



S.A.No.61 of 2

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.61 of 2024

and

C.M.P.No.1751 of 20245

Lakshmanan

... Appellant

Vs.

1.Nagamani

2.Balamurugan

3.Balasubramanian

. . . Respondents

Prayer:- Second Appeal is filed under Section 100 of C.P.C to To set aside the Judgement and Decree Dated 16.06.2015 made in AS.No. 42 of 2013 on the file of the Principal Subordinate Judge, Tindivanam, confirming the Judgement and Decree Dated 27.03.2013 made in OS.No.67 of 2001 on the file of District Munsif Cum Judicial Magistrate, Vanoor.

For Appellants : M/s.P.Dinesh Kumar

For Respondent : M/s.Girishankar [R.1 to R.3] vide order dated 10.01.2024 in SA.Sr.74276/2022.



JUDGEMENT

The plaintiff in the suit for bare injunction who has lost before both the Courts below has moved the above Second Appeal. The facts are briefly set out herein below and the parties are referred to in the same ranking as before the Trial Court.

2. The suit has been filed in respect of an extent of 2.66 cents out of 3.76 cents comprised in Old S.No.339/2B and New S.Nos.116/4 and 114/2 Nallavoor Village, Vanoor Taluk. It is the contention of the plaintiff that he has been in possession and enjoyment of the aforesaid property for over 40 years. The plaintiff's name has been entered in the revenue records and he has been allotted old Patta No.K.11 which is now renumbered as Patta No.354. It is the case of the plaintiff that on 17.05.2001, the plaintiff had sold an extent of 1 acre 10 cents to one Alamelu under a registered sale deed. The remaining extent constitutes the suit property. The plaintiff has prescribed title to the suit property having been in possession of the same for over 12 years to the knowledge of all.



3. It is the case of the plaintiff that the defendants have no right, title or interest over the suit property at any point in time. Recently, certain misunderstandings arose between the plaintiff and the defendants and the defendants started claiming a right over the suit property and from 30.07.2001 they had started interfering with the plaintiff's peaceful possession and enjoyment of the suit property. Therefore, the plaintiff had come forward with the suit in question.

4. The 1st defendant had filed a written statement which was adopted by the defendants 2 and 3 in which they had denied the allegations contained in the plaint. It is their contention that the 1st defendant's father and the grandfather of the defendants 2 and 3 one Srinivasan and the plaintiff's father, Ayyankutty were brothers. The two of them were the children of one Subban. They were enjoying the suit property as a joint family property. It is the contention of the defendants that the said Subban when he was alive had encroached into the Government lands, developed the same and was in its enjoyment. Since Ayyankutty, the father of the plaintiff was the eldest, patta was



granted in his name. After the death of Subban, the eastern portion of the suit property was allotted to Srinivasan and the western portion to Ayyankutty under an oral partition. The two of them had died intestate and thereafter their properties have been partitioned and were being enjoyed by their legal representatives. The share of Ayyankutty was being enjoyed by his legal heirs, Lakshmanan, the plaintiff and Srinivasan's share was being enjoyed by Ayyanar and Nagamani, the 1st defendant, Ayyanar died in the year 1996 leaving behind defendants 2 and 3 as his legal representatives. The defendants would submit that even to date, the defendants are paying the necessary taxes in respect of the eastern portion and are in enjoyment of the same. The plaintiff has clandestinely got the patta assessed in his name and had filed the suit on the basis of this false document.

5. The 1st defendant would submit that he had obtained a loan from the Vanoor Land Development Bank **for** offering the suit property allotted to his share as security. The defendants would submit that they are cultivating the lands which have been allotted to them and the



plaintiff is not in possession and the same. Therefore they sought for the dismissal of the suit.

6. The Trial Court had framed the following issues which when translated from the vernacular would read as follows:-

1. Whether the plaintiff is entitled to the suit property?

2. Whether the suit property being enjoyed by the plaintiff?

3. Whether the defendant's case that under a partition, Srinivasan and thereafter his son Ayyanar were in enjoyment of the eastern portion of the suit property?

4. Whether the plaintiff is entitled to the relief claimed for?

5. Whether the suit is liable to be dismissed on the ground of non joinder of necessary parties.

6. To what other relief the plaintiff is entitled to?



7. The plaintiff had examined himself as P.W.1 and one Narayansamy as P.W.2 and marked Ex.A.1 to A.39. On the side of the defendants, the 2nd defendant' Balamurugan had examined himself as D.W.1 and one Subramani as D.W.2 and marked Ex.B.1 to B.15.

8. The Trial Court on considering the evidence on record and taking into account the admission made by P.W.1 in his cross examination held that the plaintiff was not entitled to the decree and consequently dismissed the suit.

9. Challenging the same the plaintiff has filed A.S.No.42 of 2013 on the file of the Principal Sub Court, Tindivanam. The learned Appellate Judge also concurred with the Judgement and decree of the Trial Court and dismissed the appeal. Challenging the same, the plaintiff/appellant is before this Court.

10. Heard the counsel for the appellant.



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11. It is an admitted fact that the total extent in S.No.339/2 measures an extent of 3.76 acres. The defendants would contend that the said extent of land was orally partitioned between the defendants and the plaintiff with the eastern half being allotted to the defendants and the western half to the plaintiff. Ex.B.1 would confirm the fact that the parties are in joint possession of the suit property as it contains the names of both the defendants and the plaintiff. Ex.A.1 also contains the name of two persons however, the name of the 2nd person has been scored out and this is evident from the judgment of the lower Appellate Court. The plaintiff had produced documents to show possession which is in respect of Patta no.11 which is now Patta no.354. The defendants had also produced Ex.B.4 to B.15 standing in the name of Ayyanar, the father of defendants 2 and 3. That apart, the defendants have produced Ex.B.2 which is a mortgage deed which has been executed by Ayyanar in favour of one Vardharajalu with reference to an extent of 1 acre and 2 cents. This document has not been denied or disputed by the plaintiff. On the contrary, the plaintiff had under Ex.A.3 conveyed an extent of 1



acre and 10 cents to one Alamelu. After effecting the sale, the plaintiff now seeks to claim a right to an extent of 2.66 cents whereas, the plaintiff is entitled only to a lesser extent. Therefore, from a perusal of Ex.B.1 and B.2 and B.4 to B.15, it is clearly evident that an extent of 3.76 cents in S.No.339/2 have been assessed jointly in the name of the plaintiff and the defendants. Therefore, the plaintiff's suit for a permanent injunction in respect of the entire extent of 2.66 acres cannot be granted and has been rightly rejected by both the Courts below. I see no reason to interfere with this concurrent judgment and decree of the Courts below. Further, no substantial question of law has been made out by the plaintiff/appellant. Accordingly, the Second Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

24.01.2024

Index: Yes/No
Speaking order/non-speaking order
Neutral Citation: Yes/No
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To

1. The Principal Subordinate Judge, Tindivanam,
2. The District Munsif Cum Judicial Magistrate, Vanoor.
3. The Section Officer,
V.R.Section,
High Court, Madras.



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P.T.ASHA, J.,

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