



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2024

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

S.A.Nos.1649 & 1650 of 2011 and
M.P.Nos.1 and 1 of 2011

S.A.No.1649 of 2011

Balakrishnan

... Appellant / Plaintiff

Vs.

1.Pazhanimuthu

2.Dhanasekaran (deceased)

3.Shanthi

4.Jayachithra (Minor)

5.Jayachandran (Minor)

(RR3 to 5 brought on record as Legal Heirs of the deceased
R2 vide order dated 14.11.2014 made in M.P.No.1 of 2024)

... Respondents / Defendants

Prayer: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree dated 22.11.2004 passed in A.S.No.124 of 2003 by the Additional Subordinate Judge, Virudhachalam, confirming the judgment and decree dated 29.09.2003 passed in O.S.No.206 of 1992 by the Additional District Munsif Court - I, Virudhachalam.



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For Appellant : Mr.E.Prabhu

For Respondents : No appearance for RR1,3 to 7
R2-died

S.A.No.1650 of 2011

Balakrishnan

... Appellant / Plaintiff

Vs.

1.K.V.Ramasamy

2.Padmavathy (deceased)

3.A.Kalaiselvi

4.A.Ravanarajan

5.A.Arivarasan

6.A.Tamilarasan

7.A.Kalaiarasan

(RR3 to 7 brought on record as the legal heirs of the deceased
R2 vide order dated 23.06.2024 made in M.P.No.4 of 2014)

... Respondents / Defendants

Prayer: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree dated 22.11.2004 passed in A.S.No.125 of 2003 by the Additional Subordinate Judge, Virudhachalam, confirming the judgment and decree dated 29.09.2003 passed in O.S.No.261 of 1996 by the Additional District Munsif Court - I, Virudhachalam.



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For Appellant : Mr.E.Prabhu

For Respondents : No appearance for RR1,3 to 5
R2-died

COMMON JUDGMENT

These Second Appeals have been filed to set aside the judgment and decree dated 22.11.2004 passed in A.S.Nos.124 & 125 of 2003 by the Additional Subordinate Judge, Virudhachalam, confirming the judgment and decree dated 29.09.2003 passed in O.S.No.206 of 1992 and O.S.No.261 of 1996 by the Additional District Munsif Court - I, Virudhachalam.

2. Heard Mr.E.Prabhu, learned counsel for the appellant in both Second Appeals and perused the materials available on record.

3. The appellant is the plaintiff in both the suits in O.S.No.206 of 1992 and O.S.No.261 of 1996. The suits have been filed by the plaintiff for seeking the relief of declaration of title with permanent injunction and for recovery of possession against the defendants. Pending suit, the defendants in O.S.No.206 of 1992 has sold the property to the defendants in O.S.No.261 of 1996. Hence, the plaintiff has filed the similar relief in the other suit also against the purchasers. The Trial Court has dismissed the



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suits as not maintainable and on an Appeal preferred by the plaintiff, the First Appellate Court has also confirmed the judgment and decree of the Trial Court.

4.The facts pleaded in the plaint are as follows:

The suit property lies in Karuveppillankurichi Village. The suit property and the property north of the suit property originally belonged to the first defendant's mother Sornammal. The said Sornammal sold the suit property and the property north of it to the plaintiff's father Ramasamy Naidu on 15.08.1956 by a registered sale deed and handed over possession of the said properties and the said Ramasamy Naidu put up thatched house on the eastern side in the property north of the suit property. About 32 years back, the plaintiff's father has dismantled the thatched house and constructed a Mangalore tiled house and have been enjoying the property by leaving the vacant site on the western side and on the south side. The plaintiff's father died about 30 years back, leaving behind the plaintiff, his mother and his sister as his legal heirs. Thus, the plaintiff became the absolute owner of the suit property and the northern property. In the



northern property, the plaintiff constructed a Mangalore tiles building for his brother-in-law's Tractor Trailor Wilding and Lethe Business.

4.1. In 1984, by oral exchange, the plaintiff gave one portion in the western side of the northern property to the first defendant and in exchange for that, the plaintiff took the property lying on the southern side. The brother-in-law of the plaintiff was using the building in the northern property and he had been using the suit property for repair works of the Tractor Trailor and for putting up the things in respect of his business. In the suit property, the plaintiff's father and the plaintiff were in open, continuous and uninterrupted possession over the same. Since the first defendant asked for a cancellation of the oral exchange, the plaintiff had given away the first defendant's property in January 1992. After the cancellation of the oral exchange, the plaintiff has put up a compound wall on the northern side and the western side. In the suit property, the defendants are wrongly claiming rights over the same and they have prevented the plaintiff from putting up any compound wall in the suit property. They have been trying to trespass into the suit property. Their



action is against the law and not justifiable. Therefore, the plaintiff has filed the suits.

5. The averments made in the written statement filed by the first defendant are as follows:

The suit is false and is filed with a fraudulent intention. The suit is not maintainable in law and is not justifiable and hence, the suit is liable to be dismissed. The suit property and other properties in R.S.No.41/7 measuring 16 cents originally belonged to one Chinnathambi and others. As per the records, the measurement is 16 cents and the actual extent available is 15 1/4 cents. Since the said Chinnathambi was a minor, his mother and guardian Deivanai for herself and for the minors had sold 16 cents to one Namasivaya Padayachi by way of sale. The said Chinnathambi had sold the 10 cents on the northern side to the same Namasivaya Padayachi by a sale deed dated 18.04.1944. The said Namasivaya Padayachi has sold the 10 cents on the northern side to the first defendant's mother Sornammal. The 6 cents on the southern side was purchased by one Parimala and she has been in possession of the same by putting up a compound wall and was in enjoyment for more than 30 years.



5.1. Without knowing the correct extent, the first defendant's mother retained two cents north of Parimala's compound wall for more than 12 years openly, continuously and without any interruption from anybody. Therefore, the first defendant has prescribed his title to the suit property of 2 cents by adverse possession also. For the 16 cents joint patta has been issued in the name of Parimala and the first defendant and in the name of the plaintiff in Patta No.46.

5.2. There is no oral exchange as alleged by the plaintiff. As per the said oral agreement, the first defendant has to give 2 cents of his land to the plaintiff and the plaintiff has to give 3 cents of his land on the western side and there was a passage of 3 links into the 93 links for ingress and egress to the first defendant's land. As per the UDR patta, 3 cents given to the first defendant is subdivided as 41/7A and the passage was subdivided as 41/7B. But the properties were not enjoyed by the plaintiff or the first defendant as per the oral exchange. In the presence of Panchayadars, the oral exchange was cancelled and they were restored to original position. It is also false that the first defendant was falsely claiming rights in the suit property and was trying to prevent the plaintiff from putting up the compound wall and trying



to trespass into the suit property. In fact, the plaintiff does not have any cause of action to file the suit. The plaintiff was not entitled for the relief he prayed for. Therefore, the suit should be dismissed.

6. On the basis of the above pleadings, the Trial Court has framed the following issues:

- “1. வாதி தாவாவில் கோரியவாறு விளம்புகைப் பரிகாரம், நிரந்தர உறுத்துக்கட்டளைப் பரிகாரம் இதர பரிகாரங்கள் பெற அருகரா?
2. 0.02 சென்ட் பொறுத்து எதிர்வாதிக்கு எதிர்நிலை உடைமை பாத்தியம் உள்ளது என்பது சரியா?
3. வாதியின் தாயார் மற்றும் அவரது சகோதரி இந்த தாவாவிற்கு அவசியமான தரப்பினர் என்பது சரியா?
4. வாதிக்கு கிட்டும் பரிகாரம் யாது?”

7. During the course of the trial, on the side of the plaintiff, P.W.1 and P.W.2 were examined and Exs.A1 to A4 were marked. On the side of the defendants D.W.1 to D.W.3 were examined and Exs.B1 to B3 were marked. The Commissioner's report and the Sketch have been marked as Exs.C1 to C6.



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8. At the conclusion of the trial and on considering the evidence available on record, the Trial Court has dismissed the suit and the appeal preferred by the plaintiff was also dismissed by confirming the judgment of the Trial Court. Now, the plaintiff has filed this Second Appeal by raising the following substantial question of law:

"Whether the First Appellate Court is right in ignoring the position of law that the defendants who already sold the property cannot claim right over the subject matter of the same?"

9. The learned counsel for the appellant / plaintiff submitted that the first defendant's mother Sornammal sold the suit property to the plaintiff's Father Ramasamy Naidu by virtue of a sale deed dated 15.08.1956, which is marked as Ex.A1. The defendants did not have any objection on the said fact. But the contention of the first defendant is that he was in adverse possession of two cents on the south side and he has perfected his title over the same. Even the sale deed would state that eight cents have been sold to the plaintiff's father on the northern side and the remaining was retained by the first defendant's mother.



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10. The contention of the appellant / plaintiff is that there is no two cents on the south side of eight cents as alleged by the defendants and hence, the defendants cannot claim right over the property which is not in existence. The much of the oral evidence is reduced with the Commissioner's report and the sketch. The Commissioner's report was marked as Ex.C4.

11. Neither the plaintiff nor the defendants could produce any revenue records to show that they have been in enjoyment of the specific extents stated in the respective patta etc. Even the Commissioner could not have identified the property with the help of the Surveyor, but he had simply measured the property shown by the plaintiff and had filed a report. The Commissioner has also mentioned in the report that the portion of the property has been under encroachment.

12. The appointment of the Commissioner to reduce the oral evidence in this case is to only ascertain the extent of the land alleged to have been purchased by the plaintiff and whether the same is available on the ground.



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To accomplish the said purpose, the Commissioner ought to have taken the help of the Surveyor and fix any boundaries which have been surveyed by boundary stone and then, proceeded to measure the property and correlated with the Field Map. Based on the same, the Commissioner should have filed a report by taking the measurement in his presence.

13. But in the case in hand, it did not happen. Hence, I feel it is appropriate to remand the matter back to the file of the Additional District Munsif Court - I, Virudhachalam, in order to appoint a Commissioner afresh on the application, if any, filed by the plaintiff. In the event of the Commissioner's report is filed after identifying the property with the help of the Surveyor and FMB Sketch, the Trial Court shall look into the matter afresh and pass orders with the materials available on record. If the plaintiff does not come forward to file any application seeking appointment of Commissioner, it goes without saying that the plaintiff will lose the benefit of remanding the matter and the judgment of the First Appellate Court will get automatically restored without being placed for further orders.



14. With the above observations, these Second Appeals are disposed.

No costs. Consequently, connected miscellaneous petitions are closed.

Speaking order / Non-speaking order

21.11.2024

Index : Yes / No

Neutral Citation : Yes / No

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To

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- 1.The Additional Subordinate Judge,
Virudhachalam.
- 2.The Additional District Munsif Court - I,
Virudhachalam.



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R.N.MANJULA, J.

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S.A.Nos.1649 & 1650 of 2011

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