



S.A.(MD).No.259 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

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and

C.M.P.(MD).No.5107 of 2024

1.Sundararajan
2.Pitchai @ Nagarajan
3.Amirtham
4.Periasamy
5.Arumugam @ Mani
6.Eswari

... Appellants

Vs.

1.Neelamegam
2.Shanthilakshmi
2nd respondent represented
by her power agent 1st respondent

... Respondents

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 24.11.2023 in A.S.No.247 of 2020 on the file of Subordinate Judge, Manapparai, confirming the judgment and decree dated 11.01.2020 in O.S.No.42 of 2017 on the file of Additional District Munsif, Manapparai.



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For Appellants : Mr.Raguvaran Gopalan

J U D G M E N T

The defendants are the appellants. The respondents 1 and 2 filed a suit seeking declaration of title over suit 'A' and 'B' schedule property and for consequential relief of recovery of possession in respect of portion of suit 'A' and 'B' schedule property described as 'C' schedule property. The suit was decreed by the trial Court and the findings of the trial Court were affirmed by the first appellate Court. Aggrieved by the concurrent findings, the defendants are before this Court.

2. According to the respondents/plaintiffs, the suit 'A' and 'B' schedule property along with vacant site with total extent of 10 cents was purchased by plaintiff's mother Marudhambal from one Noor Nabisha by registered sale deed dated 16.07.1986. The plaintiff's mother had been in possession and enjoyment of the same since the date of purchase by mutating the revenue records. An extent of 0.06 cent in the property purchased by Marudhambal was acquired by



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Government for the purpose of laying National Highway and compensation for the said land was also paid to plaintiff's mother Marudhambal. Out of remaining extent of 9.4 cents available with Marudhambal, she sold 6.30 cents of vacant site on the western side to one Bakrudeen by sale deed dated 13.11.2015 under Ex.A4. The remaining extent of 3.10 cents on the eastern side was retained by Marudhambal. Later on, the said Marudhambal executed two settlement deeds dated 04.05.2016 and 11.04.2016 in favour of first and second plaintiffs settling 2.60 cents and $\frac{1}{2}$ cent in favour of the plaintiffs 1 and 2 respectively. The property settled in favour of the first plaintiff was shown as 'A,B,C,D' and the property settled in favour of the second plaintiff was shown as 'E,F,A,B'. The defendants 2 to 6 owned property on the eastern side of suit property. The defendants 2 to 6 sold 3.14 cents of land on the eastern side of suit property to first defendant under Document dated 02.05.2016, wherein while describing four boundaries, the western boundary was shown as vacant site belonged to Bakrudeen instead of suit property owned by the plaintiffs. Taking advantage of the wrong description of the property in the sale deed in favour of the first respondent, he trespassed into the portion of the suit property and had put up a shed thereon and such encroached portion is shown as 'C' schedule property. On these pleadings, the suit



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was laid for declaration of title over suit 'A' and 'B' schedule property and for recovery of possession in respect of suit 'C' schedule property.

3. The suit was resisted by the appellants/defendants by filing a written statement, wherein they generally denied the title and right of the respondents/plaintiffs over the suit property. The appellants also raised a specific defence that both the properties of the plaintiffs and the defendants were subject matter of the partition in the family of Savarimuthu and Chinnappan dated 28.02.1968. It is the case of the appellants that in the partition deed dated 28.02.1968, the appellants' predecessor in title Savarimuthu was allotted 10 cents under 'A' scheduled to the partition deed. Likewise, the respondents' predecessor in title Chinnasamy was allotted 10 cents under 'C' schedule to the partition deed. It was also claimed by the appellants that the property allotted to Chinnasamy under partition deed lies on the eastern side of property allotted to Savarimuthu. It was also averred that the Chinnasamy sold the property in favour of the Noor Nabisha under sale deed dated 19.03.1982 and she in turn sold the property to plaintiff's mother Marudhambal on 16.07.1986.



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4. Before the trial Court, the first respondent was examined as P.W.1 and one Manoharan was examined as P.W.2 and 9 documents were marked on behalf of the respondents. The first appellant was examined as D.W.1 and one Gnanaekar was examined as D.W.2 and 9 documents were marked on behalf of the appellants. The Advocate Commissioner's report, Plan and Surveyor's Plan have been marked as Exs.C1 to C3. The order passed by the Special Thasildar regarding the acquisition proceedings was marked as Ex.X1.

5. The trial Court, on appreciation of evidence available on record, came to the conclusion that the respondents/plaintiffs were entitled to title and recovery of possession as prayed for. Aggrieved by the same, the appellants preferred an appeal in A.S.No.247 of 2020. The first appellate Court affirmed the finding of the trial Court. Aggrieved by the concurrent finding, the appellants/defendants are before this Court.

6. The learned counsel appearing for the appellants mainly submitted that the respondents/plaintiffs failed to produce the sale deed in favour of



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Marudhambal's vendor and therefore, the Courts below ought not to have granted declaration in favour of the respondents, when they failed to produce the parent documents. The learned counsel for the appellants further submitted that the Courts below failed to appreciate the recitals found in the documents produced by either parties and therefore, the findings rendered by the Courts below are vitiated by mis-reading of documentary evidence available on record. The learned counsel for the appellants also submitted that in a suit for declaration, the plaintiffs shall prove their title on their own strength and they cannot rely on the weakness of defence.

7. The plaintiffs produced the sale deed in favour of their mother dated 16.07.1986. The sale deed in favour of their mother's vendor was not produced by the respondents/plaintiffs. However, the appellants in the written statement clearly admitted that the respondents/plaintiffs are claiming 10 cents allotted to one Chinnappan under partition deed dated 28.02.1968. The appellants clearly pleaded in the written statement that 10 cents allotted to Chinnappan was sold by him to Noor Nabisha under sale deed dated 19.03.1982. The said Noor Nabisha sold the property to plaintiff's mother Marudhambal on 16.07.1986. The plaintiffs



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produced the certified copy of the sale deed in favour of Marudhambal dated 16.07.1986. However, they failed to produce the sale deed in favour of Marudhambal's vendor Noor Nabisha dated 19.03.1982. However, the non-production of the said sale deed would not be fatal to the case of the respondents/plaintiffs, in the light of the clear admission by the appellants in their written statement that 10 cents allotted to one Chinnappan in 1968 partition was sold by him to Noor Nabisha and the said Noor Nabisha in turn sold it to Marudhambal. Therefore, the submission made by the learned counsel for the appellants that the plaintiffs failed to produce the parent document and hence failed to prove their title satisfactorily is not acceptable to this Court.

8. In the written statement, the core defence of the appellants was that one Chinnappan was allotted property on eastern side of 10 cents allotted to Savarimuthu under whom the appellants are claiming title. Therefore, it is the case of the appellants that the plaintiffs are not entitled to lay claim over suit property which lies on the western side of appellants' property. The Courts below on perusal of Ex.B1 partition deed dated 28.02.1968, found that 10 cents allotted to share of Chinnappan was mentioned as the property situate on the 'west of



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Savarimuthu property'. Therefore, the main defence raised by the appellants that the respondents' predecessor in title Chinnappan was allotted property only on the eastern side of Savarimuthu property and therefore, the respondents are not entitled to lay claim over suit property which lies on the western side of appellants' property gets falsified under Ex.A1. Therefore, I do not find any perversity in the conclusion reached by the Courts below that the respondents/plaintiffs proved the title over the suit property and hence, they were entitled to consequential relief of recovery of possession. Finding no question of law much less substantial question of law, the Second Appeal stands dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

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NCC : Yes/No
Index : Yes/No
Internet : Yes/No
akv

To

- 1.The Subordinate Judge,
Manapparai,
- 2.The Additional District Munsif,
Manapparai.

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3.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SOUNTHAR,J.

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