



WEB COPY

S.A.NO.541 OF 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 23 / 08 / 2024

JUDGMENT PRONOUNCED ON : 11 / 09 / 2024

CORAM:

THE HON'BLE MR.JUSTICE R.SAKTHIVEL

S.A.NO.541 OF 2018

AND

CMP NO.15402 OF 2018

1.Anandhan S/o. Krishnan

2.Krishnan S/o. Muthu

...

Appellants /Appellants /
Defendants

Versus

Sri Rangan S/o. Ayyakannu

...

Respondent / Respondent /
Plaintiff

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, 1908, praying to set aside the Judgment and Decree dated March 7, 2018 made by the Subordinate Court, Kallakurichi in A.S.No.106 of 2011, which confirmed the Judgment and Decree dated August 2, 2011 made by the Principal District Munsif Court, Kallakurichi, in O.S.No.208 of 2007, by allowing this Second Appeal.

For Appellants : Mr.N.Manokaran

For Respondent : Mr.P.Valliappan
Senior Counsel
for M/s.P.V.Law Associates

J U D G M E N T



S.A.NO.541 OF 2018

WEB COPY

This Second Appeal is directed against the Judgment and Decree dated March 7, 2018, made by the 'Subordinate Court, Kallakurichi' ['First Appellate Court' for short] in A.S.No.106 of 2011, thereby confirming the Judgment and Decree dated August 2, 2011, made by the 'Principal District Munsif Court, Kallakurichi' ['Trial Court' for short] in O.S.No.208 of 2007.

2.The appellants herein are the defendants while the sole respondent herein is the plaintiff before the Trial Court. Hereinafter, the parties will be referred to as per their array before the Trial Court.

PLAINTIFF'S CASE IN BRIEF:

3.The Suit Property is an extent of 6 Cents (0.02.5 Hectares) in Old Survey No.107/4, New Survey No.107/9 of Thenkeeranur Village of the Kallakuruchi Taluk, comprising of a tiled roof house on the west and a thatched shed on the east. The plaintiff's father - Ayyakannu owned the said 6 Cents of land as ancestral property along with some other properties. Vide registered Partition Deed dated September 11, 2006 executed among the plaintiff, plaintiff's father and plaintiff's brothers, where the said 6 Cents of land was allotted to the plaintiff as 'B' Schedule Property. Revenue records pertaining to the Suit Property which also stands in the



S.A.NO.541 OF 2018

name of the plaintiff. The defendants have no right or interest in the Suit Property. While so, on February 18, 2007, using men and money power, the defendants trespassed and encroached upon the thatched shed, and erected a mud wall on the property. Hence, the plaintiff has filed this Suit for Declaration, Recovery of Possession, and Costs.

DEFENDANTS' CASE IN BRIEF:

4.The defendants filed written statement, wherein it is averred that the Partition Deed dated September 11, 2006 has not yet come into force and it is invalid. Total extent of suit survey number is 6 Cents (0.02.5 Hectares). The said extent of land originally belonged to Muthu, Arumugam, Ayya kutty @ Ayyan and Raman, who were in possession and enjoyment of it. Then, they orally divided the said extent equally (1.5 Cents each). The second defendant is son of said Muthu while the first defendant is son of the second defendant. The plaintiff is one of grandsons of said Arumugam. Ganesan is one of the sons of said Ayyakutty. Annamalai, son of said Raman, along with his two minor sons, sold the extent of 1.5 Cents allotted to them in the said Oral Partition, to the defendants vide Sale Deed dated July 1, 1972. Thus, the defendants are in possession and enjoyment of 3 Cents of land out of the said extent of 6



S.A.NO.541 OF 2018

Cents; the defendants have constructed a thatched shed on the property and have obtained an electricity connection. In a nut shell, out of the said 6 Cents, the defendants are in possession and enjoyment of 3 Cents, while the plaintiff and Ganesan, son of Ayyakutty, are in possession and enjoyment of 1.5 Cents each. Hence, the plaintiff is not entitled to the relief sought for.

TRIAL COURT AND FIRST APPELLATE COURT :

5. Upon hearing either side and perusing the records, the Trial Court and the First Appellate Court concurrently found that an extent of 6 Cents in Old Survey No. 107/4 (New Survey No. 107/9) along with other properties was owned by the plaintiff's father (Ayyakannu son of Arumugam) as Hindu Joint Family properties; that they partitioned the properties under Ex-A.1 = Ex-A.8 - Registered Partition Deed dated September 11, 2006, whereby the said extent of 6 Cents along with some other properties was allotted to the share of the plaintiff as 'B' Schedule Property; that Ex-A.1 = Ex-A.8 coupled with the revenue records and electricity receipts standing in the name of the plaintiff, proves his title over the Suit Property as well as his possession and enjoyment thereof; that Ex-B.1 and Ex-B.2 are not related to the Suit Property and the defendants'



S.A.NO.541 OF 2018

case has not been established. Upon these findings, the Trial Court decreed the Suit as prayed for and the First Appellate Court confirmed the same on appeal.

SUBSTANTIAL QUESTIONS OF LAW:

6.The second appeal was admitted on September 18, 2018, on the following substantial questions of law:-

“(i) Whether the courts below are correct in decreeing the suit for declaration of title on the basis of the revenue records and by wrongly placing the burden of proof on the defendants unmindful of the settled principles of law laid down in 2014 (2) SCC 269?

(ii) Have not the courts below erred in decreeing the suit for larger extent particularly when the plaintiff himself has filed the suit for one cent in old S.F.No.107/4, New S.No.107/9, by ignoring the defendants' title and possession over 3 out of 6 cents?

(iii) Whether the judgment and decree passed by the courts below are perverse for not identifying the extent claimed by the plaintiff in exercise of the powers conferred under Order 26 Rule 9 CPC either suo motu or at the instance of the plaintiff?”

ARGUMENTS:

7.Mr. N.Manokaran, the learned Counsel appearing for the



S.A.NO.541 OF 2018

appellants / defendants would argue that the plaintiff has not established his title over the Suit Property; that since Ex-A.1 = Ex-A.8 - Partition Deed does not trace the title to the plaintiff's father, it cannot be treated as a document of title; that the defendants are not parties of Ex-A.1 = Ex-A.8 and hence it does not bind the defendants.

7.1. Further would argue that, the plaintiff's father - Ayya Kannu, who is the competent person to depose about the Suit Property, was not examined by the plaintiff; that an adverse inference must be drawn from his non-examination.

7.2. Further inviting the attention of this Court to the description of property under the Plaint, he would argue that, it is misleading and not clear; that, in such a scenario the plaintiff ought to have identified the site and location of the alleged encroached property with the help of surveyor which he has failed to do and hence, the decree is inexecutable.

7.3. Further would argue that it is settled position of law that the burden of proof is upon the plaintiff, but the Trial Court has erroneously held that the defendants have failed to prove their case. Further, the First Appellate Court's Judgment is not in consonance with Order LXI Rule 31 of the 'Code of Civil Procedure, 1908' ['CPC' for



short]. Accordingly he prayed to allow the Second Appeal.

WEB COPY

7.4. In support of his arguments, he would rely on the following case laws:

- (i) **Vasavi case** - Judgment of the Hon'ble Supreme Court in *Union of India and Others -vs- Vasavi Cooperative Housing Society Limited and Others*, reported in (2014) 2 SCC 269;
- (ii) **Santhosh Hazari's case** - Judgment of the Hon'ble Supreme Court in *Santhosh Hazari -vs- Purushottam Tiwari (deceased) by LRs*, reported in (2001) 3 SCC 179.

8.Mr. P. Valliappan, learned Senior Counsel appearing for the respondent / plaintiff, would argue that the Suit Property is ancestral property *qua* plaintiff's father and his descendants; that the same is fortified by the fact that revenue records pertaining to Suit Property, namely Chitta Extract and Patta, stood in the name of the plaintiff's father before the partition; that Suit Property (ancestral property) along with some other properties were partitioned among the plaintiff, plaintiff's father and plaintiff's brothers vide Ex-A.1 = Ex-A.8 - Partition Deed, whereby the Suit Property along with some other properties was allotted to the plaintiff as 'B' Schedule Property; that, thus, the plaintiff has



S.A.NO.541 OF 2018

successfully traced his title; that Ex-A.1 to Ex-A.16, which includes revenue records, electricity receipts, *etc.*, coupled with the oral evidence of P.W.1 and D.W.1, prove the plaintiff's case.

8.1. Further would argue that, there is no plea regarding Order XX Rule 9 of CPC in the Written Statement; that the Suit Property has been described sufficient enough for identification; that Ex-B.1 - Sale Deed is related to Survey No. 107/5 and Natham Survey No.106/1 while Ex-B.2 - Gist Receipts pertain to Patta No.342; that Ex-B.1 and Ex-B.2 are not related to the Suit Property; that the Trial Court and First Appellate Court concurrently held that the plaintiff proved his case and there is no need to interfere with the same. Accordingly, he prayed to dismiss the Second Appeal.

DISCUSSION:

9. Heard on either side and perused the materials available on record in light of the Substantial Questions of Law.

10. The plaintiff filed a Suit for Declaration and Recovery of Possession. As per Paragraph Nos.3 and 4 of the Plaint, Old Survey No.107/4 (New Survey No.107/9) totally comprises of 6 Cents of land. The plaintiff's father - Ayya Kannu was ancestrally entitled to the said 6



S.A.NO.541 OF 2018

Cents of land along with some other properties ancestrally. While so, on September 11, 2006, the plaintiff along with his father and brother, partitioned the said 6 Cents along with some other properties vide Ex-A.1 = Ex-A.8 - Partition Deed, whereby the said 6 Cents along with some other properties was allotted to the share of the plaintiff as 'B' Schedule Property. The said 6 Cents of land has a tiled-roof house on the western side, where the plaintiff is residing, as well as a thatched shed on the eastern side. On 18.02.2007, the defendants encroached upon the thatched shed and constructed a mud wall on it. Hence, the Suit.

11.The Description of Property under the Plaint reads thus:

“சொத்து விபரம்

கள்ளக்குறிச்சி வட்டம், தென்கீரனூர் கிராம எல்லையில், கிராம் நத்தம் பழைய சர்வே எண். 107/4, புதிய சர்வே எண். 107/9, 0.06 செண்டு (0.025 ஏர்ஸ்), இதில் கீழ்புறம் கி.மீ. 20 அடி, தெவ. 18 அடி, சுமார் 0.01 சென்ட் உட்பட இதிலுள்ள கூரை கொட்டகை உள்பட.

சக்குபந்தி:-

வாதியின் மீதி இடத்திற்கும் (கிழக்கு) (தெற்கு), பிச்சன் இடத்திற்கும் (வடக்கு) வாங்கார பெரியசாமி இடத்திற்கும் மேற்கு.”

12.It is settled position of law that the Plaint has to be read



S.A.NO.541 OF 2018

and understood as a whole. Conjoint reading of Complaint Paragraph Nos.3 and

4 along with Complaint Description of Property would clearly reveal that the plaintiff is residing in the tiled-roof house in Old Survey No.107/4 (New Survey No.107/9); that on the eastern side of the tiled house, there is a thatched shed measuring 20 feet from east to west and 18 feet from north to south; that the defendant encroached upon the thatched shed and erected a small mud wall therein. This Court does not find any difficulty in identifying the Suit Property and the alleged encroached portion thereof.

There is no inconsistency with Order XX Rule 9 of CPC, which reads thus:

“9.Decree for recovery of immovable property.— Where the subject-matter of the suit is immovable property, the decree shall contain a description of such property sufficient to identify the same, and where such property can be identified by boundaries or by numbers in a record of settlement or survey, the decree shall specify such boundaries or numbers.”

13. Hence, the contention of the learned Counsel for the appellants / defendants that the description of property is incorrect and that the decree is inexecutable does not hold water and deserves to be rejected.

14. Ex-A.6 - ‘Chitta extract for the fasli year 1395 to 1410’ shows that Survey No.107/4 totally consists of 0.02.5 Hectares; that the said total extent stood in the name of Ayyakannu under Patta No.33; that



S.A.NO.541 OF 2018

Survey No.107/4 was converted into House Site vide proceedings

அ.ஐ.5975/95 dated 07.02.2001. Ex-A.7 - 'A' Register also corroborates the same. Conjoint reading of Ex-A.6 and Ex-A.7 along with the Plaint would show that the Suit Property was ancestral property in the hands of plaintiff's father Ayyakannu. In the year 2006, the plaintiff along with his father and brothers partitioned their joint family properties under Ex-A.1 = Ex-A.8 - Partition Deed, whereby the Suit Property along with some other properties was allotted to the plaintiff as 'B' Schedule Property. Relevant portion of Schedule 'B' under Ex-A.1 = Ex-A.8 is hereunder:

“ . . . கள்ளக்குறிச்சி டி கள்ளக்குறிச்சி 1 நெ சப்டி
தென்கீரனூர் கிராம எல்லையில்
நத்தம் சர்வே 107/4 (இது புதிய சப்டிவிஷன்படி 107/9-ல்
சம்மந்தப்பட்டது) அரிசன காலனியில் மாரியம்மன் கோவில்
தெரு ராஜ வீதிக்கும் (கிழக்கு) அரசு குடியிருக்கும்
காலனிக்கும் (மேற்கு) பிச்சன் கூரை வீட்டுக்கும் (வடக்கு)
பூங்காள் மற்றும் மட்டினகுறிச்சி கோவிந்தன் மனைக்கும்
(தெற்கு) இதன் மத்தியில் 0.06 செண்டுக்கு 2616 சதுர அடி
காலிமனை மதிப்பு - ரூ.162192-00

மேற்படி மனையில் சுமார் 7 ஆண்டுகளுக்கு முன்பு செங்கல்,
செம்மண் கொண்டு கட்டப்பட்டுள்ள மங்கனூர் ஓட்டுவீடும்
மேற்படி வீடானது கி.மே. ஜாதியபடி 11 தெ.வ ஜாதியபடி 19
சதுரஅடி 209 அடி உள்ள மங்கனூர் ஓட்டுவீடும் மேற்படி
வீட்டில் இணைக்கப்பட்டுள்ள கதவு அருகால் உள்படவும்,
மேற்படி வீட்டின் கதவு எண் 3/255 எஸ்.சி.நெ.879



S.A.NO.541 OF 2018

உள்படவும் . . . ”

- 46920-00

WEB COPY

15. Ex-A.2 - ‘Patta No.817 dated 07.12.2006’ and Ex-A.3 - Chitta are issued in the name of the plaintiff under the Natham Land Tax Scheme. It could be evinced from Ex-A.2 that Old Survey No.107/4 was converted into New Survey No.107/9 and classified as House Site.

16. Ex-A.4 is the Letter received from the Tamilnadu Electricity Board with respect to Service Connection No.879 which shows that the Service Connection No.879 standing in the name of Ayyakannu was transferred to the name of the plaintiff with effect from 03.03.2007.

17. Ex-A.5 - House Tax Receipt and Ex-A.12 - ‘Electricity Consumption Receipt for Service Connection No.879’, both standing in the name of the plaintiff, would establish that the plaintiff is in possession and enjoyment of the tiled-roof house situate in the Suit Property.

18. Through the above documents viz., Exs-A.1 to A.8 and A.12, the plaintiff has *prima facie* traced his title and discharged his initial



S.A.NO.541 OF 2018

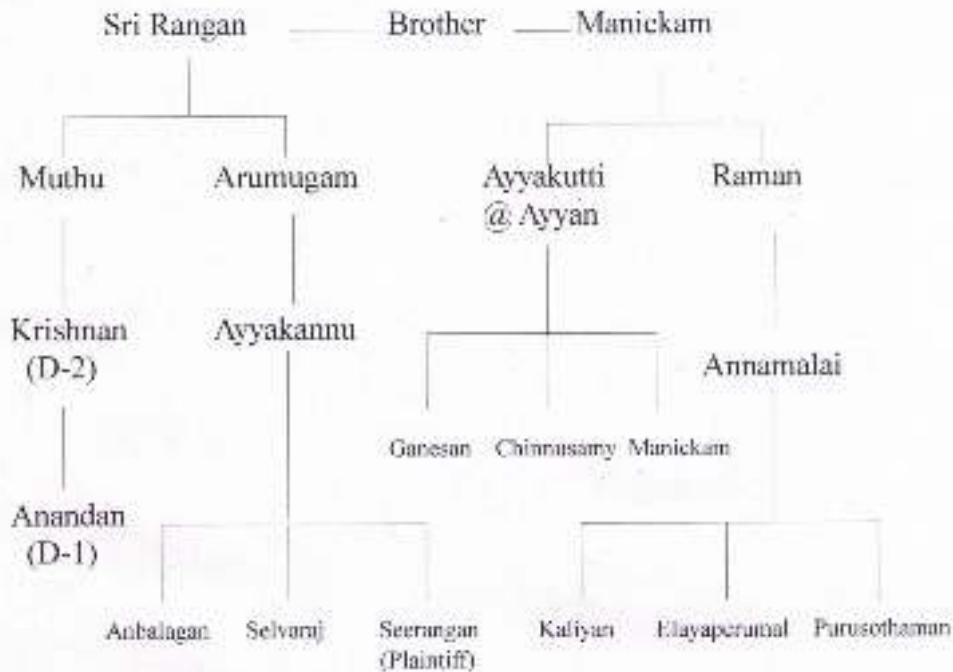
burden to prove that he is entitled to the reliefs sought for. Now, as per

Section 102 of the Indian Evidence Act, 1872, onus would shift onto the defendants to rebut the case of the plaintiff.

19. The case of the defendants is that Sri Rangan and Manickam are siblings. Sri Rangan had two sons, Muthu and Arumugam. Manickam had two sons, named Ayyakutty and Ramam. The second defendant is Muthu's son, and the first defendant is the son of the second defendant. The plaintiff is one of the grandsons of Arumugam. Ganesan is one of the sons of Ayyakutty. Annamalai is Raman's son. The following genealogy chart helps in better understanding and appreciation of the defendant's case:



GENEALOGICAL TREE



20. Further case of the defendants is that Muthu, Arumugam, Ayya kutty @ Ayyan and Raman collectively owned 6 Cents in Survey No.107/4 and were in possession and enjoyment thereof. They then orally divided the land equally among themselves, with each receiving 1.5 Cents. Annamalai, Raman's son, along with his two minor sons, sold the 1.5 Cents of land allotted to them in the oral partition to the defendants through Ex-B.1 - Sale Deed dated July 1, 1972. As a result, the defendants now possess and enjoy 3 Cents out of the 6 Cents of land; they have also built a thatched shed and acquired electricity connection.



S.A.NO.541 OF 2018

21. This Court has perused Ex-B.1 - Sale Deed, whereby first defendant purchased 2 Items. As far as Item No. 1 goes, it is an extent of 3 Cents in Survey No.107/5 within specified boundaries. In Ex-B.1, it is stated that, Item No.1 thereof is situate on the western side of Ayya Kannu's Patta Land. Thus, is it clear that Item No.1 situate in Survey No.107/5 is different from the Suit Property which pertains to Old Survey No.107/4 (New Survey No.107/9). As far as Item No.2 thereof is concerned, it is a House Site in *Natham* Survey No.106/1 within specified boundaries. As per D.W.1's evidence, Item No.2 has now been converted into *Natham* Survey No. 296. Thus, Item No.2 is also different from the Suit Property. At this juncture, it is apposite to refer to a portion of D.W.1's evidence extracted hereunder:

“தாவா சொத்தின் பழைய புல எண். 107/4 புதிய 107/9 மொத்தம் 6 சென்ட்டு விஸ்தீர்ணம். மேற்படி 6 சென்ட்டுக்கும் மேற்கே சிமென்ட் ரோடு உள்ளது. அந்த சிமென்ட் ரோடு தெற்கிலிருந்து வடக்காக செல்கிறது. அவ்வாறு வடக்கே சென்று மாரியம்மன்கோவில் தெருவில் முடிகிறது. மாரியம்மன்கோவில் தெரு என்பது கிழக்கு மேற்கு என்பதாகும். தாவா சொத்தான புல எண் 107/9 என்பது சிமென்ட்ரோட்டிற்கும் கிழக்கே உள்ளது. சிமென்ட் ரோட்டிற்கு மேற்கில் உள்ள புல எண்.106/1. மேற்படி 106/1 என்பது தற்பொழுது நத்தத்தில் புல எண் 296 என்று மாற்றம் செய்யப்பட்டுள்ளது. என்னுடைய



S.A.NO.541 OF 2018

ஓட்டுவீடு சிமெனட்ரோடை ஓட்டி மேற்கில் உள்ளது. அது அண்ணாமலை பாகத்தை என் தகப்பனார் கிரையம் வாங்கி அந்த பத்திரத்தை தான் பி.சா.ஆ.1 ஆக தாக்கல் செய்துள்ளேன். என்னுடைய ஓட்டுவீட்டின் புதிய புல எண். 296/8 என்றால் அதுபற்றி எனக்குத் தெரியாது. எங்கள் ஓட்டுவீட்டை ஓட்டி தெற்கில் உள்ள இடம் வாதியின் தகப்பனார் அய்யாக்கண்ணுவின் இடம் என்றால் சரிதான். ஓட்டுவீட்டிற்கும் வடக்கில் மாரியம்மன் கோவில் தெரு. அண்ணாமலை பாகத்தில் கிரையம் வாங்கிய இடத்தில் தான் நான் ஓட்டுவீடு கட்டி குடியிருக்கிறேன். . . . ”

D.W.1 further deposed :

“ . . . அந்த ஓட்டுவீட்டில் வாதிதான் தற்பொழுதுவரை குடியிருந்து அனுபவம் செய்துவருகிறார். மேற்படி ஓட்டுவீட்டிற்கும் கிழக்கில் உள்ள இடம்தான் தாவா சொத்து ஆகும். தாவாசொத்தில் ஏற்கனவே ஒரு கூரைகொட்டாய் இருந்தது. மேற்படி கூரைகொட்டாயில் சுற்றிலும் 2007 பிப்ரவரியில் நாங்கள் சுவர் வைத்தோம். அது மண் சுவர். அவ்வாறு மண் சுவர் வைப்பதற்கு முன்பும் அதில் சுவர் இருந்தது. 2007 பிப்ரவரியில் தான் முதன் முதலில் சுவர் வைத்தோம். தாவாசொத்திற்கு என் பெயரிலோ, என் தகப்பனார் பெயரிலோ பட்டா இல்லை. நான் தாக்கல் செய்துள்ள வாய்தா ரசீதுகள் எங்கள் கிரையதாரார் கிருஷ்ணனின் பெயரில் உள்ளது. மேற்படி ரசீதுகள் அவரது பட்டா நிலத்திற்கு உரியது என்று சொன்னால் எனக்குத்தெரியாது. அதில் பட்டா நெம்பர் 342 என்று சொல்லி உள்ளது என்று சொன்னால் எனக்குத் தெரியாது. கிருஷ்ணனுக்கு வயக்காட்டில் நிலங்கள் உள்ளன. மேற்படி ரசீதுகள் அந்த நிலத்திற்கு



S.A.NO.541 OF 2018

வைக்கப்பட்டவையா என்றால் எனக்குத் தெரியாது. சாட்சி மீண்டும் கூறுகிறார் மேற்படி ரசீதுகள் கிருஷ்ணன் புகையிலை தோட்டம் கொல்லையிட்டு வைக்கப்பட்டவை. மேற்படி கொல்லையும், அரசாங்கம் ஆர்ஜிதப்படுத்தி நிறைய பேருக்கு பட்டாவும் கொடுத்துவிட்டார்கள். மேற்படி புகையிலை தோட்டக்கொல்லை என்பது வேறு, தாவா சொத்து வேறு. நான் சொல்லி உள்ளதுபோல் ஸ்ரீரங்கம், மாணிக்கமும் பங்காளிகள் என்று காட்ட என்னிடம் ஆதாரம் எதுவும் இல்லை. நான் என்னுடைய முதல்விசாரணையில் சொல்லி உள்ளதுபோல் வாய்மொழிப் பாகப்பிரிவினையார், யார் செய்துகொண்டார்கள் என்று எனக்குத்தெரியாது. அது எப்பொழுது நடந்தது என்றும் எனக்குத்தெரியாது. அப்பொழுது பிச்சன் என்பவரும், பிச்சைக்காரன் என்பவரும், ராமசாமி என்பவரும் இருந்தனர். அந்த வாய்மொழிப்பாகப்பிரிவினை எந்த வருடம் நடந்தது என்று தெரியாது. . . .”

21.1. Therefore, it can be concluded that the properties covered under Ex-B.1 are completely different from the Suit Property.

22. Ex-B.2 - Gist Receipts pertain to Patta No.342. Whereas Suit Property's old Patta Number is 33 and new Patta Number under Natham Land Tax Scheme is 817. Hence, it also does not relate to the Suit Property.

23. Defendants' documents viz., Ex-B.1 and Ex-B.2 do not relate to the Suit Property. There is no other evidence on record to support



the defendants' case. The defendants have neither successfully rebutted the case of the plaintiff nor have they proved their case. Hence, they have failed to discharge the onus casted upon them, which means the plaintiff has successfully proved his case and is entitled to the reliefs sought for.

24. In ***Vasavi case (supra)***, Hon'ble Supreme Court in Paragraph Nos.15 to 19 has discussed the legal position about burden of proof in a Suit for Declaration of Title. Relevant extract is as follows:

“15. It is trite law that, in a suit for declaration of title, burden always lies on the plaintiff to make out and establish a clear case for granting such a declaration and the weakness, if any, of the case set up by the defendants would not be a ground to grant relief to the plaintiff.

16. The High Court, we notice, has taken the view that once the evidence is let in by both the parties, the question of burden of proof pales into insignificance and the evidence let in by both the parties is required to be appreciated by the court in order to record its findings in respect of each of the issues that may ultimately determine the fate of the suit. The High Court has also proceeded on the basis that initial burden would always be upon the plaintiff to establish its case but if the evidence let in by defendants in support of their case probabalises the case set up by the plaintiff, such evidence cannot be ignored and kept out of consideration.

17. At the outset, let us examine the legal position with regard to whom the burden of proof lies in a suit for declaration of title and possession. This Court in Maran Mar Basselios



S.A.NO.541 OF 2018

Catholicos v. Thukalan Paulo Avira reported in AIR1959 SC 31
observed that:

“20... in a suit for declaration if the plaintiffs are to succeed, they must do so on the strength of their own title.”

18. *In Nagar Palika, Jind v. Jagat Singh, Advocate (1995) 3 SCC 426, this Court held as under:*

“The onus to prove title to the property in question was on the plaintiff. . . . In a suit for ejectment based on title it was incumbent on the part of the court of appeal first to record a finding on the claim of title to the suit land made on behalf of the plaintiff. The court is bound to enquire or investigate that question first before going into any other question that may arise in a suit.”

19. The legal position, therefore, is clear that the plaintiff in a suit for declaration of title and possession could succeed only on the strength of its own title and that could be done only by adducing sufficient evidence to discharge the onus on it, irrespective of the question whether the defendants have proved their case or not. We are of the view that even if the title set up by the defendants is found against, in the absence of establishment of plaintiff's own title, plaintiff must be non-suited.”

(Emphasis supplied by this Court)

24.1. In the instant case, as discussed *supra*, the plaintiff has



S.A.NO.541 OF 2018

prima facie proved his case by adducing material evidence and discharged the initial burden casted upon him, thereby shifting the onus onto the defendants. Hence, though ***Vasavi case*** is squarely applicable to the instant case, it would not come to the aid of defendants.

25. There is no quarrel with the legal proposition laid down in ***Santhosh Hazari's case***. This Court perused the First Appellate Court's Judgment and finds that the First Appellate Court has applied its mind, framed four points for consideration and answered all of them with appropriate reasons concurring with the Trial Court's findings. In such a scenario, merely because the First Appellate Court concurred with the Trial Court's findings, it does not mean non-application of mind. Hence, ***Santhosh Hazari's case*** would not help the defendants.

26. As far as the contention of the learned Counsel for the appellants / defendants with respect to non-examination of the plaintiff's father, the plaintiff has established his case through examining himself as well as through other oral and documentary evidence and therefore, there was no need to examine his father, who is not a party to the Suit. The Plaintiff, who is the *dominus litis*, can exercise discretion as to who is to be examined to prove his case. Further, if really examining the plaintiff's father is that crucial, the defendants could have very well summoned the



S.A.NO.541 OF 2018

plaintiff's father and examined him either as witness on their side or as court witness after obtaining due leave; but they did not do so. Hence, this Court does not find any infirmity with the non-examination of the plaintiff's father and therefore, there shall be no adverse inference drawn therefrom.

27. Thus, the Trial Court and the First Appellate Court were right in concurrently holding that the plaintiff proved his title over the Suit Property as well as his possession and enjoyment thereof. Thus, they are right in decreeing the Suit as prayed for. Therefore, no interference is warranted.

28. In light of the foregoing narrative, the Substantial Questions of Law are answered accordingly in favour of the respondent / plaintiff and against the appellants / defendants.

RESULT:

29. Resultantly, the Second Appeal is dismissed. Considering the facts and circumstances, there shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

11 / 09 / 2024

Index : Yes



S.A.NO.541 OF 2018

Internet : Yes

Neutral Citation : Yes

Speaking order

TK

To

1.The Subordinate Judge

Subordinate Court

Kallakurichi.

2.The Principal District Munsif

Principal District Munsif Court

Kallakurichi.



WEB COPY



S.A.NO.541 OF 2018



WEB COPY



S.A.NO.541 OF 2018

R.SAKTHIVEL, J.

TK

PRE-DELIVERY JUDGMENT MADE IN
S.A.NO.541 OF 2018

11 / 09 / 2024