



S.A.(MD)No.246 of 2017

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **19.04.2023**

CORAM:

THE HONOURABLE **MR.JUSTICE ABDUL QUDDHOSE**

S.A.(MD)No.246 of 2017

V.Chella kannu thevar

... Appellant

/Vs./

1.Nadar Uravinmurai Sangam,
Represented by its Secretary and the President.

2.Hindu Nadar Middle School, Settikurutchi,
Represented by its Manager.

3.A/m. Veilukandhamman Kovil Settikurutchi,
Settikurutchi Village,
Kovilpatti Taluk,
Tuticorin District.

4.S.Ayyalusamy

5.V.Karthikeyan

6.V.Meenatchi

... Respondents

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code to set aside the judgment and decree passed in A.S.No.249 of 1998 on the file of the Sub Court, Kovilpatti, dated 27.01.2015 reversing the



S.A.(MD)No.246 of 2017

judgment and decree passed in O.S.No.84 of 1994 on the file of the District Munsif, Kovilpatti, dated 08.12.1997.

For Appellant : Mr.S.Kadarkarai
For Respondents : Mr.B.Saravanan
Senior Counsel
for Mr.S.Thiruppathi

JUDGMENT

This second appeal has been filed challenging the judgment and decree of the lower appellate Court, namely, Sub Court, Kovilpatti dated 27.01.2015 in A.S.No.249 of 1998. The fourth plaintiff representing the temple in the suit in O.S.No.84 of 1994 on the file of the District Munsif Court, Kovilpatti is the appellant herein. The defendants in the suit are the respondents 1 and 2 herein. In the forthcoming paragraphs, the parties are described as per their litigative status in the suit.

2. The suit was filed for declaration, permanent injunction and also for mandatory injunction in respect of two items of the properties, namely Schedule I and Schedule II. A written statement was also filed by



S.A.(MD)No.246 of 2017

the defendants denying the plaintiff's claim in respect of item No.1 of the suit schedule properties. The defendants had claimed adverse possession. However, in respect of Item No.2 of the suit schedule properties, the defendants claimed that they are the absolute owners of the same.

3. Based on the pleadings of the respective parties, issues were framed by the trial Court. Before the trial Court, the plaintiffs filed 15 documents, which were marked as Exs.A1 to A15 and one witness was examined, namely Varadharajulu Naidu as P.W.1. On the side of the defendants, five documents were filed, which were marked as Exs.B1 to B5 and two witnesses were examined on their side, namely, Krishnasamy Nadar as D.W.1 and Mariyasoosai Thalaivar as D.W.2. Two Court exhibits were marked namely Advocate Commissioner's report as well as plan as Exs.C1 & C2 respectively. The trial Court decreed the suit in entirety in favour of the plaintiff in respect of Item No.1 and Item No.2 of the suit schedule properties and the declaratory relief as well as the permanent injunction relief was granted in favour of the plaintiff.



S.A.(MD)No.246 of 2017

WEB COPY

4. Aggrieved by the judgment and decree dated 08.12.1997 passed in O.S.No.84 of 1994 by the District Munsif Court, Kovilpatti, the defendants preferred the first appeal in A.S.No.249 of 1998 on the file of the Sub Court, Kovilpatti. The lower appellate Court, by its Judgment and Decree dated 27.01.2015 partly allowed the appeal by dismissing the suit filed by the plaintiff in respect of Item No.2 of the suit schedule properties and by confirming the decree of the trial Court passed in favour of the plaintiff in respect of Item No.1 of the suit schedule properties.

5. Aggrieved by the Judgment and decree passed by the lower appellate Court dated 27.01.2015 with regard to the dismissal of the suit in respect of Item No.2 of the suit schedule properties, this Second Appeal has been filed. This Court, on 19.06.2017, admitted the Second Appeal by formulating the following substantial questions of law:

“a) Whether the Lower Appellate Court is correct in reversing the Judgment and Decree of dismissal, in so far as the Item No.2 of the suit property is concerned, against the judgment of the Trial Court?



S.A.(MD)No.246 of 2017

b) Is it not an error apparent in law, as the Lower Appellate Court neglected to apply the correct principles of law, on Burden of Proof/Presumption, under the Indian Evidence Act?

c) Whether the Lower Appellate Court is correct, in allowing the Appeal Suit, brushing aside the available reasonable evidence, as per Ex.A4, Settlement Record of the Revenue Department, in favour of the 1st Appellant?

d) Is it not an error of law committed by the Lower Appellate Court in neglecting to consider the legal effect of a Revenue Settlement, when the same had been acted upon/implemented for the past several decades?

e) Whether the Lower Appellate Court is correct in allowing the Appeal Suit, when the appellants herein had established their case by producing necessary oral and documentary evidence, before the Trial Court, which impelled the Trial Court to dismiss a part of the suit claim?

f) Whether the Lower Appellate Court is correct to in decreeing the appeal, by rejecting Ex.A2 and not appreciating Ex.A4, which are Government records?"

6. At the outset, the learned senior counsel appearing for the respondents / defendants would submit that the lower appellate Court, by its judgment and decree, dated 27.01.2015 in A.S.No.249 of 1998 has



S.A.(MD)No.246 of 2017

rightly given a finding that the defendants are entitled to 32 cents as per Ex.B1 in Item No.2 of the suit schedule properties.

7. The learned counsel appearing for the appellant, on instructions would also submit that the plaintiff has no grievance, if the defendants restrict their ownership only in respect of 32 cents in Item No.2 of the suit schedule properties. He would submit that if the interest of the plaintiff is protected in respect of remaining extent of the land in S.No. 78/1B, the plaintiff will be satisfied.

8. When a categorical finding has been given by the lower appellate Court in Paragraph No.24 of the lower appellate Court Judgment dated 27.01.2015 passed in A.S.No.249 of 1998 that the defendants are entitled to 32 cents in Item No.2 of the suit schedule properties, which is extracted hereunder:

□24.எனவே 2ம் தபசில் சொத்து முழுவதும்
வாதிகளுக்குப் பாத்தியப்பட்டது என விளம்புகை செய்து
விசாரணை நீதிமன்றம் பிறப்பித்துள்ள தீர்ப்பு மற்றும்
தீர்ப்பாணை ரத்து செய்யத்தக்கது என்று தீர்மானிக்கும்,
உயர்நீதிமன்ற உத்தரவுப்படி பிரதிவாதிகள் பி.சா.ஆ.1



S.A.(MD)No.246 of 2017

படியான 32 சென்ட் பூமியை புல எண்.78.:1பி-க்குள் வடபக்கத்தில் இருப்பதாக ருசப்பித்திருப்பதால் அதைப்பொறுத்து மட்டும் இந்த மேல்முறையீடு அனுமதிக்கத்தக்கது என்றும் இந்த நீதிமன்றம் முடிவு செய்து இந்த எழுவினாவுக்கு விடையளிக்கப்படுகிறது.

25.முடிவாக, பி.சா.ஆ.1 படியான 32 சென்ட் பூமி புல எண்.78.:1பி-க்குள் வடபக்கத்தில் இருப்பதாக தீர்மானித்து அதைப்பொறுத்து இந்த மேல்முறையீடு அனுமதிக்கப்படுகிறது. 2ம் தபசில் சொத்து முழுவதும் வாதிகளுக்குப் பாத்தியப்பட்டது என விளம்புகை செய்து விசாரணை நீதிமன்றம் பிறப்பித்துள்ள தீர்ப்பு மற்றும் தீர்ப்பாணை ரத்து செய்து தீர்ப்பளிக்கப்படுகிறது. அவரவர் செலவுத்தொகையை அவரவர்களே ஏற்றுக்கொள்ள வேண்டுமென்று உத்தரவிடப்படுகிறது.□

and that too when the plaintiff has categorically admitted before this Court through their counsel that the defendants are entitled to extent of 32 cents in Item No.2 of the suit schedule properties and the learned Senior Counsel appearing for the respondents / defendants has also submitted before this Court, on instructions that the defendants are restricting their ownership claim only to the extent of 32 cents in Item No.2 of the suit schedule properties, this Court is of the considered view that this Second Appeal can be disposed of in the following terms:

(a) The respondents / defendants are entitled to claim ownership



S.A.(MD)No.246 of 2017

only in respect of 32 cents on the northern side of S.No.78/1B, which forms part of Item No.2 of the suit schedule properties;

(b) In respect of remaining portion of the land in S.No.78/1B, the plaintiff is the absolute owner, which includes the entire Item No.1 of the suit schedule properties as well as a portion of Item No.2 of the suit schedule properties excluding the 32 cents owned by the respondents / defendants. The substantial questions of law referred to supra formulated by this Court at the time of admission by this Court to the appeal referred to supra are answered accordingly.

9. In the result, this Second Appeal is disposed of. There shall be no order as to costs.

19.04.2023

Index : Yes / No
NCC : Yes / No
Sm



S.A.(MD)No.246 of 2017

WEB COPY

TO:

- 1.The Sub Court, Kovilpatti.
- 2.The District Munsif, Kovilpatti.
- 3.The Section Officer,
VR Section, Madurai Bench of Madras High Court,
Madurai.



WEB COPY



S.A.(MD)No.246 of 2017

ABDUL QUDDHOSE, J.

Sm

Judgment made in
S.A.(MD)No.246 of 2017

Dated:
19.04.2023