



SA(MD)No.269 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.09.2024

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

SA(MD)No.269 of 2018
and
CMP(MD)No.7442 of 2018

Nagaraj ... Appellant / 4th respondent / 4th defendant

Vs.

1.Pandithurai ...1st respondent / appellant / plaintiff

2.Thavamani

3.Nagarajan

4.Manikandan

5.The Sub Registrar
NRT Main Road,
Theni, Theni Taluk &
District.

6.The District Collector,
Theni District,
Theni – Madurai Main Road,
Theni.

... Respondents 2 to 6 /
Respondents 1 to 3, 5 & 6 /
Defendants 1 to 3, 5 & 6



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Prayer : Second Appeal filed under Section 100 of Civil Procedure Code to set aside the judgment and decree dated 16.02.2016 in A.S No. 19 of 2014 on the file of the Additional District and Sessions Court, Theni at Periyakulam reversing the judgment and decree dated 22.04.2014 in O.S No.134 of 2008 on the file of the Sub Court, Theni.

For Appellant : Mr.K.Govindarajan
for Mr.M.Saravanakumar

For Respondents : Mr.AR.L.Sundaresan, Senior Counsel
for Mr.A.K.Manickam for R1
Mr.R.Mathiyalagan for R2 & R3
Mr.R.Ragavendran
Government Advocate for R5 & R6
No appearance for R4

ORDER

The fourth defendant in O.S No.134 of 2008 on the file of the Sub Court, Theni is the appellant in this second appeal. The first respondent herein Mrs.Pandithurai, wife of Kamaraj filed the said suit seeking declaration that Document No.8173 of 2007 on the file of the Sub Registrar Office, Theni (sale deed dated 26.11.2007) executed in favour of the fourth defendant is null and void and for permanent injunction. The suit was dismissed on 22.04.2014. Questioning the same, the



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plaintiff filed A.S No.19 of 2014 before the Additional District and Sessions Judge, Theni at Periyakulam. Vide judgment dated 16.12.2016, the first appellate court reversed the decision of the trial court and decreed the suit as prayed for. Challenging the same, this second appeal has been filed.

2.Though the second appeal was filed in June 2016, till date, it has not been admitted. The learned counsel appearing for the appellant reiterated all the contentions set out in the memorandum of grounds of second appeal and called upon this Court to formulate the substantial questions of law and answer the same in favor of the appellant and set aside the decision of the first appellate court and restore the judgment and decree passed by the trial court.

3.Per contra, the learned Senior Counsel appearing for the plaintiff/first respondent submitted that the impugned judgment and decree do not warrant interference and he pressed for dismissal of the second appeal. He pointed out that no substantial questions of law arise for consideration.



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4.I carefully considered the rival contentions and went through the evidence on record. The suit property admittedly belonged to one Arunachalam Chettiar . The said Arunachalam Chettiar mortgaged the property in favour of one Veerappa Chettiar. Veerapa Chettiar filed O.S No.227 of 1931 on the file of the District Munsif Court, Periyakulam for enforcing the mortgage. During the pendency of the suit, both the plaintiff as well as the defendant passed away and their legal representatives came on record. The suit was decreed and the suit property was brought to sale on 19.03.1936. The suit property was purchased by the legal heirs of Veerapa Chettiar. The sale was confirmed and the sale certificate was also issued on 17.06.1936. Delivery was effected in E.A No.789 of 1936 on 21.07.1936.

5.It has been clearly demonstrated that the plaintiff Mrs.Pandithurai traces her title over the suit property to the legal heirs of Veerapa Chettiar who purchased the property. On the other hand, the appellant entered into a sale agreement dated 16.10.2006 with one Thavamani and her son Nagaraj through their power agent Manikandan. To enforce the said sale agreement, the appellant herein filed O.S No.2 of 2007 before the Sub Court, Periyakulam. Ex parte decree was passed on 19.02.2007 directing specific performance of the suit sale



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agreement. To enforce the decree, E.P was filed and since the defendants did not come forward to comply with the decree, the suit sale deed 26.11.2007 was executed by the Sub Judge, Periyakulam in favour of the appellant. Seeking declaration that this sale deed is null and void, the first respondent herein filed O.S No.134 of 2008. The trial court framed the issue as to whether it has jurisdiction to declare the sale deed executed pursuant to its own previous judgment and decree in O.S No.2 of 2007 as null and void. The plaintiff examined her husband as PW.1. Exs.A1 to A34 were marked. Thavamani was examined as DW.1. The appellant was examined as DW.2. Exs.B1 to B14 were marked. The trial court as already noted dismissed the suit. But the appellate court reversed the trial court's decision and decreed the suit as prayed for.

6.The learned counsel appearing for the appellant raised a contention that without seeking to nullify the judgment and decree in O.S No.2 of 2007, the present suit was not maintainable. He added that since the plaintiff's title has been questioned, the suit prayer should have included the relief of declaration of title also. He also contended that there is no evidence to show that the plaintiff was in possession on the date of filing of the suit and then the relief of permanent injunction in respect of the possession should not have been granted.



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7.I am not impressed by any of the submissions advanced by the learned counsel for the appellant. There is no dispute that the suit property originally belonged to Arunachalam Chettiar. Arunachalam Chettiar had mortgaged the suit property. The mortgagee filed O.S No. 227 of 1931 on the file of the District Munsif Court, Periyakulam to foreclose the mortgage. The suit was decreed and the legal heirs of the mortgagee purchased the suit property. Thus, Arunachalam Chettiar's legal heirs had lost their right over the suit property. They were bereft of title and could not have reconveyed any right, title or interest in favour of the appellant. The appellant conceded before the courts below that he is tracing his title only from the legal heirs of Arunachalam Chettiar. When they themselves had lost their title, they could not have passed on any title in favour of the appellant. It is too obvious that O.S No.2 of 2007 filed for specific performance by the appellant was collusive in nature. The defendants consciously did remained ex parte both in the suit as well as in the execution petition. There was no need for the plaintiff Mrs.Pandithurai to seek any declaration of nullity as regards the judgment and decree passed in O.S No.2 of 2007. The plaintiff was not a party to the suit and therefore, she was not obliged to question the same. Since the sale deed executed pursuant to the decree was registered, it affected the plaintiff's right and therefore, the plaintiff was



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justified in confining her challenge to the consequential sale deed alone.

It is true that when cloud is cast on the plaintiff's title, declaration of title must be sought for. But it must be a substantial challenge or at least a prima facie challenge to the plaintiff's title. Mere denial of title or assertion by the defendant is not sufficient. As already noted, the defendants' assertion is in thin air. On the other hand, tracing of the title by the plaintiff is impeccable.

8. In these circumstances, the first appellate court rightly came to the conclusion that there was no need for the plaintiff to have sought the relief of declaration of title. The learned counsel for the appellant strongly asserted that the defendant is in possession of the suit property and that the plaintiff has not placed any material to show that she is in possession of the suit property. This contention again is without merit. The learned Senior Counsel appearing for the first respondent has drawn my attention to Ex.A4 dated 26.02.2001. Ex.A4 is the decree in O.S No.475 of 1995 on the file of the District Munsif Court, Periyakulam. It was filed by Meenakshi Achi through her power agent Rajendran against Thavamani and others. It was a suit for relief of declaration. Permanent injunction was granted in favour of the plaintiff against Thavamani. Meenakshi Achi is the predecessor in title



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of the present plaintiff. The decree dated 26.02.2001 in O.S No.475 of 1995 on the file of the District Munsif Court, Periyakulam has not been set aside and it is holding good. When the relief of permanent injunction was already granted in favour of Meenakshi Achi against Thavamani, grant of permanent injunction in favour of Mrs.Pandhithurai, the first respondent herein is clearly in order. That apart, the plaintiff has marked Ex.A7 Patta and A12 patta passbook to show that she is in possession of the suit property. In fact, the patta granted in favour of Thavamani had been nullified in the earlier suit proceedings in O.S No. 475 of 1995. That is why, the first appellate court came to the conclusion that the plaintiff has proved her possession over the suit property.

9.Looked at from any angle, there is no merit in this appeal. No substantial question of law arises for consideration. I, therefore, dismiss this second appeal without admitting it. It stands dismissed. No costs. Connected miscellaneous petition is closed.

20.09.2024

Index : Yes / No
Internet : Yes/ No
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To

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- 1.The Sub Registrar, NRT Main Road,
Theni, Theni Taluk & District.
- 2.The District Collector, Theni District,
Theni – Madurai Main Road,
Theni.
- 3.The Additional District and Sessions Court,
Theni at Periyakulam
- 4.The Sub Court, Theni.

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V.R Section,
Madurai Bench of the Madras High Court.



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G.R.SWAMINATHAN, J.

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