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IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 28 / 03 / 2024

JUDGMENT PRONOUNCED ON : 19 / 06 / 2024

CORAM:

THE HON'BLE MR.JUSTICE R.SAKTHIVEL

S.A.NO.1552 OF 2008
AND MP NO.1 OF 2008

Governor S/o. Mayavan

... 2nd Defendant /
2nd Respondent /
Appellant

Versus

1.Seetharaman
2.Arumugam
3.Rani
4.Ponnusamy

... Plaintiffs /
Appellants /
Respondents 1 to 4

5.Rama Kounder

... 1st Defendant /
1st Respondent /
5th Respondent

6.The Assistant Engineer (O&M)
Tamil Nadu Electricity Board
Madapattu Village,
Ulundurpet Taluk.

7.The Assistant Accounts Officer
Tamil Nadu Electricity Board
Ulundurpet,
Villupuram District.

... Defendants 3 and 4/
Respondents 3 & 4/
Respondents 6 & 7



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PRAYER: Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree in A.S.No.4 of 2007 dated 22.08.2008 on the file of the Principal Subordinate Judge, Villupuram, reversing the judgment and decree in O.S.No.119 of 2005 dated 28.07.2006 on the file of the Principal District Munsif, Ulundurpet.

For Appellant : Mr.N.Suresh

For Respondents
1 to 4 : No appearance

For Respondents 5 : Set *Exparte* before the First
Appellate Court. Notice to R5 is
dispensed with in this judgment

For Respondents 6&7 : Ms.Hemalatha Gajapathy
Standing Counsel for TNEB

J U D G M E N T

This Second Appeal is directed against the judgment and decree dated August 22, 2008, passed in A.S.No.4 of 2007 by the 'Principal Subordinate Court, Villupuram' [henceforth 'First Appellate Court' for the sake of brevity], reversing the judgment and decree dated July 28, 2006 passed in O.S.No.119 of 2005 by the 'Principal District Munsif Court, Ulundurpet' [henceforth 'Trial Court' for the sake of brevity].



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2.The appellant herein is the second defendant and respondents 1 to 4 herein are the plaintiffs in O.S.No.119 of 2005. The plaintiffs filed a Suit for declaration of title with regard to 'B Schedule of the Suit Property' (henceforth 'Suit Property' for brevity and convenience) which comprises of an extent of 6 Cents within four specified boundaries along with the borewell and the '*Agricultural Electricity Service Connection No.16*' (henceforth 'S.C. No.16') therein. Further, seeking an injunction against the 2nd defendant and his men or agents not to use the S.C.No.16. Further, seeking a mandatory injunction effecting name transfer in favour of the plaintiffs and the first defendant, and for costs.

3.For the sake of convenience, the parties herein will be referred to as per their array in the Original Suit.

Case of the Plaintiffs:

4.The case of the plaintiffs is that the Suit Property was jointly allotted to the plaintiffs and 4th plaintiff's brother – Ranganathan vide Partition Deed dated *March 5, 1980* as 'F' Schedule property therein. But due to inadvertence and omission, in the said Partition Deed, the



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S.C.No.16 relating to 'F' Schedule property was omitted and *Survey No.107/13* relating to 'F' Schedule property was mistakenly recorded as *Survey No.107/12*. Taking advantage of the said fact, the 2nd defendant claims title over the Suit property and have surreptitiously effected name transfer in his name in respect of *S.C.No.16*. Hence, the Suit.

Case of the Defendant No.1 & 2:

5.The second defendant filed written statement which was adopted by the first defendant. It is stated therein that the second defendant's father -Mayavan is the exclusive owner of *S.C.No.16*. After the demise of second defendant's father, the second defendant transferred *S.C.No.16* in his name. The second defendant wants to shift *S.C.No.16* to his separate well. The second defendant alone is the exclusive owner of *S.C.No.16*. Hence, he prayed to dismiss the Suit.

Trial Court's Findings:

6.Before the Trial Court, the first plaintiff was examined as P.W.1 and two other witnesses, namely Selvaraj and Devaraj, were examined as P.W.2 and P.W.3, and Ex-A.1 to Ex-A.8 were marked on the



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side of the plaintiffs. On the side of the defendants, second defendant was examined as D.W.1 and Ex-D.1 to Ex-D.6 were marked. After hearing both sides, the Trial Court held that under Ex-A.1 – Partition Deed, ‘F’ Schedule Property was jointly allotted to the plaintiffs and the 4th plaintiff’s brother, and ‘F’ Schedule therein does not have any mention of *S.C.No.16*; that the plaintiff failed to produce documents pertaining to *S.C.No.16* to prove that *S.C.No.16* stands on their name; that moreover, *S.C.No.16* is situated at *Survey No.107/13*; that, hence, the plaintiffs are not entitled to the reliefs sought for. Accordingly, the Trial Court dismissed the Suit in its entirety.

First Appellate Court’s Finding:

7. Feeling aggrieved with the decision of the Trial Court, the plaintiffs preferred an Appeal Suit in A.S.No.4 of 2007 before the First Appellate Court. The first defendant has not contested the appeal and he was set *ex parte* in the First Appellate Court. The First Appellate Court held that *Survey No.107/13-B* stands in the names of Munniyan, Seetharaman and Ranganathan; and that *S.C.No.16* is specifically mentioned under ‘F’ Schedule Property in Ex-A.1 : Ex-A.7 – Partition



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Deed. Accordingly, allowed the Appeal Suit in its entirety vide judgment and decree dated August 22, 2008.

8. Feeling aggrieved with the judgment and decree passed by the First Appellate Court, the second defendant preferred this Second Appeal.

Substantial Questions of Law:

9. The Second Appeal was admitted on December 8, 2008 and the following substantial questions of law were framed:

“1. Whether the Court below is right in granting relief in favour of the plaintiffs in respect of Service Connection No.16 when the Partition Deed viz., Ex.A1 does not confer any right on the plaintiffs?”

2. Whether the Court below is right in granting the reliefs of prohibitory injunction and mandatory injunction in respect of Service Connection No.16, when both the reliefs are inconsistent and mutually destructive with each other?”



Arguments:

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10.The learned Counsel for the appellant / second defendant has argued that the S.C.No.16 situated in Survey No.107/13-B belongs to the appellant / second defendant; that the respondents 1 to 4 / plaintiffs have no rights in 'A' Schedule properties which were allotted to the appellant / second defendant vide Ex-A.1; that the S.C.No.16 is for the bore well which lies within the four boundaries allotted to the appellant / second defendant; and that the First Appellate Court failed to appreciate the evidence available on record in the right perspective and erroneously allowed the appeal. Hence, it is liable to be interfered with. Accordingly, he prayed to allow this Second Appeal and restore the Trial Court's judgment and decree.

11.Despite service of notices, the respondents 1 to 4 / plaintiffs did not appear and contest this second appeal. The 5th respondent/ 1st defendant was set *ex parte* before the First Appellate Court. Hence, notice to him is dispensed with



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12.Learned Counsel for the respondents 6 and 7 / defendants

3 and 4, submitted that the S.C.No.16 stood in the name of Mayavan and was later transferred in the name of Mayavan's son – Governor. Notably, respondents 6 and 7 did not file written statement and they were set *ex parte* in the Trial Court as well as the First Appellate Court.

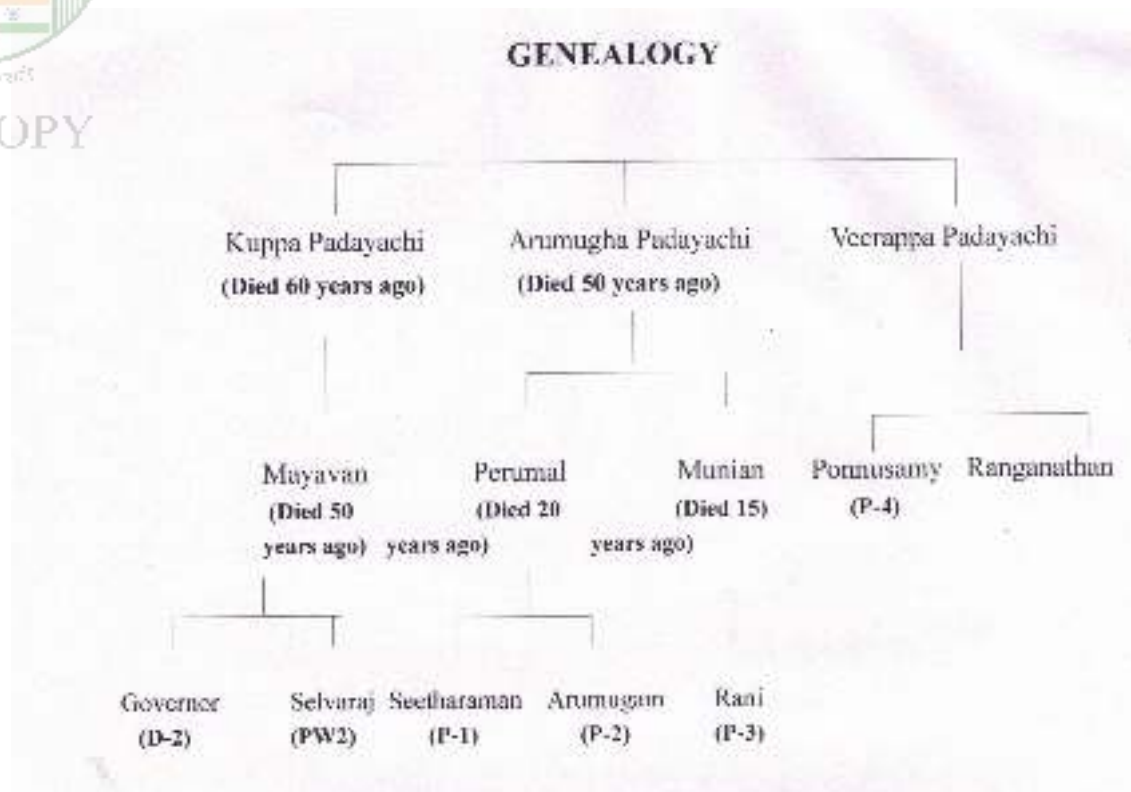
Discussion and Decision:

13.This Court has considered the submissions made on either side and perused the materials available on record in light of the substantial questions of law.

14.Admittedly, an extent of 4 Acre 24 Cents in Survey No.108/15, an extent of 1 Acre 22 Cents in Survey No.107/12 and an extent of Acre 1 Acre 20 Cents in Survey No.107/13 are ancestral properties that were under possession and enjoyment of the forefathers of plaintiffs and 2nd Defendant, as joint family properties. The relationship between the parties is admitted. The plaintiffs filed a genealogy and the same is reproduced hereunder:



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15. On March 5, 1980, under Ex-A.1 - Partition Deed, the second defendant, and the plaintiffs 1 to 4 along with 4th plaintiff's brother - Ranganathan, had entered into a registered Partition Deed with regard to the aforesaid extents of land, wherein and whereby, they divided them as detailed below:

Siruthanoor Village, Ulundurpet Taluk

Survey No.	Total Extent	'A' Schedule	'B' Schedule	'C' Schedule	'D' Schedule	'E' Schedule	'F' Schedule	Total Extent
108 / 15	4.24	1.41	0.71	0.71	0.70 ½	0.70 ½	-	4.24
107 / 12	1.22	0.39	0.38 ½	-	-	0.38 ½	0.06	1.22
107 / 13	1.20	0.40	0.20	0.20	-	0.40	-	1.20
	6.66	2.20	1.29 ½	0.91	0.70 ½	1.49 ½	0.06	6.66



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15.1.As per Ex-A.1 - Partition Deed, 'A' Schedule properties were allotted to the 2nd defendant – Governor, 'B' Schedule properties were allotted to 1st plaintiff - Seetharaman, 'C' Schedule properties were allotted to 3rd plaintiff's father – Muniyan, 'D' Schedule properties were allotted to 4th plaintiff – Ponnusamy, 'E' Schedule properties were allotted to 4th plaintiff's brother – Ranganathan and 'F' Schedule properties were jointly allotted to the plaintiffs and the 4th plaintiff's brother – Ranganathan.

16.The 'F' Schedule in Ex-A.7 – Certified copy of the Partition Deed dated *March 5, 1980* reads as follows:

' . . நம்மில் 2, 3, 4, 5 நபர்கள் பொதுவாய் சம்பாகமாய் அனுபவித்துக்கொள்ள வேண்டிய F சொத்தானது ஷை சப்பி சிறுத்தானூர் கிராமத்தில் அபு.ரீ. சர்வே 107.12 – 1.22 ல் இதில் E பாகம் புஞ்சைக்கு (தெ) A பாக புஞ்சைக்கு (மே) நயினாக்கவுண்டர் புஞ்சைக்கு (வ) ரங்கநாதன் புஞ்சைக்கு (கி) இதன் மத்தியில் - 0.06க்கு தீர்வை 0.10 சர்சார்ஜ் தீர்வை 0.05 மொத்த தீர்வை 0.15 இதற்கு 25 மடங்காக மதிப்பு ரூபாய் 3.75. இதில் உள்ள 4 அங்குலம் அகலம் 70 அடி ஆரம் உள்ள போர் மதிப்பு ரூபாய் 1000-00. இதில் சிறுத்தானூர்



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S.S.1 ல் இருந்து எடுக்கப்பட்டுள்ள SC 16 நெம்பர் சர்வீஸ் 7½ ஆர்ஸ் பவர் வேகம் உள்ள சர்வீஸ் நெம்பர். இதில் இணைக்கப்பட்டுள்ள மின்விசை மோட்டார் 7½ ஆர்ஸ் பவர் வேகமுள்ள பிரிமியர் பம்பு வகையராக்கள் மின்விசை சாமான்கள் உள்படவும் மதிப்பு ரூபாய் 5000.00.

A பாக சொத்து மதிப்பு ரூபாய் 136.00

B பாக சொத்து மதிப்பு ரூபாய் 80.50

C பாக சொத்து மதிப்பு ரூபாய் 55.50

D பாக சொத்து மதிப்பு ரூபாய் 42.75

E பாக சொத்து மதிப்பு ரூபாய் 92.50

F பாக சொத்து மதிப்பு ரூபாய் 6003.75 . . . '

17.Perusal of Ex-A.1 would reveal that it is a 15-page document. However, Ex-A.1 has only 14 pages and the last page went missing. Therefore, the plaintiffs' filed Ex-A.7 which is the certified copy of the said Partition Deed obtained from the Registration Department, containing all the 15 pages. Perusal of the 15th page would reveal that the S.C.No.16, the borewell and the motor pump set in Survey No.107/12 were allotted to the plaintiffs and fourth plaintiff's brother for their joint enjoyment as 'F' Schedule property. The Trial Court without considering the last page of the said Partition Deed, dismissed the Suit in its entirety.



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17.1.Further, in the said Partition Deed, P.W.2, who is none other than second defendant's brother, has signed as one of the witnesses.

He has deposed that, at the time of Ex-A.1 - Partition Deed, S.C.No.16 and the bore well were allotted to the plaintiffs and fourth plaintiff's brother for their joint enjoyment.

17.2.Hence, both the parties cannot now turn around and contend contrary to the recitals of Ex-A.1:Ex-A.7.

18.The contention of the plaintiffs in this regard is that, 'F' Schedule properties has been described within four specific boundaries in Ex-A.1 : Ex-A.7; but, the land within the said four boundaries comes under Survey No.107/13-B and not under Survey No.107/12. This clearly shows that in Ex-A.1 : Ex-A.7, Survey No.107/13-B has been erroneously recorded as Survey No.107/12. Further, Ex-A.5 – *Patta No.482* for *Survey No.107/13-B* stands jointly in the name of the 1st plaintiff, the 3rd plaintiff's father -Muniyan, the 4th plaintiff and the 4th plaintiff's brother – Ranganathan, which also shows that 'F' Schedule properties which were commonly allotted, lie in *Survey No.107/13-B*.



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19.This Court has perused Ex-A.1 : Ex-A.7 – Partition Deed

and is of the view that the plaintiffs' contention is incorrect. There is no dispute that 'F' schedule properties are the commonly allotted properties. The only question is 'F' Schedule properties lie under which Survey Number.

19.1.As per Ex-A.1 : Ex-A.7, the total extent of Survey No.107/13 is 1 Acre 20 Cents, out of which, an extent of 40 Cents were allotted to the second defendant; an extent of 20 Cents were allotted to the first plaintiff; an extent of 20 Cents were allotted to the third plaintiff's father -Muniyan; and an extent of 40 Cents were allotted to the fourth plaintiff's brother. Hence, the entire extent of land comprised in Survey No.107/13 was allotted to the plaintiffs and the second defendant. There is neither common allotment nor there is any land available for common allotment in Survey No.107/13.

19.2.On the other hand, as per Ex-A.1 : Ex-A.7, Survey No.107/12 has a total extent of 1 Acre 22 Cents, out of which, an extent of 39 Cents were allotted to the 2nd defendant, 38 ½ Cents were allotted to the 1st plaintiff and 38 ½ Cents were allotted to the 4th plaintiff's brother –



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Ranganathan under Ex-A.1. – Partition Deed. The remaining extent of 6 Cents were jointly allotted to the plaintiffs and the fourth plaintiff's brother as 'F' Schedule properties.

19.3.To be noted, there was no sub-division in Survey No.107/13 at the time of Ex-A.1 : Ex-A.7 – Partition Deed. Sub-division of Survey No.107/13 viz., Survey No.107/13-B could be a subsequent venture of the plaintiffs or the 2nd defendant. However it may be, Survey No.107/13-B cannot constitute 'F' Schedule properties as there is no property available for common allotment in Survey No.107/13. Also, as per Ex-A.1 : Ex-A.7, 'F' Schedule properties consist of an extent of 6 Cents whereas Survey No.107/13-B consist of an extent of only 3.7 Cents. Further, the contention of the plaintiff has not been supported by any evidence.

19.4.Furthermore, admittedly, 4th plaintiff's brother - Ranganathan executed a Sale Deed (Ex-A.8) in respect of his 1 ½ Cents land i.e., ¼ share in 'F' Schedule properties, in favour of the first defendant. The recitals of Ex-A.8 - Sale Deed, reveals that 'F' Schedule properties lie under Survey No.107/12.



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19.5.It is true that four boundaries prevail over extent. The plaintiff's contention in other words would mean four boundaries prevail over Survey Numbers. This Court is of the view that in the instant case, four boundaries cannot take precedence over the Survey Number as the Survey Number has been explicitly mentioned in the Partition Deed and there is nothing contrary to it.

19.6.Hence, the contention of the plaintiff that Survey No.107/13-B is erroneously recorded as Survey No.107/12 in Ex-A.1: Ex-A.7; and that 'F' Schedule properties lie in Survey No.107/13-B, does not hold up under scrutiny and therefore, deserves to be rejected. The findings of the First Appellate Court that the 'F' Schedule properties lie in Survey No.107/13 is not based on evidence.

20.As stated *supra* in Paragraph No.16, S.C.No.16 and the bore well were allotted to the plaintiffs and fourth plaintiff's brother for their joint enjoyment under Ex-A.1 - Partition Deed. The Trial Court failed to consider the above said fact and dismissed the Suit in its entirety.



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21. In view of the foregoing discussion, this Court is of the view that, the plaintiffs are entitled to declaration in respect of the 6 Cents land in Survey No.107/12 including S.C.No.16 therein, described as 'F' Schedule Properties under Ex-A.1 : Ex-A.7 - Partition Deed. **Question of Law (i) is answered accordingly.**

22. It is settled law that to succeed a plea of mandatory injunction in respect of immovable property, there has to be clear cut and unambiguous description of the immovable properties with all the relevant particulars so as to enable the Court to identify the property. In the absence of such unambiguous description, mandatory injunction cannot be granted. In this case, the plaintiff has not taken any steps to measure and ascertain the respective properties allotted to them under Ex-A.1:Ex-A.7 - Partition Deed. Further, the presence, the current existence and location of the borewell and the electric motor pump set has not been established. Hence the plaintiffs are not entitled to the relief of mandatory injunction with respect to the borewell and the motor pump set.

23. As far as S.C.No.16 is concerned, at the time of Ex-A.1 – Partition Deed, S.C.No.16 was standing in the name of 2nd defendant's



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father. As stated supra, S.C.No.16 was commonly allotted to the plaintiffs and Ranganathan. Ranganathan sold his common $\frac{1}{4}$ share to 1st defendant vide Ex-A.8 – Sale Deed. Further, as per Ex-B.6, S.C.No.16 which was standing in the name of 2nd defendant's father - Mayavan has been transferred to the name of the 2nd defendant. The plaintiff filed objection for the same under Ex-A.6. The defendants No.3 and 4, who are the electricity board officials, were conveniently set *ex parte* before the Trial Court. Considering the facts and circumstances of the case and to avoid multiplicity of proceedings, this Court is of the considered view that the plaintiff is entitled to the relief of declaration and mandatory injunction in respect of S.C.No.16 in favour of the plaintiffs and the 1st defendant against the 2nd defendant. **Substantial Question of Law (ii) is answered accordingly.**

24.In fine, **the Second Appeal is partly allowed.** The First Appellate Court's decree is modified, and the Original Suit is decreed in the following terms:



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(i) It is hereby declared that the plaintiffs and the first defendant are the owners of the land measuring 6 Cents comprised in Survey No.107/12, described under 'F' Schedule in Ex-A.1:Ex-A.7 - Partition Deed.

(ii) It is hereby declared that the plaintiffs and the first defendants are commonly entitled to the *Agricultural Electricity Service Connection No.16* that comes under the jurisdiction of the defendants 3 and 4.

(iii) The defendants 3 and 4 are directed by way of mandatory injunction to effect name transfer of Agricultural Electricity Service Connection No.16 that comes under the jurisdiction of their jurisdiction, in the name of the plaintiffs and the first defendant, as per due procedure.



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(iv)It is clarified that the 'F' Schedule properties as described in Ex-A.1:Ex-A.7 Partition Deed is situated in Survey No.107/12 and not in Survey No.107/13.

(v)Considering the facts and circumstances of the case, there shall be no order as to costs.

(vi)Consequently, connected Miscellaneous Petition is closed.

19 / 06 / 2024

Index : Yes
Internet : Yes
Neutral Citation : Yes
Speaking order
TK

To

1.The Principal Subordinate Judge
Principal Subordinate Court
Villupuram.

2.The Principal District Munsif
Principal District Munsif Court
Ulundurpet.



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R.SAKTHIVEL, J.

TK

PRE-DELIVERY JUDGMENT MADE IN
S.A.NO.1552 OF 2008

19 / 06 / 2024