



S.A.No.477 of 2000

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.No.477 of 2000

Syed Meera Natchiyar

...Appellant

-Vs-

1.S.P.Naina Mohammed (died)

2.Balkeesh Beevi

3.Jannath Beevi

4.Shajahan Beevi

5.Ajmeer Haja

6.Mohammed Kasim

7.Bairosbegam

8.Sathik

9.Sithilobabegam

10.Sagarbanu

... Respondents



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(Respondents 2 to 10 are brought on record as LR's of the deceased sole respondent vide Court order dated 08.02.2023 made in C.M.P(MD) No.400 of 2023)

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree in A.S.No.80 of 1997 on the file of the Principal Subordinate Judge, Tirunelveli, dated 02.12.1999 reversing the judgment and decree in O.S.No.358 of 1989 on the file of the District Munsif Court, Valliyoor, dated 15.07.1996.

For Appellant : Mr.C.M.Mari Challiah Prabhu
for M/s.Eddy & Embboss Law Firm

For R2 to R10 : Mr.R.Ponkarthikeyan

JUDGMENT

The plaintiff in the suit is the appellant. He filed a suit for declaration of title, injunction and also for delivery of possession in respect of a portion of suit property after removal of the superstructure standing there on. The suit was decreed by the trial Court and the findings of the trial Court were reversed on appeal filed by the defendant. Aggrieved by the same, the plaintiff is before this Court.



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2. According to the plaintiff, the suit property originally belonged to one Segumohammed and after his death, the suit property was enjoyed by his son Sheikmohideen. After demise of Sheikmohideen, the suit property came to be enjoyed by his legal heir Sahulhameed and he sold the suit property to the plaintiff under a registered sale deed dated 13.10.1988. The plaintiff and his predecessors in title has been in possession of the property for more than 100 years. It was also claimed that the plaintiff has been using the suit property as her backyard. The defendant, without having any manner of right over the suit property, attempted to interfere with the possession of the plaintiff. After filing of the suit, the defendant encroached a small portion of the suit property to the length of 25 feet east-west and 16 feet north-south and had put up a small thatched shed. Hence, the plaintiff was constrained to file a suit for declaration of title, permanent injunction and also for possession after removal of the thatched structure put up in a small portion of the suit property.

3. The defendant filed a written statement admitting the ownership of Segumohammed. However it was claimed by the defendant that he had three sons namely Seramuthaliar, Ismail and Sahulhameed. The suit property was divided



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among them orally 20 years back. Seramuthaliar sold his share to the defendant through an unregistered document. The other son, namely, Ismail sold his share in favour of the defendant under a registered sale deed dated 21.11.1975. The third son Shaulhameed sold his share in favour of defendant by a registered document dated 30.09.1972. Thus, the defendant claimed right and possession over the suit property for more than statutory period and sought for dismissal of the suit filed by the plaintiff by denying her title and possession over the suit property.

4.The trial Court, on appreciation of evidence available on record, came to the conclusion that the survey numbers mentioned in the defendant's documents are different from the suit survey number and hence, negated his claim of title over the suit property. The trial Court also found that the plaintiff established her right and possession over the suit property and granted a decree as prayed for. Aggrieved by the same, the defendant filed an appeal in A.S.No.80 of 1997 on the file of the Principal Sub Court, Tirunelveli. The first appellate Court reversed the findings of the trial Court and allowed the appeal. Aggrieved by the same, the plaintiff has come by way of this second appeal.



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5. At the time of admission, this Court formulated the following substantial questions of law, by order, dated 15.03.2000:-

1) Whether the Lower Appellate Court failed to draw adverse inference against the respondent for non-production of the sale agreement dated 05.12.1975 claimed by the respondent?

2) Whether the Lower Appellate Court failed to note that the survey number and boundaries in Ex.B1 and B2 differ from the suit property? If so whether Lower Appellate Court failed to reject the claim of the respondent based on Ex.B1 and Ex.B2?

3) Whether the Lower Appellate Court failed to note that Ex.B4 to B15, B16 and B24 to B36 do not relate to the suit property and that the respondent did not produce any evidence to correlate the said documents to the suit property?

6. The learned counsel appearing for the appellant submitted that when the survey number and boundaries mentioned in Ex.B1 and Ex.B2 defendant's documents, differ from the suit property, the first appellate Court ought have rejected the claim of the respondents and granted a decree in favour of the plaintiff as prayed for. The learned counsel further submitted that the plaintiff purchased the shares of two other brothers of Seramuthaliar, Ismail and



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Sahulhameed under Ex.A6 subsequent to the suit and therefore, he is entitled to declaration of title based on Ex.A6 and Ex.A1.

7.It is a settled law that in a suit for title, the plaintiff has to win on his own strength and he cannot take advantage of weakness found in the case of the defendant. In the case on hand, the plaintiff claimed that one Segumohammed was original owner of the suit property and after his death, the suit property was enjoyed by his only son Sheikmohideen and after his death, it was enjoyed by his legal heir Sahulhameed and from him, the plaintiff purchased the property on 13.10.1988 under Ex.A1. Therefore, the plaintiff has to prove his case as per the plea raised by him in his plaint by leading cogent evidence.

8. The case of the plaintiff was resisted by the defendant by contending that Segumohammed had three sons by name Seramuthaliar, Ismail and Sahulhameed, and he purchased the suit property from them. Both the Courts below by taking into consideration the title documents relied on by the defendant namely, Ex.B1 and Ex.B2, rendered a finding that survey number of the properties covered by defendant's documents were not tallying with the suit survey number and



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therefore, the defendant failed to prove his title over the suit property. In view of the settled legal proposition that merely because the defendant failed to establish his title over the suit property, the plaintiff is not entitled to succeed in a suit for declaration, he has to establish his plea on his own strength.

9.In the reply statement to the written statement filed by the defendant, the plaintiff raised a plea that the plaintiff admitted that the original owner Segumohammed had three sons and his first son Seramuthaliar was also known as Seramuthaliar @ Sheikmohideen. In his reply statement, he reiterated his earlier plea that after the death of Segumohammed, property was enjoyed by Sheikmohideen. After his death, the plaintiff purchased the suit property from Sahulhameed, S/o.Seramuthaliar @ Shaikmohideen. Therefore, the plaintiff has not raised any plea that he purchased the suit property from other two sons of the original owner Segumohammed namely, Ismail and Sahulhameed (senior), S/o. Segumohammed. It is the specific case of the plaintiff that he purchased the suit property from Sahulhameed S/o. Seramuthaliar @ Shaikmohideen. In the plaint, he referred him as Shaikmohideen. After the defendant filed a written statement claiming that Shaikmohideen was not the legal heir of Segumohamed



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and three other persons namely Seramuthaliar, Ismail, and Shahulhameed were sons of Segumohammed, the plaintiff in his reply statement, claimed that Shaikmohideen was also known as Seramuthaliar. However, a perusal of Ex.A1 sale deed would suggest that the name of plaintiff's vendor was mentioned as Sahulhameed, S/o. Shaikmohideen. The name of the plaintiff vendor's father was not mentioned as Seramudaliar @ Shaikmohideen. Therefore, there is no evidence available on record to suggest that the plaintiff vendor's father Shaikmohideen was also known as Seramudaliar. In this regard, it would be appropriate to refer to the admission of P.W.1. The relevant portion of P.W.1's evidence reads as follows:-

சேக் முகம்மதுவிற்கு சேரா முதலியார், இஸ்மாயில், சாகுல் ஹமீது ஆகிய 3 ஆண் மக்கள் உண்டு. கிழமேல் ரோட்டிற்கு தெற்குப்பக்கம் தனக்குப்பாத்தியப்பட்ட ஒட்டுப்பிறையை மட்டும் மீரா முகம்மதுவிற்கு விற்று மீரா முகம்மது எதிர்வாதிக்கு கிரயம் கொடுத்துள்ளார். ஒட்டுப்பிறைக்கு தென்பக்கம் ஒலைச் செட் இருக்கிறது. என்னை அடித்துவிட்டு அக்ரமமாக புகுந்து ஒலை செட் போட்டார். நான் நீதிமன்றத்தில் தடை உத்திரவு பெற்றபிறகு அவ்வாறு அத்துமீறி கட்டி உள்ளார். ஆணையர் வரும்பொழுது ஒலை செட் இருந்தது. சேரா முதலியாருக்கு சேக் முகைதீன் என்கிற பட்டப்பெயர் உண்டு. சேரா



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முதலியாருக்கு சேக் முகைதீன் என்கிற பட்டப் பெயருக்கு எந்தவித ரிக்கார்டும் இல்லை. சேரா முதலியாருக்கு சேக் முகைதீன் என்கிற பட்டப்பெயர் உண்டு என்று வழக்கு காலத்தில் தெரியாது. அவ்வாறு பட்டப்பெயர் உண்டு என்று அவர் மகன்கள் சொல்லித்தெரியும். சேரா முதலியாருக்கு சேக் முகைதீன் என்று பட்டப்பெயர் உண்டு என்பது சரியல்ல என்பதும் வழக்கிற்காக பொய்யாக அவ்வாறு உள்ளது என்று சொல்கிறேன் என்றால் சரியல்ல.

10.A reading of above evidence would demonstrate that the plaintiff clearly admitted that the original owner Segumohammed had three sons namely Seramudaliar, Ismail and Sahulhameed. Therefore, the claim of plaintiff that after the death of Segumohammed, property was enjoyed by his vendor's father Sheikmohideen got falsified by his own testimony. The plaintiff attempted to improve his case by saying Sheikmohideen was also known as Seramuthaliar. However, he himself admitted that there is no evidence to suggest Sheikmohideen and Seramuthaliar are one and the same person. Therefore, the plaintiff is unable to link his vendor Sahulhameed with the original owner of the property Segumohamed. Even assuming Sahulhameed, S/o.Sheikmohideen from whom the plaintiff purchased the suit property was the grandson of original owner Segumohammed and Sheikmohideen was also known as Seramuthaliar, the



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plaintiff will not get title over the entire property, when the Segumohammed had two other sons, namely, Ismail and Sahulhameed. Therefore, the plaintiff is unable to establish his right over the suit property based on Ex.A.1.

11.The learned counsel for the appellant vehemently contended that subsequent to filing of the suit, the plaintiff purchased suit property from two other sons of Segumohammed, namely, Ismail and Sahulhameed under Ex.A6, dated 27.01.1990. The alleged purchase from Ismail and Sahulhameed was not at all referred to by the plaintiff in his pleadings. In fact, he claimed Segumohammed had only one son namely Sheikmohideen. When the relationship of Sheikmohideen with the Segumohammed was denied by the written statement by raising a plea that Segumohemed had three sons by name Seramuthaliar, Ismail and Sahulhameed, the plaintiff filed a reply statement claiming his vendor's father Sheikmohideen was also known as Seramuthaliar. However, he himself clearly admitted that there is no document to establish that Seramuthaliar and Sheikmohideen are one and the same person. The plaintiff is not entitled to change his case and lead evidence as if he purchased the property from two other sons of Segumohammed without the foundation of the plea. It is settled law that



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no evidence is permitted without the foundation of plea. Therefore, the plaintiff cannot change his specific plea and lead evidence in support of a new case, which was not pleaded. The first appellate Court rightly came to the conclusion that the plaintiff was not entitled to take a new stand and lead evidence in support of that new stand, which was not supported by pleadings.

12.A perusal of Ex.A6 dated 27.01.1990 would suggest that an extent of 1153 sq.ft equivalent to 2.646 cent was purchased by the plaintiff subsequent to the filing of the suit from Ismail and Sahulhameed. However, in the plaint the suit property was described with an extent of 765 sq. ft. equivalent to 1.756 cent. The western boundary mentioned in Ex.A6 is also not tallying with the boundary description mentioned in the plaint schedule. In such circumstances, it is highly doubtful whether Ex.A6 is relating to the suit property. In any event, the plaintiff is not entitled to press into service Ex.A6 which came into existence subsequent to the filing of the suit as we are concerned with the title of the plaintiff on the date of filing of the suit as per his pleadings. Therefore, the conclusion reached by the first appellate Court that the plaintiff failed to establish his title over the suit property as per his pleadings is found to be correct and it requires no



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interference. As a necessary consequence, the plaintiff is not entitled to the other consequential reliefs also. However, now the plaintiff has taken a new stand that he purchased the suit property under Ex.A6 subsequent to the filing of the suit from Ismail and Sahulhameed, S/o.Segumohammed. It is nothing but a new claim based on different title. Therefore, it is always open to the plaintiff to file a fresh suit based on the subsequent event now claimed by her.

13. In view of the discussion made earlier, the finding reached by the first appellate Court that the plaintiff failed to establish his title as pleaded, is confirmed and the plaintiff is not entitled to get a declaration merely because the defendant failed to establish his case. The questions of law framed at the time of admission are answered against the appellant. Accordingly, the second appeal is dismissed. However, it is open to the appellant /plaintiff to file a fresh suit based on the subsequent cause of action. No costs.

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NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

- 1.The Principal Subordinate Judge,
Tirunelveli.
- 2.The District Munsif Court,
Valliyoar.
- 3.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SOUNTHAR, J.

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