



S.A(MD)No.568 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 25.07.2024

Delivered on : 29.11.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

S.A(MD)No.568 of 2019
and CMP(MD)No.11457 of 2019

1.S.Manokaran [died]

2.S.Ganesan

3.S.Rathinammal : Appellants/Respondents/Defendants

4.M.R.Kalavathi

5.M.Bhuvaneshwaran : Appellants

Appellants 4 and 5 are brought on record as
as LR's of the deceased A1 vide Court order,
dated 08.03.2021 made in CMP(MD)No.6784 of 2020
in SA(MD)No.568/2019.

Vs.

Rajamaniammal : Respondent/Appellant/Plaintiff

Prayer : Second Appeal filed under Section 100 of C.P.C., to call for the records pertaining to the judgment and decree, dated 26.07.2019 in A.S.No.3 of 2019 on the file of the Sub Court, Aruppukotai by setting aside the judgment and decree in O.S.No.59 of 2022, dated 04.10.2018 passed by the



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learned District Munsif Court, Aruppukottai and set aside the same.

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For Appellants : Mr.A.Sirajudeen, Senior Counsel,
for S.Devasena.

For Respondents : Mr.R.Sreethar,
for C.Prithiviraj.

JUDGMENT

The second appeal is directed against the judgment and decree passed in A.S.No.3 of 2019 on the file of the Sub Court, Aruppukottai, dated 26.07.2019 reversing the judgment and decree made in O.S.No.59 of 2002, dated 04.10.2018 on the file of the District Munsif Court, Aruppukottai.

2. The appellants 1 to 3 are the defendants and the respondent as plaintiff has filed the suit to declare that the suit property is belonging to her and for consequential relief of recovery of possession of the suit property.

3. For the sake of convenience and brevity, the parties hereinafter will be referred as per their status/ranking in the trial Court.



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4. Admittedly, the plaintiff's father Nagama Naicker is the brother of one Lakshmi Ammal and the said Lakshmi Ammal had a son by name of Subba Reddiyar. The third defendant Rathinammal is the wife and the defendants 1 and 2 are the sons of the said Subba Reddiyar.

5. The case of the plaintiff is that the plaintiff's mother Subbammal has purchased the suit property from Nagaiyan Chettiar, son of Azhagiri Chettiar vide sale deed, dated 17.11.1941, bearing document No.2632/41 on the file of the Thiruchuli, SRO and since then the said Subbammal had been in possession and enjoyment of the suit property; that the plaintiff's father Nagama Naicker had constructed two tiled houses and also a basement; that a portion of the suit property measuring five cents of vacant land was leased out to one Pandi; that since Nagama Naicker's sister Lakshmi Ammal was not having any residence and her husband died long back, he had permitted the said Lakshmi Ammal to reside in the portion of the suit property; that after the death of her father Nagama Naicker and mother Subbammal, the plaintiff has become owner of the suit property; that the plaintiff, after her mother has been paying kist by changing the patta in her name; that the plaintiff had permitted the defendants to reside in the property continuously and they had



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agreed to vacate the premises, after constructing a new house; that when the defendants had attempted to change patta and to get house tax assessment and electricity connection fraudulently, a panchayat was convened on 04.04.1994 and at the panchayat, the defendants had agreed to vacate the premises on or before 04.04.1995, but despite the lapse of period, they have not chosen to vacate the premises; that since the patta came to be issued in favour of the plaintiff, the first defendant has filed a petition before the Headquarters Tahsildar and after enquiry, patta issued in favour of the plaintiff came to be cancelled; that the plaintiff has then filed an appeal before the Revenue Divisional Officer, Aruppukottai and he has passed an order, dated 31.12.1993 setting aside the order of Tahsildar and directed the parties to approach the competent civil Court to workout their remedy; that the plaintiff has preferred an appeal before the District Revenue Officer and the District Revenue Officer has passed the order, dated 31.08.1995 setting aside the cancellation order and directed the Revenue Divisional Officer to conduct fresh enquiry; that the defendants are having absolutely no title or interest in the suit property, except the permissive occupation to reside in the property given by the plaintiff and her parents and that therefore, the plaintiff was constrained to file the above suit to declare her title to the suit property and for recovery of possession.



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WEB COPY 6. The defence of the defendants 1 and 3 is that the suit property in S.No.162/2 is the ancestral property of the defendants; that Lakshmi Ammal was possessing house property, 15 acres of dry land and 1 ½ acres wet-land; that Lakshmi Ammal's son Subba Reddiyar, who had studied B.A., B.Ed., was working as a Headmaster in a High School and as such, the defendants were never depending on the Nagama Naicker; that Lakshmi Ammal's son had constructed terrace house in the suit property and the same would cost of Rs.10 lakhs ; that the compound wall came to be constructed 30 years back and the same would cost of Rs.75,000/-; that the value of the suit property would be Rs.15 lakhs and as such, the Munsif Court is not having pecuniary jurisdiction to try the suit; that no panchayat was convened on 04.04.1994 as alleged by the plaintiff; that no permission was given by the plaintiff's father or mother or by the plaintiff to the defendants to reside in the suit property; that since the property is the ancestral property of the defendants, there was absolutely no need or necessity to get any permission from the plaintiff side; that the description of the property given in the plaint are all false and incorrect; that the third defendant alone has leased out the portion of the property to Pandi at monthly rent of Rs.100/- and hence, the contention of the plaintiff that they had leased out the property to Pandi is false and untenable



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and that since the suit was filed with an evil intention to cause loss to defendants and by suppressing the material facts, the suit is liable to be dismissed with compensatory cost.

7. When the suit was pending for trial, the plaintiff has amended the plaint and take a new stand that portion of the property was purchased by the plaintiff's father Nagama Naicker on 11.12.1954 from one Subba Naicker, son of Mannar Kondama Naicker and that the plaintiff has derived title to the suit property through the above said two documents, one purchased by her mother Subbammal and the other purchased by her father Nagama Naicker.

8. The learned trial Judge, upon perusing the pleadings has framed the following issues :

(i) Whether the suit property is valued properly and Court Fee is paid correctly ?

(ii) Whether the District Munsif Court has got pecuniary jurisdiction to entertain the suit ?

(iii) Whether the suit property is owned by the plaintiff ?

(iv) Whether the plaintiff is entitled to get the relief of declaration ?



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(v) Whether the plaintiff is entitled to get the relief of recovery of possession ?

(vi) To what other reliefs, the parties are entitled to ?

9. During trial, the plaintiff has examined her husband Natarajan as P.W.1 and one Rajaram as P.W.2 and exhibited 21 documents as Ex.A.1 to Ex.A.21 and two witness documents as Ex.X.1 and Ex.X.2. The defendants have examined the third defendant as D.W.1 and three other witnesses (i) Raji, (ii) Selvam and (iii) Balu as D.W.2 to D.W.4 respectively and exhibited 34 documents Ex.B.1 to Ex.B.34 and one witness document as Ex.X.3. Two Court documents came to be marked as Ex.C.1 and Ex.C.2.

10. The learned trial Judge, upon considering the pleadings, evidence both oral and documentary and on hearing the arguments of both the sides, has passed the judgment and decree, dated 04.10.2018, dismissing the suit with cost. Aggrieved by the dismissal of the suit, the plaintiff has preferred an appeal in A.S.No.3 of 2019 and the same was pending on the file of the Sub Court, Aruppukottai.



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WEB COPY 11. Pending appeal, the defendants have filed an application in I.A.No.

1 of 2019 under Order 41 Rule 27 of C.P.C., for reception of additional evidence. The plaintiff has filed her objections. The learned Appellate Judge, considering the materials available on record and on hearing the arguments of both the sides, has passed the impugned common judgment and order, dated 26.07.2019 allowing the appeal and thereby setting aside the judgment and decree passed by the trial Court and further directed the defendants to hand over the possession of the suit property to the appellant/plaintiff within three months from the date of the said judgment. Challenging the reversal judgment, the defendants have preferred the present second appeal.

12. At the time of admission, the following substantial questions of law came to be formulated :

(A) Whether the Lower Appellate Court is correct in law in allowing the suit without the plaintiff complying with the order dated 19.01.2011 in I.A.No.81 of 2009 in O.S.No.59 of 2002, wherein the Court had directed the plaintiff to value the suit and pay the additional Court fee?

(B) Whether the Lower Appellate Court is correct in law in ignoring the contradictory stand taken by the plaintiff in



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the original plaint and subsequent amended plaint and overlooking the fact that the plaintiff has come to the Court with the inconsistent case?

(C) Whether the findings of the Lower Appellate Court in respect of the valuation of the suit property and the payment of the Court fee is correct in law when there is a clear findings of a house property over the suit property as per the Ex.C2 Commissioner Report filed in I.A.No.4 of 2008 in O.S.No.59 of 2002?

(D) Whether the findings of the Lower Appellate Court in respect of the pecuniary jurisdiction of the lower Court is correct in law when there is a clear admission of the plaintiff as to the existence of the house building in the suit property as per the Amended Plaint?

(E) Whether the Lower Appellate Court had properly appreciated the aspect of possession and whether it is justified in going to inconsistency findings regarding the nature of documents and the aspect of possession?

(F) Whether the Lower Appellate Court had arrived at a correct conclusion regarding the question of limitation despite the fact that the super structure situate in the suit schedule property which was constructed some 30 years before the date of institution of suit?

13. Pending second appeal, the first appellant had died and his legal heirs got themselves impleaded as appellants 4 and 5.



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14. The learned counsel for the appellants would submit that the first appellate Court has erred in accepting the documents in Ex.A1 to Ex.A4; that the defendants have raised the questions about the proper description of the property in dispute in the written statement itself, but the same was not at all considered; that the first appellate Court has failed to appreciate Ex.B.8 to Ex.B.19 and Ex.B.23 to Ex.B.29, which would prove the prolonged possession of the defendants in the suit property; that Ex.A.14 is an unregistered sale deed and the stamps in which document was engrossed were different and signature of executor Subbanaicker was challenged by the defendants; that the four boundaries of the suit property was not at all tallied with the four boundaries stated in Ex.A.1/sale deed as the plaintiff has filed the appeal only based on the said document; that the issue in respect of patta of the suit property, proceedings are pending before the Revenue Divisional Officer; that the appellate Court ought to have considered the physical features of the suit property as per the Commissioner's report, written statement and description of the property stated in the plaint; that the entire property was belonging to Mannar Kondama Naicker and patta assessed in his name; that the plaintiff has purposely omitted to mention the exact extent



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of house in the suit property and other physical features; that the appellate Court ought to have found that the suit is barred by time and ought to have dismissed the same; that the report of the Advocate Commissioner was not at all taken into consideration and that therefore, the judgment and decree passed by the appellant Court are liable to be interfered with.

15. The learned counsel for the respondent/plaintiff would contend that since permission was granted to the defendants to reside in the property, production of telephone receipts, electricity consumption charges and other receipts would not prove the possession of the property; that the third defendant as D.W.1 would admit that the property in dispute was owned by the Nagaian Chettiar; that the case is pending with respect to the Nagaian Chettiar's property; that the said Nagaian Chettiar by redeeming the mortgage has constructed a house herein; that the third defendant's husband or Lakshmi Ammal have not shown that they have taken sale in respect of the suit property; that the third defendant in her evidence would admit that the plaintiff Rajamani Ammal is the legal heir of the deceased Nagama Naicker and Subbammal; that the property belonging to Nagama Naicker and Subbammal came to be owned by the plaintiff; that initial burden was on the plaintiff and since the plaintiff has discharged his initial burden, the burden



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of proof gets reflected to the defendants; that they have not produced any title deed nor any documents to show that the property was belonging to them ancestrally ; that even assuming that the defendants have produced receipts evidencing payment of property tax and electricity charges mere mutation of entries does not confer title in the property; that since the plaintiff has canvassed a case of permissive possession, the burden is on the other side to prove that they have long and continuous possession and as such, their possession has become adverse and that therefore, the judgment and decree passed by the appellate Court are liable to be confirmed.

16. Originally, the plaintiff has filed a suit claiming declaration of title and recovery of possession in respect of the property, on the basis that the suit property came to be owned by her mother Subbammal vide Ex.A.1/sale deed, dated 17.11.1941. According to the plaintiff, the entire suit property was purchased by her mother through Ex.A.1/sale deed.

17. Pending trial, the plaintiff has taken another stand that half of the suit property was purchased by her mother vide Ex.A.1/sale deed and the remaining portion of the suit property came to be purchased by her father Nagama Naicker vide sale deed, dated 01.12.1954 under Ex.A.14 sale deed.



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18. The defence of the defendants is that the suit property belonged to the third defendant's husband's family ancestrally. The defendants have specifically disputed the ownership over the suit property claimed by the plaintiff through Ex.A.1 originally and also through Ex.A.14 subsequently and that they have disputed the documents under Ex.A1 to Ex.A.14. The plaintiff, who filed the suit for declaration of her title and recovery of possession, has a heavy burden to prove their title and the plaintiff has to prove her case through her evidence and cannot rely on the weaknesses of the defence case.

19. Admittedly, the plaintiff has produced the registration copy of the sale deed, dated 17.11.1941 as Ex.A.1 and at the time of marking the same, the plaintiff has not accounted for non production of the original document. The learned counsel for the plaintiff would rely on the recent decision of the Hon'ble Supreme Court in the case of *Appaiya Vs. Andimuthu @ Thangapandi and others* reported in **2023 SCC Online SC 1183** and argued that the certified registered documents more than 30 years are to be considered as ancient document and there is no need to look for the



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application of section 90 and 110 of Evidence Act.

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20.The Hon'ble Supreme Court, after considering various provisions of the Evidence Act and Registration Act, has observed as follows :

"Thus, the cumulative effect of the aforementioned sections of the Evidence Act and Section 57(5) of the Registration Act would make the certified copy of the sale deed No. 1209/1928 dated 27.08.1928 of SRO Andipatti, produced as Ext.A1 admissible in evidence for the purpose of proving the contents of the said original document. When this be the position in the light of the specific provisions referred hereinbefore under the Evidence Act and the Registration Act, we have no hesitation to hold that the finding of the High Court that the certified copy of Ext.A1 owing to the failure in production of the original and proving through an independent witness is inadmissible in evidence, is legally unsustainable. In the other words, the acceptance of the admissibility of Ext.A1 found in favour of the appellant/plaintiff by the trial Court and confirmed by the First Appellate Court was perfectly in tune with the provisions referred hereinbefore and the High Court had committed an error in reversing the finding regarding the admissibility of Ext.A1.

21. But the learned counsel appearing for the defendants would submit that in the case above referred, the execution of the document in dispute



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i.e., Ex.A.1 was not at all disputed by the other side and in para No.27 of said judgment, it has been observed that “Point Nos.8 and 9 as stated above raised by the defendant in this appeal would reveal that he did not dispute the execution of Ext.A1 sale deed No.1209/1928 dated 27.08.1928” and in para No.31, it has been observed that “When the execution of Ext.A1 was not disputed by the respondent (in fact in the circumstances it was indisputable) and when the contents of the original sale deed bearing No.1209/1928 dated 27.08.1928 of SRO Andipatti was proved by production of the certified copy there was absolutely no reason to look for the application of Section 90 or 110 of the Evidence Act, in the instant case.”

22. In the present case, admittedly the execution of Ex.A.1 sale deed was disputed by the defendants specifically. It is pertinent to note that the plaintiff has not chosen to enter into the witness box, but on the other hand, she has examined her husband as P.W.1. But P.W.1 in his evidence would admit that he got married after the property was purchased and he did not know the fact about the property prior to his marriage. P.W.1 would say that “வா.சா.ஆ.1.பத்திரத்தை ஆரம்பத்திலிருந்து சொல்லக்கூடிய தகுதி என் மனைவிக்கு மட்டும்தான் உண்டு.



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WEB COPY 23. As rightly contended by the learned counsel for the defendants, there is absolutely no correlation between the boundaries, extent and survey numbers given in Ex.A.1 and the plaint schedule. In the Original plaint, Aruppukottai Taluk, M. Reddiyapatti Village, S.No.162/2 extent 0.07.5 (பைமாஸ் எண்.129/2-ல் P.T. 0.18 செ), patta No.925, 13 cents, after excluding 5 cents.

South - Subbammal, Venkatapathy houses,

North - Land leased out to the Pandi,

West - North-South main road,

East – Subba Naicker and Subbammal houses.

But in the amended plaint, north boundary has been shown as Sarvodaya building, common wall and the portion leased out to Pandi. Though originally land alone was mentioned as the suit property, after amendment, house property was also added. As rightly pointed out by the learned counsel for the defendants, the plaintiff has shown 13 cents of property as the suit property after excluding the five cents, which was leased out to Pandi, but at the same time, in Ex.A.4 rental agreement, total extent has been shown as 19 cents and the land leased out to Pandi was shown as 6



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24. The plaintiff has not offered any reason or explanation in this regard. Moreover, as rightly contended by the learned counsel for the defendants, in the original plaint, the plaintiff has shown northern boundary as land leased out to Pandi, but at the same time, she has shown the extent as 18 cents and after deducting the five cents occupied by the said Pandi, remaining 13 cents as suit property, but in the amended plaint, it has been mentioned out of 18 cents deducting five cents, remaining 13 cents is the suit property.

25. As already pointed out, in the description of the property, it has been shown “கீழ்புறமும் மேல்புறமும் 0.18 சென்ட், சென்ட் 0.05 நீக்கி மீதமுள்ள சென்ட் 0.13.” As rightly contended by the learned counsel for the defendants, as per schedule, eastern and western portions are to be deducted only an additional deduction, but the extent of eastern and western portion has not been shown in the plaint.

26. Now turning to the second document Ex.A.14, as already pointed out, this document as well as the property referred therein was not at all referred in the plaint. Admittedly, Ex.A.14 is an unregistered sale deed, but



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the sale was shown to be for Rs.90/- only.

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27. P.W.1 in his cross examination would say that he came to know about Ex.A.14 document only from one Paramanandham; that the said Paramanandham has given the said document to him and that he does not know, where the document was taken by the Paramandham. Admittedly, the said Paramanandham was not at all examined before the trial Court. P.W.1 would say that the attesting witness Pandi already died and the other witness Rajaram used to visit his home, but he would examine, if required.

28. As already pointed out, the defendants have taken a specific stand that since the defendants have elucidated that the boundaries and the extent are not tallied with the plaint schedule properties, they have created Ex.A.14 by utilizing the old stamp papers. Even though such defence was taken by the defendants, the plaintiff has not chosen to examine any person relating to Ex.A.14. P.W.1 would admit that Ex.A.14 was not executed by the third defendant's husband, but by some other Kondama Naicker. P.W.1 would admit that “மேற்படி வா.சா.ஆ.14 முதலாவது முத்திரைத்தாளில் 706. அது 1.50 ரூபாய்க்கு உள்ளது என்றால் சரிதான். 2வது முத்திரைத்தாள் எண்.702 என்றுதான் உள்ளது. அது 4 ரூபாய்க்கு வாங்கப்பட்டுள்ளது என்றால் சரிதான். மேற்படி பழைய பத்திர தாள்கள் மூலம் அவற்றை பெற்று பத்திரத்தை தயார்



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செய்துள்ளேன் என்றால் சரிதான். ...

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நான் தாவா சொத்து சம்மந்தமாக வருவாய் நீதிமன்றத்தில் கோட்டாட்சியர் முன்னிலையில் நடந்த வழக்குகளில் வா.சா.ஆ.14 ஆவணத்தினை தாக்கல் செய்துள்ளேனா என்றால் தாக்கல் செய்யவில்லை. அதன் காரணம் அப்போது அந்த பத்திரம் கிடைக்கவில்லை. அதன் பின்னர்தான் கிடைத்தது.”

29.The plaintiff has not produced any contemporaneous documents to support Ex.A.1 and Ex.A.14. It is admitted by both the parties that Paimash No.129 had larger extent. In Ex.A.1 and Ex.A.14 Paimash No.129 was referred. But according to the plaintiff, corresponding S.No.162/2 for Paimash No.129/2.

30. As rightly contended by the learned counsel for the defendants, the plaintiff has not produced any material to show that the property referred in Ex.A.1 and Ex.A.14 are coming under bymas No.129/2. It is for the plaintiff to prove that S.No.129 had larger extent and portion of the same was allegedly purchased with specific boundaries and measurements. But as already pointed out, there are differences in the boundaries as well as the extent between the documents and the plaint schedule property.



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31. As rightly contended by the learned counsel for the defendants, the first appellate Court has proceeded with the appeal as if the plaint was not amended and there is absolutely no reference to the new stand taken by the plaintiff that she was claiming ownership through two documents. The first appellate Court has nowhere whispered about Ex.A.14 and the property referred therein.

32. The plaintiff, by admitting the possession of the defendants, has also sought for recovery of possession. But according to the plaintiff, originally her father and subsequently, the plaintiff had permitted the defendants to reside in the suit property. More importantly, P.W.2 in his evidence would admit that the defendants were in possession for the past 38 years. The plaintiff in the plaint has alleged that his father has constructed two tiled houses, but according to the defendants, the third defendant's husband has constructed a terrace house in the property and they have obtained electricity service connection and are paying property tax as well as the electricity consumption charges.

33. It is admitted by both the parties that a cemetery area was available



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in the suit property and according to the defendants, the first defendant's child was buried in that place, but according to the plaintiff, her father-in-law was buried. The trial Court, taking note of the evidence of P.W.1 and the measurement of the cemetery, has come to a decision that a child was buried in that place and not the father-in-law of P.W.1 as claimed by her.

34. P.W.1 would say that he was not aware as to who leased out the portion of the suit property to the Telephone Exchange and as to when they have vacated the premises. P.W.1 would say, “தாவா சொத்தில் உள்ள வீட்டை டெலிபோன் எக்ஸ்சேஞ்சிற்கு யார் வாடகைக்குவிட்டார்கள் என்று தெரியாது. அவர்கள் எப்போது காலிசெய்தார்கள் என்று எனக்கு தெரியாது. நானோ, என் மாமனாரோ, என் மனைவியோ நாங்கள் தொலைபேசி நிலையத்திற்கு வாடகைக்குவிட்டோமா என்றால் எனக்கு தெரியாது.

35.As already pointed out, originally the suit was filed as if the suit property is a vacant land. P.W.1 in his cross examination would admit that “நான் 2002-ல் வழக்கு தாக்கல் செய்யும்போது வழக்கு சொத்தை காலிமனை என்றுதான் வழக்கு போட்டேன்.....

ஐ.எ.எண்.89/2009 பின்பாகத்தான் வீடு இருப்பதாக பிராதில் சேர்த்துள்ளோம் என்றால் சரிதான்.



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கதவு எண் பிரதில் சொல்லவில்லை. தாவா சொத்திலுள்ள வீட்டின் அளவுகள் கொடுக்கவில்லை என்றால் சரிதான். தாவா சொத்தில் உள்ள வீட்டிற்கு மின் இணைப்பு பிரதிவாதிகள் வாங்கியிருப்பார்கள். தாவா வீட்டின் மின் இணைப்பு எண் எனக்கு தெரியாது. தாவா வீட்டின் கதவு எண் எனக்கு தெரியாது. எனக்கு திருமணமாகி சுமார் 40 வருடங்கள் இருக்கும். என் வாக்குமூலத்தின்படி தாவா வீடு கட்டப்பட்டு 38 வருடங்கள் ஆகிறது. 38 வருடங்களில் தாவா வீட்டின் என் மாமனாரின் பெயர் மற்றும் மனைவியின் பெயரிலோ இருக்கிறது என்றால் ரசீதுகள் இல்லை. தீர்வை ரசீதுதான் உள்ளது. தாவா சொத்திற்கு வடக்கே பாண்டிக்கு வாடகைக்குவிட்ட வீடு இருக்கிறது. நான் விஜயகுமார் வழக்கறிஞர் மூலமாக இந்த வழக்கின் 2ம் பிரதிவாதி கேவியட் மனு தாக்கல் செய்தேன்....

மேற்படி மனுவில் தாவா சொத்தில் வீடு கட்டியதாகவோ, வீடு இருப்பதாகவோ சொல்லவில்லை என்றால் சரிதான்.”

36. Considering the above, as rightly contended by the learned counsel for the defendants, the plaintiff, by concealing superstructure available and by giving under valuation, has filed the suit. Admittedly, after amendment of



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the plaint, the plaintiff has not valued the house property and no Court fee was paid. But the learned Appellate Judge, without any evidence, has come to a decision that the suit property can be presumed to be ryotwari punja and as such, the suit can be valued as per the kist value and hence, the valuation of the suit, Court fee paid cannot be found fault with.

37. The learned Judge has specifically observed that after amendment of the plaint, the plaintiff was directed to value the property properly and to pay necessary Court fee, but the said direction was not complied with by the plaintiff. If the directions was not complied with, then the trial Court should not have proceeded with the trial and should have taken steps for rejecting the plaint. But whatever it is, even thereafter, the plaintiff has not chosen to pay the necessary Court fee.

38. As already pointed out, the plaintiff has alleged that since the plaintiff's father's sister Lakshmi Ammal was not well, he permitted sister's family to reside that property. But according to the defendants, Lakshmi Ammal was a widow at the time of possessing house property and 15 acres of dry land and 1 ½ acres wetland. P.W.1 would admit that the third defendant's husband had studied B.A.,B.Ed., and was working as a Headmaster in the



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Government High School and that the first defendant was in Government Service, he would say that he was not aware as to whether the defendants' family was affluent family.

39. Considering the above, this Court has no hesitation to hold that the plaintiff has miserably failed to prove her title to the suit property. Moreover, there is absolutely no evidence to show that the plaintiff's father or the plaintiff has permitted the defendants to reside in the property. As already pointed out, the plaintiff, who is claiming equitable and discretionary relief of declaration, has approached the Court with unclean hands, as she has suppressed the availability of the terraced building in the property. Hence, the substantial questions of law are answered against the plaintiff and in favour of the defendants. The first Appellate Court, without considering the above aspects in proper perspective and without even considering the amended plaint, has allowed the appeal in a casual and mechanical manner and as such, the same is liable to be interfered with. Consequently, this Court concludes that the second appeal is liable to be allowed and the judgment and decree of the first appellate Court are liable to be set aside. Considering the other facts and circumstances of the case, this Court is of the view that the plaintiff is to be mulcted with cost throughout.



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The judgment and decree passed in A.S.No.3 of 2019 on the file of the Sub Court, Aruppukottai are set aside and the judgment and decree made in O.S.No.59 of 2002 are restored and the suit in O.S.No.59 of 2002 stands dismissed. Consequently, connected Miscellaneous Petition is closed.

29.11.2024

NCC :Yes/No
Index :Yes/No
Internet :Yes/ No
das

To

- 1.The Sub Judge, Aruppukottai.
- 2.The District Munsif,
Aruppukottai.
- 3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

DAS

Pre-delivery order made in
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Dated : 29.11.2024