



S.A.No.1932 of 2000

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.02.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No.1932 of 2000

and

M.P.(MD) No.2 of 2012

Mookiah

... Appellant/Appellant/
2nd Defendant

Vs

1.Karuppayee

... 1st Respondent/
1st Respondent/Plaintiff

2.Duraikannu (Died)

... 2nd Respondent/
2nd Respondent/1st Defendant

3.D.Solai

4.D.Balu

5.D.Karnan

6.D.Kumar

... Respondents 3 to 6

*[RR3 to 6 – brought on record as LRs of the deceased
R2 vide order dated 03.11.2011 made in M.P.
(MD) Nos.1 to 3 of 2008 in S.A.No.1932 of 2000]*

*[RR3 to 5 – given up vide order dated
30.10.2018 made in S.A.No.1932 of 2000]*

*[Memo dated 08.04.2022 presented before the Court on
08.04.2022 is recorded as Respondent No.6 is given up
vide order dated 08.04.2022 in S.A.No.1932 of 2000]*



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Prayer:- Appeal filed under Section 100 of Civil Procedure Code to set aside the judgment and decree dated 29.09.2000 made in A.S.No.15 of 2000 on the file of the Additional District Court, Pudukkottai, confirming the judgment and decree dated 28.06.1999 made in O.S.No.962 of 1987 on the file of the District Munsif's Court, Pudukkottai.

For Appellant : Mr.P.Thiagarajan

For R1 : Mr.M.Senthil Kumar

J U D G M E N T

1.1. The second defendant in the suit is the appellant. The first respondent herein filed a suit for declaration of title and injunction. The suit was decreed by the trial Court. The appeal filed by the appellant before the first appellate Court was dismissed. Hence, he has come up with this second appeal.



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1.2. According to the first respondent/plaintiff, she purchased the suit property from Pappa, wife of Vaithiyalingam; Saroja, wife of Ramachandran; and minor Ponnuswamy, son of Ramachandran represented by his mother Saroja. The suit property was purchased by the first respondent on 12.08.1977 under Ex.A.1. She purchased 1.33 acres of land out of a total extent of 2 acres in Old Survey Field No. 238/F2 and New Survey Field No.283/4A. It was the case of the first respondent that she had been paying tax and enjoying the property from the date of purchase. It was further stated that the second respondent/first defendant in the suit owned 67 cents of land on the south of the suit property and he alienated the same to different persons. The appellant herein claimed to have purchased the south-eastern portion of the suit property from the second respondent and tried to obliterate the fence of the first respondent and hence, the first respondent laid the suit for declaration of title and injunction against the second respondent and the appellant herein.



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2. The appellant herein filed a written statement and submitted that the entire 2 acres of land in the suit survey number originally belonged to one Nimbavanam. After his death, his three sons viz., Kandasamy, Vaithiyalingam and Ramachandran succeeded to his estate. It was further averred in the written statement of the appellant that after death of Vaithiyalingam and Ramachandran, the first respondent claimed to have purchased the shares of Kandasamy and Ramachandran in the suit property. The first respondent attempted to annex portion of the property purchased by the appellant from the second defendant in the suit survey number and when her attempts were resisted, the first respondent came up with the present suit for declaration of title and injunction. The original written statement was filed by the appellant and the same was adopted by his vendor, the second respondent. The appellant also filed an additional written statement claiming 15 cents in the suit survey number under Ex.B.2 and Ex.B.25.

3. The trial Court, based on the evidence available on record, came to the conclusion that the first respondent proved her title and possession over



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the suit property and decreed the suit. Aggrieved by the same, the appellant herein filed first appeal in A.S.No.15 of 2000 and the same was dismissed by the first appellate Court. Aggrieved by the concurrent findings, the second defendant in the suit is before this Court.

4. At the time of admission, this Court formulated the following substantial questions of law:

“i) When the plaintiffs have purchased an undivided 1.33 acres without any specific boundaries out of 2 acres, is the suit filed by the plaintiffs for declaration of title and injunction maintainable when only a suit for partition should have been filed?

ii) Is the learned Additional District Judge right in decreeing the suit when the plaintiffs have not identified their property?

iii) Whether suit for declaration can be filed with respect of undivided share of land in which both the appellant and the respondents will have their share?”



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5. The learned counsel for the appellant submitted that under Ex.A.1, the first respondent purchased only undivided share in the suit property and hence, based on Ex.A.1, the first respondent cannot seek declaration of her title. It is the case of the learned counsel for the appellant that the proper course for the person who purchased undivided interest would be to file a suit for partition. When there is no partition by metes and bounds, it is not open to the first respondent to seek declaration of title by giving wrong boundaries.

6. The appellant also filed M.P.(MD) No.2 of 2012 seeking permission for raising additional evidence. Along with the petition, he filed four registered sale deeds executed by his vendor, the second respondent in favour of Narayanasamy, Karuppiyah, Balasubramanian and Susila dated 19.02.1975, 02.04.1975, 02.04.1975 and 30.08.1977 and another sale deed executed in favour of Susila dated 13.03.1980 and also sought them to be marked by way of additional documents. The appellant also produced two rectification deeds executed by his vendor Duraikannu in favour of Susila



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and another rectification deed executed by Susila in favour of Alagammal along with the petition to raise additional evidence. In the affidavit filed in support of the petition to raise additional evidence, it was stated that the appellant's vendor Duraikannau was entitled to 67 cents in the suit survey number and he sold 15 cents to the appellant and remaining 52 cents to Narayanasamy, Karuppiah, Balasubramanian and Susila. It was further stated that those documents were not available with the appellant at the time of trial and admission of the additional evidence would help the Court to resolve the dispute in the suit.

7. The learned counsel for the appellant, by taking this Court to the boundary description found in the documents executed by his vendor viz., the second respondent submitted that while selling properties to Narayanasamy, Karuppiah and Balasubramanian under document numbers 1 to 3 produced along with M.P.(MD) No.2 of 2012, his vendor retained some land on the northern side. Therefore, the boundary description mentioned in the plaint schedule may not be the correct one.



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8. The learned counsel for the first respondent submitted that the first respondent/plaintiff proved her title over the suit property by producing Ex.A.1 dated 12.08.1977, whereunder she purchased 1 acre and 33 cents in the suit survey number from the legal representatives of the paternal uncles of the second respondent. The learned counsel also by taking this Court to the evidence of D.W.1, submitted that the appellant himself admitted that there was a partition between the paternal uncles of the second respondent and his father and northern 1 acre and 33 cents was allotted to the share of the vendors of the first respondent. The learned counsel further submitted that the appellant also admitted as D.W.1 that even before his purchase, the first respondent had taken possession of 1 acre and 33 cents. Therefore, the Courts below rightly came to the conclusion that the first respondent proved her title and possession over the suit property and decreed the suit.

9. With regard to the first contention made by the learned counsel for the appellant that based on undivided share purchased by the first respondent, she is not entitled to maintain a suit for declaration of exclusive



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title, a perusal of Ex.A.1 and the evidence of D.W.1 would make it clear that there was a partition between the second respondent's father Kandasamy and his brother Vaithiyalingam and Ramachandran. When the appellant was examined as D.W.1, clearly admitted that there was a partition between Kandasamy and his two brothers. He further deposed that out of 2 acres in the suit survey number, the southern 67 cents was allotted to Kandasamy, the father of his vendor and his vendor sold that 67 cents to various persons under number of documents. D.W.1 also had given details of sales effected by his vendor, the second respondent herein on various dates. The vernacular extract of the same is as follows:

கந்தசாமி மற்றும் அவரது இரண்டு
சகோதரர்களுக்கு இடையே பாகப் பிரிவினை ஏற்பட்டிருந்த
விவரம் எனக்குத் தெரியும். இது சம்பந்தமாக
அவர்களுக்கு இடையில் எழுத்து மூலமான ஒரு பாகம் முறி
ஏற்பட்டது. அதை துரைக்கண்ணு என்னிடம் கொடுத்தார்.
மேற்படி இரண்டு ஏக்கர் நிலத்தில் தென்புறம் உள்ள 67
செண்ட் நிலம் கந்தசாமிக்கு ஒதுக்கப்பட்டது.
கந்தசாமிக்கு ஒதுக்கிய மேற்படி பாகத்தை அவரது
மகன்களுள் ஒருவரான துரைக்கண்ணு கிரையம் கொடுத்துக்
கொண்டிருந்தார். நான் கிரையம் வாங்குவதற்கு முன்பு
வேறு யார் யாருக்கெல்லாம் துரைக்கண்ணு கிரையம்



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கொடுத்துள்ளார் என்பதற்கு பத்திரங்களைப் பார்த்தேன். கந்தசாமிக்கு வந்த பாகத்தில் துரைக்கண்ணு 17 செண்ட் நிலத்தை நாராயணசாமி என்பவருக்கு 06.03.75ல் கிரையம் கொடுத்தார். இரண்டு ஏக்கர் நிலத்தில் தென்பகுதியில் உள்ள 67 செண்ட்டில் கிழக்கு ஓரமாக இருந்த 17 செண்ட் நிலத்தை துரைக்கண்ணு நாராயணசாமிக்கு கிரையம் கொடுத்தார். அதற்கு அடுத்த மேல்புறம் உள்ள எட்டரை செண்ட் நிலத்தை துரைக்கண்ணு ஒரு கருப்பையா என்பவருக்கு 15.04.75ல் கிரையம் கொடுத்தார். அதே தேதியில் இதற்கு அடுத்து மேல்புறம் உள்ள 17 செண்ட் நிலத்தை துரைக்கண்ணு ஒரு பாலசுப்பிரமணியன் என்பவருக்கு கிரையம் கொடுத்தார். நான் துரைக்கண்ணுவிடம் இருந்து கிரையம் வாங்கியது 1985ல். இரண்டு ஏக்கர் நிலத்தில் வடபுறம் இருந்த ஒரு ஏக்கர் 33 செண்ட் நிலத்தை 12.08.77ல் வாதி வைத்தியலிங்கம் மனைவி பாப்பா, மற்றும் ராமச்சந்திரன் மனைவி சரோஜா ஆகியோர்களிடமிருந்து கிரையம் பெற்று இருக்கிறார் என்று சொன்னால் உண்மைதான்.□

10. A perusal of the above said evidence of D.W.1 would make it clear that partition between the second respondent's father Kandasamy and his brothers Vaithiyalingam and Ramachandran was categorically admitted by the appellant herein. He had also gone to the extent of admitting that the first respondent purchased the said 1 acre and 33 cents lying on the northern



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portion of the suit survey number under sale deed dated 12.08.1977 from Pappa, wife of Vaithiyalingam; and Saroja, wife of Ramachandran. If this admission of D.W.1 is read along with the recitals in Ex.A.1, it would be clear that northern 1.33 acres in the suit survey number was allotted to the share of Vaithiyalingam and Ramachandran and from their legal representatives, the appellant purchased the same. Therefore, the argument posed by the learned counsel for the appellant that the first respondent purchased only undivided share and hence, she could not maintain a suit for declaration of title cannot be accepted.

11.1. As far as the possession of the first respondent/plaintiff is concerned, the same was admitted by the appellant as D.W.1. In his cross examination, he clearly admitted that the first respondent got possession of 1 acre and 33 cents purchased by her even before the appellant's purchase in the suit survey number. He also categorically admitted that 1 acre and 33 cents on the north of suit survey number was in possession of the first respondent. The vernacular extract of the same is as follows:

□நான் கிரையம் வாங்குவதற்கு முன்பே வாதி அவர்



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கிரையம் வாங்கிய ஒரு ஏக்கர் 33 செண்ட்டில் அனுபவத்திற்கு வந்துவிட்டார் என்று சொன்னால் உண்மைதான். எக்சிபிட் பி4 உத்திரவு சரியானதே. அதில் எனக்கு ஆட்சேபனை இல்லை. ஆலங்குடி தாசில்தார் அவரது ஸ்தலப் பார்வையில் வாதி கருப்பாயிக்கு புல எண் 238/4ல் ஒரு ஏக்கர் 33 செண்ட் அதாவது அந்த சர்வே நம்பரில் வடபுறம் உள்ளது. வாதி கருப்பாயின் அனுபவத்திலுள்ள இடம் எனக் கண்டார். வாதியின் ஒரு ஏக்கர் 33 செண்ட் நிலத்திற்கு ஆலங்குடி தாசில்தார் அத்துக் கற்கள் ஊன்றவில்லை. வாதிக்கு இந்த வழக்கு புல எண்ணில் வடபுறம் ஒரு ஏக்கர் 33 செண்ட் அனுபவம் உள்ளது என்பது நான் ஒப்புக்கொள்கிறேனா என்று கேட்டால் ஒப்புக் கொள்கிறேன். அந்த ஒரு ஏக்கர் 33 செண்ட் நிலம் வாதி கருப்பாயிக்கு உரிமைப்பட்டது என்பதையும் நான் ஏற்றுக்கொள்கிறேன்.□

11.2. Therefore, the appellant as D.W.1 admitted the possession of the first respondent over 1 acre and 33 cents on the northern side of the suit survey number.

12. The additional documents sought to be raised in M.P.(MD) No.2 of 2012 were referred to by D.W.1 in his evidence. While deposing about the various sales effected by his vendor, the appellant had minute details of



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all the sale transactions effected by his vendor including the dates and vendees' name. Therefore, the documents sought to be produced by way of additional evidences were very well available within the knowledge of the appellant even at the time of trial. In the affidavit filed in support of the petition for raising additional evidence, it was stated that those documents were not available with the appellant at the time of trial of the suit. Now, the certified copies of those documents are sought to be produced by way of additional evidences. When the appellant was able to give minute details of the sale transactions effected by his vendor even at the time of trial, he could have very well applied for certified copies of the same and produced it before the trial Court. Even before the first appellate Court, no attempt was made by the appellant to produce all these documents by way of additional evidence. Therefore, the reasons assigned by the appellant for production of additional evidence cannot be accepted and hence, M.P.(MD) No.2 of 2012 is dismissed.

13.1. In view of the discussions made earlier, this Court comes to a definite conclusion that the first respondent/plaintiff proved her title and



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possession over the suit property and hence, the findings rendered by both the Courts below need not be disturbed. All the substantial questions of law framed at the time of admission are answered, accordingly against the appellant and the second appeal is dismissed by confirming the judgments and decrees passed by the Courts below.

13.2. In nutshell, (i) this Second Appeal is dismissed by confirming the judgments and decrees passed by the Courts below; (ii) M.P.(MD) No.2 of 2012 is also dismissed; and (iii) in the facts and circumstances of the case, there will be no order as to costs.

20.02.2023

NCC: Yes
Index: Yes
Index: Yes

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To

- 1.The Additional District Judge,
Pudukkottai.
- 2.The District Munsif,
Pudukkottai.
- 3.The Section Officer, VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SOUNTHAR, J.

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