



S.A.(MD)No.90 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 09.06.2025

CORAM

THE HON'BLE MR.JUSTICE **G.ARUL MURUGAN**

S.A.(MD)No.90 of 2019

and

C.M.P.(MD)No.2428 of 2019

D.Sarasu

... Appellant

vs

Palanivelu

...Respondent

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree passed in A.S.No.35 of 2017 dated 21.08.2018 on the file of the Subordinate Court, Devakottai reversing the judgment and decree passed in O.S.No.152 of 2013 dated 22.09.2017 on the file of the District Munsif cum Judicial Magistrate, Karaikudi.

For Appellant : Mr.G.Ramanathan
for Mr.K.Sreekumaran Nair

For Respondent : Mr.R.Sundar Srinivasan



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JUDGMENT

This Second Appeal is filed as against the judgment and decree, dated 21.08.2018 on the file of the Subordinate Court, Devakottai in A.S.No.35 of 2017 reversing the judgment and decree, dated 22.09.2017 in O.S.No.152 of 2013 on the file of the District Munsif cum Judicial Magistrate Court, Karaikudi.

2.The plaintiff in the suit is on appeal. The parties are referred to, as per their status before the trial Court.

3.It is the case of the plaintiff that the vendor of the plaintiff, Maragathamammal purchased the plaint 'A' schedule property on 24.09.1975 in Ex-A1 and thereafter, sold the same in favour of the plaintiff on 23.08.1995 in Ex-A2. According to the plaintiff, even pursuant to the sale in Ex-A2, the vendor, Maragathamammal, continued to be in possession of the property, as a tenant and vacated and handed over the possession of the house in the suit property in the year 2007. According to the plaintiff, plaint 'B' schedule property is part of plaint 'A' schedule



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property and around the year 2008, the defendant, while he constructed a house, had encroached a portion of the property of the plaintiff, which is shown as plaint 'B' schedule property and had planted trees. The plaintiff had demanded the defendant to vacate the encroachment and issued a notice in Ex-A8 for which, the defendant had issued a reply notice in Ex-A9. Thereafter, the plaintiff had come up with the suit for declaration and recovery of possession of the plaint 'B' schedule property.

4.The defendant resisted the suit by filing a written statement disputing that plaint 'B' schedule property is a part of plaint 'A' schedule property. According to the defendant, the plaint 'B' schedule property is part of the property of the defendant purchased by him in the year 1974 in Ex-B4 and the defendant had also obtained patta for the property in Ex-B1 and sought for dismissal of the suit.

5.During trial, the plaintiff examined herself as PW-1 and Ex-A1 to Ex-A9 were marked. On the side of the defendant, he examined himself as DW-1 and marked Ex-B1 to Ex-B4. An Advocate Commissioner was appointed and his report along with plan were marked as Ex-C1 and Ex-C2.



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6.The trial Court after considering the evidences and documents found that the suit property absolutely belongs to the plaintiff and the defendant has encroached the plaint 'B' schedule property and decreed the suit. Aggrieved, the defendant had preferred an appeal in A.S.No.35 of 2017 and the lower appellate Court, after re-appraising the evidences, allowed the appeal on the ground that even as per the documents relied on by the plaintiff in Ex-A1 and Ex-A2, already the plaintiff is having an excess of land purchased by her and therefore, the claim made by the plaintiff to the effect that the plaint 'B' schedule property forms part of plaint 'A' schedule property is not sustainable. The lower appellate Court further found that, in fact, the vendor of the plaintiff had already sold an excess of land than what she has purchased in Ex-A1 and further, from the Advocate Commissioner's report, it is confirmed that now the plaintiff is already having further extent of land than what was conveyed by her vendor in Ex-A2. Assailing the reversal of the decree in the appeal, the plaintiff is before this Court on appeal.



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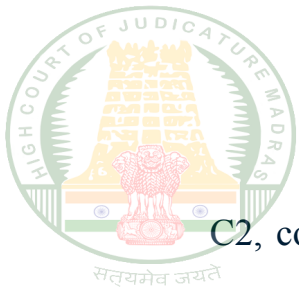
7.This Court, by order, dated 19.03.2019, admitted the Second

Appeal on the following substantial question of law:

“Whether the lower appellate Court is right in overlooking the admission of the defendant that he had absolutely no title for S.No.428/3, especially when the defendant did not plead and prove adverse possession to any extent in S.No.428/3?”

8.Mr.C.Ramanathan, learned Counsel appearing for the appellant contended that when the vendor of the plaintiff had purchased the property to an extent of 9.25 cents in Ex-A1, she executed a sale deed in favour of the plaintiff in Ex-A2 in respect of 9.33 cents. It is his contention that though there is a marginal difference in the extent, it does not bring about any material change, as the property is covered in S.No.428/3 and the entire extent, as mentioned in the sale deed, was in the possession of the plaintiff's vendor, which was handed over to the plaintiff.

9.It is his further contention that the extent in document in Ex-A1 is fortified, in view of the patta granted in favour of the plaintiff in Ex-A5, which also corresponds to an extent of 9.33 cents. The learned Counsel by relying on the Advocate Commissioner's report and plan in Ex-C1 and Ex-



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C2, contended that, in fact, the Advocate Commissioner had made it clear that the plaint 'B' schedule property forms part of plaint 'A' schedule property and the marking made in the plan makes it evident. It is his contention that when once the extent of plaint 'B' schedule property is found to be a part of plaint 'A' schedule property, then the plaintiff is the owner in respect of the lands in S.No.428/3 and the defendant is only concerned and have ownership in respect of the lands in S.No.428/4. The trial Court rightly considered this aspect and had decreed the suit, which has been erroneously reversed by the appellate Court by making calculation, which on the face of the record is not correct and thereby, submitted that the finding arrived at by the appellate Court is perverse and sought for interference of this Court.

10.Mr.R.Sundar Srinivasan, learned Counsel for the respondent submitted that plaint 'B' schedule property is not a part of plaint 'A' schedule property and in fact, the very documents filed by the plaintiff in Ex-A1 and Ex-A2, make it clear that what has been purchased by the plaintiff was only an extent of 4067 sq.ft., but what was found to be in possession of the plaintiff, as of now, is 4132.75 sq.ft., which already is in excess and therefore, the claim of the plaintiff in respect of plaint 'B' schedule property



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is not sustainable. The learned Counsel by placing reliance on the cross examination of PW-1, submitted that when the plaintiff himself has admitted that the plaint 'B' schedule property belongs to the defendant, then there is no further issue, that remains to be dealt with in respect of the claim of the plaintiff for the plaint 'B' schedule property.

11.The learned Counsel further submitted that when it is an admitted case of the plaintiff that she herself had constructed the compound wall and further, the defendant has constructed a house in the year 1975 and has been residing there, the suit filed by the plaintiff for declaration and recovery of possession in the year 2013 is completely beyond the period of limitation. The learned Counsel submitted that the issue of limitation is to be seen *de horse* the defence taken by the defendant in view of Section 3 of the Limitation Act.

12.Heard the rival submissions and perused the materials available on record.



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13. Admittedly, the plaintiff had purchased the plaint 'A' schedule property from one Maragathamammal through Ex-A2, dated 23.08.1995.

As per the sale deed, the plaintiff had been conveyed with an extent of 4067 sq.ft. (9.33 cents). The plaintiff's vendor, Maragathamammal had purchased the plaint 'A' schedule property through a sale deed, dated 24.09.1975 in Ex-A1. In the sale deed in Ex-A1, Maragathamammal had purchased an extent of 4033 sq.ft (9¼ cents). A perusal of the two sale deeds in Ex-A1 and Ex-A2 makes it evident that Maragathamammal had purchased only an extent of 9¼ cents through Ex-A1 but she had conveyed an extent more than what she had purchased in Ex-A1, while sale deed was executed in favour of the plaintiff in Ex-A2. Admittedly, at least 34 sq.ft., ie., 0.08 cents had been conveyed in excess in favour of the plaintiff. Further, it is relevant to note at this juncture that even the patta filed by the plaintiff in Ex-A5 in respect of plaint 'A' schedule property is in respect of 3.78 ares, which is corresponding to 9.33 cents.

14. It is the specific case of the defendant that plaint 'B' schedule property does not form part of plaint 'A' schedule property and they have never encroached any portion of the property belonging to the plaintiff.



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When the plaintiff has come with the suit for declaration and recovery of possession, the onus is on the plaintiff to establish the title in respect of which he claims right and prove the fact that the plaint 'B' schedule property forms part of plaint 'A' schedule property. It is the vehement contention of the learned Counsel for the appellant that the defendant has not produced any document to show that he is having title and he is not in encroachment of the plaint 'B' schedule property. This Court is not in a position to appreciate the arguments advanced on the side of the appellant in this regard, as in view of Section 101 of the Indian Evidence Act, 1872, onus is on the plaintiff to prove the fact he asserts and further as per Section 102 of Indian Evidence Act, 1872, the burden of proof in a suit lies on the person, who would fail, if no evidence is given by either of party. As such, the plaintiff cannot rely on the loophole or weakness in the case of the defendant to succeed, rather the plaintiff has to succeed on her own strength by adducing adequate documents and evidences to substantiate her claim.

15. At this juncture, it is relevant to note that the plaintiff, who has examined herself as PW-1, has categorically admitted in her cross examination that plaint 'B' schedule property belongs to the defendant.



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When there is a specific admission on the part of the plaintiff herself to the effect that plaint 'B' schedule property belongs to the defendant, then the entire relief sought for by the plaintiff seeking for declaration and recovery of possession in respect of plaint 'B' schedule property have to necessarily fail. Further, PW-1 had also categorically admitted that the plaintiff had herself put up the compound wall in plaint 'A' schedule property and the defendant had constructed the house in the year 1975 itself and are living there.

16.It is specifically admitted by the plaintiff that she herself has put up the compound wall and further the defendant had constructed a house in the year 1975 and is living there. When the plaintiff has come up with the suit for recovery of possession claiming an encroachment, the plaintiff, who admits that the construction of the defendant was made in the year 1975, had not given any contra evidence or material to show that the encroachments are made subsequently. Considering the fact that the construction was made by the defendant in the year 1975, then the entire claim made by the plaintiff seeking for declaration and also recovery of possession is definitely barred by the limitation, as it is beyond the



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prescribed period.

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17.The Advocate Commissioner's report and plan marked as Ex-C1 and Ex-C2 cannot be of much use to the plaintiff, in view of the categorical admission made by her in respect of the very plaint 'B' schedule property. Further, from the documents, it has been established that the plaintiff had been conveyed an excess extent by her vendor in Ex-A2 than what was purchased by her and further, it has been established that as on date, the plaintiff is also having excess lands in possession more than what was conveyed to the plaintiff in Ex-A2 and hence, the claim made by the plaintiff that plaint 'B' schedule property also forms part of plaint 'A' schedule property is without any basis and cannot be sustained.

18.The lower appellate Court, which is a final fact finding Court, had analysed the documents and evidences and also the admission made by the plaintiff in proper perspective and had rightly reversed the decree of the trial Court, which is based on evidences and material available on record.



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19. In such circumstances, this Court is not able to find any illegality or perversity in the finding of fact arrived at by the appellate Court. In view of the above findings, the substantial question of law framed is answered against the appellant and in favour of the respondent. In view of the above, the Second Appeal is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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

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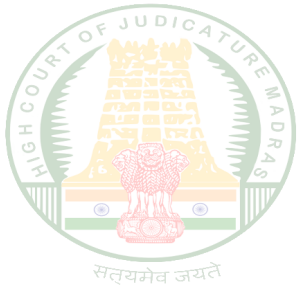
To

1. The Subordinate Judge, Devakottai.

2. The District Munsif cum Judicial Magistrate, Karaikudi.

The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

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G.ARUL MURUGAN, J.

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Judgment made in
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