



S.A(MD)No.511 of 2008

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **02.07.2024**

CORAM

THE HON'BLE MR.JUSTICE S.SOUNTHAR

S.A(MD)No.511 of 2008

1.Chellammal

2.Karuppanan (Died)

3.Muthalagi Ammal

... Appellants/Appellants
Plaintiffs

4.Ramuthai

5.Muthu

6.Boominathan

7.Selvam

... Appellants 4 to 7

*(Appellants 4 to 7 are brought on record as
LRs of the deceased second appellant vide
Court order, dated 18.04.2024 made in
C.M.P(MD)Nos.5281, 5282 and 5283 of
2024 in S.A(MD)No.511 of 2008)*

Vs.

1.Mari

2.Selvaraj (Died)

3.Rajendran

4.Erakmmal (Died)

... Respondents/Respondents
Defendants



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(Respondents 5 to 7 are brought on record as LRs of the deceased second respondent and respondents 8 to 10 are brought on record as LRs of the deceased fourth respondent vide common order, dated 06.06.2024 made in C.M.P(MD)Nos.5270, 5272 & 5273 of 2024 and 5277, 5279 & 5280 of 2024 in S.A(MD)No.511 of 2008 respectively)

PRAYER : Second Appeal filed under Section 100 of the Civil Procedure Code, to set aside the judgment and decree, dated 04.06.2007 made in A.S.No.54 of 2006 passed by the learned Subordinate Judge, Aruppukottai confirming the judgment and decree, dated 21.06.2006 made in O.S.No.250 of 2001 passed by the learned District Munsif Court, Aruppukottai.

For Appellants : Mr.M.P.Senthil
for Mr.N.Shanmuga Selvam

For R-1 & R-5 to
R-10 : Mr.K.M.Vijayakumar

R-2, R-3 & R-4 : Died

JUDGMENT

The plaintiffs are the appellants herein.

2. The suit is filed for declaration of title and injunction with alternative prayer for recovery of possession. The suit was dismissed by the Trial Court and the findings of the Trial court were affirmed by the



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First Appellate Court. Aggrieved by the concurrent findings, the plaintiffs are before this Court.

3. According to the plaintiffs, suit property was their ancestral property. Their father Muthukaruppa Moopar was entitled to 3 acres 18 cents in Pymash Nos.1277 and 1278. Out of the said total extent, their father sold 0.3.0 Mummaagani (26 cents) in favour of Andi Moopar predecessor of defendants by sale deed, dated 28.09.1955 and the remaining extent in the suit property, namely, 2 acres 92 cents was enjoyed by father of the plaintiffs by doing cultivation during his lifetime. After his death, the plaintiffs have been in possession and enjoyment of the suit property. When the plaintiffs made arrangement to sell the suit properties to third parties, it came to their knowledge that defendants 1 to 3 created a sham and nominal settlement deed on 09.02.1994 in favour of fourth defendant settling a larger extent in her favour. Since the defendants created a cloud over the title of the plaintiffs, a legal notice was issued by the plaintiffs to the defendants asserting the title of the plaintiffs. The defendants came up with the false allegations in the reply notice. Hence, the plaintiffs were constrained to file a suit for above said relief.



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4. The suit was mainly resisted by the defendants on the ground that father of the plaintiffs sold 2 acres 25 cents in suit survey number by sale deed, dated 28.09.1955 in favour of their predecessor Andi Moopar. It was also asserted by the defendants that from the date of purchase, Andi Moopar had been in possession and enjoyment of the said property and after his death, the defendants 1 to 3, being his legal heirs, had been in possession and enjoyment of 2 acres 25 cents of land in the suit survey number. Thus claiming title over larger extent, the defendants' sought for dismissal of the suit.

5. Before the Trial Court, the second appellant was examined as P.W.1. The attesor to the sale deed executed by father of the plaintiffs in favour of the defendants' predecessor Andi Moopar was examined as P.W.2. An independent witness was examined as P.W.3 and official of the Registration Department was examined as P.W.4. On behalf of the plaintiffs, 21 documents were marked as Exhibits A.1 to A.21. The first defendant was examined as D.W.1 and two other witnesses were examined on behalf of the defendants as D.W.2 and D.W.3. 14 documents were marked on behalf of the defendants as Exhibits B.1 to B.14.



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6. The Trial Court on appreciation of oral and documentary evidence came to the conclusion that plaintiffs' father sold 2 acres 25 cents in favour of defendant's predecessor Andi Moopar and hence, held plaintiffs failed to prove their title and possession over the suit property and as a consequence, dismissed the suit. Aggrieved by the same, the plaintiffs preferred an appeal in A.S.No.54 of 2006 on the file of the Sub Court, Aruppukottai. The First Appellate Court affirmed the findings of the Trial Court. Aggrieved by the concurrent findings, the plaintiffs are before this Court.

7. At the time of admission, this Court formulated the following substantial question of law by an order, dated 18.06.2008:

"Whether the Courts below are correct in coming to the conclusion that the defendants have perfected the title to the suit property by adverse possession?"

8. The learned Counsel appearing for the appellant by taking this Court to the description of the property found in Exhibit B.1 sale deed executed by father of the plaintiffs in favour of the defendants' predecessor submitted that, plaintiffs' father sold only 3 Maaganis equivalent to 26 cents in suit survey number and hence, the claim of the



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defendants over larger extent of land, namely, 2 acres 25 cents is unsustainable in the light of the description found in Exhibit B.1 sale deed.

The learned Counsel for the appellant further submitted that the Courts below committed an error in relying on the oral evidence of P.W.2 attestor to sale deed, when the description of the property in Exhibit B.1 sale deed, the property conveyed to defendant was only 26 cents. The learned Counsel for the appellant further submitted that the findings reached by the Courts below with regard to the extent of property conveyed to the defendants' predecessor is vitiated by mis-reading of Exhibit B.1.

9. Based on the submission made by the learned Counsel for the appellant, the following additional substantial question of law is also taken up for consideration in the second appeal:

"Whether the findings of the Courts below is vitiated by mis-reading of Exhibit B.1?"

10. The learned Counsel appearing for the respondent submitted that attestor to Exhibit B.1 was examined as P.W.2 on behalf of the plaintiffs and he clearly deposed one Kuzhi was equivalent to 60 cents and plaintiffs' father conveyed 3 Kuzhis and 3 Maaganis to the defendants. In the light of the clear admission by P.W.2, both the Courts



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below rightly came to the conclusion, plaintiffs' father conveyed 3 Kuzhis and 3 Maaganis is equivalent to 2 acres 25 cents in favour of defendants' predecessor and the said factual finding need not be interfered with the second appeal.

11. In view of the controversy in the pleading, the only question arising for consideration is what was the extent sold by the plaintiffs' father to defendants' predecessor Andi Moopar. It is the case of the plaintiffs that their father sold only 0.3.0 Moomagani (26 cents) to Andi Moopar. However, it is the case of the defendants that property conveyed under Exhibit B.1 in favour of Andi Moopar is 3 Kuzhis and 3 Maaganis which is equivalent to 2 acres 25 cents. A perusal of description of the property in Exhibit B.1 would reveal that plaintiffs' father sold the following property to the defendants' predecessor Andi Thevar:

"பைமாஸ் 1278 நம்பர் செவல் புஞ்சை குழி
0.3.0 முன் மாகாணி"

12. It is the case of the plaintiffs, the above description would suggest plaintiffs sold only 0.3.0 Munmaagani (26 cents) to the defendants' predecessor. The attesor to Exhibit B.1, who was examined as P.W.2 deposed that one Kuzhi is equal to 60 cents and 4 Maaganis make one Kuzhi. In Exhibit B.1, while describing the extent of the



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property, it was mentioned Kuzhi 0.3.0 Munmaagani. Therefore, the submission of the learned Counsel for the appellant that appellants / plaintiffs sold only 3 Maagani is not acceptable. Because in Exhibit B.1, it was mentioned Kuzhi 0.3.0 Munmaagani. Therefore, it appears property conveyed was 3 Kuzhis and 3 Maaganis. A word 'Munmaagani' refers to 3 Maaganis. In fact, the same has been explained by attesor to Exhibit B.1 in his evidence. In his evidence, P.W.2 says as follows:

"பொதுவாக ஒரு சொத்தின் பாதியை விற்கும்போது எங்கள் கை வசம் உள்ள சொத்தின் நான்குமால் என்று தான் எழுதுவார்கள். வா.சா.ஆ.1 கிரயப் பத்திரத்தில் என் கையறு நிலத்திற்கு கிழக்கே என்று தான் சொல்லப்பட்டிருக்கிறது. ஒரு குழி என்பது 60 சென்ட். 4 முன் மாகாணி சேர்ந்தது தான் ஒரு குழி. ஒரு மாகாணி என்பது ஒரு குழியில் 4ல் ஒரு பங்கு. நான் சாட்சிக் கையெழுத்து போட்ட பத்திரத்தில் 3 குழி 3 மாகாணி என்று போட்டிருக்கிறது என்றால் சரிதான். கிரயப் பத்திரத்தில் கிழக்கு கடைசியில் கிரயம் கொடுத்ததாக சொல்லப்படவில்லை என்றால் சரிதான். தாவா சொத்து முழுவதையும் ஆண்டி மூப்பர் தான் அனுபவித்து வந்தார். அதற்குபிறகு அவருடைய மக்கள் உழுது வந்தார்கள்."

13. A reading of P.W.2 evidence would suggest under Exhibit B.1, plaintiffs' father sold 3 Kuzhis and 3 Maaganis to the defendants' predecessor Andi Moopar. According to him, one Kuzhi is equal to 60



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cents. 4 Maaganis make one Kuzhi. Therefore, 3 Kuzhis and 3 Maagani means 2 acres and 25 cents. The second plaintiff was examined as P.W.1.

Even as per his own admission, he had no personal knowledge about sale that had taken place in the year 1995. However, P.W.2 is the attester to the said document and he is competent person to speak about the property conveyed under document. The expression found in Exhibit B.1 is clearly explained by P.W.2 in his evidence. In view of the clear admission by P.W.2, this Court has no hesitation in coming to the conclusion, plaintiffs' father sold 3 Kuzhis and 3 Maaganis equivalent to 2 acres 25 cents to defendants' predecessor Andi Moopar. P.W.1 also admitted the entire suit property has been enjoyed by Andi Moopar and after his death, it has been enjoyed by defendants 1 to 3. Therefore, the claim of the plaintiffs as if they are in possession of suit property except 26 cents sold to Andi Moopar is also gets falsified by the evidence of P.W.2 himself. The evidence of P.W.2 is binding on the plaintiffs, who produced him as their witness. Both the Courts below on proper appreciation of description of the property found in Exhibit B.1 in the light of admissions of P.W.2, came to the conclusion, plaintiffs' father sold 2 acres 25 cents to the defendants and hence, they failed to prove their title and possession over the entire extent of the suit property. Accordingly, the finding of the Courts below is not vitiated by any mis-



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reading of Exhibit B.1 sale deed. The second question of law framed is answered against the appellant and in favour of the respondents.

14. As far as first question of law regarding adverse title is concerned, both the Courts below came to the conclusion, plaintiffs failed to prove their title and possession over the suit property and dismissed the suit. There is no finding by the Courts below as if defendants perfected adverse title to the suit property. In such circumstances, the first question of law is also answered against the appellant and the second appeal stands dismissed by confirming the judgment and decree passed by the Courts below.

15. In the result, this Second Appeal stands dismissed. There shall be no order as to costs.

02.07.2024

NCC : Yes
Index : Yes
Internet : Yes
BTR



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To

- 1.The Subordinate Judge,
Aruppukottai.
- 2.The District Munsif Court,
Aruppukottai.
- 3.The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SOUNTHAR, J.

BTR

Judgment made in
S.A(MD)No.511 of 2008

Dated:
02.07.2024