



A.S.No.666 of 2024

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2024

CORAM:

THE HONOURABLE MR JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR JUSTICE C.KUMARAPPAN

A.S.No.666 of 2024
and
C.M.P.Nos.21436 & 21442 of 2024

1.A.T.Karuppasamy

2.Durai

3.Kannan

4.Murugan @ Adayappa

...Appellants

Vs.

1.N.Kalpana

2.P.L.Prabakaran

...Respondents

Prayer: Appeal filed under Section 96 read with Order 41 Rule 1 and 2 of the Code of Civil Procedure, 1908, praying to set aside the judgment and decree passed in O.S.No.108 of 2019 on the file of IV Additional District Judge, Tiruvallur at Ponneri dated 23.12.2022.

For Appellants : Mr.J.Ram

For 1st Respondent : Mr.K.Prabhakaran



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J U D G M E N T

*(Judgment of the Court was delivered by **R.SUBRAMANIAN, J.**)*

With the consent of the parties, the appeal itself is taken up for hearing.

2. For the sake of convenience, the parties will be referred to as per their rank in the suit.

3. The appeal is at the instance of the defendants. Challenge is to the decree for declaration of title and recovery of possession granted by the trial Court in O.S.No.108 of 2019.

4. The plaintiff sued for declaration of title in respect of 16 cents of land in S.No.15/3A2A of Mathur Village. According to the plaintiff, an extent of 16 cents of land which was declared as surplus under the The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 was assigned to one Narasimhan. The said Narasimhan executed a settlement



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deed in favour of the plaintiff (daughter) on 12.09.2017. Claiming that the 1st defendant had encroached upon the suit property and had put up certain shops and let out the same to the defendants 2 to 5, the plaintiff sought for declaration of her title and recovery of possession.

5. The defendants resisted the suit contending that the claim of the plaintiff is not correct. The plaintiff is not entitled to S.No.15/3A2A. The settlement deed was denied. The claim that the land was assigned to the plaintiff's father was also denied. It was claimed that the suit properties belonged to Adi Dravida people and the land was allotted to one Mahalingam on 11.04.1979. It is stated that the said Mahalingam died on 23.02.2000 leaving behind his legal representatives. On 11.08.2011, the heirs of Mahalingam sold an extend of 4 cents in S.No.15/3A1 to one Madhavi wife of Mutyalal Rao. The said Madhavi sold the said extent of 4 cents to the 1st defendant on 24.06.2013 and therefore the 1st defendant is entitled to the said 4 cents of land in S.No.15/3A1. It is also claimed that the defendant has filed a suit for permanent injunction against the plaintiff's father and the plaintiff in O.S.No.7 of 2018 in respect of the land purchased



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by him and the same is pending.

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6. On the above contentions, the trial Court framed the following issues:

1) Whether the plaintiff is the absolute owner of the suit property?

2) Whether the plaintiff is entitled to the relief of declaration and for recovery of possession?

3) Whether the 1st defendant is the absolute owner of the suit property by virtue of a registered Sale Deed dated 24.06.2013?

4) To what relief if any the plaintiff is entitled to?

7. At trial, the plaintiff was examined as PW1 and one Lokeshwari, Firka Surveyor was examined as PW2. Exs.A1 to A12 were marked on the side of the plaintiff. The 1st defendant was examined as DW1 and one Balamurugan was examined as DW2. Exs.B1 to B12 were marked on the side of the defendants.

8. The learned trial Judge upon consideration of the evidence on



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record, particularly, the evidence of PW2, firka surveyor and the admission made by the 1st defendant as DW1 in his cross-examination concluded that the 1st defendant is not claiming any right over the suit property, which is shown as S.No.15/3A2A of an extent of 16 cents. The 1st defendant is claiming title to an extent of 4 cents in S.No.15/3A1, which is situate on the West of the suit property. The trial Court also found that the claim of the plaintiff that the property was assigned to Narasimhan and Narasimhan settled it on her is true. On the said conclusion the trial Court decreed the suit. Aggrieved the defendant is on appeal.

9. We have heard Mr.J.Ram, learned counsel appearing for the appellants and Mr.K.Prabhakaran, learned counsel appearing for the 1st respondent/ plaintiff.

10. Mr.J.Ram, learned counsel appearing for the appellants/ defendants would vehemently contend that in the guise of executing the decree obtained for S.No.15/3A2A, the plaintiff is seeking to disturb their possession of land in S.No.15/3A1. Though the learned counsel would



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concede that the defendants have no claim over S.No.15/3A2A he would submit that he is actually aggrieved by the attempt of the plaintiff to disturb their possession of the 4 cents of land in S.No.15/3A1, which according to the defendants, belongs to the 1st defendant.

11. Mr.K.Prabhakaran, learned counsel appearing for the 1st respondent/ plaintiff would contend that the defendant has in his oral evidence conceded the title of the plaintiff to S.No.15/3A2A and therefore he has no cause for filing the appeal. The learned counsel would also draw our attention to the evidence of PW2 firka surveyor as well as the evidence of DW1, the 1st defendant himself to contend that in fact the defendant did not claim any right over the land in S.No.15/3A2A.

12. We have considered the rival submissions.

13. On the contention of the learned counsel on either side, the only point that arises for determination is:-

Whether the defendant had claimed any right over the land in



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S.No.15/3A2A, which is shown as suit property?

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14. The suit property has been described as follows in the plaint:-

Schedule

The Vacant land with an extent of 16 Cents which is about 6976 Sq.ft., in S.A.No.15/3A2A at Mathur Village, Madhavaram Taluk, Tiruvallure District measuring East to West 28.4 Metre on both sides and North to South 23 Metre on both sides and bounded on the
North by – 200 Feet Road ;
South by – S.No.15/3B1;
East by – S.No.15/3A2B and
West by – property in S.No.15/3A1.

15. A perusal of the description of the property along with the boundaries would show that the plaintiff's claim is restricted to an extent of 16 cents in S.No.15/3A2A, which is bounded on the North by 200 Feet Road; South by S.No.15/3B1; East by S.No.15/3A2B and West by the property in S.No.15/3A1. The firka surveyor, who was examined as PW2,



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has specifically deposed that the land in S.No.15/3A1 is situate on the West of the suit property and patta for that land stands in the name of one Subashini. As far as the land in S.No.15/3A2A, the said land has been assigned to Narasimhan and Narasimhan had in turn settled it on the plaintiff. The defendant is his oral evidence has specifically admitted that he does not have any claim over S.No.15/3A2A. The relevant portion of his evidence in cross-examination reads as follows:-

இந்த வழக்கு சொத்தை நான் என்னுடைய சொத்து என்று சொல்கிறேன் என்றால் சரிதான். வழக்கு சொத்தின் சர்வே தெரியுமா என்றால் சர்வே எண்.15/3ஏ1. அதனால் சர்வே எண்.15/3ஏ2ஏ கீழ் உள்ள 16 சசென்டில் எனக்கு எந்தவித பாத்யதையும் இல்லை என்றால் இல்லை. வழக்கு சொத்தில் தாக்கல் செய்யப்பட்டுள்ள ஆவணங்களை நான் பார்த்துள்ளேனா என்றால் இல்லை. அது குறித்து எனக்கு தெரியாது. சர்வே எண்.15/3ஏ2ஏ சொத்தில் உள்ள 16 சென்ட் நிலத்தை நரசிம்மன் என்பவர் தனது மகளாகிய கல்பனாவிற்கு (வாதிக்கு) செட்டில்மென்ட் ஏற்படுத்தியுள்ளார் என்பது குறித்து தெரியுமா என்றால் வா.சா.1 ஆவணத்தில் சர்வே எண்.15/3ஏ2ஏ குறித்து எனக்கு ஆட்சேபனை இல்லை ஆனால் சர்வே எண்.15/3ஏ1 எனக்கு பாத்தியப்பட்ட



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சொத்து.

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16. Though the defendant would claim in further cross-examination that patta in S.No.15/3A1 also stands in the name of Narasimhan, the evidence of firka surveyor is otherwise. The FMB has been produced and the same is marked as Ex.A12. A perusal of Ex.A12 shows that the land in S.No.15/3A1 is situate on the West of the suit property and the suit property has been given S.No.15/3A2A. We see no foundation for the apprehension of the appellants that the plaintiff is attempting to take possession of the land in S.No.15/3A1 in the guise of executing the present decree. The decree in this suit is for recovery of possession of 16 cents of land in S.No.15/3A2A and nothing more. Once the defendant admits that he does not have a claim over the land in S.No.15/3A2A, we do not see any grievance to the defendant as against the decree that has been granted.

17. We find that the very appeal is unnecessary. Therefore, the appeal fails and it is accordingly **dismissed**. We make it clear that the executing



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Court will ensure that the plaintiff is put in possession of the suit property and nothing more. The parties are directed to bear their own costs.

Consequently, the connected miscellaneous petitions are closed.

(R.S.M., J.) (C.K., J.)
19.11.2024

dsa
Index : No
Neutral Citation : No
Speaking order



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To

The IV Additional District Judge,
Tiruvallur at Ponneri.



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R.SUBRAMANIAN, J.
and
C.KUMARAPPAN, J.

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