



S.A.(MD).No.134 of 2021

***BEFORE THE MADURAI BENCH OF MADRAS HIGH
COURT***

<i>Judgment Reserved On</i>	<i>Judgment Pronounced On</i>
<i>31.07.2024</i>	<i>14 .11.2024</i>

CORAM:

THE HONOURABLE **MRS.JUSTICE S.SRIMATHY**

S.A.(MD).No.134 of 2021
and
CMP(MD)No.2078 of 2021

M.Shanmugam

... Appellant

/Vs./

Ramakrishnan

... Respondent

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code against the Judgment and Decree, dated 31.10.2019, made in A.S.No.31 of 2019 on the file of Principal District Court, Thoothukudi, confirming the Judgment and Decree in O.S.No.148 of 2015, dated



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08.04.2019, on the file of the Sub Court, Kovilpatti.

For Appellant : Mr.G.Gomathi Sankar

For Respondent : No appearance

JUDGMENT

This second appeal is filed by the plaintiff in the suit to set aside the Judgment and Decree, dated 31.10.2019, passed in A.S.No.31 of 2019 on the file of Principal District Court, Thoothukudi, by confirming the Judgment and Decree dated 08.04.2019 passed in O.S.No.148 of 2015, on the file of the Sub Court, Kovilpatti.

2. The plaintiff in the suit is the appellant herein and the defendant in the suit is the respondent herein. For the sake of convenience the parties are referred as plaintiff and defendant as per the ranking in the suit.



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3. The suit is filed for declaration to declare the plaintiff is having exclusive possession and consequential injunction restraining the defendant from interfering in the peaceful possession and enjoyment of the suit schedule property and the same was dismissed. Aggrieved over the same the plaintiff has preferred an appeal and the same was dismissed. Aggrieved over the same, the present second appeal has been preferred.

4. The brief facts of the case as stated in the plaint is that the suit schedule property ancestrally, jointly belongs to one P.Subramania Pillai, son of Narayana Pillai, Ulaganatha Pilai, son of Subbaiah Pillai and P.Subramania Pillai, son of Pirammanayagam Pillai and they were in possession and enjoyment under Natham Nilavari Patta No.109 jointly. On 30.03.1993, the above said persons have executed a sale deed in



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Document No.378 of 1993, in favour of one Krishna Konar, son of Madasamy Konar, for adequate sale consideration. Since the said Krishna Konar intended to move out of town had executed a registered Power of Attorney Deed dated 19.07.1995 in Document No.483 of 1995, in favour of one Udaiyar, son of Chellaiah Thevar. The said Udaiyar as power agent had sold the property to the plaintiff on 31.03.2000, through a Registered Sale Deed Document No.349 of 2000. Thereafter, the plaintiff was in possession and enjoyment of the suit schedule property by fencing the same. At present the plaintiff is staying in Mumbai due to his avocation, taking advantage of his absence, the defendant had encroached the portion of the suit schedule property and was dumping garbage. Further on 01.01.2015, the defendant tried to dig the earth in order to put up construction. When the plaintiff came to know above the defendant activities, he warned the defendant on 15.01.2015, for encroaching the property. Thereafter, the plaintiff appointed one power



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agent namely, Subbaiah, son of Kombaiah Konar, in order to manage the property. In spite of the same, the defendant on 10.08.2015, had again encroached the property and dumped the garbage and also threatening the plaintiff that he would put up construction by encroaching the plaintiff's portion of the property. When the power agent came to know that the defendant is intending to encroach the property, on 14.08.2015 the power agent had vacated the defendant. Since the power agent is staying 3 km away from the property, fearing that the defendant would encroach the property, the present suit for declaration and injunction is filed.

5. The defendant had denied the each and every averment stated in the plaint, especially denied the averment that the suit schedule property is situated in old survey No.68/9 and presently in Survey No.25/1 and also deny the said survey number belonging to the plaintiff. And deny



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the land in above said survey number measuring East-West 95 feet and South-West 54 feet, totally 4275 square feet vacant plot belong to the plaintiff or his vendors. Further four boundaries stated in the plaint is incorrect and the plaintiff has deliberately given wrong four boundaries. Infact when the peaceful possession and enjoyment of plaintiff to the property situated in Survey No.24/3C was disturbed by persons, namely, Madasamy, Esakiammal and Gomathi, the plaintiff had filed a suit in O.S.No.26 of 2016 and the plaintiff had obtained interim order and the same is still in force. Further the defendants in O.S.No.26 of 2015 instigated this plaintiff, as if the plaintiff in this case caused hindrance in the suit property in O.S.No.26 of 2015, this defendant had lodged a police complaint was filed before the Kayathar Police Station on 30.03.2015. By concealing the aforesaid facts and with false cause of action the present suit is filed. The plaintiff had not approached the court with clean hands. Hence the suit is liable to be dismissed for suppression



of material facts, non-disclosure of cause of action and abuse of court process. Further the plaintiff had indirectly admitted the defendant is in possession of the suit property, hence the plaintiff is not entitled to the relief of injunction. Hence the plaintiff ought to have filed the suit for declaration, injunction and recovery of possession, hence the suit is liable to be dismissed.

6. The defendant had filed additional written statement wherein it is stated that the suit is not legally valid. The relief claimed by the plaintiff cannot be granted. In the amended plaint it is stated that the old Survey No.25/1 is assigned Natham New Survey No.68/9, which is not correct and the same is proved by the revenue records. The alleged sale deed dated 30.03.1993 vide document No.378/93 is not belonging to the suit property. Therefore the sale deed of the plaintiff dated 31.03.2000 is also not valid and it is not related to the suit property, through which the



plaintiff has not claimed right over the property. The defendant is enjoying one portion of the suit property by dumping garbage. The plaintiff has not claimed right over the suit property on the basis of the registered sale deed Nos.378/1993 and 349/2000. Those documents were created by mentioning more extent. Further Madasamy, Esakiammal and Gomathi are necessary parties to this suit, but the plaintiff had not added them as party and the suit is bad for non-joinder of necessary parties and prayed to dismiss the suit.

7. Based on the rival pleading the Trial Court had framed the following issue:

- i. Whether it is true that the suit property was not valued property?
- ii. Whether the plaintiff is entitled to the relief of declaration?
- iii. Whether the plaintiff is entitled to the relief of permanent injunction?
- iv. To what other reliefs the plaintiff is entitled to?



8. On the plaintiff side Ex.A1 to Ex.A5 were marked and PW1 was examined as witness. On the side of the defendant no documents were marked and no witness was examined. The Advocate Commissioner's report and plan are marked as Ex.C1 and Ex.C2. After perusing the evidence, the Trial Court had dismissed the suit. Aggrieved over the plaintiff had preferred Appeal Suit. The Appellate Court had framed the point for consideration 'whether the judgment and decree of the suit is sustainable or not and to what other reliefs the plaintiff is entitled to? After considering the same the appellate court had dismissed the suit. Aggrieved over the same the present second appeal is preferred by the plaintiff and the second appeal is admitted on the following substantial question of law:

"Whether the courts below were right in rejecting the evidence offered by the registered instruments of sale



particularly Ex.A1, which is of the year 1993, on the ground that the revenue records reflect the lesser extent of property in the suit survey number?

9. The contention of the plaintiff is that he had purchased the property through Ex.A3 sale deed, wherein the extent of the property is stated as 4275 square feet. The plaintiff's vendor namely Krishnan Konar had purchased the property from P.Subramania Pillai, son of Narayana Pillai, Ulaganatha Pilai, son of Subbaiah Pillai and P.Subramania Pillai, son of Pirammanayagam Pillai through Ex.A1. In the Ex.A1 the extent of the property is stated as 4275 square feet. The said P.Subramania Pillai and three others had stated that the property is an ancestral property and Patta No.109 was issued to them. But the said patta was not produced before the Court. However the chitta was produced and the same is marked as Ex.A5, wherein the extent of the property is stated as 134.50 square meter, which is equivalent to 3.30



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cents. But the plaintiff claims he had purchased 4275 square feet which is equivalent to 9.80 cents. When the plaintiff's vendor's vendor P.Subramania Pillai and two others are having possessing 3.30 cents only, then they cannot sell more than 3.30 cents. Hence the plaintiff has not proved how his vendor's vendor having right to 9.80 cents.

10. The Trial Court has considered the plea of the plaintiff and has rightly held that the plaintiff ought to prove the case through his own evidence and he cannot rely on the defects in the written statement of the defendant. Moreover, the defendant has not filed any documents and has no deposed before the trial Court. The same cannot be a ground for the plaintiff since the defendant failed to appear before the trial Court and depose. The plaintiff has to raise or fall on his own legs and dismissed the suit.



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11. The Appellate Court has relied on the cross-examination of P.W.1 and has held that the plaintiff has clearly stated that he is claiming through his parent Document on Patta No.109. Ex.A.5, which has been issued for Patta No.109, wherein, the extent of the suit property is 134.50 square meter which is equivalent to 3.30 cents. Therefore, the appellate court had rightly held that the plaintiff is claiming 9.80 cents, but the parent document states that the plaintiff is entitled to 3.30 cents, then the plaintiff cannot claim over and above the parent document. Hence, the Appellate Court had rightly declined the prayer of the plaintiff.

12. The substantial question of law that is raised by the plaintiff is that when the sale deed states 9.80 cents and the same ought to be the correct extent of the property and revenue documents cannot be relied on to curtail the right of the plaintiff. But it is seen that the parent document



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of the plaintiff is Chitta, wherein it is referred that for Patta No.109 the Chitta is issued. In the said chitta the extent is mentioned as 134.50 square meter which is equivalent to 3.30 cents. When the plaintiff's vendor was possessing only 3.30 cents, then he can sell only 3.30 cents. If the plaintiff is claiming over and above 3.30 cents, then the plaintiff should prove how he received larger extent of 9.80 cents. The plaintiff has not produced any documents to prove the 9.80 cents belongs to him or his vendors. But the plaintiff is relying on the plea of the defendant and was trying to prove that the defendant was wrong. When the plaintiff has miserably failed to prove he is entitled to 9.80 cents, then the plaintiff is entitled to only 3.30 cents as per Patta No.109 and chitta. In such circumstances, the sale deed cannot be relied on, but only the parent document Patta No.109 and chitta can be relied on. Therefore, the substantial question of law is answered against the plaintiff.



13. The learned Counsel appearing for the plaintiff relied on the judgment rendered in *Naina Mohammed Vs. Mohammed Labbai Gani* reported in **2017 AIR CC 865: 2017(2) LW 702**, wherein, the learned Judge has held that patta in UDR Scheme would not extinguish the right of the plaintiff who had purchased the suit property through registered sale. The said judgment was rendered on a different fact, where the party in the case had successfully demonstrated the title to the suit property by registered documents. Therefore, the learned Judge had passed a judgment stating that the extent of property cannot be based on the revenue documents.

14. In the present case, when the parent document itself is revenue document i.e., Patta No.109 then whatever extent that is available in the patta/chitta, that alone can be sold. Therefore, the sale deed even though it is registered, cannot be relied. When the plaintiff's vendor's vendor is



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not having any right over the larger extent of the property, the vendor would not have sold the larger extent. When the plaintiff failed to prove that his vendor's vendor was having right over the larger extent of the property, the said judgment is not be applicable to the present case. Hence as stated supra the plaintiff has not proved that his vendor is having right over the larger extent. Hence, the second appeal fails and the substantial question of law is answered against plaintiff.

15. Accordingly, this Second Appeal stands dismissed. The Judgment and Decree, dated 31.10.2019, passed in A.S.No.31 of 2019 on the file of Principal District Court, Thoothukudi, confirming the Judgment and Decree dated 08.04.2019 passed in O.S.No.148 of 2015 on the file of the Sub Court, Kovilpatti is hereby confirmed. No costs. Consequently, connected miscellaneous petition is closed.



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Index : Yes / No
NCC : Yes / No
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TO:

- 1.The Principal District Court, Thoothukudi,.
- 2.The Sub Court, Kovilpatti
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

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Judgment made in
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Dated:
14.11.2024