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S.A. No.621 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2024

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

S.A. No.621 of 2021
and
C.M.P. No.12935 of 2021

1. K. Ravi
2. K. Kasthuri (Died) Appellants

vs.

1. R. Baby @ Shanthi
2. D. Usharani
3. Indira
4. Shanthi
5. Sangeetha

A2 died RR3 to 5 are brought on record as Lrs
of the deceased A2 vide Court order
dated 07.06.2024 in CMP No.5029 of 2024. Respondents

Prayer : Second Appeal filed under Section 100 CPC, against the judgment and decree made in A.S. No.545 of 2010, dated 02.08.2013 on the file of the 7th Additional City Civil Court, Chennai, reversing the judgment and decree made in O.S. No.795 of 2007, dated 28.09.2010 on the file of the 8th Assistant City Civil Court, Chennai.

For Appellants : Mr.Su. Srinivasan

For Respondents : Ms.V.M.Shanthi for R1 & R2
No appearance for R3 to R5



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JUDGMENT

WEB COPY This Second Appeal has been filed challenging the impugned judgment of the Lower Appellate Court viz., VII Additional City Civil Court, Chennai, dated 02.08.2013 passed in A.S. No.545 of 2010 wherein the Lower Appellate Court has reversed the findings of the Trial Court passed in its judgment and decree dated 28.09.2010 in O.S. No.795 of 2007 on the file of the VII Assistant City Civil Court, Chennai.

2.The Appellants are the defendants and the respondents 1 and 2 are plaintiffs in the suit O.S. No.795 of 2007.

3. The suit has been filed to direct the defendants to deliver vacant possession of the suit schedule property to the plaintiffs as according to the plaintiffs, the defendants are encroachers. The plaintiffs have also claimed future damages at the rate of Rs.2,000/- per month from the date of the plaint till the date of handing over the possession of the property by the defendants.

4. Heard Mr.Su.Srinivasan, learned counsel for the appellants and Ms.V.M.Shanthi, the learned counsel for the respondents.

5. In the forthcoming paragraphs, the parties are described as per



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their litigative status in the suit :-

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According to the plaintiffs, the 1st plaintiff purchased the property under a Sale Deed, dated 30.03.2000 measuring an extent of 1200 sq. ft. and the balance extent of 1398 sq. ft. was purchased by the 2nd plaintiff under a Sale Deed, dated 06.08.1998. According to the plaintiffs, the total extent under the aforementioned Sale Deeds is 2598 sq. ft. According to the plaintiffs, the aforementioned property measuring 2598 sq. ft. was purchased from the defendants under the aforementioned Sale Deeds through their Power Agent. According to the plaintiffs, the defendants have encroached an extent measuring 400 sq. ft., which is the suit schedule property, from and out of the portion of a larger extent of land measuring 2598 sq. ft., which necessitated the plaintiffs to file the suit seeking for delivery of possession and for damages. However, the defendants have contended as seen from the written statement that only one Sale Deed was executed in favour of the plaintiffs and the other Sale Deed was never executed as the intention of the defendants was to execute only a mortgage deed as they had only borrowed money from the plaintiffs.

6. Based on the pleadings of the respective parties, the Trial Court



framed the following issues :-

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a) Whether the suit schedule property are correctly shown in the plaint.

b) Whether the plaintiffs are entitled for the delivery of vacant possession as prayed for?

c) Whether the plaintiff entitled for the damages as prayed for?

d) To what other relief?

7. Before the Trial Court, the plaintiffs filed three documents which were marked as Exs. A1 to A3 and they had examined two witnesses viz., Ragavan and P. Dhanraj, who are the respective husbands of the respective plaintiffs. On the side of the defendants, 9 documents were filed which were marked as Ex.B1 to B9 and the 2nd defendant was examined as a witness (DW1).

8. The Trial Court has given a finding that since the defendants have not chosen to file a suit to set aside the two Sale Deeds standing in the name of the respective plaintiffs viz., Exs. A1 and A2, the question of



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considering the defence raised by the defendants in the written statement does not arise.

9. The Trial Court has observed that the defendants have not taken immediate steps to seek for cancellation of the Sale Deeds standing in the name of the respective plaintiffs, which are dated 06.08.1998(Ex.A1) and 30.03.2000(Ex.A2). Admittedly, no counter claim was also filed in the suit by the defendants seeking for cancellation of the aforementioned Sale Deeds standing in the name of the respective plaintiffs. The contention of the defendants that one of the Sale Deeds executed in favour of one of the plaintiffs was a Mortgage Deed and not a Sale Deed has also not been proved through any iota of evidence as seen from the evidence available on record. The documents marked as Exhibits on the side of the defendants viz., Exs. B1 to B9 are also of no significance to support the contentions of the defendants that they never executed the alleged Sale Deeds standing in the name of the respective plaintiffs. Even though the defendants may claim that they are in possession of the suit schedule property for a long number of years, when they have executed valid Sale Deeds in favour of the respective plaintiffs and that too when they have chosen not to challenge the execution of those Sale Deeds, this Court is of the considered view that the Trial Court has erroneously not granted the



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relief of recovery of possession to the plaintiffs based on the sale deeds standing in the name of the respective plaintiffs (Exs.A1 and Ex.A2).

Even though the Trial Court has given a finding that the defendants have not challenged the two Sale Deeds standing in the name of the respective plaintiffs (Exs.A1 and A2), the Trial Court has erroneously dismissed the suit on the ground that the plaintiffs and the defendants have not produced any parent documents and also on the ground that the suit property is a poromoboke land.

10. The Trial Court has also observed that the plaintiffs have not supported their suit claim through oral and documentary evidence. The Trial Court while dismissing the suit has also observed that the plaintiffs have not been able to prove through oral and documentary evidence, the date on which the delivery of possession was handed over to the plaintiffs, the date on which the defendants had trespassed and encroached the property.

11. Aggrieved by the judgment and decree of the Trial Court, dated 28.09.2010 passed in O.S. No.795 of 2007, the plaintiffs filed the first appeal before the VII Additional City Civil Court, Chennai in A.S.



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No.545 of 2010.

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12. The Lower Appellate Court by its judgment and decree, dated 02.08.2013 passed in A.S. No.545 of 2010 reversed the findings of the Trial Court by allowing the first appeal filed by the plaintiffs by giving the following reasons :-

a) DW1 (K.Kasthuri), in her cross examination has admitted her signature in Ex.A1 Sale Deed standing in the name of the 2nd plaintiff. Though the defendants have contended that Ex.A1 Sale Deed was never executed but the said document was only a Mortgage Deed, no oral and documentary evidence has been produced to substantiate the said contention.

b) The plaintiffs have proved through the oral and documentary evidence that the 1st plaintiff is the owner of the land measuring 1200 sq. ft. under Ex.A2 Sale Deed and the 2nd plaintiff is the owner of the land measuring 1398 sq. ft. under Ex.A1, Sale Deed.

c) The Trial Court has erroneously given a finding that the description and location of the suit schedule property is not



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proper and based on the said finding, the Trial Court has erroneously dismissed the suit. The said plea was never taken by the defendants in their written statement but despite the same such an erroneous finding was given by the Trial Court. The Sale Deeds standing in the names of the respective plaintiffs viz., Exs.A1 and A2 have not been challenged by the defendants though the same were executed as early as in the year 1998 and 2000 respectively. The Lower Appellate Court therefore allowed the appeal filed by the plaintiffs and granted the relief of recovery of possession as prayed for in the suit but confirmed the findings of the Trial Court with regard to the refusal to grant the relief of damages.

13. Aggrieved by the findings of the Lower Appellate Court, the defendants in the suit have preferred this Second Appeal.

Discussion :

14. The following are the undisputed facts as seen from the evidence available on record.

a) Both the Sale Deeds standing in the name of the respective plaintiffs viz., Exs.A1 and Ex.A2 have not been challenged by the



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defendants in the suit, till date.

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b) No counter claim was made in the written statement filed by the defendants seeking for cancellation of Ex.A1 and A2 Sale Deeds.

c) Ex. A2, Sale Deed pertains to a land measuring 1200 sq. ft. standing in the name of the 1st plaintiff. Ex.A1 Sale Deed pertains to a land measuring 1398 sq. ft. standing in the name of the 2nd plaintiff.

d) The revenue records pertaining to the schedule of land mentioned in Exs.A1 and A2 Sale Deeds have also been mutated in the name of the respective plaintiffs as patta has been marked as Exhibits before the Trial Court which stands in the name of the respective plaintiffs.

15. Though the Lower Appellate Court has given a finding that since no specific plea was taken by the defendants in their written statement that the suit schedule property has not been properly described, even though the said finding may be wrong in view of the specific plea having been taken by the defendants in the written statement that the property has not been properly described as per Order 7 Rule 3 CPC, the said finding does not have any relevance for the purpose of adjudicating the suit filed by the plaintiffs, in view of the admitted fact that the Sale



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Deeds standing in the name of the respective plaintiffs viz., Exs. A1 and A2, Sale Deeds have not been challenged by the defendants by initiating appropriate proceedings either in the very same suit or by separate proceedings seeking for cancellation of those Sale Deeds. The Sale Deeds are of the years 1998 and 2000 and even after lapse of several years, admittedly the defendants have not challenged those Sale Deeds by initiating appropriate legal proceedings.

16. The Trial Court in its judgment and decree dated 28.09.2010 passed in O.S. No.795 of 2007 has also given a categorical finding that the defendants have not filed any proceedings seeking for cancellation of Ex.A1 Sale Deed and Ex.A2 Sale Deed. However only on the ground that the subject property is a poromoboke land and that the parent documents have not been produced by parties, as well as proper parties were not examined as witnesses, the Trial Court has dismissed the suit.

17. This Court is of the considered view that by total non application of mind to the pleadings and the evidence available on record, the Trial Court has dismissed the suit even though the evidence produced by the plaintiffs through their oral and documentary evidence would categorically establish that they are the absolute owners of the larger



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extent of 2598 sq. ft., in which, the suit schedule property measuring 400

sq. ft. forms a part and they are entitled for recovery of possession. The

Trial Court has mis-appreciated the evidence and has come to the wrong conclusion by rejecting the relief of recovery of possession sought for by the plaintiffs. The Lower Appellate Court has rightly appreciated the evidence available on record and has come to the correct conclusion that the plaintiffs are the absolute owners of the larger extent of land in which the suit schedule property forms a part as they have purchased the larger extent under two Sale Deeds viz., Exs.A1 and A2.

18. Since no evidence has been produced by the plaintiffs with regard to the damages claim, both the Courts below have rightly refused to grant the relief of damages as prayed for in the plaint.

19. Since there are no debatable issues of fact or law involved for further consideration in this Second Appeal and there is no substantial question of law involved, this Court is not entertaining the Second Appeal as there is no merit in the same. Accordingly, the Second Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.



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WEB COPY 20. It is brought to the notice of this Court by the learned counsel for the appellants that an Execution Petition has already been filed by the plaintiffs seeking for execution of the judgement and decree of the Lower Appellate Court, dated 02.08.2013 passed in A.S. No.545 of 2010 and the Bailiff has already started executing the said decree and he would submit that apart from the extent of 400 sq. ft mentioned in the suit schedule, the Bailiff is also attempting to recover possession from the defendants in respect of the remaining lands as well which is not part of the suit schedule. It is made clear that the Bailiff can execute the judgment and decree of the Lower Appellate Court, dated 02.08.2013 passed in A.S. No.545 of 2010 only to the extent of 400 sq. ft. as mentioned in the suit schedule and not anything more.

20.06.2024

Index: Yes/No
Internet: Yes/No
Speaking Order/Non-Speaking Order
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To
1. The Judge,
VII Additional City Civil Court,
Chennai,



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ABDUL QUDDHOSE, J.

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2. The Judge,
VIII Assistant City Civil Court,
Chennai.

3. The Section Officer,
V.R. Section, High Court of Madras,
Chennai – 104.

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