



S.A.No.824 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.01.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.824 of 2022
and
C.M.P.No.16930 of 2022

Kuppusamy

... Appellant

Vs.

Krishnamoorthy

... Respondent

PRAYER: Second Appeal filed under Section 100 of C.P.C. to set aside the judgment and decree dated 13.04.2022 in A.S.No.132 of 2017 passed by the learned Sub-ordinate Judge, Ulundurpet, reversing the judgment and decree dated 28.10.2015 in O.S.No.49 of 2007 passed by the learned First Additional District Munsif, Ulundurpet.

For appellant

: Mr.R.Rajaramani

for Mrs.S.Sasikala

For respondent

: Mr.C.Munusamy

JUDGMENT

The plaintiff in the suit in O.S.No.49 of 2007 on the file of the



First Additional District Munsif Court, Ulundurpet, is the appellant before this Court, challenging the judgment and decree in A.S.No. 132 of 2017 on the file of Sub Court, Ulundurpet, in and by which, the learned Judge has reversed the judgment and decree of the learned First Additional District Munsif, Ulundurpet.

2. The facts of the case are set out hereinbelow and for easy reference, the parties are referred to in the same rank as before the Trial Court.

FACTS OF THE CASE:

2.1. The plaintiff has filed the suit in O.S No.49 of 2007, seeking the relief of recovery of possession of the 'B' schedule property and to declare the title of the plaintiff to the 'B' schedule property.

2.2. It is the case of the plaintiff that he is the absolute owner of the suit 'A' schedule property which measures 0.7½ cents and is comprised in Survey No.7/1. The plaintiff's father, Govindasamy had



purchased the same and other items from one Aarayee Ammal in the year 1948 under a registered sale deed.

2.3. The plaintiff would contend that the original sale deed was misplaced and at the time of trial, a registered copy would be produced. The plaintiff contended that right from the date of purchase of the property, his father is in possession and enjoyment of the property and after his death, the plaintiff was in possession and enjoyment of the property and paying kist for the same. The original patta stood in the name of the plaintiff in Patta No.260.

2.4. While so, when the plaintiff was away at Kerala for eking out his livelihood, the defendant trespassed into the 'B' schedule property, which is the western portion of the 'A' schedule property measuring 2½ cents. The defendant is having his property on the south and west of the suit property. Therefore, he has conveniently encroached into the 'B' schedule property. The defendant has no right to the 'B' schedule property. The plaintiff had given a police complaint



and had also moved an application to the Survey Department to measure the property. The Survey Department had also found that the 'A' schedule property belongs to the plaintiff, but, colluding with the defendant, the Department had stated that the defendant is in possession of the encroached portion for several years. The defendant is a man having considerable influence and therefore, the plaintiff had approached the Court.

2.5. The defendant had filed a written statement *inter alia* contending that the allegation of the plaintiff that his father has purchased the suit schedule property from one Aarayee Ammal in the year 1948 is absolutely false. The plaintiff's father had only purchased 0.2 1/3 cents from one Aarayee Ammal under the sale deed in the year 1948. Therefore, the contention of the plaintiff that 0.7½ cents was purchased by his father from one Aarayee Ammal is absolutely false. Further, the plaintiff had not produced either the original or registered copy of the sale deed. The defendant would submit that the 'B' schedule property and the properties adjoining it originally belonged to one



Chinnapillai Ammal, wife of Sadaiyappa Padayachi and minor, Arunachala Padayachi. The said Chinnapillai Ammal, for herself, and as guardian for her minor son Arunachala Padayachi, had sold the 'B' schedule property and the adjoining properties to one Chandira Padayachi, son of Thoplaa Padayachi under a sale deed dated 12.05.1926, for a sale consideration of Rs.10/-(Rupees Ten only).

2.6. Thereafter, Chandira Padayachi was in possession and enjoyment of the said property. On his death, it devolved on his son viz., Aalaalasundar who had sold the property to the defendant's father in the year 1958 under an oral sale for a sum of Rs.50/- (Rupees Fifty only). The defendant's father had constructed a house in the said premises and the defendant and his father were living in the said property. The house had also been assessed to property tax and the same is remitted by them. 30 years prior to the filing of the suit, the defendant's father had died intestate and the defendant and his brother had inherited the said property and they had entered into an oral partition, in which, they had partitioned the 'B' schedule property and



the adjoining properties, by which, the western half was allotted to the share of the defendant and the eastern half was allotted to the share of his brother, Elumalai.

2.7. The defendant would submit that he and his predecessor-in-title had all along been in possession and enjoyment of the said property and had perfected title by adverse possession, more particularly, by putting up a construction thereon and therefore, has sought for the dismissal of the suit.

TRIAL COURT:

3. The learned Trial Judge had framed the following issues:

“1. *Whether the plaintiff is entitled to the relief as claimed for?*

2. *To what other reliefs the plaintiff is entitled to?”*

4. The plaintiff had examined himself as P.W.1 and one Chakravarthi, Village Administrative Officer as P.W.2 and marked Exs.A1 to A10. The defendant had examined himself as D.W.1 and two



independent witnesses as D.W.2 and D.W.4 and the President of Vellore Municipality as D.W.3 and marked Exs.B1 to B5 to support his case. Through third parties, Exs.X1 to X7 were marked.

5. The learned Trial Judge has decreed the suit, by holding that the plaintiff has proved the purchase of 0.2 1/3 cents by filing Ex.A7 - sale deed and since the sale deed is over 65 years, presumption as to validity under Section 90 of the Evidence Act has to be drawn.

6. The learned Trial Judge has also held that the description of the properties in Ex.A7 and Ex.B1 - the sale deed under which the defendant's predecessor-in-title purchased the property, are two different properties.

7. The learned Judge has also proceeded to hold that when the extent of 3 cents of land had been purchased by Chandira Padaiyachi in the year 1976, then, this Court cannot accept the fact that the defendant's father had purchased and was in enjoyment and possession



of the same. The defendant has not stated as to when his father had purchased the property either in his pleadings or through evidence.

8. The learned Trial Judge had further held that the defendant has not taken any step to identify the property or property in which he had put up the construction is the 'B' schedule property. Therefore, the learned Trial Judge had decreed the suit.

LOWER APPELLATE COURT:

9. Challenging the same, the defendant has filed an appeal in A.S.No.132 of 2017, on the file of the Sub Court, Ulundurpet. The learned Lower Appellate Judge, by judgment dated 13.04.2022, has allowed the appeal and set aside the decree of the Trial Court.

10. Aggrieved by the same, the plaintiff is before this court.

11. Heard the learned counsel on both sides and perused the materials available on record.



DISCUSSION:

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12. Mr.R.Rajaramani, learned counsel appearing on behalf of Mrs.S.Sasikala, learned counsel for the appellant/plaintiff, would submit his argument on the ground that the plaintiff, by filing Ex.A7, has proved his title to 0.2 1/5 cents which is the 'B' schedule property. The defendant has not filed any document whatsoever to show that the 'B' schedule property is the property that he had purchased. The learned counsel for the appellant would further submit that the defendant had encroached the property in the year 2005, when the plaintiff was away from his property and immediately, on coming to know about the same, the suit has been filed.

13. A perusal of Ex.B1 would indicate that the property of the plaintiff is west of the street and the defendant, who has no right over the same, has entered into the said property. Therefore, the learned counsel appearing for the appellant would submit that the Trial Court has extensively considered the evidence and held that the plaintiff is entitled to the decree, as claimed. The Lower Appellate Court has not



given any cogent reason for reversing this well-considered judgment of the Trial Court. Further, proper points of consideration have not been framed by the Lower Appellate Court.

14. The learned counsel appearing for the respondent/defendant would submit that the plaintiff has come to the Court without describing the property in respect of which he seeks recovery by specified boundaries. Further, the defendant has established the fact that there is a house constructed upon the 'B' schedule property and the defendant's father was in enjoyment of the same and after him, he is in enjoyment of the same by filing the property tax receipts from the year 1943. Further, the Lower Appellate Court has rightly taken note of the above fact and held that the plaintiff is not entitled to the decree, as claimed.

15. The appeal had been admitted on the following substantial questions of law:

“1. When the entries in the pass book issued by the



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Tahsildar under Section 3 shall be prima facie evidence of title of the person in whose name the patta passbook stands as per Section 6 of the Tamil Nadu Patta Passbook Act, whether the Lower Appellate Court is correct in dismissing the suit on the ground that patta is not the document of title?

2.Whether the Lower Appellate Court is correct in applying Article 64 of the Limitation Act to dismiss the suit as time barred when the plaintiff filed the suit for recovery of possession on the basis of title for which Article 65 of the Limitation Act alone will apply?

3.Whether the relief of mandatory injunction to demolish is necessary for recovery of possession of encroached portion?

4.Whether the judgment and decree of the Lower Appellate Court is liable to be set aside for not rendering finding as how the judgment of the Trial Court is liable to be set aside?

5.Whether the judgment and decree of the Lower Appellate Court is liable to be set aside for not recording the findings supported by reasons for reversing the judgment of the Trial Court?”



16. The plaintiff has come to Court seeking the relief of recovery of possession in respect of 'B' schedule property and for a declaration of his title to the same. In the suit schedule, the property in respect of which the suit has been filed is described as follows:

“ DESCRIPTION OF THE PROPERTY

'A' SCHEDULE PROPERTY

*At keelkuppam, Vellore, Ulundurpet T.K. in Dry
S.No.7/1.. Hec.0.03.0. Kist Rs.10.00*

'B' SCHEDULE PROPERTY

*At keelkuppam, Vellore, Ulundurpet T.K. in
Dry.S.No.7/1 Western 0.02 ½ cents, in the 'A' Schedule
property (as per plaint plan)”*

17. A mere reading of the same would show that the property has not been described by specified boundaries. Order VII Rule 3 of C.P.C. prescribes that when the subject matter is an immovable property, the plaint should contain the description of the properties sufficient to identify the same. A perusal of the description of the



property in respect of which the suit has been filed, does not satisfy this criteria as, even according to the plaintiff, the extent of land comprised in Survey No.7/1 is a larger extent. The plaintiff has come to the Court stating that the 'A' schedule property measuring 0.7 ½ cents has been purchased by his father from one Aarayee Ammal under Ex.A7 - sale deed dated 12.05.1948. A perusal of Ex.A7 would clearly indicate that the extent of land purchased therein is only an extent of 0.02 1/3 cents and not the extent of 0.7 ½ cents as contended.

18. The plaintiff would develop his case during evidence, wherein, he would submit that 0.5 cents out of 0.7 ½ cents is his father's ancestral properties. However, there is no pleading or evidence in respect of the same. Therefore, the plaintiff's right to the extent of 0.5 cents in 0.7 ½ cents has to be established by relying upon Ex.A1 - patta. The plaintiff who pleads title to the property on the basis of the sale deed in his pleadings, now seeks to establish the same by relying upon the patta which admittedly is not a document of title.



19. Further, the plaintiff has not described the property by boundaries, though under Ex.A7, the property measuring an extent of 0.03 cents, has been described by boundaries. The suit being one for recovery, the identity of the property has to be clearly given. The plaintiff, having pleaded title to the property on the basis of a document of title, cannot seek to rely upon the entry in the patta passbook.

20. Further, the plaintiff who claims to be in possession of the property since 1948 by paying kist, has produced the patta only of the year 1983 (Ex.A1 for Fasli 1393). Though the plaintiff has mentioned in the schedule of the property that the plan has been enclosed, this plan has not been filed by him. Therefore, there is no clarity with reference to the identity of the property.

21. The defendant has stated that they had put up the construction upon the suit 'B' schedule property after it is purchased in the year 1958 and it is also seen that there is overwhelming evidence to show that there is a building over the suit property. However, the



plaintiff has described the property as though the same is a vacant land which, once again, contradicts the description of the property on site.

The defendant has let in evidence to show that the property was assessed to tax as early as in the year 1973 and the plaintiff has come forward with the suit for recovery of possession only in the year 2007.

22. The Lower Appellate Court, from the evidence of P.W.1, has held that even according to the plaintiff, the suit property had a construction at least in the year 1991 and the suit is filed in the year 2007. Therefore, the claim for declaration and recovery of possession is beyond the period of limitation as prescribed under Article 64 of the Limitation Act. The plaintiff would contend that the learned Judge has erroneously come to the conclusion that Article 64 of the Limitation Act would apply whereas, it is only Article 65 of the Limitation Act that would apply. It is needless to state that wrong quoting of Article would not be fatal to the case. Even if Article 65 of the Limitation Act is held to apply to the instant case, the plaintiff has come to Court seeking recovery of possession much beyond the period as prescribed



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in the Article 65 of the Limitation Act. Therefore, the substantial questions of law nos.1 and 2 are answered against the plaintiff. The plaintiff has filed the suit for recovery of possession of the property by showing the vacant land totally suppressing the existence of the building thereon. The suit without seeking mandatory injunction from demolition is not maintainable and therefore, substantial question of law no.3 is also answered against the plaintiff. The Lower Appellate Court has cogently discussed the reasons for differing with the findings of the Trial Court and therefore, substantial question of law nos. 4 and 5 are answered against the plaintiff.

In fine, this second appeal stands dismissed. Consequently, connected C.M.P. stands closed. However, there shall be no order as to costs.

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

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1. The Subordinate Judge,
Ulundurpet.
2. The First Additional District Munsif,
Ulundurpet..
3. The Section Officer, V.R. Section,
High Court, Madras.



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P.T.ASHA, J.,

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