



S.A.No.177 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 25.02.2025

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CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

S.A.No.177 of 2010

K.K.Paramasivam

... Appellant/Appellant/Plaintiff

-vs-

K.R.Thangaswamy (died)

1. Manian

2. Valliammal

3. Manian

4. Hyther Ali

5. Executive Officer,

Komaralingam Special Panchayat,

Komaralingam,

Udumalpet Taluk.

... Respondents/Respondents/Defendants

Prayer: Second Appeal Suit is filed under Section 100 of CPC against the judgment and decree dated 07.08.2009 made in A.S.No.26 of 2008 on the file of Sub-Ordinate Judge, Udumalpet, confirming the judgment and decree dated 16.07.2008 made in O.S.No.7 of 2005 on the file of District Munsif, Udumalpet.

For Appellant

: Mr.N.Suresh

For Mr.T.R.Rajaraman

For R1

: Mrs.Hema Sampath, Senior Counsel

For Mr.T.Dharani

For R2 & R3

: No Appearance

For R4

: Died

For R5

: Mrs.R.Revathy

J U D G M E N T



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Aggrieved over the concurrent findings of the Trial Courts, the

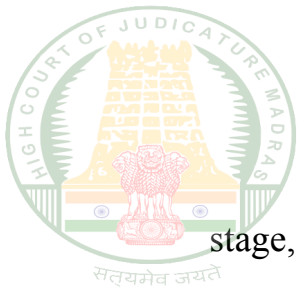
present Second Appeal has been filed.

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2. The parties are arrayed as per their own ranking before the Trial Court in O.S.No.7 of 2005.

3. The case of the plaintiff is that the suit property was originally owned by one Rangasamy Pandaram, who had three sons, namely, Kailasa Pandaram, Arunachala Pandaram and Velusamy Pandaram and there was a partition in the family on 08.08.1908. The suit property in S.No.1072 was allotted to Kailasa Pandaram, who is none other than the father of the plaintiff and in the above said partition, it is stated that charity should be performed regularly, namely, providing water in the months of Panguni, Chithirai and Vaikasi. The plaintiff's father was performing the said charity till his death.

4. The further case of the plaintiff is that while the plaintiff and his two other brothers were minors, the plaintiff's father Kailasa Pandaram passed away and his mother Deivanaiammal was a young widow. At that



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stage, one Ramalinga Pandaram, who was the father of the 1st defendant and grand father of the 2nd defendant was a measurer in the village and he was permitted to continue the charity and maintain the suit property. The building was given on lease to a Police Station and the rent was collected by Ramalinga Pandaram and given to the plaintiff, his brothers and mother.

5. According to the plaintiff, the said Ramalinga Pandaram died about 26 years ago and after his death, his son Thangaswamy / 1st defendant was asked to manage the suit properties in the place of his father and accordingly, the 1st defendant was in the management of the properties. Subsequently, the Police Station was shifted to a different place and the building had become very old and dilapidated. Therefore, the plaintiff and his brothers wanted to reconstruct the building to continue the charity. The plaintiff's another brother Rangasamy died in the year 1990 and his elder brother was not an intellect person and mother died in the year 1992. As the plaintiff was working in Tamil Nadu Electricity Board, he was not able to attend the religious work personally. Taking advantage of the fact that the building could not be reconstructed for long time, the 1st defendant changed



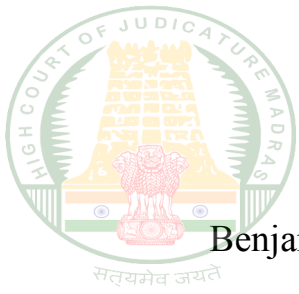
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the tax assessment in respect of the suit property in his name.

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6. It is averred in the plaint that in this regard, a representation dated 14.02.1998 was given to the Executive Officer, Komaralingam Town Panchayat, stating that there cannot be two assessments for the same building. Making use of the new assessment in his name, the 1st defendant permitted one Shandhu Mohammed to occupy the suit properties and subsequently, the 1st and 2nd defendants permitted one Murugesan Benjamin and his wife Valliammal to occupy the building by receiving Rs.55,000/- from them. The plaintiff had also paid Rs.55,000/- to the said Murugesan Benjamin and his wife Valliammal to vacate the premises. Knowing this, the defendants 1 & 2 filed O.S.No.216 of 2002, seeking permanent injunction, restraining the defendants therein from transferring or subletting the suit properties to any third parties. The said suit was decreed exparte and since the plaintiff is not a party to the suit, he is not bound by the decree in the above suit.

7. It is further averred in the plaint that after Murugesan



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Benjamin and his wife Valliammal vacated the premises, the 1st defendant forcibly occupied the premises in the month of February, 2004 and thereafter, at the instance of the defendants 1 & 2, the defendants 3 to 5 occupied the premises. Hence, the suit was filed by the plaintiff for declaration and recovery of possession.

8. The stand of the defendants 1 & 2 in the written statement was that the property was an ancestral property and in fact, the properties have been earmarked for doing religious charity with a condition that the charity has to be continued by the senior male legal heir. The property was being enjoyed ancestrally and had been let out to the Police Station in the year 1948 by the 1st defendant's father and rent was collected by him and he died in the year 1979. During his lifetime itself, house tax has been changed in his name and after the death of the 1st defendant's father, the 1st defendant was collecting the rent from the Police Station and revenue records have also been changed in his name. Even in the partition deed executed in the year 1980, it has been clearly indicated that the 1st defendant has to perform the charity. From the year 1987, one Shandhu Mohammed Rawther is a tenant



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and thereafter, Murugesan Benjamin and his wife Valliammal were tenants

and a lease deed has been executed in their favour on 16.04.2000. According to the defendants, the property belongs to them absolutely and they are in possession of the property.

9. The Trial Court, on the basis of the aforesaid pleadings, framed the following issues:

- i) Whether the suit property belongs to the plaintiff?
- ii) Whether the plaintiff is entitled to declaration and recovery of possession?
- iii) Whether the tax assessment issued by the 6th defendant in favour of the 1st defendant is to be cancelled?
- iv) As to what other relief?

10. On the side of the plaintiff, he examined himself as P.W.1 and Ex.A1 to Ex.A14 were marked. On the side of the defendants, D.W.1 to D.W.3 were examined and Ex.B1 to Ex.B80 were marked.

11. The Trial Court, after considering the entire evidence, held that the plaintiff has not established the identity of his property and the defendants are in long possession of the property even in the year 1966 onwards and only the 1st defendant's father name was found in the house tax



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assessment. The said finding of the Trial Court has been confirmed by the First Appellate Court. Challenging the concurrent findings, the instant Second Appeal has been filed.

12. The question of law framed in this appeal is as to whether the judgments of Courts below are perverse on the ground that substantial evidence is not considered.

POINTS:

13. Learned counsel for the appellant would mainly submit that as per Ex.A1 / registered partition deed, the suit properties were allotted to the father of the plaintiff. According to the learned counsel for the appellant, the suit property was allotted to the plaintiff's father with a condition to perform charity attached to the property. His further contention is that as per Ex.A3, there was a partition among the family members of the plaintiff. In the written statement, it was clearly admitted that charity, namely, providing water, should be performed from and out of the property. Similarly, in Ex.B56 / partition deed entered into between the parties, the names of defendants have not been included. If the suit properties are ancestral owned



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by the defendants, while partitioning the family properties, the suit properties should have been included in Ex.B56, which was of the year 1980. These facts have not been considered by the Courts below. Further, though adverse possession has not been pleaded, Courts below non-suited the plaintiff on the ground of non possession of the property. D.W.1 in his evidence admitted the identity of the property and therefore, the judgments of the Court below are not based on the proper appreciation of the evidence. Since relevant evidence has not been considered, the judgment is nothing, but perverse.

14. Whereas learned Senior Counsel appearing for the 1st respondent contended that the plaintiff sought for declaration of title and recovery of possession only on the basis of Ex.A1, which does not establish the identify of the property. The plaintiff failed to establish the identity of the property and Ex.A1, Ex.A3 and all other documents have been obtained by the plaintiff only after 2003 for the purpose of case. The defendants are in possession of the property ancestrally and D.W.1 also admitted the genuineness of the document, which stands in the name of the defendants 1



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and 2. She further contended that the plaintiff's case is that only his father let out the property to the Police Station, whereas in the pleadings, it is the case of the plaintiff that only the 1st defendant's father had leased out the property. P.W.1 clearly admitted in his evidence that he was not in a position to establish the identity.

15. The suit was filed for declaration and recovery of possession. The suit proceeded as if the property was allotted to the plaintiff's father with a condition to perform charity, namely, providing water. As the plaintiff's father Kailasa Pandaram died leaving behind the plaintiff, his two brothers and his mother Deivanaiammal, the mother of the plaintiff, being a young widow at that time, permitted Ramalinga Pandaram to manage the suit property, who, in turn, let out the property to the Police Station. As the said Police Station was shifted in the year 1986, the plaintiff along with his brothers wanted to renovate the building. After the death of Ramalinga Pandaram, the defendants 1 & 2 forcibly occupied the premises and started the dispute.

16. The plaintiff relied upon Ex.A1 to contend that the suit properties were allotted to his father. On perusal of Ex.A1, there is no



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description of the property and the identity of the property has also not been established except mentioning S.No.1072. Though it is contended that certain properties were allotted to Kailasa Pandaram with specific boundaries, in the entire evidence, the plaintiff has not established the identity of the property by correlating the boundaries in proper manner. There was no evidence whatsoever available on record to show that the suit property is the subject matter of Ex.A1.

17. It is the specific case of the defendants 1 & 2 that they are in possession of the property ancestrally and father of the 1st defendant let out the property to the Police Station as early as in 1948. Though it is stand of the plaintiff that his father had let out the property to the Police Station, there was no evidence available on record to substantiate the same. In his pleadings, the plaintiff categorically admitted that the 1st defendant's father only let out the premises to the Police Station. Whereas, in the evidence, he took a different stand that his father alone let out the property and there is no material whatsoever placed on record to prove his stand. Further, identity of the property has not been established. That apart, the plaintiff stated that his



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mother permitted the father of the 1st defendant Ramalinga Pandaram to manage the property, as the plaintiff and his brothers were minors and no document whatsoever has been filed to show that his mother was a young widow at the relevant point of time.

18. It is relevant to note that the defendants 1 & 2 duly established the fact that they were in possession of the property and that the father of the 1st defendant only let out the premises not only to the Police Station, but also to some third parties, which was admitted by the plaintiff. Though it is the contention of the plaintiff that he had paid the advance amount to Murugesan Benjamin and his wife Valliammal, the said fact has not been established and they have not been examined. The fact remains that the defendants 1 & 2 filed O.S.No.216 of 2002, seeking permanent injunction, restraining the defendants in the said suit from transferring or subletting the suit properties to anyone. Though it is the stand of the plaintiff that the defendants forcibly occupied the premises in the year 2004, in the cross examination, the plaintiff admitted that he does not know as to when the 1st defendant took possession of the property. Similarly, he is also not



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aware of the fact as to when defendants 3 to 5 were inducted as tenants by the 1st defendant. Merely because the suit properties have not been included in Ex.B56 / partition deed, it cannot be said that the plaintiff proved his title to the suit property.

19. It is the specific case of the defendants that they are in possession and enjoyment of the property ancestrally and also performing charity. In Ex.A1, except one boundary, no other boundaries are mentioned. Therefore, merely because the plaintiff included the suit property in the partition deed in Ex.A3, it cannot be held that the plaintiff has established the identity of the suit property. The details as to how the suit property was included and the measurement arrived at in Ex.A3 have not been clarified by the plaintiff. P.W.1 admitted in his evidence that the measurement has been given in Ex.A3 as per actuals, which clearly indicates that the exact measurement of the property now available has been included in Ex.A3 for some other purpose. There was no correlation established, whereas Ex.B1 to Ex.B28 indicate that Ex.B1 is of the year 1966 and Ex.B2 to Ex.B28 were house tax receipts paid from the year 1967 continuously. No document



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whatsoever has been adduced on the side of the plaintiff to show that the property tax assessment was made in the name of his father at the very inception. Whereas, the documents marked on the side of the defendants clearly show that from the year 1966, the tax assessment has been changed in the name of the defendant's father and no attempt has been made to disprove those documents.

20. Further, the pleadings of the plaintiff indicate that aggrieved by the mutation of the assessment order made in the name of the 1st defendant's father, there was an objection raised by the plaintiff and a representation was also made in the year 1998. It is relevant to point out that when the dispute, as to the immovable property arose in the year 1998 itself and the plaintiff himself was aware of the said fact, particularly, the defendants set up independent title, a suit ought to have been filed within three years, when the right to sue had accrued. Whereas the suit has been filed only in the year 2005 after a lapse of five years. When the plaintiff seeking declaration on the basis of a document, which is bereft of details as to the extent, measurement, boundaries, etc., it is for the plaintiff to establish



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the above fact by correlating old survey number with the new survey number, boundaries, measurement, etc. In the absence of establishing the identity of the property, merely on the basis of an old document, one cannot succeed in the declaration relief. It is for the plaintiff to prove his stand and he cannot pick holes in the defendants' case. Hence, this Court is of the view that both Courts below in fact appreciated the evidence and documents properly, warranting no interference by this Court.

21. In the result, the Second Appeal is dismissed as devoid of merits and the judgments and decree passed by the Courts below are hereby confirmed. The question of law is answered accordingly. No costs.

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Index: Yes / No
Internet: Yes / No
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To:

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1. The Sub-Ordinate Judge,
Udumalpet.

2. The District Munsif,
Udumalpet.

3. The Executive Officer,
Komaralingam Special Panchayat,
Komaralingam,
Udumalpet Taluk.

4. The Section Officer,
V.R.Section,
High Court,
Madras.

N.SATHISH KUMAR,J.,
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