



SA(MD)No.493 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 11/07/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

SA(MD)No.493 of 2021

and

CMP(MD)No.6538 of 2021

1.M.Jeyapandiyan

2.M.Raja

: Appellants/Appellants/
Defendants

Vs.

K.Kumarakrishnan

: Respondent/Respondent/
Plaintiff

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code, to set aside the judgment and decree made in OS No.60 of 2012 on the file of the District Munsif Court, Madurai Taluk at Madurai, dated 12/04/2016, which is confirmed in judgment and decree made in AS No.48 of 2016 on the file of the Principal Sub Court, Madurai, dated 11/12/2019.

For Appellants : Mr.T.K.Gopalan

For Respondent : Mr.Niranjana.S.Kumar



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J U D G M E N T

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This second appeal is filed seeking an order to set aside the judgment and decree passed in OS No.60 of 2012 by the District Munsif Court, Madurai Taluk at Madurai dated 12/04/2016 which was confirmed by the Principal Sub Court, Madurai, in its judgment and decree passed in AS No.48 of 2016, dated 11/12/2019.

2.The brief averments made in the plaint are as follows:- The suit property along with larger extent and some other properties originally belonged to one Ilangan Moopan. He executed a Will on 09/09/1994 bequeathing the suit property by mentioning the same as 'B' schedule in favour of his wife and two daughters. His daughters names are Valarmathi and Tamaraiselvi. Ilangan Moopan died on 03/10/1994. The property devolved upon Papa, who is the wife of Ilangan Moopan and her two daughters as per Will. Patta was also transferred in the name of Valarmathi and Tamaraiselvi. They became the absolute owners by virtue of the Will. Pappa and her two daughters executed a sale deed in favour of the plaintiff on 15/12/2011. From the date of purchase, the plaintiff is in possession and enjoyment. The defendants have no right over the property. They tried to interfere into the possession of the plaintiff and tried to occupy the same. An attempt to



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attack the plaintiff was made by the first defendant. So, a case was registered. And the present suit was filed for permanent injunction and for costs.

3.The defendants filed a joint written statement stating that the property never belonged to Ilangan Moopan. The Will executed by him is not valid under law. The plaintiff never in possession, so also Ilangan Moopan. The sale deed in favour of the plaintiff is also denied and disputed. The defendants' grandfather by name Ilangan purchased the property on 21/12/1915 from one Maruthaveeran Servai. Ilangan had four sons namely Pandian, Ramu, Ayyavu and Mani. Apart from that, three female childrens were also born namely Chitrayee, Oyammal, Azhagammal. Among the childrens, Illangan Moopan, Pandian and Ramu died without marriage. Ayyavu had a son by name Malkalai and a daughter by name Saraswathi. Malkalai died leaving behind two males and one female children. The daughter namely Alagu is married and the son by name Mani have 7 childrens. So they are the legal heirs. Ayyavu and Mani orally divided the properties on 13/12/1988. It was reduced to writing. Later, by virtue of the above said oral partition, the respective parties are in possession. Neither Ilangan, nor his children have any right over the properties.



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4. On the basis of the pleadings, the following issues were framed by the trial Court:-

(1) Whether the plaintiff is in possession and enjoyment of the suit properties?

(2) Whether the plaintiff is entitled for permanent injunction as prayed for?

(3) To what other reliefs?

5. On the side of the plaintiff, 3 witnesses were examined, 15 documents were marked. On the side of the defendants, the first defendant was examined as DW1 and two documents were marked.

6. At the conclusion of the trial process, the trial Court decreed the suit as prayed for without any cost.

7. Against which, the defendants filed A.S.No.48 of 2016 before the Sub Court, Madurai. It was also dismissed confirming the judgment and decree passed by the trial Court.

8. Against the concurrent judgment and decree of the trial Court as well as the first appellate Court, this second appeal has been preferred by the defendants.



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9.Heard both sides.

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10.At the time of admission the following substantial question of law has been framed:-.

(1).Whether the suit for an injunction without a prayer for seeking declaration is maintainable or not?

11.In the light of the pleadings, now let us go to the description of properties in the original title document. The earlier document is Ex.B2, which is relied by the defendants namely the appellants herein. The sale deed was executed by one Maruthaveeran Servai, S/o.Maruthu Servai in favour of Ilangan Moopan, S/o.Illangan on 21/12/1915. The description of property reads that Madurai Taluk, Jari Melapanangadi village to the east of Muthusamy Servai Nangaj. On the south of the property sold by him in favour Moopan and others and west of his own nanja lands. On the north of his own land measuring about kani 0.1.3 Makani Mukkal Veasam 0.0.3 Mukkani situated in phmash No.85, Survey No.37.

12.Now we will go to Ex.A1, which is relied by the plaintiff. The date of sale is 08/09/1920. One Ammayee @



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Meenakshi Ammal, D/o.Rasu Thevar and wife of Maruthuveeran Servai sold the property in favour of Naicka Moopan, S/o.Ilagan Moopan.

13.The description of the property reads that the property was purchased by her in 1970 from one Ayyasamy Kothanar. The description of the property reads that Madurai Taluk,Jari Melapanangadi village, phmash No.85, Survey No.37, 15 cents and the local name is called as 'Sevala Kondu'; cents 15 and the local name is called as sevalagundu Kani makani Mukkal Veeram.

14.So the description of the property and the description of the parties shows that in the very same survey No.37, old phmash No.85, two different sale deeds came into existence. In 1915 document, the executor has stated that the description of the property as noted above. So, the purchasers are different. Vendors were also different. The documents are very old and none is available to say the relationship of both parties with regard to the parties mentioned in Exs.B2 and A15. Only by way of subsequent revenue record entries, this case has to be decided. It was so decided by the trial court as well as the first appellate court.



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15. One important aspect that was argued by the appellants is that the trial court as well as the first appellate court failed to take into account an important point that Ex.A15 was not considered by the trial court as well as the first appellate court. In both documents, the description of the properties are one and the same. So, according to him, by way of Ex.B12, the property was sold to the grand-father of the appellants. According to the defendants namely the appellants herein Ilangan, S/o.Ilangan Mooppan is their grandfather. The wife sold the same property to another person namely in favour of one Naicka Moopan, S/o.Ilangan Moopan.

16. The meaning of the argument is that the Vendor in Ex.A15 Ammayee @ Meenakshi Ammal is the wife of the Vendor in Ex.B2 namely Maruthuveeran Servai. But a new fact has been argued for the first time before the first appellate court. That was not the evidence by the parties before the trial court.

17. It appears that the husband name of Ammayee @ Meenakshi Ammal is Veeran Servai and not Marthuveeran Servai. It appears that Maruthuveeran Servai and Veeran Servai are different persons. Now the appellants wants to take advantage of the similarity of the name to some



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extent. But absolutely, it is not supported by any evidence. So, I am of the considered view that the first argument on the side of the appellants that the husband sold the property in 1915 in favour of the grand-father of the appellants and later, the very same property was sold by the wife of the Vendor in 1915 in favour of Illagan under Ex.A15 is not correct on record. It is rejected outright.

18.With this preliminary point, now let us go to the other aspects.

19.As mentioned above, only subsequent revenue records will throw light upon the controversy between the parties. Except the production of Exs.B1 and B2 namely the rough sketch and Adangal, no other document is produced by the appellants herein.

20.No doubt that it is not the duty of the appellants/defendants herein to disprove the case of the plaintiff. The plaintiff has to stand or fall on the strength of his own case and not on the failure on the defendants, either to substantiate their case or to produce the documents.



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21.Now let us go to the documentary evidence before we go into the oral evidence.

22.Ex.A3 reveals that Ilangan Moopan was granted with patta as per Ex.A15. Later, it was transferred to the name of Valarmathi and Tamaraiselvi in patta No.345.

23.Exs.A4 and A5 shows the continuous possession. Ex.A1 is the Will, dated 09/09/1994. There is a reference in the Will over the source of title to the executor namely Ilangan Moopan. He has stated that the property belongs to him by way of purchase. Even though, he is not referring the date of the document, but we can infer that he has referred Ex.A15. Subsequent to the sale, it came into effect and the execution was established or proved as per law through PW2, the attester to the Will. He has given clear evidence with regard to the date of execution as well as attestation. He has stated that only at the invitation of Ilangan, he went to the document writer office and he was informed that Ilangan intended to execute the sale. There is no serious dispute on that aspect over the execution of the Will. What he says is that the property never belongs to the executor namely Ilangan. Similarly, three other attesting witnesses were also examined on the side of the



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plaintiff. So, continuous documents right from Ex.A15, it is seen that the predecessor-in-title of the plaintiff were in possession. Ex.A16 is the sale deed standing in the name of the plaintiff. So, the continuous documents does indicate that the plaintiff and before that, his predecessor-in-title were in continuous possession of the property.

24. Another important aspect, that was pleaded by the appellants in the written statement is that there was an oral partition between the legal heirs of their grandfather namely Ilangan. Ilangan and Mani partitioned the properties left by Ilangan on 13/12/1982, later reduced the same into writing on 13/12/1988, in which Ilangan signed as a witness. By this specific averment, what they try to say is that the said Ilangan through whom the predecessor-in-title of the plaintiff derive the title, accepted the title over the properties in favour of Ilangan and Mani and signed in the partition deed, dated 13/12/1988. That document was not produced by the appellants either before the trial court or the appellate court. This circumstance also taken into account by the trial court as well as the appellate court.



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25. When that important piece of evidence was not produced by the appellants, then they cannot say that Ilangan did accept the title of Ilangan and Mani.

26. Absolutely, there is no confusion with regard to the identity of the persons under Exs.A15 and Ex.B2. Both are entirely different persons. The properties purchased were also different. But the confusion, it appears arose due to the similarity of the name. The defendant case is clearly out of place and without any basis.

27. As mentioned above, there is no relationship between the Vendors under Ex.B2 and Vendors under Ex.A15. So, the conclusion reached by the trial court as confirmed by the appellate court does not suffer from any perversity, either of question of fact or law.

28. Now coming to the substantial question of law, it is a vacant site. As admitted by both parties, possession follows title, that was followed by the trial court as well as the first appellate court. The appellants would submit that when there is serious issue raised with regard to the title, the suit for permanent injunction simplisiter will not lie. But, as mentioned above, since it is a case based upon the earliest documents, which are



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more than 30 years old and the vacant site, the above said principle has been followed. Simply because, the respondent/plaintiff has not sought for declaratory relief, that will not affect the decision rendered.

29.In a suit for injunction, declaratory issue can be incidentally gone. This is the basic principle. But more specifically, when the vacant site issue, possession follows title is a mandatory principle, that got to be followed. That is why, I have taken up the argument on the side of the appellants first. The omission on the part of the plaintiff to seek declaratory relief is not fatal to the case.

30.For all these reasons, I find that absolutely no interference is called for in the judgment of the trial court as confirmed by the appellate court.

31.In the result, this second appeal is **dismissed**. No costs. Consequently, connected Miscellaneous Petition is closed.

11/07/2024

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To,

- 1.The Principal Sub Court,
Madurai.
- 2.The District Munsif Court,
Madurai Taluk at Madurai.
- 3.The Section Officer,
VR/ER Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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