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S.A. No.225 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2024

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

S.A. No.225 of 2021
and
C.M.P. No.4460 of 2021

1. K.P. Vijayakumar
2. K. Manickasundaram
S. Sadasivam

.... Appellants

VS.

.... Respondent

Prayer : Second Appeal filed under Section 100 CPC, to set aside the judgment and decree dated 15.11.2019 made in A.S. No.4 of 2019 on the file of the I Additional Subordinate Court, Erode reversing the judgment and decree dated 02.08.2018 made in O.S. No.158 of 2015 on the file of the District Munsif Court – cum – Judicial Magistrate Court, Kodumudi, Erode District and dismiss the suit by allowing this Second Appeal.

For Appellants : Mr.R. Prabakar
for
Mr.M.R. Vivekananthan

For Respondent : Mr.A.Sundaravadhanan

JUDGMENT

This Second Appeal has been filed by the defendants in the suit challenging the judgment and decree dated 15.11.2019 passed in A.S. No.4 of 2019 on the file of I Additional Subordinate Court, Erode



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reversing the judgment and decree dated 02.08.2018 passed in O.S.No.158 of 2015 on the file of the District Munsif Court-cum-Judicial Magistrate Court, Kodumudi, Erode District.

2. Heard Mr.R. Prabakar, learned counsel for the appellants and Mr.A. Sundaravadhanan, learned counsel for the respondent.

3. In the forthcoming paragraphs, the parties are described to as per their litigative status in the suit.

4. The plaintiff and the 1st defendant are cousins. Both of their fathers are brothers. The 2nd defendant is a neighbour to the suit schedule property. The plaintiff has filed the suit for permanent injunction to restrain the defendants from interfering with his peaceful possession and enjoyment of the suit schedule property. The suit schedule property comprises of ten cents. The plaintiff claims that originally a large extent of land and other properties were belonging to one Marappa gounder. According to the plaintiff, the said Marappa gounder had two Sons, they are Samiyappa gounder and K.M.Palanisamy. The plaintiff is the Son of the Samiyappa gounder and



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the 1st defendant is the Son of K.M. Palanisamy. According to the plaintiff, there was an oral partition about thirty years before filing of the suit between the Samiyappa gounder and K.M. Palanisamy. According to the plaintiff, a partition suit came to be filed in O.S. No.187 of 2014 on the file of the District Munsif-cum-Judicial Magistrate Court, Kodumudi, which was filed by the plaintiff's Sister Parvathi for partition. According to the plaintiff in the said partition suit, a compromise decree was passed under which, the suit schedule property was allotted to the plaintiff. According to the plaintiff subsequent to the allotment of the suit schedule property in favour of the plaintiff, the revenue records has also been mutated in his favour. However, according to the plaintiff, the 1st defendant, who is his Cousin is interfering with his peaceful possession and enjoyment of the suit schedule property and only under those circumstances, he was constrained to file the suit O.S. No.158 of 2015 on the file of the District Munsif -cum-Judicial Magistrate Court, Kodumudi.

5. However, it is the case of the defendants that there was no oral partition as claimed by the plaintiff in the suit. According to the defendants, the compromise decree obtained in O.S. No.187 of 2014 on the file of the District Munsif-cum-Judicial Magistrate Court, Kodumudi



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is a collusive decree and the same is not binding on the defendants.

According to the defendants, the mutation of revenue records in favour of the plaintiff was only pursuant to the collusive partition decree obtained in O.S. No.187 of 2014 on the file of the District Munsif-cum-Judicial Magistrate Court, Kodumudi. According to the defendants, the 1st defendant is in possession of the suit schedule property. The 1st defendant has also pleaded that the injunction relief cannot be granted since the 1st defendant is a co-owner.

6. Based on the pleadings of the respective parties, the Trial Court has framed the following issues :-

i) Whether without the alleged declaration prayer this suit is maintainable?

ii) Whether 1st defendant is co-sharer of the suit schedule property is true?

iii) Whether the suit is bad for non-joinder of necessary parties?

iv) Whether the plaintiff is entitled to get permanent injunction against the defendants as prayed for?

v) To what other reliefs, the plaintiff is entitled to?



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7. Based on the evidence available on record, the Trial Court viz.,

District Munsif-cum-Judicial Magistrate Court, Kodumudi by its judgment and decree dated 02.08.2018 passed in O.S. No.158 of 2015, dismissed the suit filed by the plaintiff by giving the following findings :-

a) The injunction against co-sharer cannot be granted.

b) The revenue records which have been marked as Exhibits on the side of the plaintiff are of recent origin and has been obtained only pursuant to the decree passed in O.S. No.187 of 2014 on the file of the District Munsif-cum-Judicial Magistrate Court, Kodumudi, which according to the defendants is a collusive decree.

c) There is no non-joinder of necessary parties and the suit is maintainable against the defendants.

d) As seen from the deposition of DW1, the oral partition claimed by the plaintiff in the plaint has been admitted. However, Ex.A1 Compromise Decree and Ex. B1, Settlement Deed in their respective descriptions contain the name of the father of the 1st defendant.

8. Aggrieved by the findings of the Trial Court while dismissing the suit, the plaintiff preferred a first appeal before the Lower Appellate



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Court viz., I Additional Sub Court Erode in A.S. No.4 of 2019.

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9. The Lower Appellate Court by its judgment and decree dated 15.11.2019 passed in A.S. No.4 of 2019 reversed the findings of the Trial Court by decreeing the suit as prayed for by the plaintiff and granted the relief of permanent injunction against the defendants by giving the following reasons :-

a) The plaintiff has proved that he is in possession of the suit schedule property through Ex.A1 and Ex.B1, Settlement Deed and he has also produced the revenue records standing in his name which have been marked as Exs.A2 to A5. Hence, the plaintiff is entitled for the permanent injunction relief as prayed for in the plaint.

b) The defendants have not filed any documents except the Settlement Deed (Ex.B1) standing in the name of the plaintiff to show that the title and common enjoyment of the suit property is also with the 1st defendant.

c) The 1st defendant has not marked any revenue records standing in his name for the suit schedule property



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to substantiate his claim that he is in possession of the suit schedule property.

d) The Trial Court had committed a grave error in holding that the 1st defendant is also a co-owner of the suit property on the strength of the boundaries referred in Ex.A1 & Ex.B1 Settlement Deed, both standing in the name of the plaintiff.

10. Aggrieved by the findings of the Lower Appellate Court in its judgment and decree dated 15.11.2019 passed in A.S. No.4 of 2019, the defendants have filed this Second Appeal.

11. This Court by its order dated 12.03.2021 admitted the Second Appeal by formulating the following substantial questions of law :

i) Whether the First Appellate Court is legally right in decreeing the suit of the plaintiff reversing the judgment of the trial court by shifting the burden of proof on the plaintiff with regard to the pleadings of the defendant against Section 101 of Indian Evidence Act?

ii) Whether the First Appellate Court is right in decreeing the suit for injunction by the one co-sharer against the another



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co-sharer concealing the right and title of the 1st appellate relying on Ex.A2 to A5 which was obtained pursuant to the collusive decree not binding on the 1st appellant?

iii) Whether the judgment of the First Appellate Court is vitiated for non-compliance of Section 41(j) of Specific Relief Act and dictum of Apex Court reported in AIR 2012 SC 1727?"

12. The learned counsel for the appellants drew the attention of this Court to the impugned judgment and decree of the Lower Appellate Court and would submit that erroneously relying upon a collusive partition decree obtained in O.S. No.187 of 2014 and based on the revenue records produced by the plaintiff, which are of recent origin obtained just prior to the filing to the suit without giving due consideration to the boundaries referred to in Ex.B1 Settlement Deed standing in the name of the plaintiff which discloses that the 1st defendant's father was in possession and enjoyment of the suit schedule property, the Lower Appellate Court has reversed the well considered findings of the Trial Court. According to him, in the reply statement filed by the plaintiff to the written statement filed by the defendant in the suit, the plaintiff has admitted that the 1st defendant is in possession of the suit schedule property and without considering the same in the proper



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perspective, the Lower Appellate Court has reversed the well considered findings of the Trial Court by allowing the appeal filed by the plaintiff.

13. However, the learned counsel for the respondent/plaintiff would submit that the compromise decree has not been challenged till date by the appellants, even though the same was passed as early as in the year 2014. He would also submit that the revenue records have also been mutated in favour of the plaintiff and marked as Exhibits before the Trial Court. He would also submit that oral partition took place between the plaintiff's father and the 1st defendant's father 30 years back, prior to the filing of the suit and only based on the said oral partition, the suit came to be filed for partition by the Sister of the plaintiff, in which, a compromise decree was passed. According to the learned counsel for the respondent, the oral partition has also been acted upon by the 1st defendant, who has sold a portion of the property allotted to him to a third party. He would submit that only based on the evidence available on record, the Lower Appellate Court has rightly reversed the findings of the Trial Court by granting the injunction relief as sought for by the plaintiff in the suit.



14. Discussion :-

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a) Admittedly, the compromise decree passed in O.S. No. 187 of 2014 on the file of the District Munsif-cum-Judicial Magistrate, Kodumudi, which the defendants claim is a collusive decree has not been challenged by the defendants, till date.

b) Admittedly, the revenue records have been mutated subsequent to the passing of the compromise decree in O.S. 187 of 2014 on the file of the District Munsif-cum-Judicial Magistrate, Kodumudi. The revenue records stands only in the name of the plaintiff for the suit schedule property.

c) The plaintiff has filed the documentary evidence before the Trial Court viz, his Settlement Deed, viz., Ex.B1 and also the revenue records standing in his name (Exs.A2 to A5) to prove that he is the absolute owner of the suit schedule property and he is in possession of the same. Excepting for relying upon the Settlement Deed standing in the name of the plaintiff (Ex.B1) to show that in the description of the property, the name of the father of the 1st defendant is shown as the owner of one of the boundaries to the properties is concerned, the 1st defendant has not produced any documentary evidence to substantiate his claim that he is the owner of the suit schedule property. He has not filed any revenue



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records standing in his name for the suit schedule property to disprove the claim of the plaintiff that he is the owner and he is in possession of the suit schedule property. The Trial Court by an erroneous judgment and decree dated 02.08.2018 passed in O.S. No.158 of 2015 has dismissed the suit on the ground that the revenue records obtained by the plaintiff were of recent origin just prior to the filing of the suit and the 1st defendant is also a co-owner along with the plaintiff and therefore an injunction against the co-owner is not legally permissible. The said finding with regard to the co-ownership is not proved by the 1st defendant through any documentary evidence as seen from the evidence available on record as stated supra. Excepting for relying upon Ex. A1 Compromise Decree and B1 Settlement Deed and the reply statement filed by the plaintiff in the suit, the 1st defendant has not produced any documentary evidence either in the form of the title deeds or revenue records to show that he is in possession of the suit schedule property and that he is the co-owner along with the plaintiff.

d) The Lower Appellate Court has rightly appreciated the evidence available on record and only thereafter has rightly reversed the findings of the Trial Court by allowing the appeal filed by the plaintiff and decreeing the suit as prayed for by the plaintiff in the suit.



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15. Therefore, the substantial questions of law formulated by this Court while admitting the Second Appeal on 12.03.2021 has to be answered against the appellants by holding that the First Appellate Court was legally right in decreeing the suit in favour of the plaintiff reversing the judgment of the Trial Court as the plaintiff has discharged his initial burden of proving his case as per the provisions of Section 101 of the Indian Evidence Act and the defendants have failed to establish that the plaintiff is not in possession of the suit schedule property.

16. The Lower Appellate Court is also right in decreeing the suit for injunction as the 1st defendant has been unable to establish that he is the co-owner of the suit schedule property along with the plaintiff. Therefore, the suit for injunction filed by the plaintiff is maintainable as the suit has not been filed against the co-owner.

17. In the result there is no merit in this Second Appeal. Accordingly, the Second Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.



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Index: Yes/No
Internet: Yes/No
Speaking Order/Non-Speaking Order
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To

1. The I Additional Sub Judge,
Erode .

2. The District Munsif Court-cum-Judicial Magistrate,
Kodumudi, Erode District.

3. The Section Officer,
V.R. Section, High Court of Madras,
Chennai – 104.

ABDUL QUDDHOSE, J.

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