



S.A.(MD)No.693 of 2005

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE **S.SOUNTHAR**

S.A.(MD)No.693 of 2005

1.Nainar (Died)
2.Petchiammal
3.Udayakumar
4.Logammal
5.Rathi
6.Kannan
7.Devika

...Appellants

-Vs-

Sekar

... Respondents

(Appellants 2 to 7 were brought on record as legal representatives of the deceased first appellant vide order of this Court, dated 25.04.2016.)

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree passed in A.S.No.76 of 2004, dated 25.02.2005 on the file of the Principal Subordinate Court, Tenkasi confirming the judgment and decree in O.S.No.237 of 2001, dated 16.02.2004 on the file of the Additional District Munsif Court, Tenkasi.



WEB COPY

S.A.(MD)No.693 of 2005

For Appellants : Mr.V.Meenakshi Sundaram
for Mr.C.Vakeeswaran
For Respondent : No appearance

JUDGMENT

The plaintiff in the suit is the appellant herein. The suit is for declaration of title and injunction. The trial Court dismissed the suit. The first appeal filed by the plaintiff was partly allowed by granting a decree for declaration of title and injunction in respect of a property covered by S.No.366/4 with an extent of 0.00.38 hectares. Aggrieved by the same, the plaintiff is before this Court.

2.According to the plaintiff, the suit property originally belonged to one Dharmar and he sold the suit property to one Chelliah @ Sankaralinagm and his wife Parvathy Ammal under a sale deed, dated 23.07.1955. Thereafter, the said Chelliah @ Sankaralinagm and Parvathy Ammal sold the suit property to the plaintiff on 05.04.1969. It was claimed by the plaintiff that he had been in possession and enjoyment of the suit property by paying land tax to the Government from that date onwards. The plaintiff also claimed right over the suit property by adverse possession. It was further stated that the defendant had no



S.A.(MD)No.693 of 2005

WEB COPY

right or claim over the suit property and he attempted to interfere with the possession of the southern vacant portion of the suit property and hence, the plaintiff was constrained to file a suit for declaration of title and injunction.

3.The defendant had filed his written statement denied the measurements mentioned by the plaintiff. It was the case of the defendant that the plaintiff was entitled to only 0.00.38 hectares of property in village S.No.366/4 and the claim made by the plaintiff more than the extent mentioned in his patta was not maintainable. It was further averred in the written statement that the property lies east and south of the plaintiff's property with S.No.366/5 belonged to Vadakathiamman Temple and the same has been in possession and enjoyment of worshipers of the said Temple. It was the specific case of the defendant that neither the plaintiff nor his predecessor-in-interest enjoyed the property with the measurement found in the sale deed in favour of the plaintiff. The defendant also claimed that the plaintiff had no right or possession over the property in S.No.366/5 belonged to the Temple and the suit filed by the plaintiff without impleading the worshipers of the Temple was not maintainable.



S.A.(MD)No.693 of 2005

WEB COPY

4.Before the trial Court, the plaintiff was examined as PW-1 and three documents were marked on his side as Ex-A1 to Ex-A3. On behalf of the defendant, he was examined as DW-1 and one independent witness was examined as DW-2 and three documents were marked as Ex-B1 to Ex-B3. The Advocate Commissioner's report and plan were marked as Ex-C1 and Ex-C2.

5.The trial Court, on appreciation of evidence available on record, came to the conclusion that the plaintiff failed to prove his title over the suit property and hence, dismissed the suit. Aggrieved by the same, the plaintiff preferred an appeal in A.S.No.76 of 2004 on the file of the Principal Subordinate Court, Tenkasi. The first appellate Court found that the plaintiff was entitled to the relief prayed for in respect of a lesser extent situated in village S.No.366/4 with an extent of 0.00.38 hectares. Not satisfied with the limited decree granted by the first appellate Court, the plaintiff has come before this Court by way of this second appeal.

6.The learned Counsel appearing for the appellant submitted that the plaintiff has purchased the suit property under Ex-A2 with specific measurements



S.A.(MD)No.693 of 2005

and hence, the Courts below ought not to have refused the relief of declaration of title and injunction based on the lesser extent shown in the revenue document by ignoring the measurements found in the title document of the plaintiff. The learned Counsel further submitted that the title documents of the plaintiff in Ex-A1 and Ex-A2 would prevail over the revenue documents produced by the defendants under Ex-B1 to Ex-B3.

7.A perusal of Ex-A2, the sale deed in favour of the plaintiff would suggest that he purchased a property with the following description:

□தபசில் கண்ட சுரண்டை சப்த கீழ்வெள்ளகால் கிராமத்தில் ஹரிஜன் தெருவிலுள்ளதும் கீழ் வெள்ளகால் பஞ்சாயத்துப்போர்டு 3வது வார்டிலுள்ளது மனை வீட்டுக்குழல் மாராந்தை கால்வாய்கரைக்கும் கிழக்கு 6.நீர்மடை வரி.3ல் ன். ற் கடிந்தல் காலுக்கு முன்பக்கமுள்ள நடை பாதைக்கும் தெற்கு கால பொருமாள் மனை வீட்டுக்கும் மேற்கு நத்தத்து மாடன் மனைக்கும் வடக்குமான மனை கிழமேல் தச்சுமுழம் 10.பத்தும் தென் வடல் தச்சுமுழலம் 13.பதின்மூன்றும் உள்ள மனையும்□

8.A perusal of the description of the property found in the title deed of the plaintiff would suggest that no survey number is mentioned in the title document. When the plaintiff was examined as PW-1, he clearly admitted the survey number of the property on the south of his property is S.No.366/5. He also admitted that



S.A.(MD)No.693 of 2005

WEB COPY

he was given patta in respect of S.No.366/4 based on his possession. Further, he deposed that earlier the property on the south of his property belonged to one Natha Maadan and the Vadakathiamman Temple, which is situated on the southern side, was a family Temple of Natha Maadan. The relevant portion of PW-1's evidence reads as follows:

□என்னுடைய சொத்திற்கு தெற்கு அருகில் ஒரு வடக்கத்தியம்மன் கோவில் உள்ளது. அந்த கோவில் நத்ததுமாடன் குடும்பத்திற்கு பாத்தியப்பட்ட கோவில்தான். அந்த கோவில் புறம்போக்கில் இல்லை. பட்டா இடத்தில் தான் உள்ளது. பட்டா நம்பர் தெரியாது. கோவில் இருக்கக் கூடிய இடத்தில் சர்வே நம்பர் தெரியாது. அந்த கோவிலுக்கு கொடை விழாஏதும் கிடையாது. அந்த கோவிலில் தீபம் ஏதும் ஏற்றுவது கிடையாது. அந்த வழியாக போகக் கூடியவர்கள் அந்த கோவிலை கும்பிடுவார்கள். 1982க்குபின்னர்தான் அந்த கோவிலில் சிலை வைக்கப்பட்டுள்ளது. அதற்கு முன்னால் சிலை கிடையாது. பிரதிவாதி போட்டுள்ள எதிர்வழக்குரையை படித்துப்பார்த்தேன். என்னுடைய சொத்திற்கு கிழக்கிலும், தெற்கிலும் 366/5 சொத்து இருப்பதாக காட்டியுள்ளேன். என்னுடைய அனுபவத்திற்கு தகுந்தாற்போல, பட்டா கொடுத்துள்ளார்கள். என்னுடைய பெயருக்கு வழங்கப்பட்ட சர்வே 366/4 பட்டா கொடுத்துள்ளார்கள். எனக்கு வழங்கப்பட்ட நத்தம் நிலவரித்திட்ட தூய அடங்கல் பதிவேடு நகல் பி.த.சா.ஆ.1 என்னுடைய அனுபவத்திலுள்ள சொத்திற்கு தீர்வை போடுகிறேன். என்னுடைய இடத்திற்கு தெற்கு பக்கம் நத்ததுமாடனுக்கும் சேகர் வகையராவுக்கும் சொந்தமான பட்டா இடம். அவர்களுடைய இடத்தில் எனக்கு உரிமை ஏதும் கிடையாது. நான் சொல்லக்கூடிய கோவில் அவர்களுடைய இடத்தில்தான் 366/5ல் இருக்கிறது.□

9.A perusal of PW-1's evidence would suggest that the plaintiff clearly



S.A.(MD)No.693 of 2005

WEB COPY

admitted that he was given patta in respect of S.No.366/4 based on the property in his possession. He also further admitted that the Vadakathiamman Temple, which is situated on the southern side of the suit property, was constructed in the property of Natha Maadan, which lies in S.No.366/5. The learned Counsel for the appellant vehemently contended that at the time of Natham Nilavari Survey, a portion of the property belonged to the plaintiff was carved out and annexed with the survey number on the southern side of the suit property and therefore, the plaintiff was given patta with a lesser extent. However, PW-1 in his evidence clearly admitted that patta for S.No.366/4 was given to the plaintiff only based on his possession. He also clearly deposed that he was not claiming any right over the property of Natha Maadan, where the Temple is situated.

10.By taking into consideration the well pronounced admission of PW-1, the first appellate Court came to a definite conclusion that the plaintiff was entitled to declaration of title and injunction in respect of lesser extent of property covered by S.No.366/4. The title document does not contain any survey number. Based on the southern boundary description mentioned in the title document of the plaintiff and also the admission of PW-1, the first appellate Court came to the



S.A.(MD)No.693 of 2005

WEB COPY

conclusion that the plaintiff was entitled to declaration and injunction only in respect of a lesser extent available in S.No.366/4.

11.The said factual conclusion reached by the first appellate Court is based on proper appreciation of evidence available on record and the same is not vitiated by any perversity in appreciation of evidence. Therefore, I do not find anything to interfere with the factual findings reached by this Courts below. Finding no substantial questions of law, the Second Appeal stands dismissed. No costs.

25.04.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
cmr

To

- 1.The Principal Subordinate Judge, Tenkasi.
- 2.The Additional District Munsif, Tenkasi.
- 3.The Record Keeper,
V.R.Section,

8/10



S.A.(MD)No.693 of 2005

WEB COPY

Madurai Bench of Madras High Court,
Madurai.

S.SOUNTHAR, J.

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S.A.(MD)No.693 of 2005



WEB COPY



S.A.(MD)No.693 of 2005

25.04.2024