



S.A.No.489 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 12.02.2024	Pronounced on: 22.03.2024
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CORAM

THE HONOURABLE MR. JUSTICE P.B.BALAJI

S.A. No.489 of 2017

K.Ponnaiyan

...Appellant

Vs.

1.Mr.Irusan
2.Mr.E.Thangaraj
3.Mrs.Vasantha
4.Mrs.Sakunthala
5.Mrs.Kanchana
6.Mrs.Lakshmi

...Respondents

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure to set aside the Judgment and Decree of the learned Subordinate Judge, Udthagamandalam dated 22.03.2017 made in A.S. No.10 of 2014 reversing the Judgment and Decree of the learned District Munsif, Coonoor dated 19.12.2013 made in O.S. No.285 of 2004.



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For Appellant : Mr.I.Abrar Md. Abdullah

For Respondents : Mr.C.A.Diwakar

JUDGMENT

The unsuccessful plaintiff in a suit for declaration, recovery of possession and mandatory injunction having initially succeeded before the trial Court and having been unsuccessful before the First Appellate Court, is the appellant herein.

2. The parties are described as per their litigative status before the trial Court.

3. The plaintiff filed the suit claiming that the plaintiff is the absolute owner of the suit property, having purchased it under a sale deed dated 05.01.1984 and since then he has been in possession and enjoyment of the same, including mutation of revenue records. It is the further case of the plaintiff that Neelavathi and Janagi filed a suit in O.S. No.135 of 1986



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against the plaintiff pertaining to the suit property and the said suit was dismissed on 14.09.2000. Similarly, the plaintiff has also filed a suit in O.S. No.225 of 1989, to protect his possession and the said suit was decreed on 09.04.1991.

4. The further case of the plaintiff is that he sold three cents out of 50 cents to one Bharathy, 27 cents to Malarvizhi out of 47 cents, 5 and half cents out of balance 20 cents to another purchaser and retained 14 and half cents for himself. One Mitchiammal filed a suit in O.S. No.22 of 1992 claiming rights against the plaintiff and the said suit was also dismissed on 29.11.2002. Whiles, the defendants encroached into the suit property and put up construction thereon and according to the plaintiff, the defendants joined hands with Janagi and Mitchiammal and refused to remove the offending construction. Under such circumstances, the suit came to be filed.

5. The third defendant filed a written statement stating that the suit property belonged to S.Nandhi Gowder and the defendants were allotted the suit land by the said Nandhi Gowder and the defendants have also put up



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construction and effected mutation in their names. Hence, the defendants sought for dismissal of the same.

6. The Trial Court answered the issues framed in the suit, in favour of the plaintiff and decreed the suit. However, the First Appellate Court, reversed the findings of the trial Court and allowed the Appeal at the instance of the defendants 1 and 3 to 7.

7. Aggrieved by the reversal findings rendered by the First Appellate Court, the plaintiff has preferred the present Second Appeal. On 04.08.2017, this Court admitted the Second Appeal on the following two substantial questions of law:

“ (i) Whether the Lower Appellate Court was right in ignoring the vital documentary evidence viz., Sale deeds produced by the appellant as Exhibits A-1 and A-13, while considering the question of title of the appellant?

(ii) Whether the lower appellate Court was right in holding that the defendants had perfected their title in the absence of any valid proof or documentary evidence?”

8. I have heard Mr.I.Abrar Mohamed Abdullah, learned counsel for



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the appellant and Mr.C.A. Diwakar, learned counsel for the respondents. I have also gone through the available records including the pleadings, oral and documentary evidence adduced by the parties before the trial Court, as well as, the judgement and decree passed by the trial Court and the First Appellate Court.

9. The learned counsel for the appellant, Mr.Abrar Mohammed Abdulla, would take me through the findings of the trial Court as well as the First Appellate Court. He would submit that the plaintiff had clearly established his title to the suit property by producing Exhibits A1 to A5 and A13 to A24. He would also state that the plaintiff has also mutated revenue records to evidence lawful possession of the suit property, on the other hand, the defendants have failed to establish any semblance of right over the suit property. The learned counsel for the appellant would also trace the title of the plaintiff referring to various exhibits under which portions of the property originally owned by the plaintiff, were sold resulting in the suit property being retained by the plaintiff. According to him, right from 1986,



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descendants of Devi Ammal @ Mottai Deviammal have been dealing with the properties and even in Ex.A2, suit in O.S. No.225 of 1989, it was filed by the plaintiff herein against the heirs of Deviammal viz., Neelavathi and Janagi. He would also further invite my attention to the schedules in the said decree as well as the plaint schedule to correlate the suit property to be that of the plaintiff alone.

10. Per contra, Mr.C.A.Diwakar, learned counsel for the respondents, would support the findings of the First Appellate Court and contended that the plaintiff's predecessors in title had sold the property without valid title and the suit was only a speculative suit. He would also state that the names like Nandhi Gowder and Deviammal were common names in the locality and the plaintiff has only taken advantage of the same. Further, he would also contend that the First Appellate Court has rightly found that the plaintiff did not take any steps close to ten years, which only establishes that the plaintiff was merely speculating. He would therefore, pray for dismissal of the Second Appeal.



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11. The learned counsel for the appellant would place reliance on the following decisions:-

(i) *Yadaiah and Another Vs. State of Telangana and Others* reported in (2023) 10 SCC 755

(ii) *Easwari Vs. Parvathi and others* reported in (2014) 15 SCC 255

(iii) *Municipal Committee, Hoshiarpur Vs. Pubjab State Electricity Board and Others* reported in (2010) 13 SCC 216

(iv) *Haryana State and Another Vs. Gram Panchayat Village Kalehri* reported in (2016) 11 SCC 374

(v) *State of Rajasthan and Others Vs. Shiv Dayal and Another* reported in (2019) 8 SCC 637

(vi) *Balasumbramanian and Another Vs. M.Arockiasamy (Dead) through LRs* reported in 2021 (10) SCALE 179

(vii) *Mari and another Vs. Thangavel and another* reported in 2019 (6) CTC 543 and

(viii) *Nadar Uravinmurai Vs. Paulraj and Others* reported in MANU/TN/9214/2022.



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12. Similarly, the learned counsel for the respondent would place reliance on the following decisions.

(i) *Union of India and others Vs. Vasavi Cooperative Housing Society Limited and Others* reported in (2014) 2 SCC 269

(ii) *Jagadish Prasad Patel (Dead) through Legal Representatives and another Vs. Shivnath and others* reported in (2019) 6 SCC 82 and

(iii) *Kuruvamani and others Vs. A. Muthu and Others* reported in 2014 (4) CTC 653.

13. I have carefully considered the rival submissions advanced by the learned counsel on either side.

14. Ex.A1, is the sale deed dated 05.01.1984, executed in favour of the plaintiff for a total extent of 50 cents comprised in RS.No.16/2. From Ex.A13, sale deed dated 17.09.1944, it is seen that R.S. No.16/2, originally comprised of an extent of 1 Acre and 29 cents, out of which 50 cents has been purchased by the plaintiff. In O.S. No.225 of 1989, the Court had



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found lawful possession of the said 50 cents being with the plaintiff and decreed the suit, while dismissing the suit filed by the daughters of Devi Ammal and Nanja Gowder in O.S. No.135 of 1986, (Ex.A11). Similarly one Michiammal also filed a suit against the plaintiff herein in O.S. No.22 of 1992, which was also dismissed (Ex.A12). These apart, the plaintiff has also filed adequate and satisfactory documentary evidence to show various sales effected by him and finally, he retained the suit property.

15. On the side of the defendants, it is their case that under Ex.B1 sale deed dated 01.02.1961, Deviammal purchased from Kullaiyan, 2.96 Acres including lands in RS.No.16/2 (Ex.B1). It is seen from Ex.B7 that sons and daughters of Deviammal filed a suit in O.S. No.82 of 1985 against Azhagamma and Murugesan, who were the Legal Representatives of Nallusamy. In fact, as already seen above, Nallusamy also purchased lands from the plaintiff's vendor. The said suit was filed for recovery of possession and the same came to be decreed and Appeal therefrom was also dismissed.

16. It is the case of the defendants that, though the plaintiff claimed



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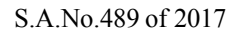
right under Ex.A1 sale deed, having purchased it from his vendor Raman, in the said sale deed, the vendor has stated that he inherited 1.29 Acres in R.S. No.16/2 from his father. However, according to the learned counsel for the respondents in Ex.A13, sale deed dated 17.09.1998, item 2 refers to S.No16/2 of an extent of 1.29 Acres and it was sold to Nanja Gowder and others. However, I find that all the purchasers in Ex.A13, admittedly were children of Bella Gowder and therefore, I do not find it inconsistent for the vendor of the plaintiff, B.Raman, who had stated that he inherited the property from his father. Even though, the initial appearing in Ex.A13, is 'N' and not 'B', in all properties the initial 'N' was included, probably because all the minors including Raman were represented by their elder brother and guardian Nanja Gowder. Though it was also contended by the learned counsel for the respondent that even if the purchaser in Ex.A13 and vendor of the plaintiff was one and the same, still, there is nothing to show as to how entire 1.29 Acres was allotted or inherited by the plaintiff's vendor. However, I am unable to countenance the said argument, since the plaintiff has purchased the property from B.Raman as early as in 1984 and none of



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the siblings of the said Raman had objected to the said sale by B.Raman, their brother and in fact, the plaintiff has produced oral and documentary evidence and established that in pursuance of the sale deed, he has been in absolute and physical possession of the land, including by fragmenting the same into smaller portions, by way of sale to third parties and ultimately retaining the suit property.

17. On the contrary, it is the specific case of the defendants that they were allotted the suit property by Nandi Gowder and that they have been in possession of the same, for which, there is absolutely no evidence forthcoming from the side of the defendants. Thus, I hold that the plaintiff has substantiated his right, title and interest to the suit property. The trial Court has correctly analysed the facts including oral and documentary evidence judiciously and decreed the suit. However, the First Appellate Court has proceeded on an erroneous consideration to reverse the findings of the trial Court. Even though the learned counsel for the respondent would faintly attempt to canvass that the names of Deviammal and Nandi Gowder



18. The next aspect is with regard to the alleged encroachment by the defendants. According to the plaintiff, the defendants have encroached into the plaintiff's property. In the plaint, it is alleged that the defendants encroached on the plaintiff's property in January 1995, the suit has been admittedly filed in 2005. However, as contended by the learned counsel for the respondents, the delay in filing the suit, there has been delay and same has been sought to be explained in the plaint, the suit is not barred by limitation as it has been filed within the period of 12 years prescribed for claiming such relief under the Limitation Act, 1963 and consequently, the suit is in time and merely because it has been filed after 10 years, alone cannot be a ground for dismissing the suit. Since the defendants have denied encroachments in the suit property, their



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claim that they were allotted the suit land by Nandi Gowder and that they have perfected title by long possession remains unsubstantiated. Even the documents that have been filed on the side of the defendants are only of the year 2007 and 2009, which do not in anyway further the cause of the defendant when they have pleaded adverse possession.

19. Once the plaintiff has established his title and the defendants have miserably failed to prove their defence, especially not being able to establish the plea of adverse possession, the plaintiff, as a consequence of being the lawful owner, is entitled to relief from the Court. No doubt the plaintiff has not filed any police complaint alleging encroachment or trespass in the year 1995. That alone would not be a ground to disbelieve the allegation of trespass. The pleadings and evidence of the parties have to be read as a whole and the plaintiff has clearly established lawful title and also possession of the suit property only follows title, especially when the defendants have not filed a shred of evidence to establish their contention of being allotted the suit land by Nandi Gowder and that they have put up



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pucca construction over the same by production of any satisfactory oral and documentary evidence in this regard.

20. Though the learned counsel for the respondent relied on *Union of India and others's* case, referred herein supra, where the Hon'ble Supreme Court has held that the burden of proof is on the plaintiff, in a suit for declaration and possession, to prove his case, irrespective of whether the defendants prove their case or not, having already found that the plaintiff has established his title, I do not find the above decision helping the defendants in any manner. He would also place reliance on *Kuruvamani's* case, referred herein supra, where this Court has held that revenue records do not confer title and title cannot be conferred merely based on mutation of revenue records. Even this decision will not apply to the facts of the present case, as I have already found that the plaintiff has established his title to the suit property.

21. The learned counsel for the appellant, as already mentioned, relied



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on five decisions of the Hon'ble Supreme Court. In *Municipal Committee's* case, referred herein supra, where the Hon'ble Supreme Court held that when a finding of fact arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or when the findings defies logic so as to suffer from the vice of irrationality, incurring the blame of being perverse, the High Court is justified in interfering with under Section 100 CPC. In *Easwari's* case, referred herein supra, the Hon'ble Supreme Court again reiterated that the High Court cannot be precluded from reversing the order and judgment of the lower appellate Court, if there is perversity in the decision, due to misappreciation of evidence and even when there is concurrent findings, the principal holds good.

22. In *Haryana State's* case, the Hon'ble Supreme Court held that when an issue regarding ownership rights is coupled with proper interpretation of document to prove such ownership rights are involved, it would constitute a substantial questions of law as to whether the Courts below were justified in interpreting the exhibits relied upon by the parties. In



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State of Rajasthan's case, referred herein supra, the Hon'ble Supreme Court held that the appellant in the Second Appeal is entitled to attack concurrent findings, if it is shown that it is bad in law as a result of being based on no evidence; based on misreading of material documentary evidence; or being recorded against any provision of law and, the decision is one which no judge acting judicially could have reasonably reached.

23. In *Balasubramanian's* case, referred herein supra, the Hon'ble Supreme Court held that merely because the High Court refers to factual aspects to conclude on the question of law, it would not amount to reappreciation of evidence and that the High Court was within its jurisdiction to determine whether reading of the evidence on record by one of the Courts was perverse. The appellant has further relied on the decision of this Court in *Mari's* case, referred herein supra, regarding *res judicata*. He has also relied on decision of this Court in *Nadar Uravinmurai's* case, referred herein supra, where this Court held that pleadings in the former suit have to be produced before invoking the plea of *res judicata*. However,



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where non-compliance of Order I Rule 8 of CPC, in the earlier suit was the issue, failure to produce the pleadings in the earlier case may not affect the application of *res judicata*. In *Yadaiah*'s case, referred herein supra, the Hon'ble Supreme Court, held that only determinations which are essential and fundamental to the substantive decision, and not collateral thereto, would result in the application of the doctrine of *res judicata* and when the Court, in the process of arriving at a final conclusion, makes any incidental, supplemental or non-essential observations which are not foundational to final determination, then it would not tie down the hands of the Court in future, on the ground of *res judicata*.

24. With regard to plea of *res judicata*, the learned counsel for the respondents would submit that the defendants never pleaded *res judicata* as a defence and they had only relied on Ex.B7 and B8 judgments, to substantiate their defence that the plaintiff's vendor had no title to the suit property. In any event, I do not find that the judgments in the earlier O.S. No.82 of 1985 (Ex.B7) would bar the present suit, since the disputed



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property in the said suit was only an extent of 5 cents in 54 cents in RS.

No.16/2 and moreover, the defendants in the said suit were Azhagamma and Murugesan who were not the predecessors in interest of the plaintiff. Similarly Ex.B8 also is only an Appeal filed by the defendants against O.S. No.82 of 1985 (Ex.B7). Even otherwise, as the learned counsel for the respondents has submitted that they have not raised plea of res judicata, I find no necessity to dwell into any further, detail on this aspect.

25. Keeping in mind, the above ratio laid down by the Hon'ble Supreme Court and testing the judgments of the Courts below, I am conscious of the fact that in a suit for declaration and reliefs of the nature that have been sought in the present suit, the burden is only on the plaintiff to establish the same, without attempting to take advantage of the weaknesses in the defence set up by the adversary party. I have already found that the trial Court has rightly discussed the oral and documentary evidence and found that the plaintiff had established his title and the son of the first defendant who was examined also admitted to the agreement in



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Ex.A24 dated 06.11.1992 having been signed by his father. Curiously, the first defendant also avoided entering the witness box and in all probability, it was only for the purposes of avoiding inconvenient questions regarding Ex.A24. Under the said Ex.A24, the first defendant has acknowledged in writing that he has borrowed a sum of Rs.10,000/- and in default, he would sell his 7 cents of land purchased from K.Ponnaiyan to Raman, S/o.Bella Gouder. The trial Court has also found that though under Ex.B1, extent of 2 Acre 96 cents is said to have been purchased by Deviammal, there are five Survey Numbers and Ex.B1 was not clear as to the extent purchased in R.S. No.16/2 and has also found that the plaintiff through Ex.A2, A5, A9, A11, A15 and A18 to A22 and A23 has clearly established his claim. However, the First Appellate Court on misreading of the evidence and irrelevant consideration of testing the plaintiff's vendor's title, especially when sufficient documentary evidence was available on record, erred in reversing the findings of the trial Court. The First Appellate Court has also not correctly analysed Ex.B1 and B2 documents in a proper perspective and for all the above reasons, the findings of the First Appellate Court deserve to be



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interfered with.

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26. In fine, the substantial questions of law are answered in favour of the appellant and the Second Appeal is allowed. The judgment and decree of First Appellate Court made in A.S. No.10 of 2014 is set aside and judgment and decree of the trial Court made in O.S. No.285 of 2004 is restored. There shall be no order as to costs.

22.03.2024

Index :Yes/No
Internet : Yes/No
Neutral Citation :Yes/No.
Speaking order/Non-speaking order
rkp

To
1.The Subordinate Judge, Udhagamandalam.
2.The District Munsif, Coonoor.

P.B.BALAJI, J.

20/21



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