



S.A. Nos.827 & 828 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 11.03.2024

Pronounced on: 05.04.2024

CORAM :

THE HONOURABLE MR. JUSTICE P.B.BALAJI

S.A.Nos.827 & 828 of 2018

Ganesan

...Appellant in both S.As

Vs.

1.Murugan
2.Maheswari

...Respondents in both S.As

PRAYER : Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree passed in A.S. No.26 of 2018 and A.S. No.13 of 2018 dated 06.08.2018 by the learned Sub Judge, Sathiyamangalam confirming the judgment and decree passed in O.S. No.176 of 2016 dated 21.02.2018 by the learned District Munsif Judge at Sathiyamangalam and allow this Second Appeal.

For Appellant : Mr.S.Parthasarathy, in both S.As.

For Respondents : Mr.R.Vijayan for R1 & R2
in both Second Appeals.

COMMON JUDGMENT

The plaintiff in a suit for declaration and injunction to restrain the defendant from interfering with the possession is the appellant, having initially succeeded before the Trial Court, but having suffered reversal



findings at the hands of the First Appellate Court.

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

3. The brief facts that are necessary for adjudicating the above Second Appeals are as hereunder:-

3.1. The suit properties originally belonged to the plaintiff's grandfather Bolappa and after him, his wife Azhagammal was enjoying the same. Bolappa had executed a registered Will on 30.06.1982, bequeathing the suit property to his daughter, Kembasivani. The said Bolappa died on 25.10.1990 and his daughter, Kembasevani was in absolute enjoyment after her mother's lifetime. On 07.03.2006, the said Kembasivani had executed a settlement deed in favour of her son, the plaintiff and also handed over possession of the suit properties and the plaintiff has been in absolute possession and enjoyment. Since the defendants claimed right over the suit properties, the plaintiff approached the Court with the suit seeking relief of declaration and injunction.



4. In answer to the suit claim, the first defendant stated that insofar as S.Nos.137/1 & 137/2, the same admittedly belonged to Bolappa. However, insofar as S.No.137/4, it belongs to one Jade pandathambidi and after his lifetime, his Legal Heir Kezhuthithambidi, became entitled to the same. The plaintiff's mother has no right to execute a settlement deed in respect of S.No.137/4 and therefore, the suit was sought to be dismissed.

5. Reply statement was filed by the plaintiff denying the averments in the written statement and also stating that the first defendant's grandfather viz., father of Kezhuthithambidi was not Jade pandathambidi, but Kethkeerathambidi and allegations were made only in order to grab the suit properties.

6. The Trial Court, decreed the suit holding that the plaintiff was entitled to the declaration of title insofar as S.No.137/2 and 137/4 and insofar as S.No.137/1, the relief of permanent injunction was dismissed.

7. Aggrieved by the disallowed portion, the plaintiff preferred A.S. No.26 of 2018 and the defendants preferred A.S. No.13 of 2018. The First



Appellate Court, dismissed the Appeal filed by the plaintiff in A.S. No.26 of 2018 and confirmed the declaration and injunction insofar as S.No.137/1 and allowed the Appeal in A.S. No.13 of 2018 filed by the defendants and set aside the declaration and injunction insofar as S.No.137/4 was concerned.

8. Aggrieved by the said reversal findings, the present Second Appeals have been preferred by the appellants before this Court. On 17.12.2018, the above Second Appeals were admitted on the following substantial questions of law:-

“1. Whether the Courts below is right in coming to the conclusion that the appellant is not entitled for injunction while coming to the conclusion that the appellant is entitled for Decree of Declaration?

2. Whether the Courts below is right in coming to the conclusion that the oral evidence will over come the documentary evidence?

3. Whether the Courts below is right in coming to the conclusion that the appellant is not entitled for injunction where the respondent has not proved through documentary evidence about his possession?”

9. I have heard Mr.S.Parthasarathy, learned counsel for the appellant and Mr.R.Vijayan, learned counsel for R1 and R2 in both the Appeals.



10. The learned counsel for the appellant would submit that the plaintiff has established his title to the suit properties and in fact, the defendants themselves admitted to the right of the plaintiff insofar as S.Nos.137/1 and 137/2 and disputed title only in respect of S.No.137/4. He would invite my attention to the findings of the Trial Court as well as the First Appellate Court and state that the First Appellate Court had erroneously set aside the findings of the Trial Court without following the settled principles that possession follows title. He would also invite my attention to the evidence of D.W.3, VAO who would specifically affirm the plaintiff's possession of the suit properties. Insofar as S.No.137/4, the learned counsel for the appellant would submit that the plaintiff exhibited Exs.A6 and A10, revenue records, patta and also land registers to fortify his case. The Trial Court had rightly decided that S.No.137/4 was also the absolute property of the plaintiff and the said findings was based on oral and documentary evidence available before the Trial Court. However, according to the learned counsel for the Appellant, the First Appellate Court has erroneously set aside the well considered and well merited findings of the Trial Court. He would therefore, pray for the Second Appeals being allowed.



11. Per contra, the learned counsel for the respondents would submit that in a suit for declaration, the burden was only on the plaintiff and the plaintiff has not produced the patta in his name in respect of S.No.137/4 and he would invite my attention to X series documents in and where by, it is seen that the name of Jade pandathambidi is mentioned in Ex.X1 and subsequently, it is not known how fresh patta has been issued behind the back of the respondents. He would place reliance of Ex.X3, which is in the name of Kembasivani in respect of S.No.137/4 and only in respect of S.No.137/1 and 137/2, it is in the name of Bolappa and thereafter, Kembasivani. He would also refer to Ex.X7, Patta No.205 pertaining to S.No.137/4, which is in the name of Ganesan and there is absolutely no justification for issuing patta in the individual name of Ganesan in Ex.X7 in the year 2018, pending the suit. Ex.X1 clearly established that S.No.137/1 was mutated in the name of Jade pandathambidi, who is none else than the first defendant's grandfather. The learned counsel would also refer to Ex.A10 patta passbook, where also there is a mention of Bolappa and another but it has been tampered with, to destroy evidence that Jade pandathambidi was also entitled to S.No.137/4. In fact, in the details of land owners on the first page of the patta passbook, I find that the name of



Jadepandathambidi has been mentioned, adjacent to S.No.137/4, this document has been produced only by the plaintiff. It is for the plaintiff to explain as to how the name of the defendant's grandfather has been mutated and fresh patta be obtained in the name of the plaintiff, that too, during the pendency of the suit proceedings. He would therefore, pray for dismissal of the Second Appeals.

12. I have carefully considered the rival submissions advanced by the learned counsel on either side.

13. There is no dispute with regard to the properties comprised in S.Nos.137/1 and 137/2. The dispute is only with regard to S.No.137/4. Even from the plaintiff's document, it is seen that there is a mention of the defendant's grandfather in Ex.A10 and I also find force in the submission of the learned counsel for the respondents that Ex.A10 produced before the Trial Court has been physically tampered with in order to substantiate that patta was issued in the name of Bolappa under whom, the plaintiff claims title. However, adjacent to S.No.137/4, the defendant's grandfather's name finds a place. Thus, it is not known how the plaintiff has been able to get a



new patta, that too pending the suit in his individual name in respect of S.No.137/4. In fact, the defendants had exhibited Ex.B4, notice issued by the Tahsildar, B5 Patta in the name of Jadepandathambidi and he has also produced land revenue receipts to show that the defendants are in possession of the suit properties. The defendants have not admitted the title of the plaintiff to the properties in S.No.137/4.

14. According to the plaintiff, the properties were originally belonging to the ancestors of the plaintiff and in the plaint, there is no specific pleading with regard to three survey numbers and it is merely stated that after Bolappa's death, his daughter Kembasivani became entitled to the suit properties and settlement deed came to be executed in favour of the plaintiff by Azhagamma wife of Boalappa, who is none else than the plaintiff's grandmother. The plaintiff having come to Court cannot claim title based on just a settlement deed executed by the mother. Antecedent title has to be necessarily proved by the plaintiff. Unfortunately, even from the documents produced by the plaintiff, it is clear that Bolappa was not the absolute owner of S.No.137/4. Therefore, the plaintiff has miserably failed to establish absolute and independent title to lands in S. No.137/4 is concerned. The



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First Appellate Court, has rightly reversed the findings of the Trial Court which were contrary to the evidence adduced by the parties. No interference is warranted exercising power under Section 100 of Code of Civil Procedure, 1908 and the findings of the First Appellate Court are confirmed. Accordingly, these Second Appeals are dismissed. There shall be no order as to costs.

05.04.2024

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

1. The Sub Judge, Sathiyamangalam.
2. The District Munsif Judge at Sathiyamangalam.



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P.B.BALAJI, J.

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Pre-delivery Judgment in

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