



S.A.(MD).No.227 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 31.07.2024

DELIVERED ON : 14.10.2024

CORAM

THE HON'BLE MR.JUSTICE G.ILANGO VAN

S.A.(MD).No.227 of 2021
and C.M.P.(MD).No.3169 of 2021

Ganesan ... Appellant/Appellant/Plaintiff

Vs.

Arumugam ... Respondent/Respondent/Defendant

PRAYER : Second Appeal filed under Section 100 of the Civil Procedure Code, to set aside the Judgment and Decree passed in A.S.No. 112 of 2017 on the file of the Principal Sub Court, Tenkasi, dated 20.01.2021 confirming the Judgment and Decree passed in O.S.No.67 of 2010 on the file of the District Munsif cum Judicial Magistrate Court, Shenkottai, dated 02.08.2017.

For Appellants : Mr.N.Ganagasapapathy

For Respondent : Mr.R.J.Karthik



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JUDGMENT

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This appeal has been filed against the Judgment and Decree passed in A.S.No.112 of 2017 on the file of the Principal Sub Court, Tenkasi, dated 20.01.2021 confirming the Judgment and Decree passed in O.S.No. 67 of 2010 on the file of the District Munsif cum Judicial Magistrate Court, Shenkottai, dated 02.08.2017.

2.The facts in brief:

The suit property originally assigned in favour of the plaintiff's father Subbiah Asari on 31.08.1998 in Survey No.300/3, Plot No.1 as per the order No.A6/6400/97. After assignment the plaintiff's father constructed a small thatched hut and was living there. Later, he executed a settlement deed in favour of the plaintiff on 14.06.2010. The gift was accepted by the plaintiff and he become the owner. The old hut was in dilapidated condition. So he made arrangement to put up pucca constructions. The defendant is the neighbour claiming right over the suit property. He was making frequent trouble to sell the property to him. The plaintiff refused. So he making arrangement to encroach the property. So the suit is laid for declaration that the plaintiff is entitled for



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suit property and for permanent injunction and for costs.

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3.The defendant filed written statement stating that the description of property is not proper. The plaintiff's father is not qualified person to be assigned with any free patta. Against the condition imposed upon the plaintiff's father, the settlement deed came into existence. In the written statement, the property belongs to the defendant is shown as 2nd schedule. The first schedule is the portion of the second schedule. The plaintiff's claim is entirely pertaining to different property. His survey number is 300/3. But in the counter claim, the survey number is 300/2. After filing the suit, the plaintiff encroached the second item of the counter claim and laid foundation on the south eastern corner. The property claimed by the plaintiff absolutely belongs to the defendant. The assignment patta was not granted in the name of the plaintiff's father. The plaintiff's father is Sivanu Asari. But the assignment was granted in favour of one Subbiah Asari.

4.The plaintiff's father belongs to one Kilaangaadu village and had a big house, apart from landed properties. So the assignment patta would



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not have granted to a non Villager. Apart from that the plaintiff's father belongs to some other Taluk also.

5. Even before the assignment dated 31.08.1998 the defendant purchased 25 cents in S.No.300/2 on 21.10.1992 from one Ganapathi Chettiyar. He laid a foundation on the south eastern portion and fenced the same. The plaintiff removed the fencing. By mis-directing himself, he is making the trouble to the defendant's property in S.No.300/2.

6. Taking advantage of the interim order, the plaintiff encroached the first schedule of the property mentioned in the written statement and put up construction measuring about east - west 12 feet and north - south 25 $\frac{3}{4}$ on the east and 26 feet on the west with cement, bricks and asbestos sheet. So, the counter claim is laid for the relief of declaration for second schedule along with first schedule and for recovery of possession of the portion encroached by the plaintiff in first item and for mandatory injunction for removing the structure and for costs.

7. Reply statement was filed by the plaintiff which contains the



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following averments:

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It is denied that the plaintiff encroached the first schedule in the counter claim. As mentioned in the plaint only Subbiah Asari the father of the plaintiff, was assigned with settlement patta.

8.On the basis of the pleadings the trial Court formulated the following issues.

1. Whether the plaintiff is entitled for the relief of declaration?
2. Whether the plaintiff is entitled for the relief of permanent injunction?
3. Whether the defendant is entitled for the relief of declaration in respect of the 1st item of schedule property mentioned in the counter claim?
4. Whether the defendant is entitled for the relief of recovery of possession in respect of the 1st item of schedule property mentioned in the counter claim?
5. Whether the defendant is entitled for the relief of mandatory injunction in respect of the 1st item of schedule property mentioned in the counter claim?



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6. To what other reliefs the parties are entitled to?

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9. On the side of the plaintiff PW1 and PW2 were examined and Ex.A1 to Ex.A4 were marked. On the side of the defendant DW1 was examined and Ex.B1 to Ex.B6 were marked.

10. At the conclusion of the trial process the trial Court dismissed the suit filed by the plaintiff as well as the counter claim without any costs. Against which, the plaintiff himself filed appeal in A.S.No.112 of 2017 before the Principal Sub Court, Tenkasi and cross appeal was filed by the defendant. Both were heard together by the appellate court. The appellate Court dismissed the appeal filed by the plaintiff and allowed the cross appeal filed by the defendant in part and decree and judgment of the trial court was modified declaring that the first schedule in the written statement absolutely belongs to the defendant, but, dismissed the counter claim in respect of the prayer of recovery of possession and mandatory injunction without any cost.

11. Against which, this second appeal is preferred by the plaintiff



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namely Ganesan. There is no cross appeal or regular appeal by the defendant against the dismissal portion of his counter claim.

12.It is judgment of reversal. At the time of admission the following substantial question of law was framed.

1. Whether the Courts below are correct in coming to the conclusion that the appellant/plaintiff had not proved his case when the plaintiff is relying his title on the basis of free housing patta (Exhibit A-1) granted by the Government as the predominant evidence?
2. Whether the Courts below are correct in dismissing the suit of the appellant / plaintiff without considering the aspect that the respondent/defendant had not sought any relief against the suit property?

13.Both parties claimed rival title. But, defendant says that the plaint schedule property lies in S.No.300/3, which he is not concerned which is one S.No.300/2. According to the defendant the plaintiff by misdirecting himself regarding the identity of the property encroached



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the first item in the written statement and put up the construction. So that must be removed.

14.For resolving the issue, the trial Court has issued the Commission. The Commissioner has filed the report and plan. Now we will straight away go to the Commissioner's report and plan. The trial Court has extracted the relevant portion in the commissioner's report. On the basis of the commissioner's report, it has recorded a finding that the first schedule mentioned in the written statement lies in S.No.300/2 and 300/3. The defendant's sale deed under Ex.B1 refers to S.No.300/2. In S.No.300/3 the defendant has no right over the property, which is shown as second schedule. By finding so it dismissed the counter claim.

15.So far as title of the plaintiff it has recorded finding that the Ex.A1 does not inspire any confidence, since manipulations have been made in the assignee's name, so also survey number. So the plaintiff is not entitled for the relief. So also the defendant as mentioned above. Now we will go to the finding of the appellate Court, since it is a case of reversal, since both sides suffers failure before the trial Court, both filed



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appeal and cross appeal as mentioned above. Now let us first go to the title of the plaintiff. It concurred with the finding of the trial court as to the manipulations and corrections in Ex.A1.

16.Regarding the counter claim the trial court recorded a finding that since the title over the property in S.No.300/2 has been established by the defendant, which lies on the north of S.No.300/3 and construction was also found in S.No.300/3, the trial Court ought to have decreed the counter claim in respect of S.No.300/2. The entire construction was made by the plaintiff only in S.No.300/3. In so far as S.No.300/2 there was no construction. So the defendant is not entitled for recovery of possession and for mandatory injunction and as mentioned above, in respect of declaration of right in first schedule in the counter claim, it was decreed. As mentioned above there is no second appeal by the defendant. So when there is a clear finding with regard to the manipulation in Ex.A1, the learned counsel for the appellant would submit that with regard to S.No. 300/2, the plaintiff has no claim. As mentioned in the plaint, he claims title over the property in S.No.300/3. He was unable to prove Ex.A1, since the original documents were destroyed by the Revenue Department



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as indicated in the Judgment of the trial Court itself. There was only minor discrepancy is available in the assignment order and if at all only the Government can question the same and not the defendant. But, as mentioned above when the Government record itself is manipulated to suit the convenience of the plaintiff, he must be thrown out of the instaneously. The reason being of declaratory relief is a discretionary one, the person, who seeks the relief must come to the court with clean hands. No decree and no cause of action will lie over the illegal act of manipulation of records. So the contention on the part of the appellant deserves no consideration at all. So it is rejected out right and conclusion reached by the trial Court as well as appellate Court with regard to the finding of the title of the property in S.No.300/3 deserves no interference at all. So the first substantial question of law is answered against the plaintiff/appellant stating that document under Ex.A1 is not a genuine one.

17.The second substantial question of law is answered that there is a clear finding by the trial Court as well as appellate Court to the effect that the plaintiff has encroached the portion in survey number 300/3. But



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so far as S.No.300/2 is concerned there is no encroachment. In the written statement the first schedule is mentioned as S.No.300/2 measuring about totally 25 cents. Out of 25 cents the plaintiff has encroached east west 12 feet, north south on the east $25 \frac{3}{4}$ feet and on the west 26 feet encroached portion. Second schedule is mentioned as 25 cents in the entire S.No.300/2. So the first schedule is a portion of second schedule. That is why the appellate court has granted decree of declaration in respect of the first schedule. But the appellate court ought to have granted decree in respect of second schedule, since the first schedule is the part of the second schedule. Second schedule absolutely belongs to the defendant as mentioned above, in which the plaintiff has no right. But, so far as the S.No.300/3 is concerned the construction has been made. But, the plaintiff has not established his right over the property. So when he has no right over the property, he is not entitled for any decree as confirmed by both the courts. In view of the above said the second substantial question of law is answered against the plaintiff. So he is not entitled for any decree, even though the defendant has not made any title or claim over the property in S.No.300/3, since the document under Ex.A1 is a manipulated document. For the reasons stated above, he



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is not entitled for any relief from this Court. This second appeal fails.

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18. Accordingly, this second appeal stands dismissed with costs.

The Judgment and decree passed by the trial Court as well as the appellate Court are hereby confirmed. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No
Internet : Yes / No
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To

1. The Principal Sub Judge, Tenkasi.
2. The District Munsif cum Judicial Magistrate, Shencottah.
3. The Section Officer,
E.R. Section/V.R. Section,
Madurai Bench of Madras High Court, Madurai.



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G.ILANGOVAN,J.

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