



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 14.03.2024

Pronounced on: 22.03.2024

CORAM :

THE HONOURABLE MR. JUSTICE P.B.BALAJI

S.A.No. 832 of 2018
and
CMP. No.22726 of 2018

1.Manickam
2.Selvam

...Appellants

Vs.

P.Duraisami

...Respondent

PRAYER : Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the Judgment and Decree dated 18.01.2018 passed in A.S. No.30 of 2013 on the file of the Subordinate Judge, Tirupattur confirming the Judgment and Decree dated 07.08.2003 passed in O.S. No.253 of 2003 on the file of the Principal District Munsif Court, Tirupattur.

For Appellants : Mr.I.Periaswamy

For Respondent : Mr.T.M.Hariharan



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S.A. No.832 of 2016

JUDGMENT

The unsuccessful defendants who suffered concurrent findings before the trial Court as well as the First Appellate Court are the appellants.

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

3. The case of the plaintiff is that the plaintiff, his brothers, Manickam (1st defendant), Ramasami and Renu Gounder along with their father Patcha Gounder, constituted a Hindu joint family and during the lifetime of the father, properties in S.Nos.151 and 178 were purchased from one Jayarama Reddiar under three different sale deeds, one in the name of the plaintiff, one in the name of the first defendant and the other in the name of Renu Gounder, on 09.07.1977. All the properties were treated as joint family properties and after the death of the father in the year 1979, in 1980, the plaintiff and his brothers effected an oral partition and the properties covered under the three sale deeds dated 09.07.1977 were allotted to the plaintiff. The plaintiff was given custody of the title deeds of all the three properties and patta was issued to the plaintiff, clubbing all the three items into one



Survey Number namely, new S.No.151/1G.

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4. According to the plaintiff, he has constructed a rice mill and he has also obtained an electricity service connection and he has been paying kist for the entire property. He has also applied for loan from the State Bank of India for construction of Kalyana Mandapam. As the first defendant created a settlement deed in favour of the second defendant and attempted to trespass into the suit property, the plaintiff filed the suit for declaration and permanent injunction.

5. The second defendant filed a written statement, which was adopted by the first defendant, denying the plaint averments and allegations. Though the defendants admitted the oral partition in the plaint, it was denied that the plaintiff was allotted the entire property in Survey No.151/1G. According to the 2nd defendant, 10.5 cents out of the said property was allotted to the first defendant and it was only the first defendant who constructed a ricemill and obtained service connection. The defendants have also stated that the plaintiff has excluded the Kalyana Mandapam in the suit property and the lands having been subdivided before the filing of



the suit, the properties have not been properly described in the suit and hence, the suit was sought to be dismissed.

6. The trial Court finding that the plaintiff had proved title and possession of the suit property, granted a decree as prayed for viz., declaring the title and also the relief of permanent injunction. On appeal filed by the defendants, the First Appellate Court confirmed the findings of the trial Court and dismissed the Appeal.

7. On 02.01.2019, the above Second Appeal was admitted on the following two substantial questions of law:

“ 1. Whether the Appellate Court as well as the Lower Court was correct by ignoring the revenue records of sub-division of the suit property?

2. Whether the Appellate Court as well as the Lower Court was correct in not framing issues with regard to adverse possession of portion of suit property”

8. The learned counsel for the appellants would submit that referring to the plaint, when the plaintiff has omitted to mention the Kalyana Mandapam in the schedule and in fact, expressly set out in the schedule that the suit property excludes the Kalyana Mandapam, the plaintiff had to be



non-suited when he has sought for declaration of his right, title and interest in the suit property and to restrain the defendants from interfering with the peaceful possession and enjoyment.

9. The learned counsel would also refer to the mutation of records in the first defendant's name in the year 1994 and the settlement deed in the year 2003, by the first defendant to the second defendant, based on which all revenue records have also been changed in the name of second defendant. The said settlement deed has not been challenged by the plaintiff. Therefore, the suit was not even properly framed, which unfortunately both the Courts have not taken note of and instead they have erroneously decreed the suit. He would therefore, pray for the Second Appeal being allowed.

10. Per contra, Mr.T.M.Hariharan, learned counsel for the respondent would submit that the defendants admit the oral partition amongst the brothers and by production of overwhelming oral and documentary evidence supporting the oral evidence and pleadings in the plaint, the plaintiff had established his right, title and entitlement to the suit properties. The learned counsel would also state that only pursuant to the settlement deed by the



first defendant in favour of second defendant in respect of 10.5 cents, the revenue records have been mutated in the name of the second defendant.

The subdivision has also not been proved to be valid and moreover, the defendants have also not established that they were in possession of the 10.5 cents. On the contrary, the plaintiff has filed kist receipts, A Register and also patta to establish the plaintiff's title and possession of the suit property. Though the defendants contended that they have constructed the flour mill, they have been unsuccessful in establishing the said contentions and therefore, the learned counsel for the respondent Mr.T.M.Hariharan, would pray for dismissal of the Second Appeal, there being no substantial question of law to be answered in favour of the appellant.

11. I have carefully considered the rival submissions advanced by the learned counsel on either side. I have also gone through the pleadings as well as the judgment and decree of both the Courts below namely, the trial Court as well the First Appellate Court.

12. As rightly contended by the learned counsel for the appellants, in the plaint, the plaintiff had excluded Kalyana Mandapam while describing



the suit properties. However, reading the plaint as a whole, the reason for the plaintiff excluding the Kalyana Mandapam is only because, there was no dispute with regard to the portion of the suit property over which an attempt was made to trespass and when the 10.5 cents, for which the settlement deed was executed by the first defendant in favour of the second defendant on 08.09.2003, was not affecting the Kalyana Mandapam portion, in such circumstances, the plaintiff did not think it fit to include the Kalyana Mandapam in the suit schedule.

13. The defendants in the written statement have curiously admitted that there is a ricemill building situated in the suit property and that the suit has not been valued properly. They have also specifically stated that they do not claim any right in Survey No.151/1G2, in which portion the Kalyana Mandapam has been constructed. According to the defendants, their claim is only in respect of Survey No.151/1G1. The defendants have further contended in the written statement that in the flour mill there is an old building and service connection was disconnected and therefore, the building was not mentioned in the settlement deed executed by the first defendant in favour of the second defendant. The first defendant claims to have been



paying license fee for the said flour mill and that the plaintiff was never in possession and enjoyment of the said rice and flour mill and borewell, situate in an extent of 10.5 cents in Survey No.151/1G1.

14. Both the Courts have rightly assessed the oral and documentary evidence adduced by the parties and also the report of the Advocate Commissioner and plan. In coming to the conclusion that patta 506 issued in favour of the plaintiff before sub-division comprises 0.77.5 hectares and mentioned in Survey No.151/1G and it also included Survey No.175/1A5 in respect of 48 Ares and the said patta has been issued in the name of the plaintiff on 28.08.1981, immediately after the oral partition which is admitted even by the defendants. Thereafter, the plaintiff has produced adangal Extract for fasli Years 1391 to 1411, to establish that it is only the plaintiff who has been in possession. The trial Court has also taken note of the fact that from fasli year 1404, the sub divided Survey Number is shown as 151/1G2 and stands in the name of the plaintiff.

15. The trial Court also drew adverse inference for the first defendant not entering into witness box and his son, the second defendant who



examined himself as D.W.1, was not able to throw any light on the contentious issues, leave alone, defend the settlement deed in his favour.

The first defendant would have been the best person to speak about the manner of oral partition and allotment of properties thereunder. Unfortunately, he avoided the witness box for reasons best known to him and the settlee, his son had nothing to support the defence plea.

16. Insofar as Survey No.151/1G1, according to the defendants, they were in enjoyment of this portion right from the date of oral partition in the year 1980. However, they have not been able to produce any documents to substantiate the possession of Survey No.151/1G1, prior to settlement deed executed by the first defendant in favour of the second defendant. In fact, the trial Court also noticed that the FMB produced in Ex.B4 & B5, do not indicate the names of the persons in whose names the subdivided numbers namely, 1G1 and 1G2 stand. However, A Register Extract produced by the defendants in Ex.B6, clearly evidences that the entire extent of S.No.151/1G stood only in the plaintiff's name.

17. The Courts below have rightly disregarded Ex.B7 patta and B9 patta, on the ground that there was no proof as from when an extent of



0.04.3 hectares was mutated in the name of the first defendant. The Court also took note of the admissions of D.W.2, in cross examination that the entire extent stood only in the plaintiff's name and there is no indication when it was subdivided. Similarly, D.W.3, Deputy Tahsildar also admitted that the entire extent of 0.77.5 hectares stood only in the name of the plaintiff. As already pointed out Exhibits.X1 to X6, do not indicate as to when Survey No.151/1G was subdivided into 151/1G1 & 151/1G2 or on what basis it was subdivided. The Courts below also found that from the Advocate Commissioner's report that the plaintiff had put up a bore well and was enjoying the property, including the rice and flour mill. Even according to the defendants, there is no mention admittedly about the building namely the rice/flour mill in the settlement deed. Moreover, as claimed by the defendants, they have also not produced any licence fee paid for the flour mill also.

18. Both the Courts below have rightly arrived at the findings that the plaintiff has established title and also possession to the suit property and on the contrary, the defendants have miserably failed to establish the defence plea. The concurrent findings rendered by the Courts below are legal,



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proper and well merited and do not deserve any interference. The substantial question of are answered against the appellants.

19. In fine, the Second Appeal is dismissed. Connected Miscellaneous Petition is also dismissed. 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, Tirupattur.
2. The Principal District Munsif Court, Tirupattur.



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P.B.BALAJI, J.

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Pre-delivery Judgment in
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