



S.A.No.1381 of 1998

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.07.2024

CORAM

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

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- 1.Jayakumar
- 2.Selvamalar (Died)
- 3.Jayachandran
- 4.Rani
- 5.Rajathi
- 6.Jayamala

...Appellants

-Vs-

- 1.Raman (Died)
- 2.Aavidai alias Chinnayya (Died)
- 3.Sundarasu (Died)
- 4.Navarathinam
- 5.Moorthy
- 6.Balakrishnan
- 7.Sivakumari @ Pappa
- 8.Aaralingam
- 9.Thiruchelvam
- 10.S.Saroja
- 11.Subarina
- 12.Ragesh
- 13.Kunjaram
- 14.Gandhimathi
- 15.Kalaiselvi
- 16.Vijayalakshmi
- 17.Arulselvi
- 18.Puzhalvendhan

... Respondents



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(Appellants 3 to 6 were brought on record as legal representatives of the deceased the second appellant vide order of this Court, dated 20.02.2023 made in C.M.P.(MD)Nos.1685 to 2023.

Respondents 3 to 9 were brought on record as legal heirs of the deceased second respondent, dated 19.04.2022 vide M.P.(MD)Nos.1 to 3 of 2015.

Respondents 10 to 12 were brought on legal representatives of the deceased third respondent, dated 31.03.2022 in C.M.P.(MD)Nos.858 and 860 of 2018

Respondents 13 to 18 were brought on record as legal representatives of the deceased first respondent, dated 10.08.2023 made in C.M.P(MD)Nos.1681 to 1683 of 2023)

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree of the Subordinate Judge, Pudukottai passed in A.S.No.126 of 1997, dated 01.04.1998 reversing the decree and judgment of the District Munsif Court, Aranthangi, passed in O.S.No.244 of 1993, dated 09.09.1996.

For Appellants :Mr.N.Balakrishnan

For R13 to R18 :Mr.R.Paranjothi

R4 to R9 :No Appearance



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JUDGMENT

The defendants 2 and 3 are the appellants herein. The deceased first respondent herein filed a suit for declaration of title and recovery of possession. The suit was dismissed by the trial Court and on appeal filed by the plaintiff, the first appellate Court decreed the suit by allowing the first appeal. Aggrieved by the same, the defendants 2 and 3 have come by way of this Second Appeal.

2.Pending Second Appeal, the second appellant died and her legal representatives were brought on as appellants 3 to 6. It is also seen that the first respondent/plaintiff died pending Second Appeal and his legal representatives were brought on record as respondents 13 to 18. The legal representatives of the deceased second respondent were brought on record as respondents 3 to 9 and the legal representatives of the deceased third respondent were brought on record on respondents 10 to 12.



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3. According to the first respondent/plaintiff, the suit property was purchased by him from one Kuppusamy Pillai under Ex-A1, dated 23.03.1954. The plaintiff claimed that he had been in possession and enjoyment of the suit property from the date of purchase. In the year 1992, the defendants trespassed into the suit property and hence, a legal notice was issued questioning the illegal act of the defendants. The first defendant had come up with a reply as if there was an agreement between the plaintiff and the first defendant in the year 1976, whereunder, the suit property was handed over to the first defendant. Therefore, the plaintiff was constrained to file a suit for declaration of title and recovery of possession.

4. The first defendant filed a written statement denying the title as well as the possession of the plaintiff over the suit property. It was the case of the first defendant that the suit property was purchased by the plaintiff out of the funds sent by him from Ceylon. In the year 1976, the first defendant came back to India and as per the arrangement between the plaintiff and the first defendant, the possession of the suit property was handed over to him with an understanding that the first defendant can enjoy the suit property, as that



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of his own property. Thereafter, the first defendant had mortgaged a portion of the suit property with the second defendant. Subsequently, on 28.09.1992, the first defendant sold the suit property to the third defendant for valuable consideration. On these pleadings, the first defendant sought for dismissal of the suit.

5.The defendants 2 and 3 have also filed a written statement supporting the plea raised by the first defendant. The defendants 2 and 3 also denied the title and possession of the plaintiff and sought for dismissal of the suit.

6.Before the trial Court, the plaintiff alone was examined as PW-1 and 12 documents were examined as Ex-A1 to Ex-A12. On behalf of the defendants, the first defendant was examined as DW-1, the attesor to Ex-B1 agreement, was examined as DW-2, the second defendant was examined as DW-3 and other witnesses were examined as DW-4 and DW-5 and 32 documents were marked as Ex-B1 to Ex-B32.



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7.The trial Court on appreciation of oral and documentary evidence available on record came to the conclusion that the suit property was purchased out of the funds provided by the first defendant in the name of the plaintiff. The trial Court also came to the conclusion that Ex-B1 agreement was valid and the possession of the suit property was delivered to the first defendant in the year 1976 and he has been in possession and enjoyment of the suit property as an owner from that date onwards. Ultimately, the trial Court dismissed the suit by holding that the plaintiff was not entitled to the relief sought for. Aggrieved by the same, the plaintiff preferred an appeal in A.S.No.126 of 1997 on the file of the Subordinate Court, Pudukottai. The first appellate Court, on re-appreciation of evidence available on record, came to the conclusion that the plaintiff proved his title and possession over the suit property and as a necessary consequence, allowed the appeal. Aggrieved by the same, the defendants 2 and 3 are before this Court.

8.At the time of admission, this Court formulated the following substantial questions of law by order, dated 16.02.2001:



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“(1)Whether Ex-B1 requires registration in law, as observed by the Lower Appellate Court?

(2)Whether the decree and judgment of lower Appellate Court are liable to be reversed for not considering rights of appellants on the basis of adverse possession?”

9.The learned Counsel for the appellants submitted that the plaintiff was aged about only 16 years, when Ex-A1 sale deed was executed and hence, he could not have paid the consideration under Ex-A1 sale. The learned Counsel by taking this Court to the findings of the trial Court submitted that the trial Court found that the consideration for purchase of the suit property under Ex-A1 was paid by the first defendant and the said finding was reversed by the first appellate Court without proper appreciation of evidence available on record. The learned Counsel further submitted that Ex-B1 agreement between the plaintiff and the first defendant was proved and the possession was handed over to the first defendant in the year 1976 itself. The learned Counsel also submitted that the plaintiff has not produced any documents to prove his possession on the date of filing of the plaintiff. Therefore, the findings rendered by the first appellate Court with regard to



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the possession of the plaintiff are based on no acceptable material evidence on record.

10. Based on the submissions made by the learned Counsel for the appellants, the following third substantial question of law is taken up for consideration:

“(3) Whether the findings of the first appellate Court with regard to the possession of the plaintiff is based on no evidence?”

11. The learned Counsel for the respondents 13 to 18 was heard on the above mentioned substantial questions of law. The learned Counsel submitted that Ex-B1 agreement relied on by the defendants is a document, which involves conveyance of interest in an immovable property and therefore, the same is inadmissible in evidence for want of registration. The learned Counsel further submitted that the first appellate Court rightly decided that Ex-B1 was inadmissible in evidence for want of registration. The learned Counsel also submitted that Ex-A1 is the registered sale deed in



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the name of the plaintiff and the same coupled with the revenue documents filed by the plaintiff proves the title and possession of the plaintiff over the suit property. The learned Counsel further submitted that the first appellate Court on proper appreciation of evidence available on record, decreed the suit as prayed for and the same requires no interference from this Court.

Discussion on question of law No.1:-

12.The defence of the defendants in the suit is based on Ex-B1 agreement between the plaintiff and the first defendant. The relevant portion of Ex-B1, agreement, reads as follows:

□3வது நபர் ராமன் அனுபவத்தில் இருந்து வருகிற கீழ்க்கண்ட சொத்துக்களை இரண்டாவது நபர் சின்னையாவுக்கு கொடுத்து விடுவது என்றும் அதற்கான அரசாங்க வரி வாய்தாக்களை இனிமேல் மேற்படி நபர் சின்னையாவே செலுத்திக் கொள்வது என்றும் அந்த சொத்துக்களில் 3வது நபர் ராமனுக்கு எந்த தொடர்பும் இல்லையென்றும் ஒப்புக்கொண்டு இந்த ஒப்பந்த பத்திரம் எழுதிக்கொண்டோம்.....□



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13.A reading of above would suggest that a transfer of interest in an immovable property takes place under the document. Hence, it cannot be termed as a mere agreement evidencing family arrangement or past transaction. Therefore, Ex-B1 requires registration and proper stamping as a deed of conveyance. However, Ex-B1 agreement is an unregistered document hit by Section 17 r/w 49 of the Registration Act, 1908, and hence, inadmissible in evidence. Further, the trial Court collected stamp duty with penalty treating Ex-B1 as an agreement. A stamp duty of Rs.2.50 together with penalty of Rs.25/- was collected treating the same as an ordinary agreement. No stamp duty with penalty was collected treating the same as a deed of conveyance. In such circumstances, it cannot be said that bar under Section 35 of Indian Stamp Act is cured by collection of proper stamp duty together with penalty.

14.For the above reasons, I hold that Ex-B1 is inadmissible in evidence for want of registration and the first substantial question of law is answered against the appellants and in favour of respondents.



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Discussion on substantial questions of law 2 and 3:

15.If Ex-B1 is excluded from consideration for want of registration, there is no difficulty in coming to the conclusion that the plaintiff has proved his title over the suit property under Ex-A1. The plaintiff had purchased the suit property under Ex-A1, dated 26.03.1954 from one Kuppusamy Pillai. Though the first defendant pleaded that consideration for purchasing the suit property under Ex-A1 was paid out of the funds provided by him from foreign shores, the same has not been substantiated by the first defendant by leading any evidence to show that he sent funds to the plaintiff from foreign country. Ex-B20 to Ex-B24 relied on by the defendants in this regard was considered by the first appellate Court and rejected, as the same was not helpful in proving the case of the first defendant. In the absence of any convincing evidence available on record to suggest that the first defendant sent funds to the plaintiff from foreign country, the defence raised by the first defendant in this regard cannot be accepted. The plaintiff also produced revenue documents, namely, kist receipts from 1964 to 1976 to prove his effective enjoyment of the suit property from the date of purchase.



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Therefore, based on Ex-A1, title document and kist receipts, Ex-A4 to Ex-A11, this Court comes to the conclusion that the plaintiff proved his title over the suit property and the said finding of the first appellate Court is affirmed.

16.It was contended by the learned Counsel for the appellants that the defendants produced Adangal extract under Ex-B15 to Ex-B17, for the Fasli Years 1387, 1399 and 1400 relevant to the year 1977, 1989 and 1990. He also produced kist receipts from the Fasli Year 1391 to 1404. Therefore, the learned Counsel for the appellants submitted that the first defendant's possession from the year 1977 down to the date of filing of the suit has been proved and hence, the prescriptive title of the first defendant shall be upheld. The first appellate Court found that the revenue documents in favour of the first defendant came into existence based on Ex-B1 document, which was disputed by the plaintiff and therefore, the revenue documents produced by the defendants cannot be given any credence.

17.This Court already came to the conclusion that Ex-B1 is



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inadmissible in evidence. A perusal of the defendants' pleading in the written statement would suggest that the first defendant sets up title in himself under Ex-B1. He has not raised a plea of adverse possession by admitting the title of the plaintiff. When the first defendant claimed title to the suit property under Ex-B1, it is not open to him to turn around and claim adverse possession. Therefore, the second substantial question of law is answered against the appellants and in favour of the respondents.

18. Apart from declaration of title, the plaintiff also sought for decree for injunction on the strength of the plea that he had been in possession and enjoyment of the suit property. It is settled law that in order to get a decree for injunction, the plaintiff must prove his possession on the date of plaint. The plaintiff has not produced any documents to prove his possession over the suit property on the date of presentation of the plaint. The kist receipts filed by him were also relating to the period from 1964 to 1976. The suit was filed by the plaintiff in the year 1993. He has not produced any single revenue documents to prove his possession immediately preceding the presentation of the plaint. He also failed to examine any independent



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witness to prove his possession. Therefore, in order to establish the plaintiff's possession over the suit property on the date of the plaint, the only available evidence is interested testimony of the plaintiff. Therefore, this Court holds that the plaintiff failed to establish his possession over the suit property on the date of plaint. The first appellate Court without considering the total lack of evidence on the part of the plaintiff to prove his possession on the date of presentation of the plaint, on erroneous view, granted a decree for injunction. The said conclusion of the first appellate Court is based on no evidence and hence, it is liable to be set aside. Accordingly, the third substantial question of law is answered in favour of the appellants and against the respondents.

19.In view of the discussion made earlier, the Second Appeal is partly allowed by setting aside the judgment and decree passed by the first appellate Court insofar as the relief of injunction is concerned. The judgment and decree passed by the first appellate Court insofar as the relief of declaration is concerned, the same is confirmed.



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20.In nutshell:

(a)The Second Appeal is partly allowed;

(b)The judgment and decree passed by the first appellate Court regarding the relief of injunction is set aside and the suit stands dismissed as far as the relief of injunction is concerned;

(c)The judgment and decree passed by the first appellate Court regarding the relief of declaration is confirmed;

(d)In the facts and circumstances of the case, there shall be no order as to costs.

16.07.2024

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

cmr

To

1.The Subordinate Judge, Pudukottai.

2.The District Munsif, Aranthangi.

3.The Record Keeper,

V.R.Section,

Madurai Bench of Madras High Court,
Madurai.

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