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S.A.Nos.221 and 222 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2024

CORAM

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

S.A.Nos.221 and 222 of 2013
& M.P.Nos.1 to 1 of 2013

S.A.No.221 of 2023:

Dhanapalan ... Defendant/Appellant/Defendant

Vs.

Gandhimathi ... Plaintiff/Respondent/Respondent

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure to set aside the Judgment and Decree dated 23.02.2012 in A.S.No.77 of 2009 on the file of the Sub-Court, Namakkal, confirming the Judgment and Decree dated 29.07.2009 in O.S.No.13 of 2006 on the file of the Principal District Munsif, Namakkal.

S.A.No.221 of 2023:

Dhanapalan ... Plaintiff/Appellant/ Appellant

Vs.

1.Gandhimathi
2.Subramani

... Defendants/Respondents/Respondents

Prayer: Second Appeal filed under Section 100 of the Code of Civil



S.A.Nos.221 and 222 of 2013

Procedure to set aside the Judgment and Decree dated 23.02.2012 in A.S.No.78 of 2009 on the file of the Sub- Court, Namakkal, confirming the Judgment and Decree dated 29.07.2009 in O.S.No.482 of 2005 on the file of the Principal District Munsif, Namakkal.

In both the S.A's.:

For Appellant : Ms.Sri Varshini
for Mr.I.Abrar Md.Abdullah

For Respondent(s) : Mr.S.Kalyanaraman

COMMON JUDGMENT

These appeals arise against the common judgment in A.S.No.77 of 2009 and A.S.No.78 of 2009 on the file of the learned Subordinate Judge, Namakkal dated 23.02.2012. The appeals arose before the learned Subordinate Judge, Namakkal out of a common judgment that had been delivered by the learned Principal District Munsif at Namakkal in O.S.No.482 of 2005 and O.S.No.13 of 2006 dated 29.07.2009.

2. O.S.No.482 of 2005 was filed by the Appellant/Dhanapalan seeking for the relief of permanent injunction not to interfere with his peaceful possession and enjoyment of the property. O.S.No.13 of 2006 was filed by the defendant in O.S.No.482 of 2005 namely one Gandhimathi claiming the relief of declaration of title and for recovery of possession. Being a suit for



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larger relief, it was treated as primary suit and evidence was recorded in that suit. O.S.No.482 of 2005, being a suit for lesser relief, it was treated as secondary suit and common evidence was recorded and exhibits were marked only in O.S.No.13 of 2006.

3. The total extent of land in S.No.31/3 of Mettupatti Village, Namakkal District hails about 1 acre 50 cents. There is no dispute between either of the parties with respect to 1 acre 25 cents. The dispute arose with respect to the remaining extent of the property of 0.25 acres or 25 cents.

4. For the sake of convenience, in these appeals, the plaintiff in O.S.No.13 of 2006 viz., Gandhimathi will be referred to as the plaintiff and the plaintiff in O.S.No.482 of 2005 viz., Mr.Dhanapalan, shall be referred to as the defendant.

5. The trial court framed the following issues in O.S.No.13 of 2006:

இவ்வழக்கின் தீர்வுக்காக கீழ்க்கண்ட எழுவினாக்கள்

09.06.2006 அன்று வனையப்பட்டன:-

(1) தாவாச்சொத்தில் வாதிக்கு எந்தவித பாத்தியமும்,
உரிமையும் அனுபவமும் இல்லை என்று பிரதிவாதிகள்



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கூறுவது சரியா?

(2) வாதி கோருகிற விளம்புகை பரிகாரம் கிடைக்கத்தக்கதா?

(3) அதன் தொடர்ச்சியாக வாதி கோரும் சுவாதீன பரிகாரம் வாதிக்கு கிடைக்கக்கூடியதா?

(4) வாதிக்கு கிடைக்கத்தக்க வேறு பரிகாரங்கள் என்ன?

இவ்வழக்கில் 03.03.2008 அன்று வணையப்பட்ட கூடதல் எழுவினா பின்வருமாறு:-

(1) பிரதிவாதியின் பெயரில் 29.07.1980 நல்லுசாமி தான செட்டில்மென்ட் பத்திரம் எழுதிக்கொடுத்து அதன் அடிப்படையில் தாவாச்சொத்தின் சுவாதீனத்தில் பிரதிவாதி இருந்துவருவதாக கூறுவது உண்மையா?

6. The following issues had been framed in O.S.No.482 of 2005:

இவ்வழக்கின் தீர்வுக்காக கீழ்க்கண்ட எழுவினாக்கள் 20.12.2005 அன்று வணையப்பட்டன:-

(1) தாவாச்சொத்து 1ம் பிரதிவாதிக்கு பாத்தியப்பட்டது என்பது சரியா?

(2) வாதி கோரும் நிரந்தர உறுத்துக்கட்டளைப் பரிகாரம் வாதிக்கு கிடைக்கத்தக்கதா?

(3) வேறு என்ன பரிகாரம்?



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7. Before the trial court, the plaintiff/Gandhimathi examined herself as PW1 and in addition, examined four other witnesses and marked Ex.A1 to Ex.A10. The defendant examined himself as DW1 and two other witnesses namely DW2 and DW3 and marked Ex.B1 to Ex.B4. Ex.X1 to Ex.X6 were marked through official witnesses. In addition, the Advocate Commissioner's report and plan were marked as Ex.C1 and Ex.C2.

8. After detailed examination of the evidence and record, the learned trial judge decreed the suit in O.S.No.13 of 2006 and dismissed O.S.No.482 of 2005. Aggrieved by the said judgment and decree, two appeals were preferred in A.S.No.77 of 2009 and A.S.No.78 of 2009, which also came to be dismissed on 23.02.2012. Against the concurrent findings of the courts below, the present second appeals had been preferred before this Court on 28.02.2013.

9. Originally notice regarding admission had been ordered. Subsequently, by an order dated 18.12.2019, these appeals had been



admitted on the following substantial questions of law:

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“1. Whether the Lower Appellate Court was right in holding that the grant of Settlement Patta in favour of Arumugathu Udayar for an extent of 1 Acre 50 cents would prevail over the registered instruments of title namely Exs.A-1, A-2, B-2 and B-2 moreso when there is a rival claimant?

2. Whether the courts below were right in holding that the respondent is the owner of the property as per Ex.X1 to X5, when the respondent's predecessors in title were conveyed with the smaller extent under Ex.A1 and A2 than which was conveyed to the respondent under Ex.A3?

3. Whether the courts below were right in holding that the respondent is entitled for a declaration of 1.50 acres of land in the suit S.No.31/3 as the proceedings under the survey and settlement of land has recognized her predecessors' in title and the vendor has right to sell 1.50 acres to the respondent under Ex.A3 even though a lesser extent was settled to her under Ex.A2, when the appellant disputes the possession of the respondent and her predecessors' in title and the proceedings took place under the survey and settlement of land and other records under Ex.X1 to X5?”



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10. I club all the four substantial questions of law together and answer the same accordingly.

The following facts are not in dispute:

11. The property originally belonged to the family of Nallama Naidu and Thallama Naidu. They had alienated the property by way of a document on 01.11.1944 in favour of one Kondama Naidu. The said Kondama Naidu after having enjoyed the property for few years, by a registered document under Ex.A1 dated 23.04.1951 alienated the property in favour of one Arumugathu Udayar. The said Arumugathu Udayar enjoyed the property as long as he was alive and on his death, the property was inherited by his son Ramasamy Udayar.

12. Ramasamy Udayar by way of Ex.A2 transferred the property in favour of his wife Bhagyam Ammal through a settlement deed dated 12.07.1962. Bhagyam Ammal subsequently alienated the property in favour of the plaintiff/Gandhimathi by way of a registered document under Ex.A3 on 20.09.1990. On the strength of the purchase made by Gandhimathi, she



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mutated the revenue records in her favour under Ex.A4 on 30.07.1996. Since she claimed continuous possession of the property through her predecessor in title, since the presentation of O.S.No.482 of 2005 by Dhanapalan created a cloud over the title, she presented O.S.No.13 of 2006 for declaration of title and for recovery of possession.

13. It is the case of the defendant that he is the descendant of Nallama Naidu and Thallama Naidu. According to him, Nallama Naidu and Thallama Naidu had only alienated 1.25 acres of property in S.No.31/3 in favour of Kondama Naidu. He would state that the remaining 25 cents fell to the share of his father/Nalluchami Naidu, who in turn executed a registered settlement deed under Ex.B2 in his favour on 29.07.1980. He would claim that on the basis of this settlement deed, he is in possession and enjoyment of the property.

14. The issue that has to be resolved in this case is when the alienation that had been made under Ex.B1 in favour of one Kondama Naidu was only 1.25 acres and from Kondama Naidu to Arumugathu Udayar under Ex.A1 for 1.25 acres, how Bhagyam Ammal alienated 1.49 acres in favour of the



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plaintiff.

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15. Heard Ms.Sri Varshini, learned counsel representing I.Abrar Md.Abdullah, learned counsel for the Appellant/Dhanapalan and Mr.S.Kalyanaraman, learned counsel for the respondents.

16. Ms.Sri Varshini would vehemently contend the following:

(i) When Ex.A1 and Ex.A2 only speak about 1.25 acres, the case of the plaintiff for declaration of title for the remaining .25 acres is not maintainable.

(ii) She would contend that the Court should have been swayed by Ex.X1 to Ex.X6, which are revenue records and it is settled position of law that the revenue records do not confer title.

To that end, she would reply upon the judgment of the Supreme Court in ***Union of India & Others vs. Vasavi Cooperative Housing Society Limited and Others*** reported in ***(2014) 2 SCC 269***. In particular, she would invite my attention to paragraph Nos.15 to 21 of the said judgment. She would also submit that since the plaintiff/Gandhimathi has not proved her title, she does



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not have better title than the defendant and therefore, the suit for title should not have been decreed.

17. Learned counsel appearing for the respondent would submit that sitting in a second appeal, I should not re-appreciate the evidence as both the courts below have gone into in great detail regarding the documents and decreed the suit. He would further contend that boundaries would prevail over extent and therefore, no error had been committed by the courts below as they had followed the settled positions of law. He would draw my attention to Ex.A9, the sale deed dated 16.12.1969, whereunder the father of the defendant/Dhanapalan namely one Nalluchami Naidu had purchased 1/4th of the cents for the purpose of laying out a pathway from the previous vendor, Ramasamy Udayar. He would argue that had the father of the plaintiff been the owner of the property, there would have been no necessity for him to purchase the property from the predecessor in title/Ramasamy Udayar. He would further contend that under Ex.A10, the settlement deed executed in favour of the defendant Dhanapalan under Ex.B2, had been cancelled and therefore, he cannot stake any claim to the property by virtue of Ex.B2.



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18. In response, Ms.Sri Varshini, would urge that there has been no pleading with respect to Ex.A10 and therefore, where there is no pleading, there is no question of looking into the evidence.

19. I have carefully considered the arguments on either side and gone through the records.

20. Ms.Sri Varshini is right in stating that the extent of the property that had been sold under Ex.A1 is only 1.25 acres. However, a careful perusal of the document shows that the property had been alienated with specific boundaries that had been given therein. The specific boundaries are set-forth hereunder:

East by property belonging to Thallama Naidu,

North by property belonging to Sankara Aiyer,

South by property belonging to Nallama Naidu and

West by property belonging to Arumugatha Udayar.

Therefore, alienation had been made with specific four boundaries of the property. The property being “Mirasu Land” was subjected to survey, during



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the time of implementation of land reform laws. At that time, it was found that what was described as 1.25 acres in the document was a wrong extent and what had been alienated in fact under the four specific boundaries was 1.50 acres. Taking note of this factual mistake in the extent, the revenue records were corrected from 1.25 acres to 1.50 acres.

21. It is settled position of law that when there is a dispute between the boundaries and extent, the court will have to hold that the boundaries would prevail over the extent of the property mentioned in the deed. If the boundaries prevail over the extent of the property, then the plaintiff having proved that she is in occupation of the property that had been alienated under Ex.A1 to Ex.A3, would automatically be entitled to a decree.

22. A reading of the boundaries leads me to a conclusion that what had in fact been alienated under the specific boundaries was transferred by the predecessor in title under Ex.B1 in favour of Kondama Naidu. The said Kondama Naidu had also transferred whatever he had obtained under Ex.A1 in favour of Arumugathu Udayar. The evidence of PW2 and PW3 would show that they have not retained any extent in the suit schedule property and



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had alienated what they had acquired in its entirety in favour of the plaintiff.

Once I apply the law that the boundaries prevail over the extent to the facts of the case, the plaintiff will have to succeed.

23. This leads to the interesting argument of Ms.Sri Varshini that the revenue records do not confer title and therefore, the suit would have to fail.

24. It is too well settled for me to reiterate that the revenue records will not and cannot confer title over a person. However, in this case, the plaintiff is not staking claim to the remaining extent on the basis of the revenue records.

25. The title deeds of the plaintiff are Ex.A1 to Ex.A3. What had been alienated under Ex.A1 to Ex.A3 was 1.50 acres. However, by error, it was shown as 1.25 acres. It is not uncommon that the properties are sold without proper measurement and the purchaser would also take possession of the same, but only at a later date, when the survey is done, the mistake is realised. This does not give a right to the vendor to claim that he had alienated the lesser extent. If such being a case, then an unscrupulous vendor



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will take advantage of the fact that there is a mistake with respect to the extent mentioned in the document and it would lead to utter confusion in the real estate in the country. This is why the principle that the boundary will prevail over extent has held forth for more than a century, from the time, it was settled by the privy council.

26. Though the argument sounds very interesting in the beginning that it is a revenue record which has been conferred title, a careful perusal of the title deeds along with the revenue records leads me to a conclusion that the survey that was conducted during the land reforms period, brought out the mistake that what they were in occupation was only 1.25 acres and not 1.5 acres and it was accordingly rectified. Therefore, the submission of Ms.Sri Varshini that it is a revenue record has to be necessarily rejected.

27. It is here that I have to take note of Ex.A9/the Sale deed which had been executed by the Ramasamy Udayar, the predecessor in title of the plaintiff in favour of the Nallachami Naidu, the father of the defendant. Had the alienation been made only for 1.25 acres out of 1.50 acres by the predecessor in title of Nalluchami Naidu, there could not have been any



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necessity for Nalluchami Naidu to purchase a portion of the property from the predecessor in title of the plaintiff. The very fact that the predecessor in title of the defendant had purchased a portion of the property from the predecessor in title of the plaintiff shows that they were aware as to who had the title to the suit schedule mentioned property and proceeded to purchase a portion thereof. If a person is the owner of the property, there is no necessity for him to go ahead and purchase the same all over again.

28. I am not going to deal with Ex.A10 since as rightly pointed by Ms.Sri Varshini, there has been no pleading to that effect. Where there is no pleading, the question of giving any weight to the document does not arise. Therefore, I am of the view that even if Ex.A9 and Ex.A2 are kept aside, still the plaintiff would have to succeed.

29. Insofar as attack on the revenue documents are concerned, the survey was conducted in the year 1964 or thereabouts and the present suit came to be filed towards the end of 2005. In other words, the revenue records had been holding the field for more than four decades. Under Section 114 of the Indian Evidence Act, I can draw a presumption that the revenue records,



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though not a document of title, raise a presumption of possession. This has

been settled by the Supreme Court in ***Gurunath Manohar Pavaskar v.***

Nagesh Siddappa Navalgund, (2007) 13 SCC 565.

30. Section 114 read with Section 4 of the Indian Evidence Act leads me to presume a conclusion that what had been alienated was only 1.5 acres and not 1.25 acres. The defendant had unfortunately not discharged the onus on him to show that what was in occupation and what had actually been sold was not 1.5 acres and the revenue records were tampered with for the purpose of conferring title on the additional 0.25 acres.

31. In the light of the above discussion and since the principle that boundaries prevail over extent has been settled by a number of judgments of this Court and of the Supreme court and of the Privy Council which binds me, despite the vehement argument of Ms.Sri Varshini, I am constrained to dismiss the appeal.

32. In fine, the judgment and decree of the court of the Subordinate



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judge, at Namakkal in A.S.No.77 of 2009 and A.S.No.78 of 2009 dated 23.02.2012 in confirming the judgment and decree of the learned Principal District Munsif, Namakkal in O.S.No.486 of 2005 and 13 of 2006 has been confirmed. Second Appeal is dismissed. The plaintiff will be entitled to decree as prayed for. Costs throughout. Consequently, connected miscellaneous petitions are closed.

10.01.2024

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Index : Yes/No

Neutral Citation : Yes/No

Speaking order / Non-speaking order

To:

1.The Sub Judge
Namakkal

2.The Principal District Munsif
Namakkal.

3.The Section Officer
V.R.Section



High Court of Madras.

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V.LAKSHMINARAYANAN, J.

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