



S.A.(MD).No.626 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 01.08.2024

DELIVERED ON : 14.10.2024

CORAM

THE HON'BLE MR.JUSTICE G.ILANGO VAN

S.A.(MD).No.626 of 2022
and C.M.P.(MD).No.8912 of 2022

M.Ganesan

... Appellant/Appellant/Plaintiff

Vs.

1.Chinnappa

2.Anbalagan

... Respondents/Respondents/Defendants

PRAYER : Second Appeal filed under Section 100 of the Civil Procedure Code, to set aside the Judgment and Decree passed in A.S.No. 2 of 2018 on the file of the Sub Court, Aranthangi, dated 31.01.2022 confirming the Judgment and Decree passed in O.S.No.133 of 2013 on the file of the District Munsif, Aranthangi dated 22.11.2017.

For Appellant : Mr.R.Balakrishnan

For Respondents : Mr.K.Vamanan for R1 & R2



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JUDGMENT

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This appeal has been filed against the Judgment and Decree passed in A.S.No.2 of 2018 on the file of the Sub Court, Aranthangi, dated 31.01.2022 confirming the Judgment and Decree passed in O.S.No.133 of 2013 on the file of the District Munsif, Aranthangi, dated 22.11.2017.

2.The facts in brief:

The suit property measuring about 33 cents in S.No.43/6 originally belongs to the plaintiff's grandfather by name Chidambaram ambalam. Chidambaram ambalam had two wives. Through the first wife, he had a male child by name Ramasamy. Through the second wife the plaintiff's father namely Manickam and Krishnan were born. Krishnan died without any marriage. So Ramasamy and Manickam were the legal heirs of the Chidambaram ambalam. Chidambaram ambalam died before 1950. His wives also died before him. After the death of Chidambaram ambalam the properties devolved upon his legal heirs and were in possession and enjoyment.

3.In 1950 there was an oral partition between the plaintiff's father



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Manickam and his brother namely Ramasamy. By which, the plaintiff property was allotted to the share of Manicakam. Revenue records were mutated in his name. He died in the year 1978. After his death the plaintiff and his brother Murugan inherited the properties and the plaintiff is enjoying the same as Manager and Kartha. Mother died in 1987. In the eastern portion 33 cents, the plaintiff's father, plaintiff and his brother constructed houses and living there and western 13 cents is cultivated with various trees. During natham survey, it was assessed as raoyatwari land. Patta was granted.

4.The defendant has no right over the properties. On the north west the defendants are owning lands. They demanded the western 13 cents for sale. But the plaintiff refused. On 21.09.2013,the defendants along with his henchmen came to the property and caused trouble. So the suit is laid for declaration, permanent injunction and for costs.

5.Statement was filed by the defendants which contain the following averments:

The property measuring about 33 cents in S.No.43/6 originally



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belongs to plaintiff's grandfather Chidambaram ambalam. After the death of Chidambaram ambalam, his sons namely Ramasamy and Manickam divided the property. The entire property was allotted to the Ramasamy. So it is denied that the plaintiff's father was allotted with the suit property.

6.In 1987, Ramasamy died. Out of the 33 cents, southern 8 cents was sold by Ramasamy in favour of the plaintiff and his brother through the sale deed, dated 20.02.1978. In the sale deed itself it is specifically stated that the remaining property belongs to him. Out of the total extent the northern 13 cent is the plaintiff property and the eastern 5 cents sq. feet belongs to Ramasamy's family. Western 7 cents was purchased from the sons of Ramsamy. So out of the total 33 cents in suit survey number, the plaintiff is entitled only for 8 cents. Except the southern 8 cents, the plaintiff does not have any property in the suit survey number. So the plaintiff pleadings that out of the 33 cents, in the eastern portion, they constructed a house and residing and western portion is kept as thoppu is not correct.



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7.The defendant entered into sale agreement in respect of northern 13 cents and 22 cents in survey number 43/7 with them. Because of that the plaintiff got angry. So except the above said 8 cents, the plaintiff's family does not have any right in the suit survey number.

8.On the basis of the pleadings, the trial Court formulated the three issues.

1. Whether the suit properties belongs to the plaintiff's family?
2. Whether the plaintiff is entitled for the relief of declaration as the suit property is absolutely belongs to the plaintiff's family?
3. Whether the plaintiff is entitled for the relief of permanent injunction against the defendant in respect of the suit property?
4. To what other reliefs?

9.To substantiate the case on the side of the plaintiff PW1 was examined and 10 documents were marked. On the side of the defendant DW1 was examined and 4 documents were marked.

10.At the conclusion of the trial process the trial Court dismissed



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the suit. Against which A.S.No.2 of 2018, was filed before the Sub Court, Aranthangi. It concurrent with the judgment and decree of the trial Court, dismissed the appeal. Against which this second appeal is preferred.

11.At the time of admission the following substantial question of law were framed.

1. Whether the judgments and decrees passed by the courts below are perverse in misinterpreting the documentary evidence in Ex.A.4 and Ex.A.5 as well as Ex.A.9 and Ex.A.10?
2. Whether the courts below were right in law by dismissing the suit despite the plaintiff having discharged his initial burden of proving the suit claim based on the oral and documentary evidence?
3. Whether the revenue documents in Ex.A.1 to Ex.A.5 will not confer title to the appellant over the suit schedule property in the absence of any documents on the side of the respondent/defendant?
4. Whether the lower Appellate Court was right in law in not independently considering the oral and documentary evidence in



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proper perspective after framing proper points for consideration as contemplated under Order 41 Rule 33 C.P.C?"

12.Before we answer the substantial question law involved here the admitted facts may be briefly summarized. The fact that the suit property originally belonged to Chirambaram ambalam is not denied by both sides. Chidambaram ambalam had two wives. To the second wife the plaintiff's father namely Manickam was born. Apart from the plaintiff Manickam had another son by name called Murugan. Manickam had a brother by name Krishnan. He had died without marriage. Through first wife Chidambaram ambalam had a son by name Ramasamy. It is the case of both sides that in a partition that took place between Ramasamy and Manickam, the suit property was allotted to Manikkam. Whereas, it is the case of the defendant that the entire property in the said survey number was allotted to Ramasamy. The oral partition is admitted. But, the dispute still exists with regard to whom the entire properties were allotted. In this context as seen, the suit is filed for declaration and permanent injunction. The suit property is mentioned as 13 cents out of 33 cents in Survey Number 43/6. Now according to the plaintiff the



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dispute is raised by the defendant only in respect of western 13 cents, where the thoppu is situated. In the remaining portion of the properties, according to the plaintiffs there is no dispute.

13.Now as mentioned above, there is no proper evidence on both sides to show how the properties were divided between Manickam and Ramasamy. So the plaintiff has produced only the revenue records and the defendant relied upon the circumstantial evidence to show that the property were in fact allotted only to the share of the Ramasamy and not to Manickam. With this, we will go to the arguments advanced by the parties.

14.According to the learned counsel for appellant the oral partition that took place in 1950 is admitted. Ex.A1 to Ex.A3 were prior to 1980. Patta and adangal were standing in the name of the plaintiff and his father. There is no proof of sale agreement pleaded in the written statement. The sale deed under Ex.B1 relied upon by the defendant was entered into only as a nominal document, since trouble was created by Ramasamy. The appellant's mother had to enter into the above said sale



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deed without there being no intention. Apart from that it is also stated that the sale agreement pleaded by the defendant did not end in actual sale.

15.Per contra, the submission made by the respondent that the purchase under Ex.B1 made by the appellant mother will show that the entire property was allotted to Ramasamy and if really, it was allotted to Manickam, there was no necessity for the appellant's mother to purchase. They put up house in 6 cents. Sale agreement was entered in respect of remaining portion. So according to the respondent the case of the defendant has been probablised by the above said circumstantial evidence and rightly decided by the trial Court as well as the appellate Court, which requires no interference at the hands of this Court.

16.Now we will go to the substantial question of law framed. Point Nos.1 to 3 are in correct, since it is the suit for declaration and permanent injunction, it is the duty of the plaintiff to *prima facie* establishes his title over the property. If *prima facie* case is established by the plaintiff, then the burden will be shifted to the defendant. Here as mentioned above



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there is no evidence on either side with regard to the oral partition took place in 1950, more specifically as to whom the property was allotted.

17.The disturbing feature that has been brought on record as mentioned above, is, the Ex.B1. We will straight away go to Ex.B1 as to the recitals. The date is mentioned as 20.02.1978. On behalf of the minor children of Manickam including this plaintiff her mother purchased 8 cents from Ramasamy ambalam. As mentioned that it is the ancestral property and in his enjoyment. But, nowhere, it has been stated that there was an oral partition, in which, it was allotted to his share. While referring to the description of property, he has mentioned that the southern 8 cents were sold retaining northern remaining in his possession. As mentioned above to get away this difficulty, now it is contended by the appellant that only to purchase peace. When trouble was made by the Ramasamy, document was entered without any intention to be acted upon as such. But, the consideration is mentioned as Rs.400/-. No where in the pleadings, it is mentioned by the plaintiff that to purchase peace only the above said document came into existence. Even the purchase made by the plaintiff's mother is not mentioned in the



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plaint.

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18.Now, we will go to the evidence of PW1. PW1 has stated in his evidence that after the death of the father, taking advantage of the illiteracy of plaintiff's mother, the document was created by forgery. But, during cross examination, he has stated that he never gone through Ex.B1 and there is no necessity for him to peruse the document. So this sort of evidence by the plaintiff is totally unacceptable and in irresponsible manner has given evidence with regard to Ex.B1. When a suit is filed for declaration, it is the duty of the plaintiff to come to the Court with clean hands. Suppression of material facts itself is sufficient enough to non suit the plaintiff.

19.Now we will go to the evidence of DW1. A question was put to DW1 by the plaintiff that Ex.B1 is a forgery document that there is no necessity for the plaintiff to purchase their own property. Defendant is only the agreement holder. So he may not aware what was the fact in the family at the time of Ex.B1. It is suffice to say that the plaintiff has suppressed the existence of Ex.B1 and now, an belated attempt is made



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by the appellant that the document was entered only as nominal for purchasing the peace. So without any pleadings and evidence no explanation such a nature can be accepted. So it is rejected out right.

20.Now common man prudence the arguments advanced by the respondent that purchase will indicate that the property was not allotted to Manickam, as mentioned by the plaintiff has to be accepted. So we have to accept this argument due to the absence of proper explanation on the side of the plaintiff in this regard.

21.No we will go to other circumstances, which are relied by the plaintiff to prove that the property was allotted to Manickam's share through Ex.A6. Among the properties, the suit survey number 43/6 the entire 33 cents is mentioned and that property along with some other properties were mortgaged. But, for establishing the mortgage deed any one of the contesting witness must be examined. Except the plaintiff no other evidence is examined on the side of the plaintiff. So the document cannot be relied for the above said purpose.



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22.Ex.A1 is the settlement Register, which is dated 07.06.2013 issued in the name of Manickam ambalam. On the date of this document, Manickam ambalam was not alive. Because it is admitted by the plaintiff himself that his father Manickam ambalam died in the year 1978 and subsequent documents under Ex.A2, Ex.A3, which are following Ex.A1. So also Ex.A3, the natham patta, chitta etc.,

23.Per contra, to this on the side of the defendant, they have produced Ex.B2. Wherein, for the suit survey number joint patta is issued in the name of Ramasamy and the plaintiff. So it indicates that revenue records are not showing the correct title. The revenue records will not create or extinguish any right in favour of any one. So these documents can be discarded.

24.Ex.A7 is another piece of evidence laid by the plaintiff. Ex.A7 is sale deed by the plaintiff to show that the recitals indicate that for discharging or redeem the mortgage under Ex.A6, Ex.A7 was executed. But, as mentioned above Ex.A6 itself has not been properly proved by the plaintiff. So that document cannot be taken into account for



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probablising the plaintiff's case.

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25.Suit in O.S.No.140 of 2013 has no relevancy, because it is not the suit between the present parties.

26.As mentioned above, the defendants are only agreement holders and the agreement did not end in sale deed. So the defendant also cannot lay any claim over the property as the title holders.

27.That sale agreement entered between the sons of Ramasamy and the defendant herein in respect of the subject property as well as the properties situated in S.No.43/7, which dated 14.11.1988. But it is not a completed transaction. But, there is no indication in the document that possession was handed over to the defendant on the date of Ex.B4. But, however, notwithstanding the above said defects in the case of defence, the plaintiff cannot take advantage of the same. As mentioned above he has placed the existence of Ex.A1 itself and continuous possession is not also established by the plaintiff. So the conclusion reached by the trial Court and appellate Court requires no interference and the substantial



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question of law 1 to 3 are answered accordingly and I conclude that the documents produced by the appellant in the form of revenue records does not confer any title upon him.

28.The fourth substantial question of law is with reference to the manner of disposal and manner of hearing by the appellate court. The appellate court formulated 10 points for consideration under Order 43 Rule 33 of IPC. Simply, because the points were framed not desired by the appellant, he cannot make any complaint against the points formulated by the appellate Court. Appellate Court has taken its own language. So the substantial question of law does not arise here. Appeal fails.

29.Accordingly, this second appeal stand 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.

14.10.2024

Index : Yes / No
Internet : Yes / No
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To

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- 1.The Subordinate Judge, Sankarankovil.
- 2.The Principal District Munsif, Sankarankovil.
- 3.The Section Officer,
E.R.Section/V.R.Section,
Madurai Bench of Madras High Court, Madurai.



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G.ILANGO VAN,J.

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