



S.A(MD)No.617 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 04.07.2024

Delivered on : 31.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

S.A.(MD).No.617 of 2020

and

C.M.P.(MD)No.6574 of 2020

V.Ganapathy

: Appellant/4th Appellant/4th Plaintiff

/Vs./

1.Selvam

2.Boominathan

3.Pandi

4.Dhanalakshmi

5.Chittal

6.Kottasamy

: Respondents 1 to 6/ Respondents 1 to 6/
Defendants 1 to 6

7.Karuppaiah

8.Thiyagarajan

9.Ramanathan



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10.Ramasamy

11.Lakshmanan (died)

12.Ramu

13.Banumathy

14.Vijaya

15.Singappi Nachiyar : Respondents 7 to 15/ Appellants 1,2,3,5 to 10/
Plaintiffs 1,2,3, 5 to 10

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree, dated 19.02.2020 in A.S.No.24 of 2019 on the file of the Sub Court, Devakottai, confirming the judgment and decree, dated 13.12.2018 made in O.S.No.40 of 2012 on the file of the District Munsif Court, Devakottai.

For Appellants : Mr.S.Sivathilakar
for Mr.B,Muruganandam

For Respondent : Mr.J.Anand Kumar, for R4 to R6.

: No Appearance, for R1 to 3, 8 to 10, 13 to 15

: R7 given up

: No Appearance R11 and R12 memo filed.

JUDGMENT

The Second appeal is directed against the judgment and decree passed in A.S.No.24 of 2019, dated 19.02.2020 on the file of the Sub Court, Devakottai,



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confirming the judgment and decree made in O.S.No.40 of 2012, dated 13.12.2018 on the file of the District Munsif Court, Devakottai.

2. The appellant is the fourth plaintiff. The appellant and other plaintiffs have filed a suit in O.S.No.40 of 2012 on the file of the District Munsif Court, Devakottai, against the respondents 1 to 6/defendants 1 to 6, claiming mandatory injunction for removal of construction made by the defendants illegally and for permanent injunction restraining the defendants from making encroachments in the suit property. The respondents 4 to 6/defendants 4 to 6 have filed written statement and contested the suit. The respondents 1 to 3/defendants 1 to 3 had remained ex-parte. The learned District Munsif, after framing necessary issues and after full trial, has passed the judgment and decree, dated 13.12.2018, dismissing the suit. Aggrieved by the dismissal of the said suit, the plaintiffs have preferred an appeal in A.S.No.24 of 2019 and the learned Subordinate Judge, Devakottai, upon considering the materials available on record and on hearing the arguments of both the sides, has passed the impugned judgment and decree, dated 19.02.2020, dismissing the appeal and thereby confirming the judgment and decree of the trial Court. Challenging the dismissal of the appeal, the fourth plaintiff has preferred the present second appeal.



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3. Heard the learned counsel for the appellants and the learned counsel for the respondents 4 to 6.

4. Though the second appeal is pending from 2020 onwards, the same is not yet admitted and hence, the substantial question of law was not formulated.

5. At the out set, it is necessary to refer the mandate of Hon'ble Supreme Court for High Courts in deciding the second appeal under Section 100 of the Civil Procedure Code, given in the case of **Gurnam Singh (dead) by LRs., and others Vs. Lehna Singh (dead) by LRs.**, reported in **AIR 2019 SC 1441**, that the jurisdiction of the High Court in an appeal under Section 100 of the Code of Civil Procedure is strictly confined to the case involving substantial question of law and the relevant passage is extracted hereunder:

“18. Before parting with the present judgment, we remind the High Courts that the jurisdiction of the High Court, in an appeal under Section 100 of the CPC, is strictly confined to the case involving substantial question of law and while deciding the second appeal under Section 100 of the CPC, it is not permissible for the High Court to re-appreciate the evidence on record and interfere with the findings recorded by the Courts below and/or the First



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Appellate Court and if the First Appellate Court has exercised its discretion in a judicial manner, its decision cannot be recorded as suffering from an error either of law or of procedure requiring interference in Second Appeal. We have noticed and even as repeatedly observed by this Court and even in the case of Narayanan Rajendran v. Lekshmy Sarojini, (2009) 5 SCC 264, despite the catena of decisions of this Court and even the mandate under Section 100 of the CPC, the High Courts under Section 100 CPC are disturbing the concurrent findings of facts and/or even the findings recorded by the First Appellate Court, either without formulating the substantial question of law or on framing erroneous substantial question of law.”

6. Bearing the settled legal position in mind let us proceed with the present case.

7. The case of the plaintiffs is that the property measuring 29 $\frac{3}{4}$ cents in S.No.Q1/3 in Devakottai Town, Sivagangai District was purchased by one Muthukaruppan @ Karuppaiah Servai in the Court auction conducted by the District Munsif Court, Devakottai in E.P.No.404 of 1930 in S.C.No.715 of 1928 on the file of the Sub Court, Devakottai; that one Muthaiah Servai has taken proceedings in the Executing Court in E.A.No.593/31 seeking possession of the property taken in Court auction by Muthukaruppan @ Karuppaiah Servai and the



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said petition came to be dismissed; that the said Muthukaruppan @ Karuppaiah Servai has thereafter by alleging that the properties taken in the Court auction are the joint Hindu family properties filed a suit in O.S.No.296/33 against Karuppaiah Servai and Kaliyammal @ Karuppayi and the said suit was also dismissed; that subsequently one Vairasundaram has filed a suit for partition against the father of the plaintiffs 1 to 4 and the plaintiffs 5 and 6 in O.S.No.5 of 1959 and the same was also dismissed; that the said Vairasundaram has preferred an appeal in A.S.No.27 of 1960 on the file of the Sub Court, Devakottai and the same also came to be dismissed; that the said Muthukaruppan @ Karuppaiah Servai had two sons Kuppusamy and Velusamy through his first wife; that the plaintiffs 1 and 2 are the sons of the said Kuppusamy and the plaintiffs 3 and 4 are the sons of the Velusamy; that the plaintiffs 5 and 6 are the sons of the said Muthukaruppan @ Karuppaiah Servai through his second wife; that the plaintiffs' ownership over the suit properties came to be confirmed by the Court proceedings; that joint patta came to be issued in favour of the plaintiffs and after the death of Muthukaruppan @ Karuppaiah Servai , the plaintiffs have become the owners of the suit properties; that the defendants taking advantage of the plaintiffs residence in out station have trespassed into the suit property and made some house constructions therein; that though the defendants have agreed to remove the construction, they have not chosen to remove the same; that the



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plaintiffs have then sent a legal notice, dated 28.12.2012 to the defendants and the defendants having received the same, neither sent any reply nor comply with the notice demand and that therefore, the plaintiffs were constrained to file the above suit claiming mandatory and permanent injunction.

8. The defence of the defendants 4 to 6 is that the suit property is shown as ryot wet lands in the revenue records; that the said property was owned by Vairavasundaram Pillai, Kuppusamy and Pitchai @ Karuppaiah Servai; that the plaintiffs, without knowing the property which was taken in Court auction by Muthukaruppan @ Karuppaiah Servai, have claimed the relief as against the property which was in possession of the defendants 4 to 6 for long time; that the ancestors of the defendants 4 to 6 had constructed house in the suit property with the permission of Pitchai @ Karuppaiah; that since the defendants have been in possession and enjoyment of the property for more than 4, 5 generations without any interruption, they have perfected their title by adverse possession; that since the defendants 4 to 6 have been enjoying the house constructed therein for a very long time, the contention of the plaintiffs that the defendants have trespassed into the property and made some constructions recently is patently false; that the plaintiffs are not entitled to get any of the relief claimed and that the suit is liable to be dismissed.



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9. As already pointed out, the plaintiffs have claimed title over the suit property on the basis of the purchase made by the Muthukaruppan @ Karuppaiah Servai in the Court auction held in the District Munsif Court in E.P.No.404/1930, which came to be filed in executing decree passed in O.S.No.715/1928 on the file of the Sub Court, Devakottai.

10. In the plaint, the plaintiffs while describing the suit property have given the boundaries shown in Ex.A1 sale proclamation except on the western side and they have shown that the property belonging to the plaintiffs as western boundary to the suit property. But in Ex.A1 wet lands belonging to one **Ramasamy Servai** is shown as the western boundary.

11. It is pertinent to note that the plaintiffs have specifically admitted that western portion of the property purchased in the Court auction in Q1/3 was already sold under Ex.A13 and as such, they have not shown as to how the plaintiffs are claiming ownership over the property lying on the west of the suit property.



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12. Considering the above, the appellate Court has rightly observed that the western boundary shown in the suit property is not correct. Even according to the plaintiffs, Muthukaruppan @ Karuppaiah Servai, through him, they are claiming title over the suit property, was entitled to 1.31 acres of land and after his death, his legal heirs have become owner of the said extent of land. But at the same time, it is also not in dispute that the plaintiffs 3 and 4 have sold 1.75 acres of land vide sale deed, dated 04.09.1986 by giving same boundary as given in Ex.A1 sale proclamation.

13. Even according to the plaintiffs, three sales were effected apart from Ex.A13 sale. It is not in dispute that during the pendency of the suit 8 cents of land was sold to different persons and again 6 cents of land was sold to the third defendant's wife Sumathy, but they have not produced the above said sale deeds. But admitting the above two sales, they have amended the plaint and deleted 14 cents of land, which was sold vide two sale deeds, but the fact remains that they have not amended the four boundaries. Considering the above, the appellate Court has rightly entertained serious doubt about the identity and the extent of the property for which, the plaintiffs have laid the above suit.



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14. As already pointed out, they have sold 1.89 acres of land, but admittedly, Muthukaruppan @ Karuppaiah Servai was only entitled to 1.31 acres of land. As rightly contended by the learned counsel for the respondents, this Court is also at loss to understand as to how they have sold 1.89 acres of land, when they were having title for only 1.31 acres of land. Admittedly, the plaintiffs have not offered any reason or explanation in this regard.

15. In that scenario, the plaintiffs have not shown the basis on which, they are claiming ownership over 29 $\frac{3}{4}$ cents of land now shown as the suit property. Even assuming that the suit property is still available, as rightly observed by the learned trial Judge, they have not claimed any declaratory relief with respect to the same and the same is fatal to the suit.

16. Considering the evidence available on record, the Courts below have come to a decision that the defendants have been in possession and enjoyment of the suit properties. More importantly, the first appellate Court has observed that there are materials to presume that the defendants are in possession for more than 52 years and that since the plaintiffs or their predecessors in title have not taken any action for the past more than 50 years, their present suit is bared by time and that they have perfected their title by adverse possession.



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17. The appellant/fourth plaintiff has not shown that material evidence available in the case had been ignored by the first appellate Court or that there was no evidence at all. The appellant has also not shown that any wrong inference had been drawn by the first appellate Court from the proved facts by applying the law erroneously. The appellant has not canvassed any stand that the Courts below have wrongly placed the burden of proof.

18. On a perusal of the entire records, this Court is of the clear view that the Courts below on appreciating and re-appreciating the entire evidence available on record had come to a definite decision that the plaintiffs have neither shown any title nor shown possession of the suit property.

19. Considering the judgments of the Courts below, as rightly contended by the learned counsel for the respondents no question of law much less Substantial Question of Law is made out. It is not open to this Court to sit in appeal over the factual findings arrived at by the first appellate Court confirming the findings of the trial Court. Hence, this Court concludes that since no substantial question of law is made out in the second appeal, the same is liable to be dismissed. Considering the other facts and circumstances, this Court further decides that the parties are directed to bear their own costs.



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20. In the result, the Second Appeal is dismissed, confirming the concurrent judgments of the trial Court made in O.S.No.40 of 2012 on the file of the District Munsif Court, Devakottai and in A.S.No.24 of 2019 on the file of the Sub Court, Devakottai. Parties are directed to bear their own costs. Consequently, connected Miscellaneous Petition is closed.

31.07.2024

NCC :Yes/No
Index :Yes/No
Internet : Yes/ No
das

To:

- 1.The Sub Judge, Devakottai.
2. The District Munsif, Devakottai.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

DAS

Pre-delivery Judgment made in
S.A.(MD).No.617 of 2020
and
C.M.P.(MD)No.6574 of 2020

Dated: 31.07.2024