



A.S.Nos.860 & 861 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.04.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

A.S.Nos. 860 & 861 of 2010

A.S.No.860 of 2010:

Kalimuthu

...Appellant

Vs.

1.Balappa Gounder (Deceased)

2.N.P.Kandaswamy

3.The Land Acquisition Officer cum
Tahsildhar (Land Acquisition)
Salem to Karur Railway Track Scheme,
Namakkal.

4.Sellappa Gounder (Died)

5.Sellammal

6.Sarasu

7.Kanchana

8.Senthil Kumaran

...Respondents



A.S.Nos.860 & 861 of 2010

(R4 and 5 brought on record as LR's of the deceased 1st respondent and sole appellant was legal representative of the deceased 1st respondent vide order of Court dated 15.06.2017 in M.P.Nos.1 and 2 of 2012 in A.S.No.860 of 2010)

(R4 died, R6 to R8 are brought on record as LR's of the deceased 4th respondent vide Court order dated 15.12.2023 in C.M.P.No.15898 & 15899 of 2019 in A.S.No.860 of 2010).

Prayer: First Appeal is filed under Section 96 of the Code of Civil Procedure against the Judgment and Decree dated 02.08.2010 made in LA.O.P.No.46 of 2002 on the file of the Additional District Court, Fast Track Court, Namakkal.

For Appellant	:	Mr. T.Dhanyakumar
For Respondent	:	Died
		1 and 4
For Respondents	:	Ms.S.Uma Maheswari
		2, 6 to 8
For Respondent 3:		Mr. S.Jayachandran
		Government Advocate
For Respondent 5 :		No Appearance.



A.S.Nos.860 & 861 of 2010

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A.S.No. 861 of 2010:

Kalimuthu

...Appellant

Vs.

1.Sellappa Gounder (Died)

2.The Land Acquisition Officer cum
Tahsildhar (Land Acquisition)
Salem to Karur Railway Track Scheme,
Namakkal.

3.Sarasu

4.Kanchana

5.Senthil Kumaran

...Respondents

(R1 died, R3 to R5 are brought on record as LR's of the deceased 1st respondent vide Court order dated 15.12.2023 in C.M.P.No.16177 & 16652 of 2019 in A.S.No.861 of 2010).

Prayer: First Appeal is filed under Section 96 of the Code of Civil Procedure against the Judgment and Decree dated 02.08.2010 made in LA.O.P.No.45 of 2002 on the file of the Additional District Court, Fast Track Court, Namakkal.



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A.S.Nos.860 & 861 of 2010

For Appellant : Mr. T.Dhanyakumar
For Respondent 1: Died
For Respondent 2: Mr. S.Jayachandran
Government Advocate
For Respondents : Mr. S.Uma Maheswari
3 to 5

COMMON JUDGMENT

The two appeals arise from the two claim petitions in respect of which a common Judgement has been rendered by the Additional District Court, Fast Track Court, Namakkal. The facts are briefly set out herein below and the parties are referred to as the claimants and the respective respondents.

2. L.A.O.P.No.45 of 2002 was filed by one Sellappa Gounder and Kalimuthu, both sons of Balappa Gounder. A.S.No.861 of 2010 is filed challenging this award. LA.O.P.No.46 was filed by one Balappa



Gounder, Kandaswamy and Kalimuthu. A.S.No.860 of 2010 has been filed challenging this award. The 2nd claimant Kandasamy had purchased the property subject matter of the proceedings which belonged to Sellappan, the son of the 1st claimant and brother of the 3rd claimant.

3. L.A.O.P.No.45 of 2002 had been filed since dispute had arisen amongst the claimants with reference to the entitlement to the award amount deposited under the Land Acquisition Act for acquiring the lands comprised in S.No.256/1B, 256/2, 256/3, 256/4, 256/5, 256/6 measuring 0.20.0, 0.03.0, 0.02.0, 0.04.5, 1.01.5 and 1.13.5 hectares, respectively, situate in Lathuvadi village of Namakkal. These lands were acquired for the expansion of the Salem to Karur railway track. As there was dispute amongst the claimants as regards who should receive compensation, the matter was referred to the Court under Section 30 and 31 (2) of the Land Acquisition Act. Originally the matter was referred to the Sub Court in L.A.O.P.No.81 of 2000 and thereafter transferred to the file of the Additional District Court, Fast



Tract Court, Namakkal and re-numbered as L.A.O.P.No.45 of 2002.

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4. Similarly, dispute arose with reference to the lands acquired in S.No.251 and S.No.23. The matter was referred to the Sub Court, Namakkal in L.A.O.P.No.82 of 2002, subsequently it was transferred to the file of the Additional District Court, Namakkal and re-numbered as L.A.O.P.No.46 of 2002.

5. It is the case of the 1st claimant in L.A.O.P.No.45 of 2002 that he and the 2nd claimant are brothers. The lands that had been acquired by the respondent was the ancestral property of the claimants. In the month of April 1986 in the presence of Panchayatars, the claimants and their father had entered into an oral partition and on 02.05.1986, three lists of properties were prepared and each of the sharers were given one copy.

6. Under this partition, the 2nd claimant was allotted the A schedule property and the 1st claimant was allotted the B Schedule



property. Their father Balappa Gounder and his wife were to be given 4 bags of pulses / paddy together with a sum of Rs.50/- every year in the Tamil month of Thai. The sharers had taken possession of their respective properties immediately and have been in possession and enjoyment of the same. The property that have now been acquired are covered in the B schedule of this list, which had been allotted to the 1st claimant. Since the 2nd claimant had been disturbing the enjoyment of the property allotted to the 1st claimant he had filed a suit in O.S.No.731 of 1989 on the file of the District Munsif, Namakkal for declaration and injunction. The suit was decreed on 31.07.1990 against which there has been no appeal. Therefore, the 1st claimant's right to the properties described in the B schedule property of the partition list have been confirmed.

7. Since once again dispute had arisen between siblings one more mediation was attempted between the claimants on 29.07.2002. In this Panchayat, the properties that had already been allotted to the 1st claimant under the earlier partition dated 02.05.1986 was once again



allotted to him. Therefore, it is the claim of the 1st claimant that the 2nd claimant cannot claim any share in the award amount. The parents had also released their life interest in favour of the 1st claimant under a deed dated 29.07.1992 and the 1st claimant had given a total sum of Rs.50,000/- to his parents.

8. Thereafter, it appears that 2nd claimant had filed O.S.No.307 of 1996 against the 1st claimant for a partition which was later withdrawn. The 2nd claimant had deliberately suppressed the earlier decree in O.S.No.731 of 1989, partition dated 02.05.1986 and 29.07.1992. The further contention that the 2nd claimant has purchased the property from his father under a sale dated 22.07.1992 is also an absolute falsehood and the sale is not binding on the 1st claimant as the father only had a life interest over the property. Therefore, the 1st claimant prayed that the property being his exclusive property award amount should be paid to him.



9. The 2nd claimant had filed a statement inter alia contending that the decree in O.S.No.731 of 1989 is not binding upon him as the same is an ex parte decree. He would submit that he is entitled to a 1/3rd share in the amounts deposited, namely, Rs.3,88,517/-.

10. In L.A.O.P.No.46 of 2002, the 1st claimant, namely, Balappa Gounder did not file any claim.

11. The 2nd claimant in L.A.O.P.No.46 of 2002 would submit that the property that has been acquired is an extent of 0.29.5 hectares in S.No.256/11B and the entire extent has been acquired. This property was purchased by the 1st claimant under a sale deed dated 16.11.1992. The property was purchased from one Sellappan and his son. Sellappan is the 1st claimant in L.A.O.P.No.45 of 2002. From the date of the purchase, the 1st claimant has been in possession of the property. The property purchased by the 2nd claimant has been completely acquired. The 1st claimant is the father of Sellappan, the predecessor in



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title of the 2nd claimant and the 3rd claimant is the brother of the said Sellappan and is the 2nd claimant in L.A.O.P.No.45 of 2002. The properties are the ancestral properties of Sellappan and on 02.05.1986 a partition list evidencing the earlier oral partition was prepared. In the partition list, the 7th item of 'B' schedule is found.

12. The said Sellappan has already obtained a decree declaring his right to the said property in O.S.No.731 of 1989 on the file of the District Munsif, Namakkal. The 2nd claimant traces title to the property from Sellappan and therefore he is a bona fide purchaser for value and is entitled to the award amount.

13. The 3rd claimant filed a statement stating that he is entitled to a 1/3rd share.

14. The learned Additional District Judge, Namakkal had framed the following issues in both the LAOPs:



A.S.Nos.860 & 861 of 2010

“1.கோரிக்கையாளர் காளிமுத்து மற்றும் செல்லப்பன் ஆகியோர்கள் அடங்கிய பூர்வீக கூட்டுக் குடும்ப சொத்துக்கள் பாகபிரிவினை ஏற்பட்டு ஆர்ஜித சொத்துக்களும் மற்ற சொத்துக்களும் கோரிக்கையாளர் செல்லப்பனுக்கு கிடைக்கப்பெற்றதா?

2.கோரிக்கையாளர் காளிமுத்துக்கு 2 அசல் மனுக்களில் கண்ட ஆர்ஜித சொத்துக்களில் 3ல் ஒரு பங்கு பாத்தியப்பட்டதா?

3.கோரிக்கையாளர்களுக்கு கிடைக்கக்கூடிய தொகை எவ்வளவு?

15. The 1st claimant in L.A.O.P.No.45 of 2002, Sellappan, examined himself as C.W.1, the 2nd claimant in LA.O.P.No.46 of 2002 had been examined himself as C.W.2 and one Pappathy and



Muthuswamy were examined as C.W.3 and C.W.4, respectively and Ex.C.1 to Ex.C.10 were marked on the side of the claimants. In L.A.O.P.No.46 of 2002 the claimants had filed two documents.

16. Ultimately, the learned Judge taking into account the earlier decree had rejected the claim of the appellant herein in L.A.O.P.No.45 of 2002 and had directed that the award will be deposited to the credit of the 1st claimant, Sellappan. Similarly, the amounts were directed to be deposited to the credit of the 1st claimant, Kandasamy, in L.A.O.P.No.46 of 2002.

17. Challenging the said awards, the appellant is before this Court. The only point for consideration in both these appeals is *Whether the appellant herein is entitled to claim a share amount in the light of the Judgement in O.S.No.731 of 1989.*

18. The learned counsel appearing for the appellant herein would vehemently contend that the decree in O.S.No.731 of 1989 is not a



contested decree and is only an ex parte decree and therefore it cannot be contended that the property belongs exclusively to Sellappan, the 1st claimant and also to Kandasamy, who had purchased the property from the said Sellappan.

19. However, the learned counsel appearing for the respondent would submit that the appellant cannot make such an arguments especially when he had not challenged the decree in O.S.No.731 of 1989.

20. Heard the learned counsels and perused the records.

21. It is an admitted case that the property which have been acquired and which is the subject matter of two LAOPs are the ancestral properties of the appellant and the said Sellappan. It is also not in dispute that the 1st claimant, Sellappan has obtained a decree declaring his title to these properties and an injunction restraining the appellant from interfering with his peaceful possession and enjoyment



A.S.Nos.860 & 861 of 2010

of the property in O.S.No.731 of 1989.

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22. The appellant has not taken any steps whatsoever either to set aside the ex parte decree or to file an appeal against the said Judgement. Therefore, the Judgement and Decree in O.S.No.731 of 1989 continues to bind the parties till such time it is set aside. Therefore, the Courts below has rightly rejected the request of the appellant and granted the award amount to the said Sellappan, the 1st claimant in L.A.O.P.No.45 of 2002 and Kandasamy, the 2nd claimant in L.A.O.P.No.46 of 2002.

23. The point for consideration has to necessarily be held against the appellant and is accordingly held and the appeals are dismissed. No costs.

04.04.2024

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A.S.Nos.860 & 861 of 2010

To

The Additional District Court,
Fast Track Court,
Namakkal.



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A.S.Nos.860 & 861 of 2010

P.T. ASHA, J,

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A.S.Nos. 860 & 861 of 2010

04.04.2024