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S.A.NO.536 OF 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 18 / 09 / 2024

JUDGMENT PRONOUNCED ON : 17 / 12 / 2024

CORAM:

THE HON'BLE MR.JUSTICE R.SAKTHIVEL

S.A.NO.536 OF 2018
AND CMP.NOS. 15024 OF 2018 AND 304 OF 2020

1.Chakravarthi Reddiyar
2.Lalitha

... Appellants /
Appellants /
Plaintiffs

Versus

Kannan

... Respondent /
Respondent /
Defendant

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, 1908 praying to set aside the Judgment and Decree dated April 5, 2018 passed in A.S.No.12 of 2016 on the file of Additional Subordinate Court, Thindivanam, whereby the Judgment and Decree dated December 4, 2015 passed in O.S.No.527 of 2008 on the file of Additional District Munsif Court, Thindivanam was confirmed.

For Appellants : Mr.A.K.Kumarasamy
Senior Counsel
for M/s.S.Kaithamalai Kumaran

For Respondent : Mr.N.Suresh



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This Second Appeal is directed by the plaintiffs in the Original Suit. Challenge is to the Judgment and Decree dated April 5, 2018 passed in A.S.No.12 of 2016 on the file of 'Additional Subordinate Court, Thindivanam' ['First Appellate Court' for short], whereby the Judgment and Decree dated December 4, 2015 passed in O.S.No.527 of 2008 on the file of 'Additional District Munsif Court, Thindivanam' ['Trial Court' for short] was confirmed.

2. Hereinafter, for the sake of convenience, the parties will be denoted as per their array in the Original Suit.

CASE OF THE PLAINTIFFS:

3. The Suit land is an agricultural land of an extent of 0.03.0 Hectare in Survey No.94/6 of Karnavur Village. The Suit land and some other properties originally belonged to one Bakthavatchalu Reddiyar, Narayanasamy Reddiyar and Ramu Reddiyar, from whom the plaintiffs purchased the same on September 3, 1998. Since then, the plaintiffs are in possession and enjoyment of the Suit land. Subsequently, they dug the Suit irrigation well therein.



3.1. Survey No.94/5 belongs to the defendants. While so, the defendants made an application to the electricity department seeking electricity connection to the Suit well actually situated in Suit Survey No.94/6 as if it is situated in their land *viz.*, Survey No.94/5. The plaintiffs caused a notice dated August 19, 2008 to the defendants as well as the electricity department raising objection to the defendants' application. The defendants caused a reply notice with false averments. The defendants are attempting to interfere with the plaintiffs' peaceful possession and enjoyment of the Suit Property. Hence, the present suit seeking declaration of title and injunction.

CASE OF THE DEFENDANTS:

4. The first defendant filed written statement and the same was adopted by the second defendant. The defendants' case is that the defendants purchased 66 Cents out of the total 1 Acre 55 Cents comprised in old Survey No.109/5 within specific four boundaries on October 13, 1967, dug the Suit well therein and have been in possession and enjoyment of the same since then.

4.1. Later, during re-settlement, old Survey No.109/5 was converted into Survey Nos.94/5, 94/6, 94/7, *etc.*, and settlement patta was



issued in favour of first defendant in respect of Survey Nos.94/5 [0.18.5 Hectare] and 94/6 [0.03.0 Hectare]. However, in the said patta, while the corresponding old Survey number for new Survey No.94/6 was rightly mentioned as old Survey No.109/5, the corresponding old Survey number for new Survey No.94/5 was wrongly mentioned as old Survey No.109/2 instead of Survey No.109/5.

4.2. Thereafter, while the Suit well is actually situated in Suit Survey No.94/6, under a wrong notion, the defendants applied for electricity connection to the Suit well as if it is situated in Survey No.94/5. This is when the defendants came to know that patta for Suit Survey No.94/6 was wrongly mutated to plaintiffs' name without any notice. It further came to light that plaintiffs' vendor, who had no right over Suit Survey No.94/6, wrongly included Suit Survey No.94/6 in the Sale Deed while selling his Survey No.94/7 to the plaintiffs.

4.3. After purchasing Survey No.94/7, the plaintiffs dug up a well in it and have been practicing agriculture using the same. They are in possession and enjoyment of Survey No.94/7 only. The defendants were taking initiatives only to get electricity connection to the Suit well which was dug by them. The Suit Property does not belong to the plaintiffs.



Further, the Suit is bad for non-joinder of necessary parties and the Suit is barred by limitation. Accordingly, they prayed to dismiss the Suit.

TRIAL COURT:

5. On the basis of the above pleadings, the Trial Court framed issues and the parties went on to trial. During the trial, on the side of the plaintiffs, the first plaintiff examined himself as P.W.1, one of his vendor – Narayanasamy was examined as P.W.2, and Ex-A.1 to Ex-A.13 were marked. On the side of the defendants, second defendant was examined as D.W.1, three other witnesses were examined as D.W.2 to D.W.4, and Ex-B.1 and Ex-B.2 were marked. An Advocate Commissioner was appointed in this case, and his report & plan were marked as Ex-C.1 and Ex-C.2 respectively. After completion of trial and after hearing both sides, the Trial Court dismissed the Suit without cost.

FIRST APPELLATE COURT:

6. Feeling aggrieved, the plaintiffs approached the First Appellate Court, which after hearing both sides and perusing the records, placing reliance on Ex-A.11 – Sale Deed, through which plaintiffs' vendor purchased 59 Cents of land in old Survey No.109/5, concluded that there



was no well in the said land. The defendants purchased under Ex-B.1 – Sale Deed dated October 13, 1967, an extent 66 Cents out of total 1 Acre 55 Cents in old Survey No.109/5. Even during the settlement period, Ex-B.2 - Patta was issued in the name of first defendant in respect of Survey Nos.94/5 and 94/6 in the year 1975. Hence the plaintiffs' vendor has no right or title over the Suit Survey No.94/6 as recited in Ex-A.1 – Sale Deed. Accordingly, it concurred with the Trial Court's findings and dismissed the appeal.

SECOND APPEAL

7. Feeling aggrieved by the concurrent findings, the plaintiffs have preferred this Second Appeal and the same was admitted on September 3, 2018 on the following substantial questions of law:

- “a) Are the Courts below justified in holding that even after survey proceedings under Tamilnadu Survey and Boundaries Act become final and notified, the same can be challenged by an aggrieved party at any time?*
- b) When admittedly defendant/respondent is not the owner of S.No.94/6 and his title deed do not support his case, is he entitled to project a title to S.No. 94/6 overlooking the claim of the appellants?”*



ARGUMENTS:

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8. Mr.A.K. Kumarasamy, Senior Advocate for M/s. S. Kaithamalai Kumaran, learned Counsel for the appellants / plaintiffs would argue that both the Courts failed to consider the Ex-A.1- Sale Deed and the pursuant revenue records which stand in plaintiffs' name. The Advocate Commissioner exceeded his limits while relying on public's statement to conclude in his report that the defendants are in possession and enjoyment of the Suit Property. Further, the defendants have 1/6th share in the common well in old Survey No.109/5. The Trial Court and the First Appellate Court failed to note that there was no need for the defendants to dug another well. Thus, it is false to assert that the Suit Property is in possession and enjoyment of the defendants.

8.1. He would further argue that it is highly improbable that while other sub-divisions effected in Survey No.94 are correct, sub division number 6 of Survey No.94 alone is incorrect, and it is not believable that the alleged discrepancy in respect of Survey No.94/6 was not known to the defendants until they went to seek electricity connection to the Suit well. Further, the boundaries and surveys were fixed after gazette notification and the defendants are well aware about the same.



Now they cannot turn around and contend that patta in respect of Survey No.94/6 is wrongly issued in the plaintiffs' name.

8.2. He would further argue that the plaintiffs purchased under Ex-A.1 an extent of 59 Cents in old Survey No.109/5, corresponding to new Survey Nos.94/6 and 94/7. Sum of extents of both the new Survey numbers is 52 ½ Cents. It does not tally with the extent of plaintiffs' 59 Cents. Hence, it is highly probable that Survey No.94/6 belongs to the plaintiffs. Only with a view to defeat and defraud the legitimate rights of plaintiffs, defendants attempted to secure electricity connection in their name for the Suit well. Trial Court and First Appellate Court failed to appreciate the evidence in right perspective and concurrently dismissed the Suit. The concurrent dismissals are erroneous. Accordingly, he would pray to allow the Second Appeal, set aside the Judgment and Decree of First Appellate Court and the Trial Court, and decree the Suit.

9. Per Contra, Mr.N.Suresh, learned Counsel for the respondent / Defendant No.2 would argue that the defendants purchased 66 Cents in old Survey No.109/5 vide Ex-B.1 – Sale Deed dated October



13, 1967 and thereafter, during the settlement proceedings, old Survey Nos.109/5 and 109/2 were merged into Survey No.94 and the corresponding new survey numbers for the defendants' land are Survey Nos.94/5 and 94/6. Ex-B.2 – Patta dated September 23, 1975 issued by the Settlement Officer after due inquiry stands in the first defendant's name. Subsequently, in 1998, the plaintiffs purchased the Survey No.94/7 vide Ex-A.1 – Sale Deed, wherein Survey No.94/6 was wrongly included as if the plaintiffs' vendor had title over same. The plaintiffs are claiming title based on this erroneous inclusion, and the same is not valid. The Trial Court as well as the First Appellate Court rightly appreciated the evidence and concluded that the Suit is liable to be dismissed. There is no warrant to interfere with the same. Accordingly, he would pray to dismiss the Second Appeal.

DISCUSSION:

10. This Court has heard on either side and perused the materials available on record in light of the Substantial Questions of Law.

11. The plaintiffs claim title to the Suit Property comprised in Survey No.94/6 vide Ex-A.1 – Sale Deed, which references Ex-A.11 to Ex-A.13 – Sale Deeds. Under Ex-A.13 dated April 6, 1961, Jayarama



Reddiyar, father of plaintiffs' vendor, purchased an extent of 1 Acre 50 Cents within specified four boundaries in old Survey No.109/2, total extent of which is 5 Acres. Similarly, under Ex-A.12 – Sale Deed dated December 22, 1964, he purchased 66 Cents in old Survey No.109/2, and under Ex-A.11 – Sale Deed dated January 5, 1967, he totally purchased 88 Cents in old Survey No.109/2 as well as 59 Cents in old Survey No.109/5. In Ex-A.11, there is a reference that a well is situated in old Survey No.109/2 and both parties have admitted to the same. There is no dispute with respect to same. In Ex-A.11, there is no recital to show the presence of any well in the said 59 Cents in old Survey No.109/5.

12. Total extent of land purchased under the Ex-A.11 to Ex-A.13 would be 3 Acre 40 Cents in Survey No.109/2 and 59 Cents in Survey No.109/5. It is an admitted fact that, during the settlement proceedings, Survey Nos.109/5 and 109/2 were converted into Survey No.94. While the exact date of settlement proceedings are unknown, from Ex-B.2 – Patta, it is discernible that the settlement proceedings occurred around the year 1975. One of the corresponding new survey numbers for old Survey No.109/2 is Survey No.94/2 and others are not known. There is no exact evidence to show all the corresponding new survey numbers.



Under Ex-A.1, the plaintiffs purchased an extent of 3 Acre 40 Cents in Survey No.94/2 and though there is a discrepancy between the extent of land mentioned there in terms of hectares and in terms of acres, there is no dispute with the same in this case and therefore, this Court shall not delve into the same.

13. Be that as it may, in Ex-A.1, it is mentioned that an extent of 59 Cents in old Survey No.109/5, was sold to the plaintiffs. But there is no evidence to show that on the date of Ex-A.1, new Survey No.94/6 stood in the name of plaintiffs' vendor. It may be true that the plaintiffs purchased 59 Cents in old Survey No.109/5, but the question here is whether that 59 Cents purchased by the plaintiffs is comprised in Survey No.94/6 or not. Even if we add the total extent of Survey Nos.94/6 and 94/7, it does not match with the recital in Ex-A.1 that 59 Cents were sold to the plaintiffs. In this regard, it is worthwhile to refer to the deposition of P.W.2. He has deposed that the properties covered under Ex-A.1 were not measured before the Sale and that there is no well in Survey No.94/6 at the time of Ex-A.1. Both the said facts were admitted by the first plaintiff / P.W.1. The plaintiffs filed the Suit for declaration and permanent injunction based on Ex-A.1. The burden is upon the plaintiffs to prove that



their vendor had title over the land in Suit Survey No.94/6, especially when the defendants had marked Ex-B.2 – Settlement Patta standing in their name, issued much prior to Ex-A.1. It is true that there are some discrepancies with regard to corresponding old survey numbers for Survey No.94/5 in Ex-B.2 – Settlement Patta. But as far as Suit Survey No.94/6 is concerned, there is no discrepancy in Ex-B.2.

14. Ex-C.1 - Report filed by the Advocate Commissioner after measurement with the assistance of a surveyor, shows that Survey No.94/7 has a total extent of 45 Cents and its corresponding old Survey number is 109/5; that at the time of inspection, the same was cultivated with paddy. It would further show that Survey No.94/6 totally consisting of 8 Cents stands in the name of the plaintiffs and there is a well in it; that adjacent to Survey No.94/6 is Survey No.94/5; that there is no sort of separation such as a ridge between them; that both of them are used to cultivate sugarcane using water from the said well in Survey No.94/6. The Advocate Commissioner has concluded in his report that the defendants are in possession and enjoyment of the Suit Property based on the above observations and not merely on the public's statement and hence, the argument of the learned Counsel for the plaintiffs in this regard is to be



rejected. That apart, Ex-C.1 also shows that Survey No.94/7 also has a well. P.W.1 / plaintiff has admitted the presence of a well in Survey No.94/7. In this regard, it is apposite to extract the relevant portion of his evidence hereunder:

'சர்வே உண் 94/7 எப்போது கிணறு வெட்டினார் என்பது ரூபகம் இல்லை. 3 ஆண்டுகள் ஆகி இருக்கும். அதில் கிணற்றுக்கு சர்வீஸ் வாங்கி இருக்கிறேன். சர்வே எண். 94/2 லும் ஏற்கனவே எனக்கு கிணறு மற்றும் சர்வீஸ் உள்ளது என்று சொன்னால் சரிதான். 2 கிணற்றிலிருந்தும் நிலங்களுக்கு தண்ணீர் பாய்ச்ச பைப் வசதி செய்துள்ளேன் என்றால் சரிதான். வழக்கு சொத்துக்கு பக்கத்தில் பிரதிவாதிக்கு நிலம் இருக்கிறது. எவ்வளவு விஸ்தீரணம் என்று தெரியாது. தாவா கிணறு 2004ம் ஆண்டு வெட்டப்பட்டது என்று சொன்னால் சரிதான். தாவா கிணற்றுக்கு பிரதிவாதிக்கு சர்வீஸ் கொடுக்கக்கூடாது என்று வழக்கு போட்டுள்ளேன். இந்த வழக்கில் பிரதிவாதி ஆயில் என்ஜின் நீர் இறைக்கக் கூடாது என்று கோரவில்லை. நீர் இறைத்துக் கொண்டிருக்கட்டும் பிறகு பார்த்துக் கொள்ளலாம் என்று இருக்கிறேன். பிரதிவாதி தாவா சொத்தில் இருந்து நீர் இறைத்து தன் நிலத்துக்கு கரும்பு மற்றும் பிற பயிர்கள் செய்வதோடு வெளி நிலங்களுக்கு நீர் பாசனம் செய்து வருகிறார். சர்வே எண் 94/5ல் எந்த கிணறும் கிடையாது. சர்வே எண் 94/5 மற்றும் 94/6 ஆகியவை ஒரே தலையாக உள்ளது. நடுவில் வரப்பு ஏதும் இல்லை. சர்வே 94/2ல் உள்ள எனது நிலத்திற்கு செல்ல வழி ஏதும் கிடையாது. பிரதிவாதிகள் நான் கரும்பு வெட்டுவதற்கு வண்டிபாதை கொடுப்பதாக சொன்னார்கள் பின்னர் கொடுக்க மறுத்து விட்டார்கள்.



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15. At the time of inspection by the Advocate Commissioner along with the surveyor, the defendants filed a memo seeking measurement as per old Field Measurement Book (FMB). The surveyor citing the absence of old FMB with him, declined the request of the defendants. Admittedly, total extent of old Survey No.109/5 is 1 Acre 55 Cents. The plaintiffs' vendor purchased 59 Cents in Survey No.109/5 under Ex-A.11. The defendants purchased under Ex-B.1 purchased 66 Cents. The remaining extent is 30 Cents and it must be available somewhere. The plaintiffs ought to have summoned the revenue officials, brought on record the FMB of old Survey No.109/5 and measured the same in order to find out the lie and location of their respective extents. But they have miserably failed to do so. In these circumstances, this Court is of the view that the plaintiffs have failed to prove their case.

16. On the other hand, the defendants have established their title and possession through Ex-B.1 – Sale Deed and Ex-B.2 – Patta, both pre-dating Ex-A.1 – Sale Deed through which the plaintiffs claim title. Ex-B.2 – Patta issued in respect of Suit Property in the year 1975 stands in the name of the first defendant. The defendants' case is that they dug up a well and fitted oil motor pump sets and were practicing agriculture. Ex-



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C.1 - Advocate Commissioner's Report and the other evidence available on

record makes the case of the defendants more probable. Subsequent to Ex-

B.2, Exs-A.7 and A.8 which are A - Register and Patta in respect of

Survey No.94/6 respectively, were issued in the name of the plaintiffs and

this could have been done under the UDR Scheme only. There is no

evidence available on record to show that the defendants were issued

notice before the mutation. Hence, the entries in Exs-A.7 and A.8 would

not bind the defendants. Further, when an issue arises with respect to title,

civil court has got ample jurisdiction to decide on the issue. In view of Ex-

B.2 and in the absence of notice, there is no bar for the defendants to

rectify a mistake caused in a survey through Court, even upon learning the

same years later. Furthermore, in this case, not just the defendants' title

deed (Ex-B.1) but Ex-B.2 - Settlement Patta issued in respect of Suit

Property as well supports the defendants' case. Even Ex-C.1 – Advocate

Commissioner's Report corroborates the defendants' case that the second

defendant is in possession and enjoyment of the Suit Property. It is not the

plaintiffs' case that the defendants encroached upon the Suit Property

pending Suit. Had the defendants done so, the plaintiffs would have

amended their plaint to include the relief of recovery of possession. As

elaborated above, old Survey No.109/5 was converted into Survey No. 94



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and there is no evidence on record to show that the plaintiffs' vendor under Ex-A.1, which was executed subsequent to Exs-B.1 and B.2, had title over Survey No.94/6 on the date of Ex-A.1. In these circumstances, the plaintiffs cannot be said to have title or possession of the Suit Survey No.94/6. Both the Courts have concurrently concluded that the defendants are in possession and enjoyment of the Suit Property. This Court does not find any reason to deviate from the same. Substantial Questions of Law are answered accordingly.

CONCLUSION:

17. Resultantly, the Second Appeal is dismissed. Keeping in mind the facts and circumstances of the case, there shall be no order as to costs. Connected Civil Miscellaneous petitions are closed.

07 / 12 / 2024

Index : Yes
Neutral Citation : Yes
Speaking Order : Yes
MSM/TK

To



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1.The Additional Subordinate Judge
Tindivanam.

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2.The Additional District Munsif
Tindivanam.



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R. SAKTHIVEL, J.

MSM/TK

PRE-DELIVERY JUDGMENT MADE IN
S.A.NO.536 OF 2018

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