



S.A.(MD)No.195 of 2016

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE **S.SOUNTHAR**

S.A.(MD)No.195 of 2016

and

C.M.P(MD)No.3000 of 2016

1.K.Rengachamy
2.K.Sellamuthu
3.K.Arumugam
4.Palanisamy
5.S.Jeyaraman

...Appellants

-Vs-

V.Rengasamy (Died)
1.Saraswathi
2.Chitra
3.V.Karuppasamy

... Respondents

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the decree and judgment, dated 17.09.2013 made in A.S.No.9 of 2013 on the file of the Principal Subordinate Judge, Karur, by modifying the judgment and decree, dated 19.10.2010 made in O.S.No.352 of 2008 on the file of the Additional District Munsif Court, Karur.

For Appellants : Mr.T.R.Subramanian

For Respondents : No Appearance



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JUDGMENT

The defendants in the suit for bare injunction are the appellants herein. The suit for injunction filed by one V.Rengasamy, the predecessor-in-interest of the respondents, was dismissed by the trial Court. The first appellate Court granted a decree for permanent injunction only in respect of the house portion in the suit property and aggrieved by the same, the defendants have come by way of this Second Appeal.

2. According to the respondent/plaintiff, there was a partition on 18.09.1988 between Karuppana Gounder, Rasa Gounder, Vellaithayammal, Arukkaniammal and 'A' schedule to the partition was allotted to the share of Rasa Gounder and 'B' schedule to the partition was allotted to the shares of others. The plaintiff claimed that the suit property, which was part of 'B' schedule to the partition was purchased by the deceased sole plaintiff, V.Rengasamy from the above mentioned Rasa Gounder, Vellaithayammal, Arukkaniammal and one Rengasamy son of Rasa Gounder under a sale deed, dated 18.09.1988. It was claimed that the plaintiff had been in possession and enjoyment of the suit



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property from the date of purchase and patta for the suit property was also issued in his name. The deceased sole plaintiff also claimed that he put up a building in the suit property and had been residing there. It was also claimed that the appellants without having any manner of right attempted to interfere with the possession of the deceased plaintiff and hence, he was constrained to file a suit for injunction.

3.The appellants/defendants filed a written statement denying the partition, dated 18.09.1988 and the sale in favour of the deceased plaintiff, dated 18.09.1988. It is the case of the appellants that the suit property and the land with an extent of 1900 sq.ft., on the northern side originally belonged to Rasiappa Gounder and his brother, Rasa Gounder ancestrally. In an oral partition, that had taken place fifty years back, the northern 1900 sq.ft., of land was allotted to the share of Rasiappa Gounder and the southern suit property was allotted to the share of Rasa Gounder. It was also pleaded that subsequently, there was a partition between sons of Rasa Gounder, namely, Karuppana Gounder and another Rasa Gounder. The eastern portion was allotted to the share of Rasa Gounder son of Rasa Gounder and the western portion allotted to the share of Karuppana



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Gounder. It was further pleaded by the appellants/defendants that the deceased plaintiff, predecessor of respondents, namely, Rengasamy, who was the grandson of Rasa Gounder through her daughter had put up a house in the portion allotted to Rasa Gounder share and had been in enjoyment of the same. Thus, the defendants claimed that the plaintiff/respondents were not entitled to claim right over the entire suit property and had sought for dismissal of the suit.

4.The trial Court, on appreciation of oral and documentary evidence available on record, came to the conclusion that the respondent/plaintiff failed to prove his right over the suit property and dismissed the suit property. Aggrieved by the same, the respondent, predecessor in interest, deceased Rengasamy filed an appeal.

5.The first appellate Court based on the admission of the appellants in their pleading granted decree for injunction in respect of house portion alone and partly allowed the appeal accordingly. Aggrieved by the same, the appellants are before this Court.



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6.The learned Counsel for the appellants vehemently contended that the respondent/plaintiff claimed that the deceased sole plaintiff Rengasamy purchased the suit property under a sale deed, dated 18.09.1988 from Vellaithayammal, Karuppana Gounder, Arukkaniammal and Rengasamy son of Rasa Gounder. The learned Counsel further submitted that Rengasamy mentioned in the written statement is different person and the first appellate Court wrongly assumed that the said averments made by the appellants in their written statement refers to the plaintiff, Rengasamy son of Veerappa Gounder.

7.Though notice was served on the respondents and their names appeared in the cause list, there is no representation for the respondents.

8.Based on the submissions made by the learned Counsel for the appellants, the following substantial question of law arising for consideration in the Second Appeal:

“Whether the findings of the first appellate Court that the deceased sole plaintiff, Rengasamy's possession over the house portion in the suit property was admitted by the appellant is vitiated by the misreading of the pleading?”



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9.The respondent/plaintiff came to the Court with a specific plea that the suit property was purchased by the deceased sole plaintiff/V.Rengasamy under a sale deed, dated 18.09.1988 from Vellaithayammal and others. However, the said sale deed has not been produced by the plaintiff before the Courts below. The plaintiff also pleaded that the subject matter of the sale was allotted to his vendors under a partition deed, dated 18.09.1988. The said partition document was marked as Ex-A1. However, the said document was not registered and insufficiently stamped document. In view of bar under Section 35 of the Indian Stamp Act, the said document cannot be pressed into service by the plaintiff. In such circumstances, the plaintiff failed to lead any evidence to establish his right over the suit property. The first appellate Court relying on the alleged admission of the appellants in their written statement granted a decree for injunction in respect of the house portion. The first appellate Court observed that the appellant herein admitted that the deceased sole plaintiff, Rengasamy had put up a house in the portion of the suit property and hence, decreed the suit in respect of the said house portion alone based on the alleged admission of the appellants in their pleadings.



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10.A perusal of the written statement filed by the appellants would suggest that in their pleadings, they had stated that Rengasamy grandson of Rasagounder had put a house on the western portion of southern half falls to the share of Rasagounder. However, the first appellate Court failed to see that the defendants also pleaded purchase of undivided share from Rasiappa Gounder. A reading of written statement of defendants, as a whole, would suggest that the defendants claimed that there was no proper partition of suit property by a legally acceptable document and hence, they had purchased undivided half share from Rasiappa Gounder vagaiyara. Hence, it cannot be taken that defendants admitted exclusive possession of plaintiff over portion of suit property. Hence, the conclusion reached by the first appellate Court, as if the possession of the deceased plaintiff, Rengasamy was admitted by the appellants in their written statement is vitiated by misreading of the pleading. Therefore, the substantial question of law framed is answered in favour of the appellants and the decree for permanent injunction granted by the first appellate Court in respect of the house portion is set aside.



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11.The respondent/plaintiff in support of their plea that the deceased plaintiff Rengasamy purchased the suit property from Vellaiammal vagaiyara failed to produce any document and therefore, the trial Court was justified in dismissing the suit in its entirety. The first appellate Court committed an error in misreading the pleading and granted a decree for injunction in respect of a portion of the suit property, namely, the house allegedly put up by the deceased plaintiff. This Court already came to the conclusion that the conclusion reached by the first appellate Court is the result of misreading of the pleadings and therefore, the judgment and decree passed by the first appellate Court is set aside and the judgment and decree passed by the trial Court is restored. The Second Appeal stands allowed accordingly. Consequently, connected Miscellaneous Petition is closed.

12.04.2024

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

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To

- 1.The Principal Subordinate Judge, Karur.
- 2.The Additional District Munsif, Karur.
- 3.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SOUNTHAR, J.

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