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S.A(MD)No.942 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.10.2024

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A(MD)No.942 of 2014

and

M.P(MD)No.1 of 2014

- 1.Seenivasan
- 2.Athisayamani
- 3.Grace

... Appellants /
Appellants /
Defendants

-Vs-

- 1.Natarajan
- 2.Ganesan
- 3.Vijayabalan

... Respondents /
Respondents /
Plaintiffs 1 to 3

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, to set aside the judgment and decree dated 31.07.2014 in A.S.No.51 of 2014 on the file of the Principal Subordinate Judge, Tirunelveli by confirming the judgment and decree dated 12.12.2013 in O.S.No.176 of 2008 on the file of II Additional District Munsif Court, Tirunelveli and to allow the second appeal.

For Appellants : Mr.M.Saravanan

For Respondents : Mr.H.Arumugam



JUDGMENT

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On behalf of the Adi Dravidar Community of Seenivasagapuram, Kondanagaram, Tirunelveli Taluk, O.S.No.176 of 2008 was instituted on the file of II Additional District Munsif Court, Tirunelveli seeking permanent injunction against the defendants in respect of the plaint schedule properties. The suit was decreed vide judgment and decree dated 12.12.2013. Aggrieved by the same, the defendants filed A.S.No.51 of 2014 before the Principal Sub Court, Tirunelveli. The appeal was dismissed on 31.07.2014. Challenging the same, this Second Appeal came to be filed.

2.The Second Appeal was admitted on the following substantial questions of law:

“(a) Whether in law the Courts below are right in holding that the onus to prove Ex.A-4 lies on the appellant when the same was marked and relied by the respondent / plaintiff?”

(b) Whether in law the Courts below are right in granting injunction based on Ex.A.4 an unregistered and unstamped release deed?

(c) Whether in law the Courts below are right in holding that Ex.A.4 is admissible in evidence?

(d) Whether in law the Courts below are right in entertaining suit for injunction in representative capacity



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when the affected person did not come forward for filing the suit?

(e) Whether in law the Courts below is right in holding that the onus to disprove Ex.A.4 lies on the appellant / defendant? ”

3.The learned counsel for the appellants reiterated all the contentions setout in the memorandum of grounds of the Second Appeal and called upon this Court to answer the substantial questions of law in favour of the appellants and set side the impugned judgment and decree and allow the Second Appeal as prayed for.

4.Per contra, the learned counsel for the plaintiffs / respondents herein submitted that the impugned judgments are well reasoned and they do not warrant interference.

5.I carefully considered the rival contentions and went through the evidence on record.

6.It is not in dispute that the suit schedule properties originally belonged to the grandfather of the appellants, namely, Seenivasaga Josier. The plaintiffs' claim on the suit property is by virtue of Ex.A4 said to have been executed by Chelliah, father of the appellants herein. Ex.A4 is a deed



of release. The appellants have denied the signature attributed to Chelliah in their written statement. Ex.A4 is an unstamped and unregistered document. Therefore, there is considerable merit in the contention of the learned counsel for the appellants that this document could not have been looked into and no right could have flowed therefrom. In fact, I am inclined to answer the substantial questions of law framed in respect of Ex.A4 in favour of the appellants.

7.As already noted, the suit was filed in a representative capacity. It is a suit for permanent injunction. The Adi Dravidar community of Seenivasagapuram claim that they are in possession of the suit schedule properties. A Commissioner was appointed and his report and plan have been marked as Ex.C1 and Ex.C2. It is beyond dispute that constructions have already come up in the suit schedule properties.

8.When the suit on hand is only for permanent injunction, the only question that has to be looked into is who was in possession of the suit properties as on the date of filing of the suit. Ex.A10 is the patta standing in the name of “President Kondanagaram, Srinivasagapuram, Oor pothu idam (common place)”. Since Ex.A4 had been marked in evidence, without going into the question of admissibility, I perused its contents. It reads that



Chelliah, father of the appellants had received a sum of Rs.550/- from the general fund of the village and released his rights over the plaint schedule properties in favour of the general public.

9.Of course, the appellants have contested the signature attributed to Chelliah. But then, it is for the appellants to explain as to how patta came to be eventually issued in favour of the public. Ex.A10 clearly indicates that the plaint schedule property is for communal and common use.

10.Even if I assume for a moment that it is an UDR mistake, the earlier revenue records must have been in favour of the appellants family. No such revenue record has been marked. More than anything else, the defendants had filed counter claim seeking the relief of declaration and recovery of possession. For reasons that are not quite clear, the counter claim was not pressed. Even a memo was filed to that effect. By filing a counter claim for recovery of possession, the defendants had conceded that the plaintiffs are in possession of the suit property. They had given up their counter claim. Since possession had been admitted, the Courts below cannot be faulted for granting the relief of permanent injunction. In normal circumstances, in such cases where certain contentious issues have been raised, permanent injunction would be qualified with a caveat that the



plaintiff can be dispossessed only by due process of law. But in this case, when the defendants after seeking the relief of declaration chose to give up the same, the Court below was not obliged to enter any such qualification.

11.The factum of plaintiffs' possession is backed by the revenue record Ex.A10. It has been reinforced by the counter claim made by the defendants for declaration and recovery of possession. On account of giving up their counter claim, the Courts below rightly passed the impugned judgments and decrees. Therefore, notwithstanding the in admissibility or otherwise of Ex.A4, the judgments of the Courts below do not call for interference.

12.When the revenue record itself makes it clear that the suit properties are meant for communal use and Ex.A10 is also to the same effect, the Courts below are justified in entertaining a suit in a representative capacity. Even though I answer the substantial questions of law (a), (b), (c) and (e) in favour of the appellants, the substantial question of law (d) is answered against the respondents. For the reasons mentioned above, I am not in a position to interfere with the concurrent judgments of the Courts below.



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13.This Second Appeal stands dismissed. No costs. Consequently,
connected miscellaneous petition is closed.

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Internet : Yes/No

Index : Yes/No

NCC : Yes/No

MGA

To

1.The Principal Subordinate Judge,
Tirunelveli.

2.II Additional District Munsif Court,
Tirunelveli.

Copy To

The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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G.R.SWAMINATHAN.J.,

MGA

Judgment made in
S.A(MD)No.942 of 2014

24.10.2024