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S.A. No.604 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.03.2024

DELIVERED ON : 22.03.2024

CORAM:

THE HON'BLE MR. JUSTICE P.B. BALAJI

S.A. No.604 of 2018
and CMP No.18349 of 2018

Govindan

.... Appellant

Versus

Veeran

... Respondent

Second Appeal filed under Section 100 of the Civil Procedure code, against the decree and judgment passed in A.S.No.47 of 2012 dated 08.01.2018 on the file of II Additional Subordinate Judge, Villupuram, confirming the judgment and decree dated 09.03.2012 in O.S.No.255 of 2009 on the file of Principal District Munsif Court, Thirukoilur.

For Appellant

: Mr.N.Suresh

For Respondent

: Mr.K.Venkatasubban

For M/s Sarvabhuman Associates



S.A. No.604 of 2018

WEB COPY

JUDGMENT

The unsuccessful plaintiff in a suit for declaration and injunction is the appellant herein. The parties are described as per their litigative status in the suit.

2. The plaintiff, contended that the suit property, measuring 68 cents, comprising in S.No.210/2, Arungurungai Village, originally belonged to one Narasa Gounder and that after his death, the suit property and other properties, available in the family, were divided amongst his four sons viz., Pachai Gounder, Narayana Gounder, Padaiyatchi Gounder and Aadhimula Gounder, by an oral partition, which had taken place 50 years back.

3. It is the further case of the plaintiff that 0.16 cents came to be acquired by the Government for laying roads and the remaining 52 cents were subdivided as Survey Nos.210/2B1, 210/2B2, 210/2B3 and 210/2B4. The plaintiff further stated that the land in S.No.210/2B3, to an extent of 11 ares was registered in the name of the son of Padaiyatchi Gounder viz.,



S.A. No.604 of 2018

Kalvarayan and after the death of Kalvarayan, the legal heirs succeeded to the said property and one Kannan had encroached to an extent of 2 ares in the said land, measuring 11 ares and also obtained patta in his name and that the plaintiff was contemplating to initiate separate proceedings against the said Kannan for recovery of possession of 2 ares from him. The plaintiff, being entitled to the remaining 9 ares, has contended that “C” schedule property, to an extent of 3 cents has been encroached upon by the defendant and that he had also constructed a hut over the said land. In such circumstances, the suit came to be instituted.

4. The defendant filed a written statement, admitting that the suit property originally belonged to Narasa Gounder, who had four sons. However, according to the defendant, the 52 cents available, after 16 cents were acquired by the Government, was divided only into three portions and not four, as claimed by the plaintiff. The defendant has specifically stated that 1/3 share on the western part was allotted to the heirs of Narayana Gounder and to the east of the said share, a 1/3 share was allotted to Padaiyatchi Gounder and further east of Padaiyachi Gounder's allotment, a 1/3 share was



S.A. No.604 of 2018

allotted to Aadhiula Gounder. According to the defendant, Pachaiyappa Gounder was not allotted any share in this survey number and he was allotted share in S.No.199/17, lying on the western side of the land in S.No.210/2.

5. It is the case of the defendant that the legal heirs of Narayana Gounder sold their entitlement of 11.25 cents in the year 1968 by way of an oral sale to one Marimuthu Gounder. The said Marimuthu Gounder, in turn, in and by way of registered sale deed dated 02.07.1983, sold the said 11.25 cents in favour of defendant and thus, the suit was not maintainable and liable to be dismissed.

6. The trial Court dismissed the suit. On appeal, preferred by the plaintiff, the first appellate Court also confirmed the findings of the trial Court and dismissed the appeal. Aggrieved by the concurrent findings of the Courts below, the plaintiff has preferred the above Second Appeal.



S.A. No.604 of 2018

7. On 01.11.2018, the Second Appeal was admitted on the following substantial questions of law:-

(a) Whether the courts below are right in dismissing the suit when admittedly the plaintiff's father's name has been mutated in the revenue records even in the year 1985 and also under Exs.A.2 and A.3 in the year 2009?

(b) Whether the Courts below purposely omitted to see the plea of the plaintiff that the suit is filed against a stranger for the relief of declaration of title and for permanent injunction in respect of the property of the plaintiff and his family members and as such in law the suit is perfectly maintainable against the stranger of the family properties of the plaintiff?

8. I have heard Mr.N.Suresh, learned counsel for the appellant and Mr. K.Venkatasubban, for M/s Sarvabhuman Associates, learned counsel for the respondent. I have also gone through the pleadings, oral and documentary



S.A. No.604 of 2018

evidence adduced by the parties and the judgments of the trial Court as well as the first appellate Court.

9. Learned counsel for the appellant would first and foremost submit that the defendant stakes claim to the suit property under an oral sale, said to have been made in favour of his vendor. According to the learned counsel for the appellant, the said oral sale has not been proved and further, being a stranger and having admitted that the property was originally belonged to one Narasa Gounder, the ancestor of the plaintiff, it is not open for the defendant to set up an adverse interest to that of the plaintiff or his other family members.

10. According to the learned counsel for the appellant, the Courts below have failed to refer to the vital admissions made by P.W.3, who was examined on the side of the plaintiff, to disprove the claim of oral sale in favour of the defendant's vendor. He would take me through the evidence of P.W.3. He would also refer to the evidence of D.W.2, who has stated that no property was allotted to defendant's predecessor-in-title. Therefore, the sale



S.A. No.604 of 2018

deed in favour of the defendant would have to be held as invalid.

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11. Learned counsel for the appellant would refer to Section 54 of Transfer of Property Act, 1882 and contend that the defendant has not established delivery of possession, which is a vital component of any sale transaction and in this connection, he would take me though the written statement of the defendant.

12. Learned counsel would also refer to Ex.B.2 Sale Deed where other properties were sold to Marimuthu Gounder, vendor of the defendant and contended that the suit property did not form part of said Ex.B.2, and if really the sale in favour of Marimuthu Gounder was true, then, according to the learned counsel for the appellant, the suit property would also have formed a part of Ex.B.2 sale deed. Finally, he would state that in a suit filed by a person claiming under the original owner, Narasa Gounder, a stranger i.e., the defendant, cannot seek to defend the relief of declaration of title and also permanent injunction.



S.A. No.604 of 2018

13. The learned counsel for the appellant would place reliance on the two decisions of this Court in the cases of *Karuppan Vs. Ponnarasu Ambalam* reported in 1965 (78) LW 86 and *D.Akkamma (died) and others Vs. P.Kannamma and others* reported in 1967 (89) LW 666.

14. In *Karuppan's* case, referred herein supra, this Court held that when the possession of the defendant is undoubtedly that of trespasser and nothing more, it would be open to one of the co-owners to be in possession of the entirety of the property belonging to the co-owners, and trespasser cannot question the right of one of the co-owners to deal with the property in entirety. In *D.Akkamma's* case, referred herein supra, the ratio laid down in *Karuppan's* case, was valid.

15. Per contra, Mr.K.Venkatasubban, learned counsel for the respondents would take me through the plaint and state that even according to the plaintiff, the plaintiff had siblings, who were admittedly not parties and in their absence, the plaintiff cannot seek a declaration that he is the absolute owner of the entire suit property. He would further state that the



S.A. No.604 of 2018

plaintiff has not even described as to how the property has been divided and which portion and what extent was allotted to each of the four brothers and the plaintiff was totally silent in this regard. In this connection, he would take me to the written statement and contended that the defendant had clearly pleaded the manner of partition amongst three of the sons of Narasa Gounder and one of the sons who never took a share in the property and instead he was allotted lands in the adjoining survey number. He would also state that though the plaintiff also claims that there was an oral partition 50 years back, the plaintiff has not chosen to examine any of the family members, who were allegedly part of the oral partition or atleast any credible witness to establish that there was an oral partition as claimed by the plaintiff. He would also state that both Exs.A.2 and A.3 have been obtained just prior to the filing of the suit in the name of the plaintiff and therefore no reliance can be placed on such documents. He finally contended that the Courts below have concurrently found the plaintiff to be dis-entitled to the relief prayed for and therefore, exercising powers under Section 100 of Civil Procedure Code, this Court is not required to interfere with such concurrent findings, which do not suffer from any perversity or material irregularity.



S.A. No.604 of 2018

16. Having heard the learned counsel on either side, I proceed to decide the Second Appeal on the two substantial questions of law that have been framed at the time of admission of the second appeal.

17. With regard to the first substantial question of law, regarding Exs.A2 and A.3, as rightly contended by the learned counsel for the respondent, both these documents were obtained only in October 2009. Ex.A.2 was obtained on 08.09.2009 and Ex.A.3 was obtained on 07.10.2009. The suit came to be filed on 23.10.2009. Therefore, both these documents were obtained only for the purposes of the suit and therefore, no reliance can be placed on these documents to hold that mutation in the revenue records was in favour of the plaintiff.

18. Further, as contended by the learned counsel for the respondent, I find that the plaint is totally bereft of material particulars. Though it is stated that the total extent of land originally belonging to Narasa Gounder was 68 cents and 16 cents were acquired by the Government for laying road, leaving a balance of 52 cents, despite the plaintiff stating that the property was



S.A. No.604 of 2018

subdivided into four sub divisions viz., 210/2B1, 210/2B2, 210/2B3 and 210/2B4, the plaintiff does not disclose as to which sub division or subdivided number was allotted to each of the sons. That apart, plaintiff admits that he has a brother by name Ezhumalai and also sisters and his mother was also alive. However, he seeks for a declaration of 9 cents after reserving a right to proceed against one Kannan in respect of 2 cents, alleged to have been encroached by him, in his individual name. It is not the case of the plaintiff that there has been a partition within his family and that these 9 cents came to be allotted to him absolutely.

19. The plaint is totally lacking in material particulars and the plaintiff has not been able to substantiate the oral partition, alleged to have taken place in his family, under which, four sons of Narasa Gounder were allotted definite portions of the property and that the plaintiff was claiming absolute right in respect of one portion.

20. Even with regard to 2 cents, alleged to have been encroached by one Kannan, it has come out in evidence that the said Kannan, in fact, had



S.A. No.604 of 2018

purchased the property by registered sale deed and further, it is also admitted that till date, the plaintiff has not taken any steps whatsoever to remove the said Kannan from 2 ares, who is said to have been encroached into the suit property.

21. On the contrary, the defendant's case has been very specific. The defendant has pleaded the manner in which the suit properties were divided amongst three sons of Narasa Gounder and as to how the other son was allotted lands in different survey number, adjoining the suit property. That apart, the defendant has also exhibited the original sale deed dated 02.07.1983, under which, the defendant purchased the suit property from Marimuthu Gounder and even Ex.B.9 chitta confirms that chitta has been issued to the defendant along with two other co-owners by the Deputy Tahsildar, Thirukoilur, thereby establishing that the revenue records have also been mutated in the joint names of defendant and other co-owners. The defendants have also exhibited various other sale deeds in Exs.B.2 to B.5 to establish the manner of division that has been set out by the defendant in the written statement. Even though the learned counsel for the plaintiff would



S.A. No.604 of 2018

contend that Ex.B.2 sale deed, under which, properties have been conveyed in favour of Marimuthu Gounder/vendor of the defendant, merely because the suit property is not included in the said sale deed, it cannot lead to a presumption that the suit property was not conveyed by way of oral sale in favour of said Marimuthu Gounder, as contended by the defendant in the year 1968, subsequent to Ex.B.2.

22. Learned counsel for the plaintiff would place reliance on the evidence of P.W.3 and D.W.2 to fortify his contentions that the sale in favour of defendant's vendor, Marimuthu Gounder could not have been proved. According to him, P.W.3 Tmt.Vedavalli was the daughter of Chinnathambi, who is the son of Narayana Gounder, who, according to the plaintiff, was one of the sons of Narasa Gounder and was allotted 10 cents out of the total 68 cents.

23. Referring to the evidence of P.W.3, learned counsel for the appellant submits that P.W.3, who had succeeded intestate along with her mother to the share of Narayana Gounder herself, disowned any sale made



S.A. No.604 of 2018

in favour of Marimuthu Gounder and therefore, the courts below ought to have taken note of the said evidence of P.W.3, which rocked the very foundation of the defendant's claim. According to the learned counsel for the appellant, if the plea of oral sale goes, then the said Marimuthu Gounder was a total stranger to the family and he has no right to convey any portion of the suit property in favour of the defendant. However, I am unable to accept the said arguments of the learned counsel for the appellant.

24. Admittedly, Tmt.Vedavalli was a minor when the property was allegedly sold in favour of Marimuthu Gounder, under an oral sale. Her evidence is only hearsay and not credible and trustworthy in order to discredit the factum of there being an oral sale in favour of Marimuthu Gounder in the year 1968. In fact, P.W.3 claims that she was in possession of 10 cents of the suit property till her marriage and thereafter, she has not been enjoying the same. She also admitted that she has not paid any tax for the said property in her possession and that she did not obtain any patta in her name.

25. Even insofar as the evidence of D.W.2/Kali Gounder, no property



S.A. No.604 of 2018

was allotted to him, but, in his cross examination, though he claims that neither he nor his brother was allotted any share in 68 cents, he is not in a position to state whether he is aware of the sale in favour of Marimuthu Gounder by way of oral sale. He also states that the defendant is his son-in-law. According to the learned counsel for the appellant, D.W.2 is an interested witness and much reliance cannot be placed on his oral evidence.

26. I do not find both the decisions that have been relied on by the learned counsel for the appellant, supporting the case of the plaintiff in any manner.

27. In those cases, the possession of the co-owners claiming to be entitled to the entirety of the property vis-a-vis, a trespasser was tested. However, in the present case, admittedly, there has been severance of status. Even according to the plaintiff, he set up a plea of oral partition. It is also the case of the defendant that the suit properties were divided. Thus, the ratio laid down in the above two cases cannot be applied to the facts of the present case.



S.A. No.604 of 2018

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28. Be that as it may, in a case, where the plaintiff approaches the Court, seeking relief of declaration of title and other consequential reliefs, it is for the plaintiff to establish his case independently, without falling back or choosing to rely on the weakness of the defence set up by the defendants.

29. As already noticed herein above, the plaint itself is totally lacking in particulars and that apart even in the plaint, the plaintiff admits that he has a living mother and siblings, who are admittedly not impleaded as parties in the suit. That being the case, the plaintiff cannot be entitled to the relief of declaration that he is the absolute owner of the entire suit extent. The plaintiff has miserably failed to prove his case and the Courts below have rightly dismissed the suit, applying the correct principles of law, after assessing the oral and documentary evidence available on record in a proper and judicious manner.

30. I do not find any perversity or illegality in the findings rendered by



S.A. No.604 of 2018

the Courts below, warranting interference under Section 100 of the Civil Procedure Code.

31. For the above reasons, the substantial questions of law are answered against the appellant and the Second Appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

22.03.2024

Index: Yes/No
Speaking Order/Non-Speaking Order
sr

To
1. II Additional Subordinate Judge, Villupuram.
2. The Principal District Munsif, Thirukoilur
3. The V.R.Section, High Court, Chennai.



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S.A. No.604 of 2018

P.B.BALAJI,J.

SR

Pre-Delivery Judgment
in S.A.No.604 of 2018

22.03.2024