



S.A(MD)No.145 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 12.07.2024

Pronounced on : 27.09.2024

CORAM

THE HONOURABLE MR.JUSTICE P.VADAMALAI

S.A(MD)No.145 of 2018

and

C.M.P(MD)No.3811 of 2018

Ayyammal (Died)

1.Thangavel

2.Sakthivel

... Appellants/Respondents/Defendants

Vs.

1.Nagaraj

2.Nagarathinam

... Respondents/Appellants/Plaintiffs

PRAYER :-

This Second Appeal is filed under Section 100 of the Civil Procedure Code, to set aside the judgment and decree dated 02.08.2017 made in A.S.No.42 of 2014 on the file of the Subordinate Judge, Dindigul, reversing the judgment and decree dated 09.07.2012 made in O.S.No.04 of 2007 on the file of the District Munsif, Nilakottai.

For Appellants : Mr.R.Suriyanarayanan

For Respondents : Mr.S.Lenin Prabhu



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JUDGMENT

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This Second Appeal is preferred against the judgment and decree, dated 02.08.2017 passed in A.S.No.42 of 2014 on the file of the Sub Court, Dindigul, reversing the judgment and decree, dated 09.07.2012 passed in O.S.No.4 of 2007 on the file of the District Munsif Court, Nilakottai.

2. The appellants are the defendants and the respondents are the plaintiffs in O.S.No.4 of 2007 on the file of the District Munsif Court, Nilakottai. The respondents/plaintiffs have filed the suit for declaration and injunction in respect of the suit properties.

3. For the sake of convenience, the parties are referred as plaintiffs and defendants as arrayed in O.S.No.4 of 2007 on the file of the District Munsif Court, Nilakottai.

4. Case of the plaintiffs:

The suit properties originally belonged to great grandfather of the plaintiffs 1 and 2 namely Veeramadachi. After his death, his elder legal heir Andi obtained his share. Kist receipts stood in the name of Andi. After



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demise of Andi, his two sons Periasamy and Sangili derived the suit property and enjoyed it as their common property. Thereafter, the plaintiffs are in joint enjoyment and are jointly doing agriculture in the suit property. The 1st defendant is the plaintiffs' paternal aunt and the defendants 2 and 3 are her sons. In the year 1969, the 1st defendant purchased 39 cents in S.No. 268/5 situated on the eastern side of the suit property from the plaintiffs' respective father and grandfather Andi and has been enjoying the same by doing agriculture. A few months back, the defendants asked the plaintiffs to purchase the suit property, but the plaintiffs refused the same. Hence, the defendants started disturbance over the possession and enjoyment of the plaintiffs over the suit property. Hence, the plaintiffs have filed the present suit.

5. Case of the Defendants:

It is false to state that originally the suit properties belonged to Veeramadachi and after his death his elder son Andi derived the property. In fact, Veeramadachi had three sons namely Thavasi, Karuppan and Andi. The 1st defendant purchased Andi's share of the suit property from the said Andi and his sons Periyasamy and Sangili by virtue of the registered sale



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deed, dated 10.06.1969. So also, the 1st defendant purchased the share of suit property of another son Karuppanan and his son Ayyanan through a registered sale deed, dated 26.01.1960. From the date of purchase, the 1st defendant has been in possession and enjoyment without any interference. The survey number of the suit property and its four boundaries are wrongly stated. The plaintiffs have to prove their title over the suit property. There is no cause of action for the suit. Hence, the suit is liable to be dismissed.

6. Upon pleadings, the trial Court framed the following issues:-

"(i) Whether the suit properties belonged to the plaintiffs?

(ii) Whether the plaintiffs are entitled to declaration and injunction as prayed for?

(iii) Whether the 1st defendant has been enjoying the suit property from the date of purchase i.e., from 26.01.1960?

(iv) To what relief, the plaintiff is entitled for?"

7. During trial, on the plaintiffs' side P.W.1 to P.W.3 were examined and Ex.A.1 to Ex.A.3 were marked. Ex.X.1 to Ex.X.4 were also marked. On the defendants' side, D.W.1 and D.W.2 were examined and Ex.B.1 to Ex.B.7 were marked.



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8. After hearing both and considering the evidences of both sides, the learned trial Judge/District Munsif, Nilakottai concluded that the plaintiffs have not proved their case and dismissed the suit by passing a judgment and decree, dated 09.07.2012.

9. Aggrieved by the judgment and decree in O.S.No.4 of 2007 on the file of District Munsif Court, Nilakottai, the plaintiffs have preferred the Civil Appeal in A.S.No.42 of 2014 on the file of the Additional Sub Court, Dindigul. The first Appellate Court after hearing both passed judgment and decree dated 02.08.2017, allowing the appeal in A.S.No.42 of 2014 and reversed the judgment and decree passed in O.S.No.4 of 2007 and decreed the suit.

10. Challenging the judgment and decree of the First Appellate Court, the defendants preferred this Second Appeal and the same has been admitted for file on 26.04.2018 on the following substantial question of law:-

(a) Whether the first appellate court misread the prayer in the plaint and held that the suit is one for bare injunction?



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(b) Is it correct in holding that the plaintiffs are in possession and enjoyment of the suit properties on the date of suit and thereafter, when the revenue records admittedly do not stand in their names?

(c) Whether the revenue records can be accepted as conferring title on the plaintiffs over the suit property?

11. The learned counsel for the appellants/defendants submitted that the suit properties consist of two items, 1st item is 27 cents in S.No.267/7 and 2nd item is 37 cents in S.No.268/7. The suit properties originally belonged to one Veeramadachi, who had three sons 1) Andi, 2) Thavasi and 3) Karuppanan. The plaintiffs are grandsons of the above said Andi. The plaintiffs claim that the suit property was derived by Andi on oral partition and from Andi, his sons Periasamy and Sangili obtained the suit property and now they are enjoying the same. It is absolutely wrong. The aforesaid Andi sold his share to the 1st defendant and also Karuppanan sold his share to the 1st defendant. So, there is a cloud over the title in respect of suit properties. When there is cloud over title, declaration and injunction cannot be granted. But the first Appellate Court decreed the suit by



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misreading the prayer as the suit is only for an injunction. Even for argument's sake, the injunction cannot be granted against co-owner. The documents filed by the plaintiffs i.e., Ex.A.1 to Ex.A.3, only showing the name Veeramadachi, the plaintiffs have not filed any piece of document to establish their title over the suit property. All the revenue records stood in the name of Andi and the defendants also traced the title through Andi. The defendants are not strangers, they are also owners of the suit property by virtue of registered sale deeds marked as Ex.B.1 and Ex.B.2. The plaintiffs marked witness side documents which are all after the suit, they cannot be given any weight. Further, the revenue records would not convey any title to any person. And also additional document Ex.A.4 filed before the first Appellate Court is also after the suit. The trial Court has correctly dismissed the suit as the plaintiffs have not proved their case, whereas the first Appellate Court misconstrued the evidences and reversed the finding of the trial Court. The first Appellate Court cannot give a finding on title in a suit for injunction that too without any valid title deed and so, the first Appellate Court has not considered the other documents and evidences. Therefore, the plaintiffs are not entitled to the injunction and the Second Appeal may be allowed. In support of his argument, the learned counsel for the plaintiff



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relied on the judgment of the **Hon'ble Supreme Court** reported in **AIR 2008**

Supreme Court 2033 (Anathula Sudhakar /v/ P. Buchi Reddy).

12. Per contra, the learned counsel for the respondents/plaintiffs contended that the plaintiffs are grandsons of Andi. Their fathers Sangili and Periasamy are sons of Andi. Andi has two brothers Karuppanan and Thavasi and they are sons of Veeramadachi. Veermadachi had owned the suit property. Now the plaintiffs are in possession and enjoyment of the suit property. The relationship of the defendants was accepted. The 1st defendant purchased 39 cents in S.No.268/5 from Andi, Sangili and Periyasamy through Ex.B.1. The property purchased under Ex.B.2 has not mentioned any survey number. The property of Ex.B.3 is not related to the suit property. But, the suit survey numbers S.Nos.267/7 and 268/7 are entirely different from the survey numbers of the defendants. The plaintiffs have filed Ex.A.4 and Ex.A5 before the first Appellate Court to establish their title. The first Appellate Court has correctly appreciated the evidences and correctly decreed the suit. Since the trial Court had incorrectly dismissed the suit, the first Appellate Court corrected the finding of the trial Court. Therefore, the Second Appeal may be dismissed. In support of his argument,



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the learned counsel for the respondents has relied on the same citation relied on by the defendants.

13. Heard the arguments of both and perused the material records of the case. It is an admitted fact that the suit property belonged to Veeramadachi and Veeramadachi had three sons Andi, Thavasi and Karuppanan. It is the case of the plaintiffs that after the death of Veeramadachi, the suit property was derived by their grandfather Andi as being the eldest legal heir of Veeramadachi. At this juncture, on perusal of evidence of P.W.1 who has categorically admitted as follows:

“என் பாட்டனார் வீரமடச்சிக்கு மூன்று வாரிசுகள். என் பாட்டனார் வீரமடச்சிக்கு என்னுடைய தாத்தா ஆண்டி மற்றும் இன்னொரு வாரிசு பெயர் கருப்பணன் என்று கேள்விப்பட்டேன். இன்னொரு வாரிசு பெயர் தெரியாது.... கருப்பணன் என்பவர் வீரமடச்சியின் இரண்டாவது வாரிசு. என்னுடைய தாத்தா ஆண்டி என்பவர் மூன்றாவது வாரிசு.... என் பாட்டனார் வீரமடச்சிக்கு வழக்கு சொத்து தவிர்த்து வேறு சொத்துக்கள் எதுவும் அந்த இடத்தில் இல்லை. ... என் பாட்டனார் வீரமடச்சியின் சொத்தில் எனது தாத்தாவிற்கு கிடைத்த சொத்து 3ல் ஒரு பங்கு.....என் தாத்தா ஆண்டிக்கு கிடைத்த சொத்தின் விஸ்தீரணம் பற்றி தெரியாது. ஆனால் சர்வே எண்கள் தெரியும் சர்வே எண்கள் 267/7 மற்றும் 268/7ல் சொத்துக்கள் உள்ளதுமேற்கூறிய இரு சர்வே எண்களிலும் எனது



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தாத்தா ஆண்டிக்கு கிடைத்தது 3ல் ஒரு பங்குதான் ..”

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From the above evidence, it is very clear that the suit properties originally belonged to their great grandfather Veeramadachi and their grandfather derived only 1/3 share in the suit properties. Therefore, there is no hesitation in holding that the plaintiffs have not established that the suit properties in entirety were derived by their grandfather Andi and after his death his sons Periyasamy and Sangili and thereafter the plaintiffs derived the title.

14. On perusal of judgments of the Court below the trial Court has correctly held that the plaintiffs have not produced any valid document to prove their title over the suit property as the documents Ex.A.1 to Ex.A.3 stood in the name of Andi. The plaintiffs have filed witness side documents only after the suit and also filed documents before the first Appellate Court that is also after the suit. The documents after the suit cannot be taken into consideration regarding title over the suit property.

15. The 1st defendant filed Ex.B.1 to Ex.B.3 regarding the purchase of properties from branches of Andi. It is not disputed by the plaintiffs. The plaintiffs state that they are some other property. At the same time, P.W.1



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clearly admitted that their great grandfather has no other property except the suit survey number. On perusal of suit properties mentioned in the suit, there are two items mentioned. One property is 27 cents in S.No.267/7 and another property is 37 cents in S.No.268/7, but for two properties only four boundaries for the 2nd item alone are mentioned and there is no mentioning of four boundaries for the 1st item. Even perusal of four boundaries of the 2nd item, there is no mention of boundary regarding 1st item. At the same time, the eastern boundary is shown as “ஜெயபாண்டி, அய்யம்மாள் புஞ்சை நிலம்”. It is the definite case of the 1st defendant that she purchased two shares of the suit property from two branches of Veermadachi, i.e., Andi and Karuppanan. So there is a clear cloud of title of the plaintiffs over the suit property. When that being the circumstance, the first Appellate Court has committed an error in giving a finding based on revenue records and also misread the prayer that the suit is filed for a bare injunction. Even if it is so, an injunction cannot be granted against the co-owner, which is a settled position of law.

16. When there are no revenue records to show the plaintiffs' name, the first Appellate Court's finding that the plaintiffs are in possession of the suit



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property is a complete miscarriage of justice. Without title, no one seeks an injunction against the co-owner of the property. It is a settled proposition of law that revenue records will not confer any title to any person. Even the revenue records Exs.A.1 to A.3 filed by the plaintiffs, do not find place, the name of the plaintiffs, they bear only the name of Andi, through whom the defendants claimed the title under Ex.B.1 to Ex.B.3. It is well settled proposition of law, that a litigant should stand proved on his own case and he/she does not find fault with the opponent's case. The citation relied on by both sides, will be squarely applicable to the case of the defendants only. Hence, the judgment rendered by the first Appellate Court is held to be perverse.

17. In view of the above discussion, this Court finds that the judgment and decree of the first Appellate Court requires the interference of this Court. All the substantial questions of law framed by this Court are answered in favour of the appellants/defendants. Thus this Second Appeal succeeds.

18. In the result, this Second Appeal is allowed. The judgment and decree, dated 02.08.2017 passed in A.S.No.42 of 2014 on the file of the Sub



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Court, Dindigul, reversing the judgment and decree, dated 09.07.2012 passed in O.S.No.4 of 2007 on the file of the District Munsif Court, Nilakottai is set aside. The judgment and decree passed by the District Munsif, Nilakottai in O.S.No.4 of 2007 is restored and the suit in O.S.No.4 of 2007 is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

27.09.2024

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

VSD

To

- 1.The Subordinate Judge,
Dindigul.
2. The District Munsif,
Nilakottai.
- 3.The Record Keeper,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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P.VADAMALAI, J.

VSD

**Pre-Delivery Judgment made in
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