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S.A. No.781 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.03.2024

CORAM

THE HONOURABLE MR. JUSTICE P.B.BALAJI

S.A. No.781 of 2019
and
CMP. No.15394 of 2019

1.Lakshmanan
2.Mohan
3.Rajendiran
4.Baskar
5.Rajeswari
6.Rajesh
7.Satheesh
8.Lalitha
9.Sarathkumar
10.Durga
11.Vasumathi
12.Preethi
13.Praveen

...Appellants

Vs.

1.Chandrasekar
2.Saradambal
3.Balan

...Respondents

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure to set aside the judgment and decree made in A.S. No.32 of 2011



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on the file of the Sub Court, Ponneri, 31.01.2019, reversing the judgment and decree made in O.S. No.30 of 1999 on the file of the District Munsif, Ponneri, dated 03.12.2010.

For Appellants : Mr.A.E.Ravichandran

For Respondents : Mr.C.Jagadish,
for Mr.R.Jayaprakash for R1
R2 & R3 – Given up

JUDGMENT

Heard Mr.A.E.Ravichandran, learned counsel for the appellants and Mr.C.Jagadish, learned counsel for Mr.R.Jayaprakash, learned counsel for the first respondent.

2. In furtherance of the earlier order dated 08.03.2024, the learned counsel for the first respondent submits that the plaintiff/first respondent is willing to amend the plaint and seek for declaration and stick to the ground of claim of title under documents and not adverse possession.

3. Mr.A.E.Ravichandran, learned counsel for the appellants, would submit that the appellants are in possession and even revenue records have



already been mutated in their favour and therefore, they should also be permitted to lead oral and documentary evidence in support of their contentions.

4. The First Appellate Court has granted a decree for bare injunction and admittedly, there was no prayer seeking a declaration of title. In view of the facts and circumstances of the present case, I am of the view that the relief of declaration was necessary and mere seeking of a bare injunction would not be maintainable. Further, as requested by the learned counsel for the first respondent, the first respondent also opts to amend the plaint to seek the relief of declaration.

5. On 23.07.2019 , the above Second Appeal was admitted on the following substantial questions of law:-

“1. When the plaintiff and the defendants produced title documents to the suit property and the title of the plaintiff is questioned, whether mere filing of bare injunction suit is maintainable without a prayer for declaration of title?

2. Whether the plaintiff could succeed on the basis of the sale deed Ex.A1 when the defendants produced their title documents in Exs.B1 to B3 and the plaintiff had not denied the same?

3. Whether the Lower Appellate Court justified in shifting the burden of proof on defendants instead of plaintiff who failed to prove his case of his own evidence instead of merely relying upon all evidences of the defendants?



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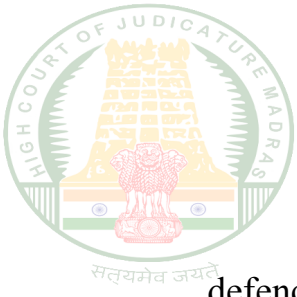
4. Whether the First Appellate Court is correct in finding that the defendants have not proved their title documents when Section 68 of the Indian Evidence Act which says that once the document is registered in accordance to the Indian Registration Act, the same need not be corroborated unless its execution is denied by the executor himself whereas in the case in hand there is no such denial?

5. Whether the finding of the First Appellate Court that the plea of adverse possession taken by the plaintiff in establishing his title is only out of abundant caution and goes against the dictum that the principle of adverse possession can be used only as a shield and not as a sword?

6. Whether the First Appellate Court without any basis on a wrong and improper appreciation of the materials placed on record, had overturned the well considered judgment and decree of the trial court and in such view of the matter, the reasonings and conclusions of the First Appellate Court in accepting the plaintiff's case is totally perverse, illogical and irrational?

7. Whether the First Appellate Court committed a jurisdictional error while deciding the application filed by the appellants herein in I.A.No.217 of 2018 under Order 41 Rule 27 of CPC?"

6. In view of the liberty being granted to the first respondent to amend the plaint and seek relief of declaration or such other relief as he may deem fit, the substantial questions of law are not required to be answered and the matter is remitted back to the trial Court for enabling the plaintiff to amend the plaint as he may be advised and thereafter, the defendants viz., appellants herein shall be at liberty to file an additional written statement and both parties are at liberty to lead further oral and documentary evidence in support of their respective case.



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7. It is also made clear that the appellants are entitled to take all such defences that may be available in law, including the plea of limitation. The trial Court, shall endeavor to dispose of the suit within a period of six months from the date of receipt of the copy of this judgment.

8. With the above directions, this Second Appeal is allowed.
Consequently, connected Miscellaneous Petition is closed. No costs.

12.03.2024

Index : Yes/No

Internet : Yes/No

rkp

To

1.The Sub Judge, Ponneri.

2.The District Munsif, Ponneri.



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P.B.BALAJI, J.

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