2025:MHC:105

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 03 / 10 / 2024

JUDGMENT PRONOUNCED ON : 07 / 01 / 2025

CORAM :

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

S.A.NO.813 OF 2018
AND CMP NO.22559 OF 2018

K.Rajendran
S/o.Kaliyan
Mattigai Village Colony,
Ulundurpet Taluk,
Villupuram District. ... Appellant / Appellant / Plaintiff

Vs.

P.T.Ranganathan
S/o. Thangavel
Kattukudalur Village & Post,
Panruti Taluk,
Cuddalore District. ... Respondent / Respondent / Defendant

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, 1908, praying to set aside the Judgment and Decree dated February 26, 2018 made in A.S.No.10 of 2017 by the learned Subordinate Judge, Ulundurpet, confirming the Judgment and Decree dated July 24, 2015 made in O.S.No.365 of 2011 by the learned Principal District Munsif, Ulundurpet.

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For Appellant : Mr.R.Rajarajan
For Respondent : Mr.R.Gururaj

JUDGMENT

This Second Appeal is directed against the Judgment and Decree dated February 26, 2018 passed in A.S.No.10 of 2017 by the 'Subordinate Court, Ulundurpet' ['First Appellate Court' for brevity], whereby the Judgment and Decree dated July 24, 2015 passed in O.S.No.365 of 2011 by the 'Principal District Munsif Court, Ulundurpet' ['Trial Court' for brevity] was confirmed.

2. For the sake of convenience, hereinafter, the parties will be referred to as per their array in the Original Suit.

PLAINTIFF'S CASE

3. The Suit Property originally belonged to Arunachala Reddiar, Lakshminarayana Reddiar and their minor brother - Venkatesan. Arunachala Reddiar was the guardian of his minor brother - Venkatesan. All of them were in possession and enjoyment of the Suit Property and later, it was sold to the plaintiff through a registered Sale Deed dated March 15, 1983. Based on the Sale Deed, the plaintiff obtained patta in

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his name and paid taxes. The plaintiff has been in possession of the Suit Property for over 12 years. Accordingly, the plaintiff claims prescriptive rights over the same as well.

3.1. According to the plaintiff, the defendant has no right in the Suit Property. Further, it was falsely alleged by the defendant that on December 30, 1999, Arunachala Reddiar and his family members collusively executed a Sale Agreement in favour of the defendant and that the defendant filed a case in O.S.No.142 of 2004 for specific performance of the said Sale Agreement and obtained an *ex-parte* Decree in his favour. Neither the plaintiff nor the erstwhile owner, who sold the Suit Property to him, were parties to the above said Suit. Furthermore, since the Suit Property had already been sold to the plaintiff in the year 1983 itself, the alleged Sale Deed said to have been executed in the year 1999 is invalid. The *ex-parte* Decree obtained by the defendant was based on false claims and hence, it is null and void.

3.2. Further when the defendant attempted to trespass into the Suit Property on December 19, 2011 under the pretext of having Decree in his favour, the plaintiff prevented him from doing so. Therefore, the

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plaintiff sought for declaration of title and permanent injunction against the defendant.

DEFENDANT'S CASE

4. The defendant filed written statement denying the allegations made by the plaintiff in the plaint. According to the defendant, the Suit Property and some other properties originally belonged to Vijayaram Reddiar. Since Vijayaram Reddiar failed to pay the dues to the Government, the Suit Property was declared as government-owned barren land vide Proceedings No.A6/50268/1968 dated December 3, 1968 of the Revenue Divisional Officer, Thirukovilur. After the demise of Vijayaram Reddiar, his heirs including Arunachala Reddiar, settled the dues and applied for re-assignment of the land. Subsequently, on October 12, 1999, after due enquiry, the land was re-assigned to the heirs of Vijayaram Reddiar.

4.1. Thereafter, on December 30, 1999, Vijayaram Reddiar's heirs entered into a Sale Agreement with the defendant, agreeing to sell the Suit Property and some other properties for Rs.1,00,000/- (Rupees One Lakh only), of which Rs.98,000/- was paid. Though the defendant

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repeatedly insisted on the registration of Sale Deed after receiving the balance sale consideration, Vijayaram Reddiar's heirs delayed the process. Therefore, the defendant filed a suit in O.S.No.61 of 2000 on the file of Sub Court, Villupuram for specific performance, which was later transferred to Munsif Court, Villupuram and renumbered as O.S.No.142 of 2004, which resulted in an *ex-parte* Decree in favour of the defendant on January 30, 2006.

4.2. Further, vide Execution Petition No. 503 of 2009, the *ex-parte* Decree was executed and consequently, a Sale Deed was executed in favour of the defendant. The defendant also filed Execution Petition No.47 of 2011 seeking recovery of possession and accordingly, the possession of the Suit Property was delivered to him on January 5, 2012. According to the defendant, the plaintiff has no ownership right, as the property was validly sold to the defendant. Thus, the defendant sought to dismiss the Suit.

TRIAL COURT

5. At trial, plaintiff examined himself as P.W.1 and two other witnesses were examined as P.W.2 and P.W.3, and Ex-A.1 to Ex-A.10

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were marked on the side of the plaintiff. On the side of the defendant, the defendant was examined as D.W.1, and two other witnesses were examined as D.W.2 and D.W.3, and Ex-B.1 to Ex-B.12 were marked.

6. Upon hearing both sides and considering the evidence available on record, the Trial Court concluded that the vendor of plaintiff under Ex-A.1 – Sale Deed has only 3/5 share in the Suit Property and hence, the plaintiff is entitled only to the said extent. Since the plaintiff is in possession and enjoyment of the Suit Property, it is not right to assert that the defendant obtained possession through legal heirs of Vijayaram Reddiar through Court proceedings. Accordingly, it dismissed the Suit with an observation that Ex-A.1- Sale Deed is valid only in respect of 3/5 share in the Suit Property.

FIRST APPELLATE COURT

7. Feeling aggrieved, the plaintiff preferred an appeal before the First Appellate Court, which after hearing both sides and perusing the documents available on record, dismissed the appeal and also set aside the observation made by the Trial Court with regard to validity of Ex-A.1 – Sale Deed in respect of 3/5 share in the Suit Property.

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SECOND APPEAL

8. Feeling aggrieved, the plaintiff preferred this Second Appeal which was admitted by this Court on December 17, 2018 on the following Substantial Questions of Law:

> *' 1) Whether the first Appellate Court is correct in reversing the finding of the trial Court with respect to the title and possession in the absence of any cross objection filed by the Defendant / Respondent under order 41 Rule 22 of the Civil Procedure Code.*
>
> *2) Whether the first Appellate Court is correct in reversing the finding of the trial Court regarding the possession without considering the documentary evidence marked as Ex.A1 to Ex.A10 on the side of the Appellant / Plaintiff. '*

ARGUMENTS

9. Mr.R.Rajarajan, the learned Counsel for the appellant / plaintiff would argue that the First Appellate Court failed to consider Section 43 of the Transfer of Property Act, 1882 in proper perspective; that the First Appellate Court failed to consider the fact that the plaintiff herein was not a party to the Suit in O.S.No.142 of 2004; that the Trial Court held that the plaintiff's vendor had only 3/5 share and hence, Ex-A.1 - Sale Deed of the plaintiff is valid for 3/5 share; that the defendant

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did not prefer any appeal against the Trial Court's Judgment and Decree; that in the absence of an appeal or cross objection, the observation of the First Appellate Court is against the provisions of law; that the Trial Court ought to have decreed the Suit as prayed for; that the First Appellate Court failed to consider the fact that the Judgment and Decree of the Trial Court in O.S.No.142 of 2004 was obtained collusively with a view to defeat and defraud the plaintiff. Accordingly, he would pray to set aside the Judgment and Decree of the First Appellate Court as well as the Trial Court and decree the Original Suit.

10. Per contra, Mr.R.Gururaj, learned Counsel for the respondent / defendant would submit that though the defendant did not prefer any appeal against the Judgment and Decree passed by the Trial Court, the defendant is entitled to question the findings recorded by the Trial Court in view of Order XLI Rule 22 of the Civil Procedure Code, 1908. The First Appellate Court rightly appreciated the facts and evidence, and dismissed the appeal and set aside the findings recorded in favour of the plaintiff by the Trial Court as well. Hence, there is no warrant to interfere with it. Accordingly, he would pray to dismiss the Second Appeal.

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DISCUSSION

11. This Court has heard the submissions made on either side and perused the materials available on record.

12. Admittedly, the Suit Properties were originally owned by Vijayaram Reddiar, who passed away leaving behind his wife - Vijayalakshmi Ammal and four sons - Arunachala Reddiar, Lakshmi Narayanan, Minor Venkatesan and Raju Sundaram. The plaintiff purchased the property from Arunachala Reddiar, Lakshmi Narayanan and Minor Venkatesan by way of Ex-A.1 - Sale Deed. Hence, Ex-A.1 – Sale Deed is valid only in respect of 3/5 share in the Suit Property. It appears that on the date of execution of Sale Deed itself, revenue recovery proceedings were pending and the Government had declared the Suit Property as 'unassessed vacant *tharisu*' (ஏல தரிசு). Thereafter, Vijayarama Reddiar's family members cleared the debts due to the Government and got re-assignment of the land. In this case, the plaintiff's vendors sold the Suit Property to the plaintiff erroneously representing as if they had rights over the entire extent of the Suit Property. Hence, as per Section 43 of the Transfer of Property Act, 1882, though on the date of Ex-A.1 – Sale Deed, the vendors had no right to sell the Suit Property, in

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view of the subsequent acquisition of title in the Suit Property, the vendors or person claiming through them, have no right to challenge the Sale Deed in respect of the 3/5 share. Hence, Ex-A.1 – Sale Deed is valid but only in respect of 3/5 share of the Suit Property.

13. The defendant entered into an Sale Agreement with Vijayarama Reddiar's family members on December 30, 1999. Based on the Sale Agreement, the defendant filed a Suit in O.S.No.142 of 2004 for specific performance and obtained an *ex-parte* Decree, pursuant to which, he took possession of the Suit Property on January 5, 2012 from Vijayarama Reddiar's family. To be noted, three out of five legal heirs of Vijayarama Reddiar had already sold their shares in the Suit Property vide Ex-A.1 to the plaintiff. The plaintiff herein is not a party to the Suit in O.S.No.142 of 2004. Naturally, the plaintiff, as a third party, has no right to implead himself in the said Original Suit. Though the Sale Deed was executed by the Court on behalf of the defendant in O.S.No.142 of 2004, the Sale Deed is valid only in respect of 2/5 share, in view of Ex-A.1 – Sale Deed. In other words, since the plaintiff had already purchased 3/5 share vide Ex-A.1 - Sale Deed, the defendant's Sale Deed is valid only in respect of 2/5 share in the Suit Property. The plaintiff and the defendant

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are co-owners having shares in the ratio of 3 : 2. Hence, the Trial Court rightly dismissed the Suit with a finding that the plaintiff is entitled to 3/5 share in the Suit Property; that the defendant is entitled to 2/5 share therein; and that the parties are at liberty to work out their remedy by filing a Suit for partition. The First Appellate Court without considering the scope and ambit of Section 43 of the Transfer of Property Act, 1882, erroneously dismissed the appeal and set aside the finding made by the Trial Court that the plaintiff is entitled to 3/5 share in the Suit Property.

14. It is settled law that the defendant while supporting the Trial Court's Judgment and Decree as respondent before the First Appellate Court, though he may not have preferred an appeal over the Trial Court's Judgment and Decree, he can very well question the findings recorded by the Trial Court against him, in view of Order XLI Rule 22 of the Civil Procedure Code, 1908 [See Judgment of the Hon'ble Supreme Court in ***Ravinder Kumar Sharma -vs- State of Assam,*** reported in ***(1999) 7 SCC 435***].

15. As already stated *supra*, as per Ex-A.1 – Sale Deed, the plaintiff is entitled to 3/5 share in the Suit Property and the defendant is

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entitled to 2/5 share. In order to avoid the multiplicity of proceedings and in the interest of justice, this Court is of the view that there is no need for the parties to file a separate Suit for partition, instead, in view of the other reliefs sought for under Paragraph No.6 (3) of the plaint, this Court by invoking its discretionary power, is inclined to divide the Suit Property as per law.

CONCLUSION:

16. In fine,

(i) The Second Appeal is allowed in part and the Judgment and Decree of the Trial Court as well as the First Appellate Court are set aside;

(ii) It is hereby declared that the plaintiff is entitled to 3/5 share in the Suit Property and to that extent, a Preliminary Decree is passed ;

(iii) The defendant is entitled to get an allotment of 2/5 share in the Suit Property on payment of necessary Court Fee;

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(iv) In view of the facts and circumstances of this case, there shall be no order as to costs; and

(v) Consequently, connected Civil Miscellaneous Petition is closed.

07 / 01 / 2025

Index : Yes
Speaking Order : Yes
Neutral Citation : Yes
TK
To

1.The Subordinate Judge
Ulundurpet.

2.The Principal District Munsif
Ulundurpet.

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R. SAKTHIVEL, J.

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PRE-DELIVERY JUDGMENT MADE IN
S.A.NO.813 OF 2018

07 / 01 / 2025