



SA(MD)No.647 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.10.2024

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

SA(MD)No.647 of 2016
and
CMP(MD)No.9784 of 2016

1.D.Seeni (died) ... Appellant / Appellant / Defendant

2.Sivapakkiam

3.Veerammal

4.Selvi

5.Sangeetha

6.Bhuvaneswari

7.Duraikannu ...Appellants

(Appellants 2 to 7 & Respondent No.8 were brought on record as LR's of the deceased sole appellant vide order dated 17.08.2023)

Vs.

1.Synam Beevi Ammal (died)

2.Kadher Ibrahim

3.Mohammed Beevi

4.Aish Begum

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5.Syed Musthafa

6.Abdul Shah

7.Yusuf Khan

... Respondents 2 to 7

(Respondents 2 to 7 were brought on record as LRs of the deceased sole respondent vide order dated 17.08.2023)

Prayer : Second Appeal filed under Section 100 of Civil Procedure Code to set aside the judgement and decree of the lower appellate court dated 08.02.2016 passed in A.S No.7 of 2010 on the file of the Subordinate Court, Pudukkottai confirming the judgment and decree of the trial court dated 20.10.2008 passed in O.S No.197 of 2000 on the file of the District Munsif cum Judicial Magistrate Court, Keeranur.

For Appellants : Mr.Vinoth for Mr.M.Saravanan

For Respondents : Mr.K.P.Narayanakumar for R2 to R6

No appearance for R7 & R8

ORDER

The defendant in O.S No.197 of 2000 on the file of the District Munsif cum Judicial Magistrate, Keeranur is the appellant in this second appeal. It was a suit for permanent injunction. The suit was decreed as



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prayed for on 20.10.2008. Aggrieved by the same, the defendant filed A.S No.7 of 2010 on the file of the Sub Court, Pudukottai. The first appellate court vide judgment and decree dated 08.02.2016 confirmed the decision of the trial court. Challenging the same, this second appeal has been filed. During the pendency of the second appeal, the defendant passed away and his legal heirs have been brought on record as appellants.

2.The second appeal has not been admitted till date though the records have been called for. The learned counsel for the appellants reiterated all the contentions set out in the memorandum of grounds and called upon this Court to admit this second appeal by formulating substantial questions of law and issue notice and thereafter take up the matter for final disposal.

3.Per contra, the learned counsel for the respondents submitted that the impugned judgments and decrees are well reasoned and that no substantial questions of law arise for consideration. He called upon this Court to dismiss this second appeal.



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4.I carefully considered the rival contentions and went through the evidence on record. The learned counsel for the appellants was at pains to point out that the suit is one for bare injunction and that therefore, the plaintiff was obliged to prove her possession. His contention is that the finding regarding possession is perverse. He pointed out that Exhibit X series marked through the witness (PW.4) are post suit documents and that therefore they ought not to be looked into. He also would argue that since the defendant denied the plaintiff's title, the plaintiff ought to have sought the relief of declaration also. Her omission to amend the suit prayer is fatal. He relied on the decision of the Hon'ble Supreme Court in **Anathula Sudhakar v. P.Buchi Reddy (2008) 4 SCC 594**.

5. am not swayed by the submissions of the learned counsel for the appellants. It is true that the suit has been instituted for the relief of bare injunction. If the plaintiff's title is under a cloud, the plaintiff is obliged to include the relief of declaration also. Failure to seek declaratory relief in such cases can be fatal. But mere denial by the defendant without anything more is not sufficient. The defendant should lay sufficient foundation in his written statement questioning the plaintiff's title. In this case, except bare denial and reliance on



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Ex.B1, there is absolutely no evidence in support of the defendant's assertions. On the other hand, the plaintiff has marked Ex.A2 patta pass book. It is of the year 1979. The case of the plaintiff is that the property belonged to her husband and the patta has been issued in her favour and the patta pass book has been marked. I went through its contents. It covers all the items in the suit schedule, particularly, S.No.293/4 about which only there is serious contest. It is stated that during UDR, there were unrelated entries in respect of the said survey number. On an application by the plaintiff, Ex.A3 dated 24.10.1997 patta transfer order was issued in favour of the plaintiff. Ex.A4 are the kist receipt series. Though in the said receipts (five in number), there was no reference to survey number 360. Ex.P5 is the patta pass book in which S.No.360 has been mentioned. Ex.A1 series must be seen as continuity of the Ex.A4 series. If the plaintiff's post suit documents alone are taken up for consideration, then, the learned counsel for the appellants' arguments would be justified. The post suit documents are not standing in vacuum. The pre-suit documents also confirm the plaintiff's possession in respect of the suit property. Ex.A6 is the computer patta dated 22.12.2004. That is also in the name of the plaintiff.

6.

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6.The courts below after a careful consideration of the entire evidence on record came to the conclusion that the plaintiff had convincingly established her possession over the suit property. It is true that during UDR, the name of one Chinnasamy was entered. From the said Chinnasamy, the defendant had purchased 15 cents of land vide Ex.B1 dated 12.08.1997. There is nothing on record to show as to how Chinnasamy's name was entered. It got subsequently extinguished. The defendant cannot take advantage of Ex.B4 sale deed. More than anything else, the defendant's claim that he is the cultivating tenant in respect of the suit property was rejected by the competent authority under Ex.A12. However, the courts below were careful enough to add caveat to their decrees. They made it clear that their decrees will have to abide by the tenancy proceedings. I called upon the learned counsel on either side to confirm if Ex.A12 has been dislodged. It is admitted on either side that challenge to Ex.A12 was rejected right up to the Hon'ble Division Bench in a writ appeal. The defendant has no title document to project on his side. The defendant's vendor's title is also highly doubtful. On the other hand, the plaintiff has document standing in her name which dates back to the year 1979. The defendant's claim that he is a cultivating tenant has also been rejected. The kist receipts both pre-suit and post suit are in the name of the plaintiff.



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7.The courts below have carefully appreciated the facts and their findings are sound. No substantial questions of law arise for consideration. This second appeal stands dismissed. No costs. Connected miscellaneous petition is closed.

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Index : Yes / No
Internet : Yes/ No
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To

1.The Subordinate Court, Pudukkottai

2.The District Munsif cum Judicial Magistrate Court, Keeranur.

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The Record Keeper,
V.R Section,
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G.R.SWAMINATHAN, J.

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