



S.A.No.712 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2024

CORAM

THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

S.A.No.712 of 2017 and
C.M.P.No.18146 of 2017

P.Pichaipillai

... Appellant

Vs.

1. G.Pichaipillai
2. G.Chinnadurai
3. T.Asothai
4. G.Rasu (died)
(LRs of R1 are dispensed vide
Order of this Court, dated 31.01.2024

5. The District Collector,
Ariyalur,
Ariyalur District.

6. The Tahsildar,
Ariyalur,
Ariyalur District.

... Respondents

Prayer: Second Appeal filed under Section 100 CPC r/w. Order 41 Rule 1 of C.P.C., 1908 against the decree and judgment dated 15.03.2016 passed in A.S.No.104/2012, on the file of the Additional District and Sessions Court, Ariyalur reversing the decree and judgment dated 23.11.2009 passed in O.S.No.99/2008, on the file of the Principal District Munsif, Ariyalur.



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For Appellant : Mr.A.S.Narasimhan
For R1 to R3 : Mr.S.M.S.Shriram Narayanan
For R6 : Mr.P.Gurunathan

JUDGMENT

The appellant is the plaintiff in O.S.No.99/2008 on the file of the Principal District Munsif, Ariyalur. He filed the suit for declaration of his title to the suit property and for a permanent injunction restraining the defendants, their men and agents, from interfering with his peaceful possession and enjoyment of the suit property. He also prayed for a direction to the Revenue Officials to issue patta in respect of the suit property to the plaintiff.

2. The suit property as described in the plaint is a land in survey number 40/14 of Karupilakattalai village, Ariyalur admeasuring 0.04.0 Ares.

3. For the sake of convenience, the parties are referred to as per their ranking in the Trial Court and at appropriate places, their rank in the present second appeal would also be indicated.



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4. The case of the plaintiff in a nutshell is as follows :

The suit property was purchased by the plaintiff from the father of the first defendant through a registered sale deed, dated 15.03.1978 (Ex.A2). The suit property is shown as third item in the sale deed (Ex.A2). However, the survey number was wrongly indicated as 39/1. The plaintiff has been in possession and enjoyment of the suit property, which is in Survey number 40/14, continuously without any interference. Since the survey number has been mentioned wrongly in the sale deed (Ex.A2) the defendants took advantage of the same and obtained patta in their favour in respect of the suit property. Hence the suit.

5. The defendants 5 and 6 remained absent and were set exparte. The suit was resisted by the other defendants on the following grounds:

- i. It is not true that the suit property was sold in favour of the plaintiff through the registered sale deed, dated 15.03.1978 (Ex.A2).



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- ii. The plaintiff is not in possession and enjoyment of the suit property.
- iii. The suit property is a common tank and therefore, the same cannot be sold in favour of the plaintiff.
- iv. Patta in respect of the suit property was issued in favour of the defendants and they are in possession and enjoyment of the same.

6. On the basis of the above pleadings, the Trial Court framed the following issues:

- i. Whether the plaintiff is entitled to a decree of declaration and permanent injunction restraining the defendants from interfering with his peaceful possession and enjoyment of the suit property as prayed for?*
- ii. Whether the plaintiff is entitled for a direction to the defendants 5 and 6 to change patta in respect of the suit property in favour of the plaintiff?*
- iii. Whether the plaintiff is in possession of the suit property as per the sale deed ?*



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iv. To what relief the plaintiff is entitled?

7. In the Trial Court, the plaintiff examined himself and marked Ex.A1 to Ex.A7. The first defendant examined himself and marked Ex.B1 to Ex.B3. An Advocate commissioner was appointed by the Trial Court and he filed his report and plan which were marked as Ex.C1 and Ex.C2.

8. After full contest, the learned Trial Court Judge, vide his decree and judgment dated 23.11.2009, decreed the suit in favour of the plaintiff on the following grounds:

- i. The plaintiff has categorically stated that the survey number has been wrongly indicated in the sale deed, dated 15.03.1978 (Ex.A2).
- ii. The defendants had not adduced any evidence to show that the suit property in survey number 40/14 was never sold in favour of the plaintiff.



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- iii. The plaintiff has been in possession and enjoyment of the suit property ever since the date of sale deed (Ex.A2).
- iv. The plaintiff has also filed patta and other connected records to show his possession over the suit property.

9. Aggrieved over the decree and judgment passed by the Trial Court Judge, the defendants filed an appeal in A.S.No.104/2012 before the Additional District and Sessions Court, Ariyalur. The learned Additional District and Sessions Judge, on considering the oral and documentary evidence adduced on both sides, allowed the appeal and dismissed the suit filed by the plaintiff vide her decree and judgment dated 15.03.2016 on the following grounds:

- i. Though the plaintiff has contended that in the sale deed, dated 15.03.1978 (Ex.A2) survey number has been wrongly indicated, he did not take any steps to get the same rectified through a rectification deed.
- ii. He did not also initiate any action against the father of the first defendant in this regard.



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- iii. The plaintiff has not also adduced any acceptable evidence to show that how survey number in the sale deed, dated 15.03.1978 (Ex.A2) has been wrongly indicated as survey number 39/1 instead of survey number 40/14.
- iv. Moreover, the plaintiff during the course of cross examination, had deposed that the survey number in the sale deed has been correctly mentioned.

10. Aggrieved over the decree and Judgment passed by the first appellate Court, the present second appeal is filed.

11. Heard Mr.A.S.Narasimhan, learned counsel for the appellant, Mr.S.M.S.Shriram Narayanan, counsel for the Respondents 1 to 3 and Mr.P.Gurunathan, learned counsel appearing for the sixth respondent.

12. The plaintiff had claimed title and possession over the suit property in Survey number 40/14 of Karupilakattalai village, Ariyalur



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Taluk, Ariyalur District admeasuring 0.04.0 Ares through the registered sale deed, dated 15.03.1978 (Ex.A2). According to the plaintiff, the suit property is mentioned as third item in the sale deed, dated 15.03.1978 (Ex.A2). However, in Ex.A2, the third item is indicated as survey number 39/1 measuring 0.29 1/2 cents. According to the plaintiff, the third item in Ex.A2 has been wrongly indicated as survey number 39/1 instead of survey number 40/14. It is pertinent to point out that the sale deed is of the year 1978 and the present suit is filed only in the year 2008. The vendor in Ex.A2 is the father of the first defendant. When the plaintiff had contended that there is a mistake in mentioning the survey number in the sale deed (Ex.A2), he did not take steps to get the same rectified through a rectification deed. On the contrary, he has filed the present suit after a lapse of twenty years against his vendors and others stating that he is in possession and enjoyment of the suit property in survey number 40/14. He did not also adduce any acceptable evidence to show as to how the survey number has been wrongly indicated in the sale deed (Ex.A2). Moreover, the boundary description has not been mentioned either in the sale deed (Ex.A2) or in the plaint schedule. In



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this regard, the contention of the plaintiff is that the suit property is a tank and therefore, there cannot be any boundary description. When it is admitted by the plaintiff that the suit property is a tank, it is not known as to how he claimed possession over the same and that too based on the sale deed, dated 15.03.1978 (Ex.A2). As already observed, the plaintiff did not initiate any action against the father of the first defendant for wrongly indicating the survey number in the sale deed. Apart from that, the plaintiff during the course of cross examination, had admitted that there was no mistake while mentioning the survey number in the sale deed, dated 15.03.1978 (Ex.A2). In the circumstances, the observations of the first appellate Court that the plaintiff has not established his title and possession over the suit property is perfectly in order. In fact, there is no substantial question of law involved in the present second appeal.

13. In the result,

- i. The Second Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.



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ii. The decree and judgment dated 15.03.2016 passed in A.S.No.104/2012, on the file of the Additional District and Sessions Court, Ariyalur are upheld.

iii. The suit in O.S.No.99/2008, on the file of the Principal District Munsif, Ariyalur is dismissed with costs.

16.12.2024

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
vum

To

1. The Additional District and Sessions Court, Ariyalur.
2. The Principal District Munsif, Ariyalur.
3. The Section Officer, VR Section,
Madras High Court, Chennai.



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R. HEMALATHA, J.

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