



S.A.Nos.641 & 646 of 2018
& C.M.P.No.20014 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on : 11.03.2024

Pronounced on: 15.03.2024

Coram:

THE HONOURABLE Mr. JUSTICE P.B.BALAJI

S.A.Nos.641 & 646 of 2018
& C.M.P.No.20014 of 2018
& C.M.P.No.19897 of 2018

S.A.No.641 of 2018

1. Prabakaran,
2. Rajendran.

... Appellants/Appellants 1 & 7/Plaintiffs 2 & 8

/versus/

1. Rani
2. D.Saraswathi.
3. D.Mayavathi.
4. D.Sivagami.
5. D.Kasthuri.
6. D.Rajeswari.
7. D.Ezhilmathi.

... 1st Respondent/Defendant

... Respondents 2 to 7/Respondents 2 to 6/
Plaintiffs 3 to 7 & 9

Prayer: Second Appeal has been filed under Section 100 of C.P.C., against the common judgement and decree passed by the I Additional District & Sessions Court, Vellore in A.S.No.21 of 2016 on 03.02.2018 confirming the Judgment and Decree of the Additional District Munsif, Vellore in O.S.No.654 of 1999 on 23.01.2013.



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For Appellants : Mr.K.S.Kumar

For R1 : Mr.P.Satheesh Kumar

For R2 to R7 : Not necessary parties already given up

S.A.No.646 of 2018

1. Prabakaran

2. Rajendran

... Appellants/Defendants

/versus/

Rani

... Respondent/Plaintiff

Prayer: Second Appeal has been filed under Section 100 of C.P.C., against the common judgement and decree passed by the I Additional District & Sessions Court, Vellore in A.S.No.24 of 2013 on 03.02.2018 confirming the Judgment and Decree of the Additional District Munsif Vellore in O.S.No.493 of 2009 on 23.01.2013.

For Appellants : Mr.K.S.Kumar

For R1 : Mr.P.Satheesh Kumar

COMMON JUDGMENT

These two Second Appeals arise out of a suit for permanent injunction in O.S.No.654 of 1999 and a suit for declaration of title and recovery of possession in O.S.No.493 of 2009. The trial Court dismissed the suit for permanent injunction and decreed the suit for declaration and recovery of



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possession. Two Appeals preferred against the judgment and decree of the trial Court in these two suits in A.S.No.21 of 2016 and A.S.No.24 of 2013 also came to be dismissed, confirming the findings of the trial Court.

2. Aggrieved by the dismissal of the suit in O.S.No.654 of 1999, the plaintiffs have preferred S.A.No.641 of 2018 and aggrieved by the decree in O.S.No.493 of 2009 for declaration and mandatory injunction, confirmed by the First Appellate Court, S.A.No.646 of 2018 has been preferred. Both the Second Appeals are not yet been admitted.

3. I have Mr.K.S.Kumar, Learned Counsel for the appellants and Mr.P.Satheesh Kumar, Learned Counsel for the 1st respondent. The respondents 2 to 7 have already been given up by the Learned Counsel for the appellants in the earlier hearing on 28.02.2024.

4. Mr.K.S.Kumar, Learned Counsel for the appellants would submit that though the appellants have suffered concurrent findings in both the suits and the appeals challenging the judgment and decree of the trial Court, according to the Learned Counsel for the appellants, the Courts below have not



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appreciated the oral and documentary evidence adduced by the parties in a proper perspective and he would further contend that in so far as the suit for permanent injunction being filed by the appellants and being dismissed, he would contend that when the 1st respondent had admittedly filed a suit recognising the factum of possession being with the appellants, the Courts below ought not to have dismissed the suit for permanent injunction on the ground that it was not maintainable without a declaratory prayer.

5. Mr.K.S.Kumar, Learned Counsel for the appellants would further contend that the Courts below failed to see that the measurements in the sale deed in favour of the 1st respondent were not matching with the actual lay of the property, which was established by production of field map and in such circumstances, the decree of declaration of title should not have been granted by the Courts below.

6. The Learned Counsel for the appellants would also state that the extent as per the sale deed is 1458 sq.ft. However, as per the village map it is 1048 sq.ft and further, he would also rely on the Advocate Commissioner's report in terms of which the extent was even lesser namely, 1034 sq.ft. This is



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in respect of S.No.355/33 which was purchased by the defendants in the year 1999. The Learned Counsel for the appellants would state that though the purchase of the property by the defendant is admitted, the said available extent was not admitted, in view of the three different extents available in the documents namely, sale deed, village map and in the one produced by the Advocate Commissioner, who was appointed before the trial Court.

7. The Learned Counsel for the appellants would also refer to S.No.355/34 which pertains to the appellant's document and as per document the extent is 782 sq.ft, as per village map the extent is 1770 sq.ft and as per the Advocate Commissioner report it is 1754 sq.ft. Next, relying on the disputed portion namely, S.No.355/35 as per the document of the defendant it was 527 sq.ft, as per village map 536 sq.ft and as per Advocate Commissioner's report 524 sq.ft. He would also state that so far as S.No.355/36, there is no dispute which is only a pathway, over which the defendant has absolutely no rights and it was purchased by the plaintiff and measuring 376 sq.ft. Further, according to the Learned Counsel for the appellants, all the legal heirs left the village even 60 years back and settled in the City and therefore, they have not come forward to claim any right. The case of the appellants that there was an oral partition in



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which the property was allotted to the appellants ought to have been believed by both the Courts. He would further state that the First Appellate Court has not assessed the evidence, oral and documentary in an independent manner and has merely rendered a translated English version of the trial Court judgment which was in Tamil.

8. The Learned Counsel for the appellants would also place reliance on the following judgments:

(i). ***K.Thirunavukkarasu and another -vs- Loganathan (deceased) and others*** reported in ***2018 (5) CTC 883***.

(ii). ***Periasamy Gounder and others -vs- Arassapa Gounder*** reported in ***2017 (1) CTC 662***.

(iii). ***Union of India and others -vs- Vasavi Cooperative Housing Society Limited and others*** reported in ***(2014) 2 SCC 269***.

(iv). ***Jayanthi and another -vs- Dr.K.Selvaraj and others*** reported in ***2014 (4) CTC 618***.



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9. The Learned Counsel for the appellants would also suggest the following substantial questions of law:-

“1. Whether a suit for Permanent Injunction is maintainable without a Prayer for Declaration of Title when the respondent admits possession with the Appellants?

2. Whether a Decree of Declaration of title could be granted with respect to a Grama Natham land without there being any document of patta, chitta or other revenue records and tax receipts evidence possession and title.

3. Whether a Decree of Declaration of title could be granted with respect to a property without arraying all the legal heirs of the original owner of the said property.

4. Whether a decree of Declaration of title could be granted only on the basis of a sale deed which contains measurements in excess of the actual lie of the property as per the Field Map.”

10. Per contra, Mr.P.Satheesh Kumar, Learned Counsel for the 1st respondent would submit that the plaintiff's document did not contain any survey numbers and he would refer to the plaint schedule as well which also does not contain or refer to any particular survey number. The Learned



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Counsel for the 1st respondent would also state that the Courts below had rightly found that the plaintiff was not able to identify his property and besides taking note of the inconsistent pleadings where the plea of adverse possession has also been taken which according to the Learned Counsel, would admit to admitting the defendant's title.

11. With regard to the suit for permanent injunction, the Learned Counsel for the 1st respondent would fairly concede that he is not harping on the permanent injunction suit for the simple reason that admitting the possession of the appellants alone, the suit in O.S.No.493 of 2009 has been filed and therefore, according to the Learned Counsel for the 1st respondent, if the Second Appeal arising out of O.S.No.493 of 2009, namely S.A.No.646 of 2018 is decided, it will given a quietus to the both the Second Appeals.

12. The Learned Counsel for the 1st respondent would further submit that the defendant has exhibited three registered documents of the year 1934, 1937 & 1944 which all pertains to specific items of property purchased by the 1st respondent, in and by way of registered documents and in all the said documents, the property is clearly described by reference to survey numbers as



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well as four boundaries. He would therefore contend that the boundaries cannot prevail over the survey number, though boundaries may prevail over the extent in given cases and therefore, no interference is warranted in both the Second Appeals.

13. The 2nd appellant was examined as P.W.1 before the trial Court where both the suits were jointly tried. He has stated that the property originally belonged to the father, Duraisamy and that he had inherited the same from his father and all other legal heirs have not staked any claim in the properties and in fact, even his father had inherited the said property only through an oral partition. However, the appellants have not been able to produce any documents whatsoever to establish their claim over the suit properties. Further, he also stated that the suit property originally belonged to the grandmother Chinnathaiammal and she had six children and one of them was Duraisamy, the father of the 2nd appellant. The appellants are only two sons out of six children of Chinnathaiammal and therefore, admittedly the four other legal heirs have not been impleaded. The appellants have also not established the plea of oral partition and that the said partition had been acted upon. The Courts below have rightly found that the appellants had not established the oral



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partition by adducing satisfactory oral and documentary evidence before the trial Court.

14. However, as fairly conceded by the Learned Counsel for the 1st respondent insofar as the relief of permanent injunction is concerned, there can be no difficulty whatsoever in recognising the physical possession of the suit property with the appellants since it is the specific case of the 1st respondent that they are in possession and whether they are liable to vacate and handover vacant possession is subject matter of suit in O.S.No.493 of 2009. With regard to suit in O.S.No.493 of 2009, it is the specific case of the 1st respondent herein that the suit properties originally belong to one Thiru.Thandavarayan, who had purchased it under registered sale deed dated 21.05.1934 and he sold the same to Tmt.Lakshmiammal on 27.06.1944 and subsequent to the demise of said Lakshmiammal her sons, namely, N.Chandran, N.Chinnadurai and N.Munusamy inherited the said properties and subsequently conveyed the same to the 1st respondent, in and by registered sale deed dated 10.03.1999. The case of the 1st respondent in the subsequent suit is that after her purchase, the plaintiff has constructed a house comprising ground and first floors and had left the backyard vacant and further, alleged that the defendants have trespassed



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into the said open backyard, forming part of her total property and suit has been instituted for declaration of the 1st respondent's title to the suit property and also for handing over the possession of the encroached portion. In order to establish title, the 1st respondent has exhibited the sale deeds in favour of Thiru.Thandavarayan, Thiru.Kuppusamy and Tmt.Lakshmi, besides the sale deed dated 10.03.1999 under which the 1st respondent purchased the suit property under Ex.B.4.

15. As rightly contended by the Learned Counsel for the 1st respondent in the documents exhibited by the appellants, I do not find that the properties are described by distinct survey numbers. Merely because the properties are described by four boundaries and the extent is also available, it would not be sufficient to establish the correct lay or identity of the property. Though, I find that the appellants had produced Chitta and Adangal in respect of the disputed property, there are revenue records which can only help the appellants to establish the factum of possession and it is settled law that revenue records cannot be used or relied on to decide title to the property concern.



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16. Further, the Courts below have also placed reliance on the Advocate Commissioner's report and plan to non-suit the appellants as the report falsified the version of the appellants regarding the right and entitlement of the suit properties. Further, I find that the appellants having filed the suit for permanent injunction, claiming title to the suit properties have also chosen to plead adverse possession and having perfected title by prescription, being in peaceful, open, uninterrupted and continuous possession for over the statutory period. As rightly found by the trial Court and confirmed by the First Appellate Court, the plaintiff who comes to Court cannot take mutually destructive stands. The moment the appellants, as plaintiffs in the suit for permanent injunction, set up the plea of adverse possession, then it goes without saying that they admit the title of the 1st respondent. However, unfortunately, there is absolutely no evidence forth coming on the side of the appellants to establish their plea of adverse possession and the factum of having been in hostile possession of the suit property for over the statutory period in order to claim the benefit of adverse possession in their favour.

17. In any event, the issues involved are all factual in nature and the Courts below have concurrently held, on assessment of the oral and



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documentary evidence available on records that the 1st respondent has established her title to the suit properties and on the contrary, the appellants having claimed title in themselves, also pleaded adverse possession which was virtually contradictory and destructive to their own case and also found that the 1st respondent was entitled to recovery of possession and declaration, considering the documents exhibited on the side of the 1st respondent clearly established the 1st respondent's right, title and interest to the suit property.

18. Insofar as the decision relied on by the Learned Counsel for the appellants in *K.Thirunavukkarasu* case referred above, this Court held that revenue documents cannot be construed as documents of title. This decision, in fact goes against the case of the appellant themselves. The 1st respondent established her title by production of registered documents right from 1934 onwards.

19. In *Periasamy Gounder's* case referred above, this Court held that in a suit for permanent injunction, it is not necessary to join all owners and plea of suit being bad for non-joinder was not sustainable. In view of the admitted position that the appellants are in physical possession of the suit



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property and the 1st respondent has filed a suit for declaration of title and recovery of possession, I do not find this plea of non-joinder requiring adjudication.

20. In *Union of India and others'* case referred above, the Hon'ble Supreme Court held that in a suit for declaration, the burden is on the plaintiff to establish a clear case and should succeed only on the strength of his title and not on the weakness of the opponent's case. I do not find this decision also helping the appellants in any manner since the 1st respondent has traced title right from 1934 onwards under registered sale deeds and it is only the title of the appellants which has not been established since the documents on which reliance is placed or title claimed by them is not identifying the suit property since excepting extent and boundaries, the document do not contain survey numbers, which alone will be of use to fix the lay of the property.

21. In *Jayanthi's* case referred above, this Court held that in a suit for injunction simpliciter, where the plaintiff claims title through sale deed in his favour and the issue of title was clear and straightforward, it was not necessary for the plaintiff to seek the remedy of declaration. However, the facts



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of the said case cannot be applied to the facts of the present case since in the present case the title of the appellants is not clear or simple and straightforward as in the said decided case, because their sale deeds are admittedly not containing survey numbers and the Courts below have also concurrently found that the plaintiff has not established even the identity of the suit property and on the contrary, the 1st respondent has clearly established her title and interest in the suit property, entitling her to the relief of declaration as well as recovery of possession.

22. I do not find that the said factual findings warranting interference in Second Appeal, especially when the findings are neither irregular nor perverse. The Courts below have judiciously assessed the pleadings as well as oral and documentary evidence in arriving at concurrent findings. I do not find any substantial questions of law arising for consideration in the Second Appeal. ***These Second Appeals are dismissed.*** No costs. Consequently, connected Miscellaneous Petition is closed.

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Index :Yes/No.
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P.B.BALAJI, J.

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Pre-delivery common judgment made in
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