



S.A.No. 1138 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.12.2024

CORAM:

THE HONOURABLE Ms. JUSTICE R.N.MANJULA

S.A. No.1138 of 2013
and M.P.No.1 of 2013

1. Mannar
2. Raj @ Subramanian
3. Ravichandran
4. Natarajan
5. Harikrishnan
6. Rajendran

... Appellants / Defendants

Vs.

Subramania Mudaliyar

... Respondent / Plaintiff

Second Appeal is filed under Section 100 of Civil Procedure Code, 1908, against the judgment and decree dated 28.03.2013 passed in A.S.No.60/2011 on the file of the Principal Sub-Court, Tindivanam, confirming the judgment and decree dated 30.08.2010 passed in O.S.No.140/2007 on the file of the Additional District Munsif Court, Tindivanam.

For Appellants : Mr.B.Gurunathan

For Respondent : Ms.Rukmni

for Mr.P.B.Ramanujam



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JUDGMENT

The learned counsel for the appellants submitted that the first appellant died during pendency of this second appeal and the appellants 2 to 6 can be considered as his legal heirs and he had also filed a memo to that effect.

The memo filed by the appellant is recorded. The Registry is directed to carry out necessary amendments in the cause title.

2. The defendants are the appellants. The plaintiff / respondent has filed a suit for declaration and consequential injunction. The trial Court decreed the suit and the first appeal preferred by the defendants was dismissed by confirming the judgment of the trial Court. Now the defendants have filed this Second Appeal.

3. The facts pleaded in the plaint filed by the plaintiff in brief:

The suit 'A' schedule property is situated in Survey No.282/7 and it measures 1 acre 14 cents. Along with 1 acre 14 cents, a part of Survey No.156 and other Survey Numbers have also been included. The new Survey number for 1 acre 14 cents as per resurvey are S.Nos.156/4B (0.03.0 ares) and 156/5B (0.08.0ares) and 156/3. The lands in Survey Nos.156/4A and



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156/5A are situated on the western side of S.Nos.156/4B and 156/5B.

S.Nos.156/4A is on the northern side and 156/5A is on the southern side.

S.No.156/5B is the suit property measuring 0.08.0 ares which is situated on the eastern side of S.No.156/5A. S.No.156/4B which is situated on the eastern side of S.No.156/4A has a well which does not have any water. II Item of Suit 'B' schedule is 0.03.0 ares in S.No.156/4B. S.No.156/3 is on the eastern side of S.No.156/4B. The defendants have dug a well before one year in the first Item of 'B' Schedule property in S.No.156/5B and heaped the soil on the northern side. As the soil was heaped in S.No.156/5B, that was objected by the plaintiff. The defendants have undertaken that they would remove the soil but later they declared that S.No.156/5B belongs to them and refused to clear the soil. As the defendants have heaped the soil in Item I of the 'B' Schedule, the plaintiff was not able to reach his lands in S.Nos.156/4B and 156/5B. In view of the false claim by the defendants over the suit property, the plaintiff had filed the suit to declare that the suit property belongs to him and for permanent injunction and also mandatory injunction to direct the defendants to remove the soil heaped on the Item I of 'B' Schedule property and also for permanent injunction to restrain from heaping the soil in the said lands.



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WEB COPY 4. *The facts pleaded in the defendant's written statement in short:*

The defendants are entitled to an extent of 2 acre 46 cents in S.No.282/6. The properties in 'B' schedule property belong to the defendants and they were originally situated in S.No.282/6 and later got sub-divided. The whole extent of property comprised in old S.No.282/6 was 2 acres 46 cents. In the resurvey, out of the total above extent, an extent of 0.46.5 ares is situated in new S.No.156/4 and another extent of 0.42.0 ares is situated in S.No.156/5.

4.1 The whole of the property in S.No.156/4 was purchased by defendant's father Manika Gounder from one Chinnapappa on 07.06.1971 by virtue of a registered sale deed and he was in enjoyment of the same till his lifetime. After his lifetime, the defendants inherited the said property and they are in enjoyment of the same. The property in S.No.156/5 was purchased by the defendant from the legal heirs of Chinnakuzhandhai Ammal and others on 18.05.1978 and he is in enjoyment of the same. Even though the whole of the suit property in old survey No.282/6 was mentioned as 2 acre and 16 cents, the defendants were in actual enjoyment of an extent measuring 2 acre 46 cents.



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WEB COPY 4.2 The plaintiff had some other property in S.No.282/7 and they tried to encroach the properties of the defendant in S.No.282/6. Hence the sub-divisions made in S.Nos.156/4A, 156/4B, 156/5A and 156/5B corresponding to new S.No.156/4 and 156/5 and old S.No.282/6 is illegal. The sub division has been made in respect of the property which does not belong to the plaintiff. Before effecting the above sub-division, the defendants were not given with any notice. The defendants have heaped the soil only in S.No.156/5B which belonged to them. Hence the plaintiff's suit is not maintainable and it should be dismissed.

5. Based on the above pleadings, the trial Court has framed the following issues:

“ 1. தாவா பி அட்டவணை சொத்துக்களில் வாதியின் உரிமையை -தாமித்து அதில் பிரதிவாதிகளின் அனுபவத்திற்கு எவ்வித தடையும் இடை-சலும் செய்யாமலிருக்க நிரந்தர தடையுத்தரவு பெற வாதி உரியவரா ?

2. தாவா பி அட்டவணை 1வது அயிட்டத்தில் பிரதிவாதிகள் கொட்டிய மண்ணை அப்புறப்படுத்த செயலுறுத்துக்கட்டளை பரிகாரம் பெற வாதி உரியவரா ?

3. தாவா பி அட்டவணை சொத்தில் கிணறு வெட்டுக் காலத்தில்



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மண்ணை கொட்டாமலிருக்க நிரந்தர தடை யுத்தரவு பெற வாதி

உரியவரா ?

4. பழைய சர்வே எண் 282/6 ல் இப்பிரதிவாதிகளுக்கு 2 ஏக்கர் 46 செண்ட் உரிமை கிடைத்து கடந்த 35 ஆண்டுகளுக்கு மேலாக அனுபவித்து வருகிறார்கள் என்பது சரியா ?

5. சின்னக்குழந்தையம்மாள் கிணற்றுக்காக ஒரு கிரய ஒப்பந்த இரத்து இப்பிரதிவாதிக்கு எழுதிக் கொடுத்துள்ளார் என்பது சரியா?

6. வாதிக்கு கிடைக்கத் தக்க வேறு பரிகாரங்கள் யாவை ?”

6. During the course of trial on the side of the plaintiffs two witnesses were examined as P.W.1 and P.W.2 and Exs.A1 to A4. On the side of the defendants two witnesses were examined as D.W.1 and D.W.2 and Exs.B1 to B13 were marked. The Commissioners' report and place were marked as Exs.C1 and C2.

7. At the conclusion of the trial and considering the materials available on record, the trial Court decreed the suit and the first appeal preferred by the defendants was dismissed by confirming the judgment and decree of the trial Court. Now the defendants have filed the present second appeal by raising the following substantial questions of law:



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“ 1. Whether the courts below erred in law and misdirected themselves in granting the relief with respect to the entirety of the suit property in the absence of any evidence or explanation for entitlement of more extent in S.No.282/7 by the respondent / plaintiff when admittedly lesser extent is granted under Ex.A-1 sale proceedings ?

2. Whether the Courts below failed to note that in a suit for declaration of title and for consequential injunction does not the initial burden of proof lie on the plaintiff ?

3. Whether the Courts below failed to note that in keeping with the initial burden, is not the plaintiff bound to prove his case by positive evidence on his side, rather than by reliance on the loopholes, if any, on the side of the defendant ?

4. Whether the Courts below erred in law and misdirected themselves that the respondent / plaintiff has proved the B- Schedule properties are forming part and parcel of A-Schedule in S.No.282/7 having an extent of acre 1.14 cents, even though there is no piece of evidence on the part of the respondent / plaintiff for the same ?

5. Whether the courts below failed to note that the advocate commissioner would not identify the S.No.282/7 (N.No.156/3) which is the 'A' schedule property and clearly states the same in his report without ascertain the major portion of the A-Schedule suit property, the declaratory relief claimed in ancillary portion mentioned as B-schedule can be granted ?

6. Whether the courts below erred in holding that the plaintiff having right more than the specified extent in Ex.A-1, when the eastern boundary in Ex.B-1 is mentioned as Odai Promboke and not the respondent / plaintiff land ?

7. Whether the courts below erred in law and misdirected themselves in granting the declaration relief merely on the basis of Patta in the absence of any other documentary evidence of title ?

8. Whether the lower appellate court's judgment confirming the trial court's judgment is correct and admissible without giving any independent



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reasoning for the same ?”

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8. The learned counsel for the appellants / defendants submitted that the Courts below have considered only Ex.A1 and Ex.B2 and did not consider Ex.B1 wherein the eastern boundary of the property purchased by the defendant is shown as 'odai' ; in Ex.A1 the western boundary is shown as defendant's vendor Chinnakuzhandhai and Manikam's property.

9. The plaintiff's claim is in respect of old Survey No.282/7 and the defendant's property is in Survey No.282/6. The total extent comprised in S.No.282/7 is 1 acre 14 cents and the defendant's lands comprised in S.No.282/6 is 2 acre 16 cents. However it is claimed by the defendants that though they purchased 2 acre 16 cents through sale deeds Exs.B1 and B2, they were in actual enjoyment of 2 acre 42 cents and only in view that the eastern boundary is shown as 'odai'. But the plaintiff claims the title over the suit property which is immediately on the western side of odai.

10. According to the defendants, the boundaries will prevail over the extent and hence they deny the title and enjoyment of the plaintiff's lands in sub-divided S.Nos.156/5B and 156/4B which are situated immediately on



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the west of odai. If the principle of boundaries should prevail over the extent is adopted then it has to be seen that the boundaries mentioned in those sale deeds have to be taken into consideration. Even the plaintiff's sale deed would also show that the western side boundary is the property of defendant's predecessor's in title. The defendants claim that their property extends to the odai cannot be accepted.

11. The categorical contention of the respondent / plaintiff is that he had purchased the whole of 1 acre 14 cents in S.No.282/7 by virtue of a sale deed dated 20.02.1978. The same was not denied by the defendants also. Accordingly, the properties purchased by the defendants through two sale deeds Exs.B1 and B2 in respect of 2 acres 16 cents in S.No.282/6, also not denied by the plaintiff. Even Ex.B2 sale deed would also show that the eastern boundary is mentioned as plaintiff's lands. The well is situated in S.No.156/5A. The Commissioner who had visited the suit property have stated that the soil taken from the well has been heaped over S.Nos.156/5B and 156/4B. According to the defendant the old S.No.282/6 would correspond to the whole of the S.Nos.156/4 and 156/5 and hence the plaintiff cannot have any title in respect of the suit B schedule properties in S.No.156/5B and 156/4B. But the correlation would show that old



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S.No.282/6 and 282/7 as a part of S.Nos.156/4 and 156/5 also.

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12. It is claimed that 'A' Register in respect of S.No.156/4 and 156/5 is seen to be entered only in the name of the defendants and defendant's predecessor by name Ponnurangan and Manikam. But the old corresponding No.282/7 is admittedly the property belonging to the plaintiff. So the 'A' register entries would only show some mistakes in describing the name of the persons. But the fact remains that even as per the admission of both the plaintiff and the defendants, the plaintiff is entitled to the whole of the property of 1 acre 14 cents in S.No.282/7 and the defendants are entitled to the whole of 2 acre 16 cents in S.No.282/6. Even though the defendants have claimed a larger extent than what they have purchased, that has not been substantiated except by taking advantage of one particular boundary which is shown as odai in one of the title deeds of the defendant namely Ex.B1.

13. Even as per the survey number correlation statement as found in Ex.B6 ('A' Register extract), it is seen that the plaintiff has got right in S.No.156/5 which corresponds to old S.No.282/7. So it cannot be outrightly stated by the defendants that the plaintiff do not have any right in S.No.156/5. Though S.No.156/4 has not been shown as the new correlating



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S.No.282/7, the boundaries of the plaintiff's Ex.A1 coincides with the defendant's title deed Ex.B2. In the absence of any other material it appears that the trial court and the first appellate court have relied on the admissions made by the respective parties in respect of their title over 1 acre 14 cents in old S.No.282/7 for the plaintiff and 2 acre 16 cents in old S.No.282/6 for the defendants and the corresponding boundaries found in Ex.A1 and B2.

14. As the preponderance of probabilities found in the sale deeds Ex.A1 and B2 favours the case of the plaintiff, the suit has been decreed as prayed. The defendants did not produce any other documents to show that they have enjoyment over a property exceeding 2 acre 16 cents up to odai contrary to the boundary details found in Ex.B2 and Ex.A1. Even though the general principle boundaries will prevail over the extent cannot be denied and that is applicable to the plaintiff also. In the plaintiff's title deed also the western boundary is shown as the property belonging to the defendants. When both the parties have the boundary detail in their respective title deeds, the respective party has to supply some more details to support their claim.

15. So far as the defendants are concerned, they are claiming excess extent than what they have purchased in Exs.B1 and B2. As the said fact has



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not been substantiated. The new survey number corresponding to old Survey No.282/7 also lies in S.No.156/5 and there is some mistake found in describing the name of the parties in adangal extract. The courts below had relied on the preponderance and the admission made by both the parties in their evidence and decreed the suit as prayed. In view of the above, I do not find any reason for interference and no substantial questions of law has arisen.

16. In the result, the Second Appeal is dismissed and the judgment and decree dated 28.03.2013 passed in A.S.No.60/2011 on the file of the Principal Sub-Court, Tindivanam, is hereby confirmed and the suit in O.S.No.140/2007 on the file of the Additional District Munsif Court, Tindivanam, is decreed. No costs. Connected miscellaneous petition is closed.

16.12.2024

Index:Yes/No

Speaking Order / Non-speaking order

Neutral Citation Case : Yes / No

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- To:
1. The Principal Sub-Court, Tindivanam.
 2. The Additional District Munsif Court, Tindivanam.



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R.N.MANJULA, J.

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