



S.A(MD)No.97 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 12.07.2024

Pronounced on : 25.09.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

S.A(MD)No.97 of 2017

and

C.M.P(MD)No.1729 of 2017

1.C.Arumugam (Died)

2.Kannathal

... Appellants

(2nd Appellant is brought on record as LR of the deceased sole appellant vide Court order dated 17.04.2023 made in C.M.P(MD)Nos.4885, 4886 & 4888 of 2023 in S.A(MD)No.97 of 2017)

Vs.

1.Alagappan

... 1st Respondent/1st Respondent/
Plaintiff

2.The State of Tamil Nadu Rep. by
The District Collector,
Collectorate Complex,
Sivagangai District,
Sivagangai.

... 2nd Respondent/2nd Respondent/
2nd Defendant



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PRAYER :-

This Second Appeal is filed under Section 100 of the Civil Procedure Code, to set aside the judgment and decree dated 13.04.2016 made in A.S.No.130 of 2013 on the file of the Sub Court, Sivagangai, confirming the judgment and decree dated 06.04.2013 made in O.S.No.36 of 2012 on the file of the District Munsif Court, Sivagangai.

For Appellants : Mr.G.Mohankumar
For R1 : Mr.S.Srinivasa Raghavan
For R2 : Mr.N.Muthuvijayan
Special Government Pleader

JUDGMENT

This Second Appeal is filed against the judgment and decree dated 13.04.2016 made in A.S.No.130 of 2013 on the file of the Sub Court, Sivagangai confirming the judgment and decree dated 06.04.2013 passed in O.S.No.36 of 2012 on the file of the District Munsif Court, Sivagangai.

2. The first appellant is the first defendant and the first respondent is the plaintiff in O.S.No.36 of 2012 on the file of District Munsif Court, Sivagangai. The first respondent/plaintiff filed the suit for declaration, perpetual injunction and mandatory injunction in respect of the suit property.



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3. For the sake of convenience, the parties are referred as per their rank in O.S.No.36 of 2012 on the file of District Munsif Court, Sivagangai.

4. Case of the plaintiff:

The property measuring 21 cents in S.No.315/11 of Kollankudi, Sivagangai Taluk was assigned to the plaintiff by the Tamil Nadu Government as per assignment order, dated 11.07.1987. Patta No.1520 was issued to the plaintiff for 27 cents. At the western side of the said property, an extent of 16 cents in S.No.315/12 was situated and the same was purchased by one Chinnammal from Meenal by virtue of registered sale deed, dated 19.06.1980. The 1st defendant purchased the said 16 cents in S.No.315/12 from Chinnammal through registered sale deed dated 25.07.1985 and Patta No.1907 was issued to the 1st defendant for that extent. Being the facts so, the revenue officials prepared FMB mistakenly showing 16 cents in S.No.315/11 and 27 cents in S.No.315/12. On coming to the defect, the plaintiff gave a petition to the 2nd defendant for suit correction on 10.12.2011. Taking advantage of wrong mentioning in FMB, the first defendant is claiming right over eastern 12 cents in S.No.315/12. In fact, the first defendant has right over the 16 cents only in S.No.315/12. Hence, the



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suit is filed for declaration that the 1st schedule eastern 12 cents in S.No.315/12 belonged to the plaintiff, injunction and mandatory injunction for necessary correction in FMB.

5. Case of the Defendants:

The averment that the FMB was prepared mistakenly showing 27 cents in S.No.315/12 and 16 cents in S.No.315/11 is denied. The plaintiff is the sister's son of the 1st defendant. With the consent of the plaintiff and the 1st defendant, the Patta was changed mentioning 27 cents in S.No.315/12 and 16 cents in S.No.315/11 as it was necessitated by the government to make change in earth. Notice was issued for making changes in S.No.315/11 and 315/12 to both parties in the year 1989 requiring them to object, if any, within 15 days. The plaintiff did not object for such change, as the 1st defendant is his maternal uncle. Accordingly, both have been enjoying the properties. At present, since the price of land is increasing, the plaintiff suppressing the real facts, filed the suit. The suit is filed beyond limitation for declaration and making corrections in FMB. The plaintiff has not approached the Court with clean hands. Hence, the suit is liable to be dismissed.



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6. During trial, on the plaintiff's side, the plaintiff was examined as P.W.1 and one Karuppiah was examined as P.W.2 and marked 6 exhibits as Ex.A.1 to Ex.A.6. On the defendants' side, three witnesses were examined as D.W.1 to D.W.3 and Ex.B.1 was marked.

7. After hearing both sides, the learned District Munsif, Sivagangai concluded that the plaintiff is entitled to the suit property and decreed the suit granting the relief as sought in the plaint by passing judgment and decree dated 06.04.2013.

8. Aggrieved by the judgment and decree in O.S.No.36 of 2012, the first defendant preferred the Civil Appeal in A.S.No.130 of 2013 before the Subordinate Court, Sivagangai. The first Appellate Court after hearing both and after perusing material records of the case, dismissed the appeal in A.S.No.130 of 2013 by passing judgment and decree, dated 13.04.2016 and confirmed the judgment and decree passed in O.S.No.36 of 2012.



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9. Challenging the judgment and decree of the First Appellate Court, the first defendant has preferred this Second Appeal and the same has been admitted on 22.02.2017 by framing the following substantial questions of law:-

"1. Whether the courts below were right in ignoring Ex.B.1 statutory notice under which the extent of suit Survey No.315/11 was reduced to 16 cents?

2. Whether the Courts below were right in casting the burden of proof upon the defendant to establish his right over the suit property?"

10. The learned counsel for the first defendant has submitted that the settlement proceeding in the suit village was completed in the year 1987 and the assignment given to the plaintiff in S.No.315/11 for an extent of 16 cents only and so, the FMB sketch for S.No.315/11 is shown as 16 cents and the 2nd defendant erroneously granted assignment for 27 cents in S.No.315/11 on 11.07.1987 and hence, on 20.12.1989, Ex.B.1 - Notice was given to both parties for making necessary correction in the revenue records. The plaintiff has not raised any objection. The defendant has been enjoying 27 cents from the year 1989 as per Patta given to the first defendant. The suit is filed in the



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year 2012. Therefore, the suit is barred by limitation. Both the Courts below failed to consider these aspects but erred in granting decree when the plaintiff has not given any objection to Ex.B.1 - Notice or proved that the FMB sketch was wrong. Hence, he prayed to allow the Second Appeal.

11. Per contra, the learned counsel for the plaintiff submitted that the suit property originally was in S.No.315/11 measuring 27 cents and the said land was assigned to the plaintiff on 11.7.1987 by the government in issuing assignment order and accordingly, Patta No.1520 was issued to the plaintiff. The plaintiff has been enjoying the land by putting up cattle shed. Originally, one Chinammal was the owner of 16 cents in S.No.315/12 and the first defendant purchased the said 16 cents from Chinammal on 25.07.1985. Patta No.1907 was issued to that extent only to the first defendant. Unfortunately, in FMB sketch, 16 cents was mentioned in S.No. 315/11 instead of 27 cents. The plaintiff filed the application to the 2nd defendant to rectify the extent in S.No.315/11 and when it was pending, the first defendant attempted to interfere with the possession and enjoyment of the plaintiff by denying the title. Hence, the plaintiff filed the suit. The plaintiff has established his case through P.W.1 and P.W.2 and also



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through Ex.A.1 to Ex.A.6. Ex.A.1 is the assignment order and Ex.A.6 is the sale deed stands in the name of the first defendant. Both Ex.A.1 and Ex.A.6 prove the case of the plaintiff. While admitting the extent, the first defendant wantonly took plea as if the plaintiff being a relative of the first defendant gave consent to change 27 cents in S.No.315/12, but the first defendant failed to prove his stand. Moreover, Ex.A.5 – A.Register extract also proves the extent of property of the plaintiff. The Courts below correctly appreciated the evidences adduced by both parties and correctly decreed the suit in favour of the plaintiff. The findings of the Courts below are concurrent one. Concurrent findings could not be set aside unless questions of law decided favouring the appellants in the Second Appeal. The questions of law could not be decided in favour of the appellants as the suit was factually decided by the Courts below. Therefore, he prayed to dismiss the Second Appeal.

12. Heard the arguments of both and perused the material records of the case. It is admitted by both the plaintiff and the first defendant that they are relatives and originally S.No.315/11 consisted of 27 cents and S.No. 315/12 consisted of 16 cents. It is mainly argued by the appellant that the



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assignment proceeding in the suit village was completed in the year 1987 and the FMB sketch mentioned the actual extents and hence, the plaintiff gave consent to change the extent of 27 cents in S.No.315/12 and accordingly Patta was issued to the first defendant, therefore, he is entitled to the suit property. It is admitted that S.No.315/12 was situated on the west of S.No.315/11. Ex.A.1 - Assignment Proceedings shows that 27 cents in S.No.315/11 was granted to the plaintiff. Ex.A.5 disclosed that 16 cents in S.No.315/12 was purchased by one Chinnammal, who in turn sold the said 16 cents in S.No.315/12 to the first defendant under Ex.A.6. The first defendant has not disputed the same. It is a settled proposition that revenue records will not confer any title beyond the title obtained by actual purchase.

13. The first defendant took the specific stand that Ex.B.1 - Notice was given to both parties for making necessary corrections in the revenue records as per FMB and called for objections if any, but the plaintiff has not given any objection and so, the first defendant is entitled to suit property. On perusal of judgments of the Courts below, the Courts below correctly held that Ex.B.1 was issued only calling for objections and the first defendant admitted in his evidence that no changes were made in the revenue



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records as per Ex.B.1 and so, the first defendant is not entitled to the extent as per measurement mentioned in FMB. It is the definite case of the plaintiff that FMB was wrongly prepared by the revenue official against the title deeds having actual extents and his case was accepted.

14. The question of barred by limitation based on Ex.B.1 advanced by the first defendant is not accepted. Because, as rightly held by the first Appellate Court, Ex.B.1 is only issued for making changes in the revenue records, for which the plaintiff gave objections and the further action was dropped without making any changes as admitted by the first defendant. Simply because larger extent was shown in the FMB, which was against the assignment order and title deed, Patta will not confer any title to the first defendant over what he actually purchased. Moreover, the second respondent stated he did not file any appeal against the concurrent findings of the Courts below.

15. A party cannot claim more than the extent what he has in title deeds. Admittedly, the first defendant purchased only 16 cents in S.No.315/12. The case of the first defendant that the plaintiff being the



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relative of the first defendant gave consent to change in FMB and considering the present land value the plaintiff filed this suit with false averments is not acceptable. The first defendant has not established his case by adducing acceptable oral and documentary evidence.

16. It is hereby reiterated that revenue records will not confer any title beyond what was acquired by title deeds and assignment orders. FMB sketch is only a supportive document to the revenue people and it will not confer any title on its own and the vested right accrued by a person cannot be relinquished orally.

17. From the above facts, the Courts below found concurrent findings based on evidences adduced in the case. The said findings need not be interfered by this Court by way of Second Appeal. Hence, the questions of law framed in this Second Appeal are answered against the appellants/defendant. Thus, this Second Appeal fails.

18. In the result, the Second Appeal is dismissed. The judgment and decree dated 13.04.2016 made in A.S.No.130 of 2013 on the file of the Sub



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Court, Sivagangai confirming the judgment and decree dated 06.04.2013 passed in O.S.No.36 of 2012 on the file of District Munsif Court, Sivagangai is confirmed. No costs. Consequently, connected Miscellaneous Petition is closed.

25.09.2024

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

To

- 1.The Sub Court,
Sivagangai.
- 2.The District Munsif Court,
Sivagangai.
- 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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