



S.A(MD)No.537 of 2020

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**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED: 14.12.2023**

**CORAM**

**THE HONOURABLE MRS.JUSTICE S.SRIMATHY**

**S.A(MD)No.537 of 2020**

Raja Michael

... Appellant

Vs.

1. The District Collector,  
Thoothukudi District Collector Complex,  
Thoothukudi.

2. The Tahsildar,  
Ottapidaram Taluk Office,  
Ottapidaram.

Joseph (Died)

3. David

4. Anthonisamy

5. Packiarani

6. Anthoni Suresh

7. Anthoni Prema

... Respondents

**PRAYER:** Second Appeal filed under Section 100 of the Civil Procedure Code against the Decree and Judgment, dated 18.03.2019 passed in A.S.No.73 of 2006



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on the file of the Learned Sub Court, Thoothukudi confirming the Judgment and Decree dated 31.01.2005 passed in O.S.No.260 of 2003 on the file of the Learned Additional District Munsif Court, Thoothukudi.

For Appellant : M/s.M.P.Senthil  
For Respondents : Mr.A.Baskaran,  
Additional Government Pleader, for R-1 & R-2  
Mr.C.Selvakumar, for R-3  
Mr.K.Kannan, for R-4 to R-7

**ORDER**

This Second Appeal is filed against the Judgment and Decree, dated 18.03.2019 passed in A.S.No.73 of 2006 on the file of the Learned Sub Court, Thoothukudi confirming the Judgment and Decree, dated 31.01.2005 passed in O.S.No.260 of 2003 on the file of the Learned Additional District Munsif Court, Thoothukudi.

2. The Plaintiff is the Appellant and the Defendants are the Respondents herein. For the sake of convenience, the contesting parties shall be referred to as Plaintiff and Defendants.



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3. The contention of the plaintiff is that the suit was filed for declaration and permanent injunction restraining the defendants 3 to 5 from interfering with the plaintiff's peaceful possession and enjoyment of the scheduled property and for mandatory injunction directing the defendants 1 & 2 to sub divide the property and to issue separate Patta in favour of the plaintiff with regard to the scheduled property. The suit was dismissed, aggrieved over the plaintiff has preferred an appeal and the same was also dismissed. Against the said dismissal, the plaintiff is before this Court.

4. The contention of the plaintiff is that the suit property was settled in his favour through a settlement deed, dated 28.06.1999. The said land admeasuring 3 Acres 81 cents is situated in S.No.343/1 and the plaintiff had gifted 1 acre 70 cents of land to Fisheries Department and the balance 1 Acre 94 cents belongs to him.

5. But the contention of the defendants is that, as far as the balance of 1 Acre 94 Cents land is concerned, the defendants are having right over the



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property as it is their ancestral property and the plaintiff is not entitled to the same. Further the defendants had relied on the gift deed executed by the plaintiff in favour of Fisheries Department to substantiate their claim.

6. In the gift deed while describing the four boundaries it is stated that,

*“Out of 3 acres 81 cents of land, from western side 1 acre 87 cents, only 1 acre 70 cents on the eastern side is sold and bounded on the west by the land gifted by Maharajan to government, on the north A. Alagarsamy Nadar land, on the west Ayyasamy Nadar and on the east the plaintiff's 17 cents land”.*

When the gift deed specifically states that the plaintiff is retaining the balance of 17 cents alone, then the plaintiff cannot claim the entire land of 1 acre 94 cents of land. The fact that the plaintiff is having 17 cents of land is recorded by the Appellate Court, wherein it stated as under:

.....  
“ 14.10. .... எனவே மீதி 17 செண்டு தான் வாதியினுடைய கணக்குபடியும், பி.வா.சா.ஆ.1 ஆவணத்தில் குறிப்பிட்டுள்ளபடியும், இந்த வாதிக்கும் அவரது தாயார் ஆரோக்கியம் அம்மாளுக்கும் அந்தோணி முத்து நாடாருக்கும் 17 செண்டு மட்டுமே பாத்தியப்பட்டது என்று இந்த நீதிமன்றத்திற்கு தெரிய வருகிறது.”



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7. It is seen in the plaint the plaintiff had stated that the property in S.No.343/1 was settled in his favour vide settlement deed dated 28.06.1999 and he had further stated that only 1 acre 94 cents was settled. But in the suit schedule the plaintiff has stated that after gifting of 1 acre 70 cents of land to government, he is entitled to 1 acre 94 cents. But in the gift deed the plaintiff had stated that after gifting 1 acre 70 cents, the plaintiff is retaining 17 cents. From this it is evident the plaintiff is not clear in his prayer. Hence the Appellate Court had dismissed the suit. But this Court is of the considered opinion when the gift deed states that the plaintiff is retaining 17 cents and when the Appellate Court has rendered a categorical finding that the plaintiff is entitled to 17 cents, then the plaintiff is entitled to declaration that 17 cents belong to the plaintiff and consequently entitled to injunction for the said 17 cents against the defendants.

8. In view of the aforesaid reasons, the Judgment and Decree, dated 31.01.2005 rendered by the Trial Court in O.S.No.260 of 2003 and the Judgment and Decree, dated 18.03.2019 rendered by the First Appellate Court in A.S.No.73 of 2006 is modified to the extent stated supra. The plaintiff is entitled only to 17



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cents and the officials Defendants/Defendant Nos.1 & 2 are directed to sub-divide the property and issue Patta for 17 cents.

**9.** Accordingly, this Second Appeal is allowed. No Costs.

Index : Yes / No  
Internet : Yes  
KSA

**14.12.2023**

To

1. The Sub Court,  
Thoothukudi.
2. The Learned Additional District Munsif Court,  
Thoothukudi.
3. The District Collector,  
Thoothukudi District Collector Complex,  
Thoothukudi.
4. The Tahsildar,  
Ottapidaram Taluk Office,  
Ottapidaram.
5. The Section Officer,  
VR Section,  
Madurai Bench of Madras High Court,  
Madurai.



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**S.SRIMATHY, J**

KSA

**Judgment made in  
S.A(MD)No.537 of 2020**

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