



S.A.No.1255 of 2004

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.07.2024

CORAM

THE HON'BLE MR.JUSTICE S.SOUNTHAR

S.A.No.1255 of 2004
and
C.M.P.No.9172 of 2004

M.Krishnapillai (Died) ... 1st Defendant/Appellant
Appellant

2.Santhosh Kumar

3.Harikumar

4.Sunil Kumar

5.Minikumari ... Appellants 2 to 5

(Appellants 2 to 5 are brought on record as LR's of the deceased sole appellant vide Court order, dated 12.06.2024 made in C.M.P(MD)Nos.5024, 5025 & 5026 of 2024 in S.A.No.1255 of 2004)

Vs.

1.Anilkumar

2.Sasidharan Nair (Died)

3.Chellappan (Died)

4.Rajayyan ... Plaintiffs & Defendants 3 to 5/
Respondents/Respondents



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(Respondents 2 to 4 remained *ex parte* in the lower Appellate Court. Hence notice may be dispense with)

(Memo, dated 12.06.2024 presented before the Court on 12.06.2024 is recorded, to the effect that respondents 2 and 3 died, and since they remained *ex parte* before the Courts below, the Appellants are exempted from bringing their LRs on record, vide Court order, dated 12.06.2024 made in C.M.P(MD)Nos.5024, 5025 & 5026 of 2024 in S.A.No.1255 of 2004)

PRAYER : Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree, dated 11.02.2003 passed in A.S.No.68 of 1998 on the file of the Sub Court, Kuzhithurai, confirming the judgment and decree, dated 12.02.1998 passed in O.S.No. 569 of 1993 on the file of the II Additional District Munsif Court, Kuzhithurai.

For Appellants : Mr.J.Anandhavalli

For R-1 : Mr.K.N.Thampi

R-2 & R-3 : Died

R-4 : *Ex parte*

JUDGMENT

The first defendant in the suit is the appellant herein.



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2. The suit is for declaration of title and injunction. The Trial Court granted decree as prayed for. Aggrieved by the same, the first defendant preferred an appeal in A.S.No.68 of 1998 on the file of the Sub Court, Kuzhithurai. The First Appellate Court affirmed the findings of the Trial Court. Aggrieved by the concurrent findings, the first defendant has come by way of this Second Appeal.

3. According to the respondent / plaintiff, the suit property lies in old S.No.2521 equivalent to R.S.No.147/1B in Methukarummal Village, Vilavancode Taluk, locally called as Puthalathu Vilakam Purayidom. The suit property originally belonged to Puthalathu Veedu of Piracode Desom. There was a partition among the family members on 27.10.1947 under Exhibit A.8. The suit property with an extent of 5 cents was allotted to parties 2, 8 and 9 in the partition deed, namely, Kamalakshi Pillai and her sons Raghavan Pillai and Sivasankara Pillai in item No.1 of the second schedule to the partition deed. Subsequently, the sons of Kamalakshi, namely, Raghavan Pillai and Sivasankara Pillai sold the suit property to one Parameswaran Pillai under sale deeds, dated 09.07.1965 and 23.08.1965. Tamil version of the same were marked as Exhibits A.5



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and A.6. The plaintiff purchased the suit property from Parameswaran Pillai under Exhibits A.1 and A.2, dated 01.04.1993. The plaintiff claimed that he had been in possession and enjoyment of the suit property from the date of purchase and the defendants without any manner of right attempted to interfere into the possession. Therefore, above said suit was laid for declaration and injunction.

4. The suit was resisted by the defendants by denying the right and possession of the plaintiff over the suit property. It was claimed by the defendants that suit was filed with a sole object of delaying the final decree proceedings in O.S.No.398 of 1982 and the sale deed executed by Parameswaran Pillai and others in favour of the plaintiff was hit by doctrine of *lis pendens*. The defendants also claimed that they had got half share in the suit property under the preliminary decree passed in the said suit. The defendants further claimed that partition deed, dated 27.10.1947 was set aside in a suit in O.S.No.210 of 1956 and therefore, tracing of title by the plaintiff through the said partition deed would not help him to claim title over the property. Thus by denying the title of the plaintiff's vendor to convey good title to the plaintiff, the defendants sought for dismissal of the suit.



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5. Before the Trial Court, the plaintiff was examined as P.W.1 and one Kesavan Nair, brother of plaintiff's vendor Parameswaran and husband of defendant's sister was examined as P.W.2. On behalf of the plaintiff, 15 documents were marked as Exhibits A.1 to A.15. The first defendant was examined as D.W.1 and one document, namely, judgment in O.S.No.398 of 1982 was filed as Exhibit B.1.

6. The Trial Court on appreciation of oral and documentary evidence came to the conclusion that the judgment and decree passed in O.S.Nos.853 of 1969 and 398 of 1982 would not bar the plaintiff from maintaining the present suit and granted a decree for declaration and injunction as prayed for. Aggrieved by the same, the first defendant preferred an appeal and the First Appellate Court affirmed the findings of the Trial Court. Hence, the first defendant has come by way of this Second Appeal.



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7. At the time of admission, this Court formulated the following substantial questions of law by an order, dated 26.08.2004:

"1. Whether the decree granted by the Courts below is sustainable in law when the suit is hit by res judicata in view of the findings in O.S.No.210 of 1956 and O.S.No.398 of 1982?

2. When the vendor of the plaintiff has no title to the suit property and when no share was granted in favour of the vendor of the plaintiff under Exhibit B.2 final decree, whether the decree granted in favour of the plaintiff is sustainable in law?

3. When the property has not been identified by the plaintiff, whether the decree granted for declaration and injunction in favour of the respondent is sustainable in law?"

8. The learned Counsel appearing for the appellant vehemently contended that the earliest document relied on by the plaintiff, namely, the partition deed, dated 27.10.1947 was set aside by judgment in O.S.No.210 of 1956 and hence, the plaintiff is not entitled to claim good title. The learned Counsel further submitted that Exhibit A.1 sale deed



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executed in favour of plaintiff was hit by doctrine of *lis pendens* and the same was not taken into consideration by the Courts below. The learned Counsel further submitted that the plaintiff has not identified the suit properties properly by connecting the description of property found in his title documents with the boundaries available on ground.

9. The learned Counsel appearing for the respondents by taking this Court to the title documents of the plaintiff, namely, Exhibits A.2, A.5, A.6 and A.8 submitted that the title of the plaintiff has been properly traced from the year 1947 and therefore, the Courts below are justified in granting declaration in favour of the plaintiff. The learned Counsel also by referring to the tax receipts produced by the plaintiff submitted that possession of the plaintiff on the date of suit was also proved and hence, the findings of the Courts below need not be interfered with.

10. The suit was resisted by the defendant on the ground that earliest title document of the plaintiff, namely, partition deed, dated 27.10.1947 was set aside by the judgment in O.S.No.210 of 1956. The judgment in the said suit was marked as Exhibit A.15. The decree copy in O.S.No.210 of 1956 has not been marked. The Trial Court observed



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that from Exhibit A.15, the Court is not in a position to come to the conclusion whether the subject matter of suit in O.S.No.210 of 1956 and the present subject matter are one and the same. Therefore, the Courts below rejected the contention of the defendants that judgment in O.S.No. 210 of 1956 would operate as *res judicata* on the present suit. The defendants raised a plea of *res judicata*. It is incumbent on them to produce documents to show that subject matter of the suit in O.S.No.210 of 1956 and the subject matter of the present suit are one and the same. If the defendants are not able to establish before the Court that subject matter of both the suits are one and the same, the doctrine of *res judicata* cannot be invoked. Therefore, the conclusion reached by the Courts below that judgment in O.S.No.210 of 1956 would not operate as *res judicata* is not vitiated and the same is confirmed.

11. As far as suit in O.S.No.398 of 1982 is concerned, the same was relating to 19 cents belongs to other vendors in Exhibit A.2. The present suit is in respect of 5 cents which lies on the western side of 19 cents. Therefore, when the present suit property was not subject matter of suit in O.S.No.398 of 1982, the judgment passed in that suit would not operate as *res judicata* on the present suit. Further the vendor of the



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plaintiff in respect of the present 5 cents of the suit property, namely, Parameswaran was not a party to O.S.No.398 of 1982. Therefore, the doctrine of *res judicata* will not get attracted in the facts and circumstances of the case. Accordingly, the question of law one is answered against the appellant and in favour of the respondents.

12. A perusal of Exhibit A.8 partition deed, dated 27.10.1947 would suggest the present suit property with an extent of 5 cents on the western portion of the suit survey No.2521 was allotted to the share of parties 2, 8 and 9 to the said documents, namely, Kamalakshi Pillai and her sons Raghavan Pillai and Sivasankara Pillai. The plaintiff's vendor Parameswaran Pillai purchased the said property under Exhibits A.5 and A.6 from Raghavan Pillai and Sivasankara Pillai after death of Kamalakshi Ammal. Subsequently, the said Parameswaran Pillai sold the 5 cents purchased by him under Exhibits A.5 and A.6 in favour of the plaintiff under Exhibit A.2, dated 01.04.1993. In Exhibit A.1, while tracing the title of Parameswaran Pillai, the sale deed in favour of Parameswaran Pillai, dated 09.07.1965 and 23.08.1965 were clearly mentioned. The subject matter of the document Exhibit A.2 was described as 5 cents of land on the western portion of the S.No.2521.



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Therefore, there is no difficulty in coming to the conclusion that property allotted to Kamalakshi and others under Exhibit A.8 has been sold to Parameswaran by sons of Kamalakshi under Exhibits A.5 and A.6 and the said Parameswaran in-turn sold it to the plaintiff under Exhibit A.2. Therefore, the plaintiff succeeded in proving his title over the suit property by producing document from the year 1947. The oral evidence of P.W.2 also confirms the same. Exhibit A.14 is the land tax receipt produced by the plaintiff in respect of the property in suit survey number, dated 16.08.1993. The suit was presented by the plaintiff on 26.08.1993. Exhibit A.14 would establish that plaintiff was in possession of the suit property on the date of presentation of the plaint. The defendant has not produced any document of title or revenue document to claim any semblance of right over the suit property. In these circumstances, there is no difficulty in coming to the conclusion, by producing Exhibits A.2, A.5, A.6 and A.8 and revenue document Exhibit A.14, the plaintiff proved his title by preponderance of probabilities and also his possession over the suit property. Therefore, I do not find anything to interfere with the final conclusion reached by the Courts below that plaintiff was entitled to declaration of title and injunction. The substantial questions of law 2 and 3 are answered accordingly against the appellant and in favour



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of the respondents.

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13. Hence, the Second Appeal stands dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

19.07.2024

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

To

- 1.The Sub Court,
Kuzhithurai.
- 2.The II Additional District Munsif Court,
Kuzhithurai.
- 3.The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SOUNTHAR, J.

BTR

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