



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2024

CORAM :

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

S.A.No.253 of 2013
& M.P. Nos.1 & 2 of 2013

Sengodan

... Appellant

Vs.

1.Thangavel Nadar(deceased)

2.Soodamani

3.Draavidamani

4.Kavimani

5.Lakshmi

... Defendants

(RR2 to 5 are recorded as Lrs of the deceased sole respondent viz.,Thangavel Nadar vide order of Court dated 26.02.2019-PRMJ)

Prayer:- This Second Appeal has been filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 31.01.2012 in A.S.No.83 of 2007 on the file of the learned Sub Judge, Namakkal reversing the judgment and decree dated 09.04.2007 passed in O.S.No.360 of 2005 on the file of the Court of the Additional District Munsif, Namakkal.

For Appellant : Mr.P.Mohanraj

For Respondents : Mr.C.Jagadish



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JUDGMENT

This Second Appeal has been preferred against the Judgment and decree dated 31.01.2012 in A.S.No.83 of 2007 on the file of the learned Sub Judge, Namakkal reversing the judgment and decree dated 09.04.2007 passed in O.S.No.360 of 2005 on the file of the Court of the Additional District Munsif, Namakkal.

2.In this appeal, the following substantial question of law is framed:

(a) Whether the Lower Appellate Court erred in law in deciding the Appeal as well as the interim application filed by the plaintiff/appellant under Order 41 Rule 27 CPC seeking to file additional documents simultaneously without giving opportunity to the plaintiff/appellant to challenge the order of rejection of the said application, especially, when it is contended that those documents sought to be marked before the Lower Appellate Court are in support of the plaintiff /appellant to disprove the case of the defendant?



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3.The appellant before me is the plaintiff in the suit. He had presented O.S.No.360 of 2005 before the Additional District Munsif Court at Namakkal. In the said suit, he claimed for declaration that the suit schedule mentioned property belongs to him and for consequential reliefs of permanent and mandatory injunctions.

4.The predecessor in title of the plaintiff and the defendant are one and the same. They were three persons, namely Muniappa Nadar, Karuppa Nadar and Nachimuthu Nadar. The respondents were the first to purchase a portion of the entire holding from these predecessors in title. It was by a Sale Deed dated 29.05.1954. The plaintiff parents had purchased the property under Ex.A2 dated 14.02.1959 and Ex.A3 dated 09.09.1960 and Ex.A4 dated 12.09.1960.

5.The confusion arose in the present case is because the purchase that had made in the year 1954, i.e. on 29.05.1954 was to the extent of $\frac{2}{3}$ rd of the property situated in Mitta Survey No.9 and that left out $\frac{1}{3}$ rd portion of land. The balance of $\frac{1}{3}$ rd was sold by one Arumuga Gounder,



Nachimuthu Nadar and Varadappa Gounder, who were the subsequent purchasers of the property, in favour of the father and mother of the plaintiff.

6. On the death of Chinnen and Palaniammal, the property came to be vested in their legal heirs. The legal heirs entered into a Release Deed under which, the plaintiff came to possess 1.96 acres of land in S.No.102/2. The property in which the defendants are in possession is in S.Nos.102/1A and 102/1B. It is admitted by both the parties that the land lying between S.Nos.102/2 and 102/1B is divided by Kalkatti (the wall constructed by using stones). It has come to notice during the course of evidence of PW1 as well as the report of the Advocate Commissioner that the stone wall runs nearly to the entire extent from north to south of the property. The dividing wall was constructed by using stones, which had been taken from the well situated nearby.

7. The plaintiff was emboldened to file the suit on account of the fact that as per document dated 29.05.1954, the defendants had



purchased only 4.25 acres and since the original owners were possessing 6.38 acres, it is the claim of the plaintiff that he is entitled to the remaining portion. A perusal of Ex.B1 would show that Muniappa Nadar and Karuppa Nadar, on division, had alienated the property on 14.09.1978 under Ex.B1 and the extent mentioned therein is 4.43 acres. The extents mentioned under Ex.A1 and Ex.A2 are under Old Survey number i.e., Mitta survey number but the extents under Ex.A4 and Ex.B4 after re-survey had been conducted. This is the reason there has been difference in the extents. The predecessors in title of the plaintiff had purchased 1/3rd share which had fallen to the share of Nachimuthu Nadar. However, while dividing the property in and by metes and bounds in the family of the plaintiff, the extent that had been allotted to the share of the plaintiff is only 1.95 acres. The Advocate Commissioner has found that the plaintiff's portion is about 1.96 acres. The title deed of the plaintiff is the release deed and in the release deed what was allotted to him was only 1.95 acres.

8. Prior to the filing of the present suit, another suit relating to the present suit property, namely O.S.No.346/1985 had been filed on the file



of the District Court, Rasipuram. The Court proceedings had been filed before the trial Court in this suit as Exs.A5 & A6. A perusal of the claim made by the plaintiff therein under whom the present plaintiff claims and the decree shows that what is in occupation and what is possessed and owned by the plaintiff was as follows:

In Kalyani Village at Namakkal District in S.No.102/2 and an extent of 1.95 acres.

9. Apart from the above, the plaintiff had entered witness box and deposed as follows:

அதன்படி தான் தாவா சொத்து எனக்கு பாத்தியப்பட்டது. மேற்படி பத்திரப்படி எனக்கு 1.95 ஏக்கர் நிலம் பாத்தியப்பட்டது. அதன் சர்வே எண்.102/2 ஆகும். வா.சா.ஆ.1ல் மேல்புறம் ராமசாமி நாடார் நிலம் இருப்பதாகவும், அதன் சர்வே எண்.102/1 என்றும் காட்டப்பட்டுள்ளது என்றால் சரிதான். வா.சா.ஆ4ல் மிட்டா சர்வே எண் 9ல் 6 ஏக்கர் 38 சென்ட் விஸ்தீர்னம், இதில் நல்லண்ண நாடாருக்கு மேல்புறம் ஏக்கர் 4.43 போக கிழபுறம் ஏக்கர் 1.95 உள்ள நிலத்தில் 1/3 பங்கு கிரையம் பெறுவதாக கண்டுள்ளது என்றால் சரிதான்.



மேற்படி ஆவணத்தில் கண்டுள்ள நல்லண்ண நாடாரின் நிலத்தை தான் 1ம் பிரதிவாதியின் தகப்பனார் கிரையம் பெற்றுள்ளார். 1978ல் கிரையம் பெற்றார் என்றால் சரிதான். மேற்படி சொத்து சர்வே எண்.102/1ல் உள்ளது. மேற்படி சர்வே எண் சொத்தை தான் 1ம் பிரதிவாதியும், அவருடைய சகோதரியும் பிரித்துக் கொண்டார்கள் என்றால் சரியே. நல்லண்ண நாடாரிடம் இருந்து 1ம் பிரதிவாதியின் தகப்பனார் கிரையம் பெற்ற பத்திரத்தில், நிலத்தின் விஸ்தீர்ணம் ஏக்கர் 4.43 சென்ட் என்று குறிப்பிட்டுள்ளது என்றால் சரிதான். என்னுடைய பாகபாத்திய விடுதலை பத்திரத்திலும் என்னுடைய சொத்தின் விஸ்தீர்ணம் ஏக்கர் 1.95 என்று குறிப்பிடப்பட்டுள்ளது என்றால் சரிதான்.

10.A perusal of this evidence makes it clear that the plaintiff had obtained only 1.95 acres by way of release deed. Therefore, he cannot make a claim for a larger extent than the extent of land which had been described under Sale Deed dated 29.05.1954. Therefore, I do not find any error or irregularity in the judgment of the lower appellate Court and also any substantial question of law arising in this Appeal.



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11. Now having the question of law framed, the Hon'ble Supreme Court in “*Union of India versus Ibrahim Uddin and another*” reported in (2012) 8 SCC 148, has held that the existence of substantial question of law is *sine qua non* for the exercise of jurisdiction under the provisions of Section 100 of CPC. The Court, held that for the reasons to be recorded, the High Court may entertain a second appeal even on any substantial question of law, not formulated by it, if Court is satisfied that the case involved such a question. But as stated supra, I do not find any such substantial question of law in order to entertain the present appeal. Further, an application filed under Order 41 Rule 27 of CPC has to be dealt with only along with the appeal and not separately. This is exactly what has been done by the appellate Court. Accordingly, the substantial question of law framed is answered against the appellant.

12. At this stage, Mr. Mohanraj, learned counsel for the appellant submits that there are two samadhis, one belongs to his client's first wife and the other belongs to his father in the boundaries situated at S.Nos.102/2, and 102/1B.



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13.Mr.Jagadish, learned counsel for the respondents had fairly stated that samadhis will not be disturbed at all. Accordingly, the statement of the learned counsel for the respondents, is recorded.

14. For the foregoing discussion, the Second Appeal fails and it is dismissed and the judgment and decree dated 31.01.2012 of the learned Subordinate Judge, Namakkal in AS.No.83 of 2007 in reversing the judgment and decree of the learned Additional District Munsif, Namakkal in O.S.No.360 of 2005 dated 09.04.2007 is confirmed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs throughout.

15. Since the learned counsel for the respondent has undertaken that the respondents will not disturb Samadhis, the Advocate Commissioner's plan filed as Ex.C2 shall form part of the decree.

11.01.2024

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V.LAKSHMINARAYANAN.J,

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To

- 1.The Sub Judge, Namakkal
- 2.The Additional District Munsif, Namakkal.

SA.No.253 of 2013

11.01.2024