



S.A. No.680 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 26.03.2024

Pronounced on: 05.04.2024

CORAM :

THE HONOURABLE MR. JUSTICE P.B.BALAJI

S.A.No.680 of 2018

and

CMP. No.20506 of 2018

Selvaraj (Died)

1.Ponnusamy

2.Yasodha

3.Thanikachalam

4.Ramamoorthi

5.Vasuki

6.Valarmathi

...Appellants

Vs.

Noormohammed

...Respondent

PRAYER : Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree of the Subordinate Judge's Court at Uthangarai, dated 06.09.2017 in A.S. No.11 of 2015 reversing the judgment and decree of the District Munsif Cum Judicial Magistrate Court at Uthangarai, dated 31.03.2015 in O.S. No.84 of 2012.

For Appellants : Mr.P.Valliappan,
Senior Counsel
for Mr.S.M.S. Shriram Narayanan

For Respondent : No Appearance



JUDGMENT

WEB COPY The unsuccessful defendants in a suit for declaration and permanent injunction are the appellants before me.

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

3. Brief facts that are necessary for presiding the above Second Appeal are as hereunder:

3.1. The plaintiff claims that the suit property was originally belonging to one Chinnakannu Gounder, being his joint family property. The said Chinnakannu Gounder died intestate leaving behind his son N.C. Murugan and mother Periyakkal. The said Periyakkal gifted the suit property to Murugan on 22.08.2005, who in turn sold the Schedule 'A' and Schedule 'B' property and his 1/4th share in the well and electric motor to the plaintiff, in and by way of a sale deed dated 01.06.2011. The said N.C. Murugan had also sold part of the land to one Chidhambaram and the

plaintiff was in possession and enjoyment of the property sold to him,



including right in the well and electric motor. However, the defendants resisted the plaintiff from taking water through the common well situated in Schedule 'B' property and using the electric motor pumpset. Therefore, the plaintiff filed the suit to declare his right over Suit 'A' property and 1/4th share in Suit 'B' property and for permanent injunction to restrain the defendants from interfering with the plaintiff's right to irrigate the Schedule 'A' property by taking water from the common well, by using electric motor situated in Schedule 'A' property.

4. The suit was resisted by the defendants stating that there was an oral partition between Chinna Gounder and Chinnakannu Gounder in the year 1967 and that in the said partition, the 'B' Schedule well was also a subject matter of partition and the 1st defendant's father had obtained service connection to the well situated in Schedule 'B' property. It was contended by the defendants that the plaintiff had no right to claim any share in the Schedule 'B' property. He also contended that the mother Periyakkal herself had no right in the well or the electric motor pumpset and therefore, the plaintiff cannot claim any better right or interest. Therefore, he prayed dismissal of the suit filed by the plaintiff.



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5. The Trial Court, after considering the pleadings, oral and documentary evidence adduced by the parties granted the declaratory relief as prayed by the plaintiff, however dismissed the suit with regard to relief for permanent injunction.

6. Aggrieved by the said Judgement and Decree of the Trial Court, the plaintiff preferred an Appeal in A.S.No.11 of 2015 and the First Appellate Court allowed the appeal granting the relief of permanent injunction which was negated by the Trial Court.

7. It is aggrieved over the said reversal finding rendered by the First Appellate Court, the defendants had come up by way of this Second Appeal. On 27.11.2018, the above Second Appeal was admitted on the following substantial questions of law:

“a) Whether the lower appellate Court is correct in law in granting decree for permanent injunction, by picking holes in the defense, particularly when it is well settled in law that the plaintiff has to succeed or fail on the strength of his case and not on the basis of the weakness in defense?

b) When the appellants are not parties either to Exhibit A1 Settlement Deed or to Exhibit A2 Sale Deed, is the lower appellate Court correct in law in holding that the recitals contained therein are binding upon the appellants?



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c) Even assuming that there is no evidence on the side of the defendants, can a plaintiff automatically succeed, without producing sufficient proof in support of the suit claim?"

8. I have heard Mr. P.Valliappan, learned Senior Counsel appearing for the appellant and I have gone through the records placed before me by way of typed set of papers. I have also gone through the original pleadings, oral and documentary evidence adduced by the parties before the Trial Court. There is no appearance on the side of the respondents/plaintiffs.

9. The learned Senior Counsel, Mr. P.Valliappan would focus his arguments around the three substantial questions of law. He would invite my attention to the cross examination of P.W.1, evidence of P.W.2 and also evidence of D.W.1. He would specifically point out the admissions made by the plaintiff's witnesses. The learned Senior Counsel would also refer to the findings of the First Appellate Court and contend that the First Appellate Court has erroneously placed the burden on the defendants, instead of the plaintiffs and would therefore, seek for the substantial questions of law to be answered in favour of the appellant/defendants, thereby allowing the Second Appeal.



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10. I have carefully considered the submissions advanced by the learned Senior Counsel, Mr. P.Valliappan. The defendants admittedly did not challenge the decree of declaration granted by the Trial Court in favour of the respondent/plaintiff. However, aggrieved by the grant of the relief of permanent injunction, the defendants have now preferred the above Second Appeal.

11. It is the specific case of the defendants that the mother of the vendor of the plaintiff namely Periyakkal, herself did not have any right in the suit 'B' Schedule property and therefore, she could not have conveyed the same in favour of her son, N.C. Murugan and consequently, the sale of the non-existing rights in favour of the plaintiff was wholly unsustainable.

12. The Settlement Deed in Ex. A1, dated 22.08.2005 executed by Periyakkal in favour of N.C. Murugan would not bind the defendants when neither the defendants nor their predecessors in interest were parties to the said document. Mere production of the Settlement Deed in Ex. A1 would not



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establish the right of Periyakkal in suit Schedule 'B' property. I have gone through Ex. A1, Settlement Deed which has been exhibited in original. There is nothing stated in Ex. A1, as to how Periyakkal became entitled to suit Schedule 'B' property. Therefore, in the absence of tracing of title to Schedule 'B' property, the settlement executed by Periyakkal in favour of N.C. Murugan, the vendor of the plaintiff, would not convey valid right or interest in Schedule 'B' property. Consequently, the said N.C. Murugan selling the property along with the rights in the Schedule 'B' property would also not give any valid right or interest to the plaintiff.

13. The First Appellate Court, as rightly contended by the learned Senior Counsel, Mr. P.Valliappan, has picked holes in the defendant's case rather than focusing on the proof/establishment of the plaintiff's rights over the Schedule 'B' property. The First Appellate Court has also wrongly cast the burden on the defendants, instead of placing it on the plaintiff to establish the plaintiff's right to irrigate his land by using the electricity service connection. The Trial Court, on the other hand, had rightly found that the plaintiff was not entitled to a permanent injunction, as even prior to the purchase of the suit property by the plaintiff, there was a partition



between Chinna Gounder and Chinnakannu Gounder and the first defendant's father had obtained a separate service connection to the well situated in Schedule 'B' property, over which the plaintiff cannot seek any right whatsoever.

14. The well merited finding of the Trial Court has been disturbed by the First Appellate Court by wrongly casting the burden of proof on the defendants and without appreciating that the plaintiff had failed to prove their entitlement to the Schedule 'B' property and the electric motor pumpset.

15. Thus, I am constrained to interfere with the findings of the First Appellate Court. The substantial questions of law are answered in favour of the appellants. The Second Appeal is allowed. The judgment and decree of the Subordinate Court at Uthangarai, dated 06.09.2017 in A.S. No.11 of 2015 is set aside and the judgment and decree of the District Munsif Cum Judicial Magistrate Court at Uthangarai, dated 31.03.2015 in O.S. No.84 of 2012 is restored. Consequently, connected Miscellaneous Petition is also closed. There shall be no order as to costs.



S.A. No.680 of 2016

05.04.2024

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Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No.
Speaking order/Non-speaking order
rkp
To

1. The Subordinate Judge at Uthangarai.
2. The District Munsif Cum Judicial Magistrate at Uthangarai.

P.B.BALAJI, J,

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Pre-delivery Judgment in

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and

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