



S.A.No.589 of 2018

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2025

CORAM

THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

S.A.No. 589 of 2018

1. Saraswathi
W/o. Deivasigamani Kounder
Kuyilapalayam Village,
Periyababusamudram Post,
Villupuram Taluk.
 2. Prabha,
D/o. Deivasigamani,
Ottampattu Village,
Gingee Taluk, Villupuram District.
 3. Chitra,
D/o. Deivasigamani Kounder,
Mary Ulavarkarai,
Puducherry State.
 4. Uma,
D/o. Deivasigamani Kounder
Kuyilapalayam Village,
Periyababusamudram Post,
Villupuram Taluk.
-Appellants

VS



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Royal Kounder,
S/o. Ramakrishna Reddiar,
Kuyilapalayam Village,
Periyababusamudram Post,
Villupuram Taluk.

.... Respondent

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 08.12.2017 passed in A.S. No.75 of 2011, on the file of the II Additional Subordinate Court, Villupuram, upholding the decree and judgment dated 29.04.2011 passed in O.S.No.404 of 2008, on the file of the Additional District Munsif, Villupuram.

For Appellants : Mr. P. Jagadeesan
For Respondent : Mr. C. Prabakaran

JUDGMENT

The unsuccessful plaintiffs before both the Courts below have filed the present second appeal. One Deivasigamani Gounder (since deceased) filed the suit in O.S.No.404/2008 before the Additional District Munsif Court, Villupuram, for declaration of his title to the suit property and for a permanent injunction restraining the defendant from interfering with his peaceful possession and enjoyment of the suit property. The suit property morefully described in the plaint is a natham



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land in survey number 29/5A2 of Periyababusamudram Madura Kuyilapalayam Village, Kandamangalam Taluk, Villupuram Registration District, ad-measuring 210 square meters.

2. For the sake of convenience, the parties are referred to as per their rank in the trial court and at appropriate places, their rank in the present second appeal would also be indicated.

3.The case of the plaintiff in a nutshell is as follows :

3.1. The plaintiff (since deceased) is the absolute owner of the suit property and he is in possession and enjoyment of the same. He, in fact, purchased the suit property through a registered sale deed dated 27.02.2008 (Ex.A1) from one Vridhambal Ammal. The suit property was the ancestral property of one Ramanuja Reddiar and he was in possession and enjoyment of the same. After the death of Ramanuja Reddiar, the property devolved upon his wife Mahalakshmi @ Lakshmi Ammal and his daughter Padmavathy Ammal. After the death of Padmavathy Ammal, her son Rajkumar became entitled to the suit property. He was in



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possession and enjoyment of the suit property continuously and after his death his wife Vridhambal Ammal became entitled to the suit property.

3.2. Ramanuja Reddiar during his life time executed a simple mortgage deed dated 21.02.1941(Ex.A2) in favour of Villupuram Cooperative Land Mortgage Bank and obtained a loan of Rs.1,900/-. He also executed a simple mortgage deed dated 22.09.1941(Ex.A3) in favour of one Bangaru Reddiar and obtained a loan of Rs.4,000/-. The defendant is a total stranger to the suit property. However, he got the sale deed executed in respect of the suit property. The sale deed in favour of the defendant was registered only on 24.04.2008 whereas the plaintiff has purchased the suit property on 27.02.2008 itself. The vendor of the defendant had no right or title over the suit property. However, he obtained a patta bearing number 306 by making false representation to the revenue authorities. The plaintiff, after coming to know of this, issued a legal notice to the defendant on 01.08.2008 (Ex.A5). Though the defendant received the said notice, as is evidenced by the postal acknowledgment card (Ex.A6), he did not send any reply. Hence the



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4.The suit was resisted by the defendant on the following grounds:

- i. The allegations contained in the plaint are false.
- ii. The suit property is the ancestral property of the defendant's father and his brothers namely Ramakrishnan, Parasuraman and Saminathan. They have been in possession and enjoyment of the suit property for more than 30 years. Subsequently, there was an oral partition in their family in which the suit property fell to the share of Saminathan. Saminathan was also issued a patta by the Revenue authorities. Thereafter the said Saminathan sold the suit property in favour of the defendant through a registered sale deed dated 25.01.2008 (Ex.B2) for a valuable consideration.
- iii. The defendant's wife Putlayeammal had also purchased the share of Rajkumar (husband of Vridhambal) from one Krishna Kumar and Sathish Kumar. The vendors of the defendant's wife wrongly indicated the survey numbers as 29/5A1 instead of 29/7.



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However, the boundaries are properly described. In fact the plaintiff and his predecessors in title were not in possession and enjoyment of the suit property. The description of the property and the extent mentioned in the sale deed dated 27.02.2008 (Ex.A1) is vague and it does not match with the legal notice issued by the plaintiff. Hence the suit is liable to be dismissed.

5. On the basis of the above pleadings, the trial Court framed the following issues :

- i. " Whether the plaintiff is entitled for a declaration as prayed for?
- ii. Whether the plaintiff is entitled for an injunction as prayed for?
- iii. To what other relief the plaintiff is entitled ?"

6. In the trial Court, the plaintiff examined himself and marked Ex.A1 to Ex.A6. The defendant examined himself and two other witnesses and marked Ex.B1 to Ex.B7. The revenue records were marked as Ex.X1 to Ex.X4



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7. The learned trial court judge, after analysing the oral and documentary evidence on record, dismissed the suit filed by the plaintiff, vide her decree and judgment dated 29.04.2011, on the following grounds:-

- i. The plaintiff has not proved that Ramanuja Reddiar had right over the suit property.
- ii. The plaintiff (P.W.1) during the course of cross examination admitted that Krishnakumar, Sathishkumar and Rajkumar are the sons of Padmavathi Ammal. In the circumstances, the plaintiff has not proved as to how Rajkumar alone became entitled to the suit property.
- iii. The plaintiff has not also examined his vendor to prove his title and possession over the suit property.
- iv. A copy of the 'A' Register (Ex.X1) shows that one Saminatha Gounder, the vendor of the defendant, was the original owner of the land in survey number 29/5A. The Adangal Extract (Ex.X3) shows that the said Saminatha Gounder was in possession of the



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WEB COPY property in survey number 29/5A2. Thus Ex.X1 to Ex.X3 would go to show that the defendant and his predecessors in title were in possession and enjoyment of the suit property.

- v. The plaintiff has not also come to Court with clean hands as he has suppressed the material facts.
- vi. Except the mortgage deeds (Ex.A2 and Ex.A3), there is no other document to show that Ramanuja Reddiar was the absolute owner of the suit property.
- vii. Thus the plaintiff has miserably failed to prove his title and possession over the suit property.

8. Aggrieved over the decree and judgment passed by the trial court, the legal heirs of the plaintiff filed an appeal in A.S.No.75/2011, before the II Additional Sub-court, Villupuram. The learned II Additional Subordinate Judge, Villupuram, upheld the findings recorded by the trial court and dismissed the appeal vide his decree and judgment dated 08.12.2017, as against which the present second appeal is filed.



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9. The second appeal was admitted by this Court on the following substantial questions of law by my learned predecessor.

(1) "Whether or not the appellants established their title and possession over the suit property through the documents Ex. A1 to E.A3?

(2) Whether the lower courts right in dismissing the suit, especially when Ex.B1 does not convey the suit property and it is in respect of different survey number?

(3) Whether or not the defendants proved that they purchased the suit property under Ex.B1?

(4) Whether the lower courts right in relying on the Revenue records Ex.X1 to Ex.X4 to prove the case of the defendant, ignoring that they are not the proof of title?"

10. Heard Mr. P. Jagadeesan, learned counsel appearing for the appellants and Mr. C. Prabakaran, learned counsel appearing for the respondent.



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11. Mr. P. Jagadeesan appearing for the appellants would contend that the plaintiff purchased the suit property on 27.02.2008 and that the sale deed in favour of the defendant was registered only on 24.04.2008. His specific contention is that the defendant had fraudulently ante dated his document by mentioning the date of execution of the sale deed as 25.01.2008. According to him, both the courts below had not considered this aspect and had wrongly dismissed the suit filed by the plaintiff. He would further contend that the defendant has not proved his title and possession over the suit property and in fact, the defendant has admitted that he purchased only the land in survey number 29/5B2 and 29/7. In the circumstances, the decree and judgment passed by both the courts below are totally perverse.

12. *Per contra* Mr. C. Prabakaran, learned counsel for the respondent contended that both the Courts below, after analysing the oral and documentary evidence, had dismissed the suit filed by the plaintiff. Therefore, there is no reason for this Court to interfere with the concurrent findings recorded by both the Courts below.



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13. In order to prove the title and possession over the suit property, the plaintiff relies on his oral evidence as well as the sale deed dated 27.02.2008 (Ex.A1) executed by one Vridhambal Ammal in his favour. According to the plaintiff (since deceased), the suit property originally belonged to one Ramanuja Reddiar and that the said Ramanuja Reddiar had executed two simple mortgage deeds dated 21.02.1941 and 22.09.1941 (Ex.A2 and Ex.A3). It is also his contention that Ramanuja Reddiar was in possession and enjoyment of the suit property and that the same is his ancestral property. The plaintiff has purchased the suit property from one Vridhambal Ammal. According to the plaintiff Vridhambal Ammal is the wife of Rajkumar, who is one of the grandsons of Ramanuja Reddiar. A perusal of the records shows that Ramanuja Reddiar had three grand sons namely, Krishnakumar, Sathishkumar and Rajkumar and the plaintiff has not proved as to how the entire suit property fell to the share of Rajkumar alone. Moreover, there is no evidence to show that Ramanuja Reddiar was the absolute owner of the suit property. Except the mortgage deeds dated 21.02.1941 and 22.09.1941 (Ex.A2 and Ex.A3), there is no other records to show that



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Ramanuja Reddiar was in possession and enjoyment of the suit property.

In fact, it is admitted by the plaintiff that the suit property is an agricultural land. The plaintiff has not produced the chitta or adangal extract to show that Ramanuja Reddiar was in possession and enjoyment of the suit property. Patta, if any, issued in favour of Ramanuja Reddiar was not also filed by the plaintiff. Thus, the plaintiff has miserably failed to prove the title and possession over the suit property. On the other hand, the contention of the defendant is that the suit property is the ancestral property of the defendant's father and his brothers namely, Ramakrishnan, Parasuraman and Saminathan and that he and his wife Puttalayee Ammal purchased the suit property through registered sale deeds dated 29.11.1999 (Ex.B1) and 25.01.2008 (Ex.B2) from one Krishna Kumar and Sathish Kumar and Saminathan. The Adangal Extract (Ex.X3) shows that the land in survey number 25/5A2 stands in the name of Saminatha Gounder, the vendor of the defendant. The defendant's specific contention was that in his sale deed the survey numbers were wrongly indicated by their vendor and that the plaintiff taking advantage of this position got the sale deed from one Vridhambal



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Ammal, who is a total stranger to the suit property. A perusal of 'A' Register (Ex.X1) shows that land in survey number 29/5A stands in the name of Saminatha Gounder, the vendor of the defendant and survey number 29/5A1 stands in the name of the defendant's father Ramakrishnan. As already observed, the adangal extract (Ex.X3) shows that Saminatha Gounder was in possession and enjoyment of the suit property. In any event, the plaintiff has not proved his title and possession over the suit property. It is settled law that the plaintiff who has filed the case has to prove his case to the hilt and cannot pick holes in the defendant's title. The plaintiff has also not come to Court with clean hands as he has suppressed material facts by not stating that his vendor's husband had two more brothers. As already observed, he has not also explained as to how Rajkumar, his vendor's husband became entitled to the suit property after the death of his grand father Ramanuja Reddiar and his mother Padmavathy Ammal. The substantial questions of law are answered accordingly in view of the above reasons.



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14. In the result,

- i. the Second Appeal is dismissed. No costs.
- ii. The decree and judgment dated 08.12.2017 passed in A.S. No.75 of 2011, on the file of the II Additional Subordinate Court, Villupuram, and the decree and judgment dated 29.04.2011 passed in O.S.No.404 of 2008, on the file of the Additional District Munsif, Villupuram, are upheld.

10.01.2025

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
bga

To

1. The II Additional Subordinate Judge, Villupuram
2. The Additional District Munsif, Villupuram
3. The Section Officer, VR Section, High Court, Madras.



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R. HEMALATHA, J.

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