

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.07.2019

CORAM

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

S.A.Nos.704 and 705 of 2004

1.Duraisamy Padayachi (Died)

... Plaintiff/1st Respondent/Appellant

2.Chellammal

3.Dhanakodi

4.Murugesan

5.Andal

... Appellants in both the Second Appeals
(Appellants 2 to 5 brought on record as legal representatives of the deceased sole appellant viz., Duraisamy Padayachi, vide Order of Court dated 26.06.2019 made in C.M.P.No.3141, 3144 and 3146 of 2019 in S.A.No.704 of 2004 and C.M.P.No.3150, 3151 and 3154 of 2019 in S.A.No.705 of 2004).

versus

1. Jothi

2. Selvaraj

3. Lakshmi

4. Santhi

5. Manickammal

6. Amudha

7. Vimala

... Lrs of the Defendant/ Appellants /
Respondents 1 to 7

8. Rajendran

... LR of the Defendant/2nd Respondent /
8th Respondent in both the Second Appellant

Common Prayer: Second Appeals filed under Section 100 of code of Civil Procedure against the judgment and decree dated 29.09.2003 in A.S.Nos.47 and 48 of 1999 respectively on the file of the Principal Subordinate Judge's Court, Vridhachalam, reversing the Judgment and Decree dated 26.07.1999 in O.S.Nos.380 and 585 of 1996 respectively on the file of District Munsif-cum-Judicial Magistrate Court, Thittakkudi.

For Appellants : Mr.P.Valliappan

For Respondents: Mrs.Hema Sampath, Senior Counsel
for Mrs.R.Meenal
Mr.T.Sezhian [R1, R2, R6 & R8]

COMMON JUDGMENT

There are two suits, instituted one each by the rival parties against the other for declaration of their respective title, and for consequential injunction.

2.1 The suit property is stated to be in S.No.155/5A, and a total extent of the property is 1.97 acres. Out of this, some third parties to the suit owned 6 cents. These two facts are admitted by both sides. And, both the appellant and the respondent claim some right to the remaining extent in S.No:155/5A, but the dispute is all about the exact extent that they own.

2.2 The controversy can now be explained. After deducting 6 cents owned by the third parties, the balance extent left in S.No:155/5A is 1.91 acres. Out of this, the plaintiff/appellant herein claims right over 1.54 acres, whereas the respondents claim right to 59.5 cents. This would imply as between the rival parties here, the total extent as per their respective claim would be 2.035 acres. It is at least some 12.5 cents more than the available extent. It is with this background, the case may be approached.

3.1 The appellant herein has laid a suit in O.S.No.576 of 1990 for declaration of his title over 1.54 acres. The defendant in this suit has laid an independent suit in O.S.No.585 of 1996, in which, he sought declaration of title over 59.5 cents. The suit laid by the appellant was later transferred and renumbered as O.S.No.380 of 1996 and was consolidated with the suit filed by the respondents.

3.2 The evidence was recorded by the trial Court in O.S.No.380 of 1996 (Appellant's suit). The plaintiffs in one suit is the defendant in the other suit. Since both the suits are for declaration and they have to be decided based on common evidence.

4 It is now time to briefly state the pleadings in both the suits:

(a) The appellant claims that vide Ext.A1 sale deed dated 10.08.1964, he had purchased 1.54 acres in S.No.155/5A from one Kathirvel Padayachi. The appellant's vendor Kathirvel Padayachi himself had acquired title under five other sale deeds which are available on record as Exts.A23 to A27. He claims that he has been in continuous possession and enjoyment of 1.54 acres, that his property lie to the north of the respondents' property, that it is divided by a demarcating bund and the Revenue Records such as patta and adangal are also in his name, all of which go to establish that he has been in possession of the entire 1.54

acres, that he had purchased under Ext.A1.

(b)The respondents herein however dispute it. The respondents claim that under Exts.B1 to B9 sale deeds spread over between 1947 and 17.05.1961, he had purchased 59.5 cents, and he claims that he has been in possession of this 59.5 cents.

5. When the matter had gone for trial, both sides adduced oral and documentary evidence, based on which the trial Court decreed the plaintiffs' suit in entirety and dismissed the suit of the respondent. Therefore, the respondents herein preferred twin appeals in A.S.Nos.47 of 1999 and 48 of 1999. On re-appreciation of the evidence before it, the First Appellate Court allowed both the appeals. The appeals preferred against the decree of the appellant's suit, (A.S.No.47 of 1999) was partially allowed. In that as against the appellant's claim of 1.54 acres, the First Appellate Court granted decree for 1.35 acres. However, the same appellate Court gave a decree to the respondents to the entire extent they claimed.

6. If the First Appellate Court decree has to be given effect, then it requires 1.945 acres to be on ground whereas, the balance available is only 1.91 acres. It is in this backdrop, the appellant now challenges the decree of the First Appellate Court in these twin appeals.

7.1 The learned counsel for the appellant argued that inasmuch as the decree in favour of the appellant has been passed for 1.35 acres, what is now in controversy so far as the appellant is concerned, dispute is only over 19 cents. As against this decree, the respondents have not filed any cross-objection. If the right of the appellant as declared by the first appellate Court is now kept a constant, the arithmetic cannot accommodate the extent of properties declared by both the decrees of the First Appellate Court. Necessarily, the matter requires a revisit.

7.2 Based on the testimony of PW2, the learned counsel would further submit:

- The suit property originally appeared to have been held by one Nataraja Padayachi, Appavu Padayachi and fragment share by another. They had their independent extent in the properties. While this fact was not pleaded, at least one witness had spoken something about it. After the demise of Nataraja Padayachi and Appavu Padayachi, certain transactions had taken place which are now material:
 - Nataraja Padayachi had two sons namely, Muruga Padayachi and Kathirvel Padayachi. Whiles, under Ext.A24 sale deed dated 07.07.1954 and another sale deed Ext.A25 dated 12.10.1960, Muruga Padayachi had sold two separate plots

of land measuring 14 cents and 33 cents respectively to his brother Kathirvel Padayachi.

- After the demise of Appavu Padayachi referred to above, his widow Sundarambal had sold 50 cents to Kathirvel Padayachi under Ext.A26 sale deed dated 18.11.1961. This apart, Kathirvel Padayachi had also acquired some right under Exts.A23 to A27.
- Turning to Appavu Padayachi, he had two sons Kandasamy Padayachi and Thangavel Padayachi. The evidence on record would indicate that under Ext.B2 sale deed dated 29.07.1948, both of these brothers had sold 2 cents to the respondents. Subsequently, vide Ext.B4 sale deed dated 05.11.1949, these brothers had sold yet another 11 cents to the respondents.

7.3 It is further argued that if case of the respondents were to be appreciated, while under Exts.B1 to B9 sale deeds, the respondents purported to claim title to 59.5 cents, the same respondents had executed a mortgage deed dated 29.12.1976 only for 37 cents. A copy of this mortgage deed was marked as Ext.A9.

7.4 The learned counsel for the appellant would now submit that there is no dispute that the property to the east of S.F.No.155/5 belonged to a temple. This forms the eastern boundary of the suit property. It is also not in dispute that the Survey No.155/5 is abutting a main road on the south. It is the case of the appellant that his property lies to the north of the respondents' property. In this backdrop if Ext.A9 is perused, it not shows that the respondents had dealt with only 37 cents in S.No.155/5 as contended by the appellant, but also shows eastern and southern boundaries of S.No.155/5 respectively as temple property and the road. He also shows the northern boundary as the appellant's property. So far as the western boundary is concerned, even though Ext.A-9 shows that it is the property of the appellant, it is one that falls in S.No.155/4, in which, the appellant has title even earlier. This property of the appellant in S.F.No:155/4 will not be borne out by any of the documents available on record. If only the respondents had 59.5 cents, then they need not have shown at least following two facts in Ext.A9:

- a) The extent is 37 cents and not 37 cents out of 59.5 cents; and
- b) Need not have shown the appellant's property in S.No.155/4 as the western boundary of the property. Therefore, notwithstanding the total extent as per the sale deeds in his favour, the respondents knew that their actual entitlement in S.No.155/5 was only 37 cents. It is hence, when patta was granted based on UDR scheme, they did

not even seem to have raised any objection to grant of patta and sub-dividing of survey field into 155/5A and 155/5B. At any rate, argued the counsel that both the decrees passed by the First Appellate Court cannot stand in the light of the arithmetics involved, and to that extent both the decrees do not reconcile on ground.

8. Per contra, the learned counsel for the respondents would argue that as per the available evidence namely under Exts.A-23 to A-27 sale deeds executed in favour of the vendor of the appellant he had obtained only 1.35 acres. Now the appellant herein has to explain how he obtained additional 19 cents in order he could sell 1.54 acres under Ext.A1.

9. So far as the decree of the First Appellate Court is concerned, it has to be stated that both the decrees cannot stay together since it would require more extent on ground than what is available. Secondly, someone among the few who had sold properties to the parties hereto, or to their predecessor-in-title appears to have sold a larger extent than what they are entitled to. But, who is actually entitled to what extent could not be ascertained from the title documents produced by rival side. This may have to be ascertained on the basis of relevant Revenue Records or Settlement Record. Thirdly, Ext.A9 should not be lost sight of, and it must be brought for consideration for deciding the issue.

10. This Court therefore, considers that these aspects can be profitably considered by the first appellate Court, since some evidence is required to be adduced by both sides. Therefore, this Court allows both the Second Appeals and set aside the judgment and decree dated 29.09.2003, passed by the Principal Subordinate Judge's Court, Vridhachalam, in A.S.Nos.47 and 48 of 1999 respectively and remand the matter to the First Appellate Court which shall decide on the issues herein above indicated within a period of four months from the date of receipt of a copy of this order. Both parties are directed to appear before the First Appellate Court on 05.08.2019. Both sides shall have the opportunity to adduce oral and documentary evidence, necessary to resolve the issue.

Sd/-

Assistant Registrar (Insp Cell)

//True Copy//

Sub Assistant Registrar

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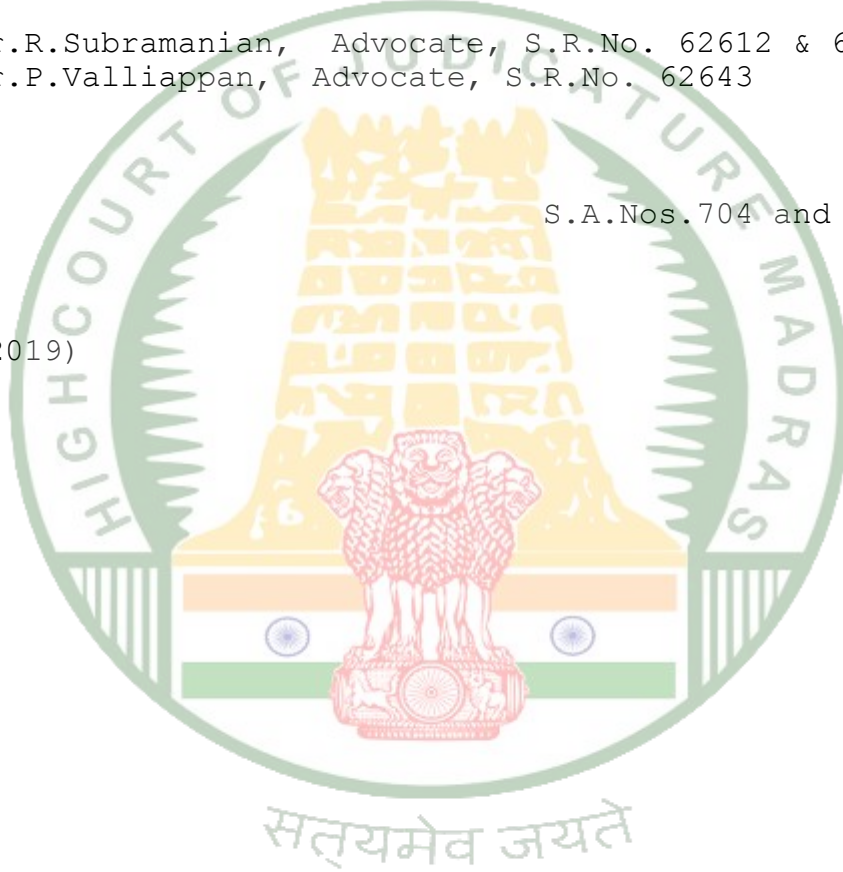
To

1. The Principal Subordinate Judge,
Vridhachalam.
2. The District Munsif-cum-Judicial Magistrate,
Thittakkudi.
3. The Section Officer,
V.R. Section, High Court,
Madras.

+2cc to Mr.R.Subramanian, Advocate, S.R.No. 62612 & 62613
+2cc to Mr.P.Valliappan, Advocate, S.R.No. 62643

S.A.Nos.704 and 705 of 2004

SR(CO)
GN(30/07/2019)



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