



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE: 03.12.2019

CORAM:

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THE HONOURABLE **MR.JUSTICE N.SATHISH KUMAR**

S.A. (MD) .No.977 of 2006

Paramaya Thevar

.. Appellant/Appellant/Plaintiff

-Vs-

1.Madasamy Thevar
2.Sokkaya Thevar
3.Vellasamy Thevar
4.Kottasamy Thevar

.. Respondents/Respondents/Defendants

PRAYER: This Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree passed in A.S.No.124 of 2005, dated 23.03.2006, on the file of the Additional Sub-Court, Tenkasi, confirming the judgment and decree passed in O.S.No.489 of 2004, dated 20.06.2005, on the file of the Principal District Munsif Court, Tenkasi.

For Appellant :Mr.A.Sankarasubramanian

For Respondents No.1 : Dismissed for default

For R2 to 4 : No Appearance

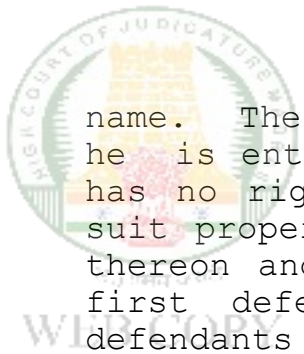
JUDGMENT

The unsuccessful plaintiff before both the Courts below has filed the present second appeal.

2.For the sake of convenience, the parties are referred to as per their ranking in the original suit.

3.The brief case of the appellant/plaintiff is read as follows:-

3.1.The suit has been filed by the plaintiff seeking for declaration and permanent injunction. The case of the plaintiff is that the suit property is situated in S.No.570/1. The plaintiff's father had purchased the suit property on 20.07.1948. Thereafter, he has gifted the above property to the plaintiff on 14.12.1981. Even at the time of gift, the survey number remained as S.No.570/1 and thereafter, there was sub-division and survey number has been classified as 570/1A and the plaintiff has obtained patta in his



name. The first defendant is having a property in S.No.570/1B and he is entitled to only 45 cents and in the said survey number, he has no right whatsoever in S.No.570/1A. In the first item of the suit property, the plaintiff is having 4 acres 64 cents with well thereon and in the third item, he is entitled to 45 cents. The first defendant has sold the property in third item to the defendants 2 to 4 without any right. In fact, the above property is also subject matter of the sale deed and gift deed in favour of the plaintiff. Hence, the suit for declaration.

3.2.The defendants 2 to 4 filed a written statement stating that the first defendant's father Paramu Thevar and his great grandfather and one Sangu Thevar were entitled to share in S.No.570/1. The plaintiff himself had purchased to an extent of 85 cents from Sangu Thevar in the year 1962. The first defendant's father is also entitled to 85 cents. Therefore, the first defendant has sold the above property to the defendants 2 to 4. Hence, there is a dispute with regard to title.

4.On the side of the plaintiff, P.W.1 was examined and Exs.A.1 to A.3 were marked. On the side of the defendants, D.W.1 was examined and Exs.B.1 to B.5 were marked.

5.The trial Court, appreciating the sale deed Ex.B.3 and Ex.A.1 gift deed in favour of the plaintiff and also Ex.B.4 settlement register and evidences of P.W.1, held that the plaintiff is not proved in respect of the property, in which, declaration as sought and has held that the plaintiff himself admitted that the boundaries shown in Ex.A.1 is correct, though the extent is shown as 5.8 cents and the ground only 4.64 cents available and held that the first defendant is also purchased the property from other co-sharers. The plaintiff's title has not been established.

6.The first appellate Court has also re-appreciated the entire evidence and came to the same finding.

7.This Court is also perused both the judgments and also by documents. In view of the findings of both Courts below and taking note of the fact that in the ground, though the extent was mentioned as 5.8 cents, in Ex.A.1 in the ground only 4.64 cents were available. The boundaries in the document, not disputed by the plaintiff. Besides the co-sharers also had share in original S.No.570/1. The plaintiff's father had purchased 85 cents from one of the co-sharer, under Ex.B.3. The above facts clearly indicate that before sub division in S.No.570/1, apart from the vendor of the plaintiff's father, namely one Paramu Thevar, Madasamy Thevar and Sangu Thevar were also sharers in the property. Ex.B.4 was also filed in this regard to show that in the settlement register their names find place. Both the Courts below after analyzing the entire documents, rejected the claim of the plaintiff.



8.This Court is of the view that there is no substantial question of law to admit this appeal.

9.In view the same, the Second Appeal is dismissed. No costs.

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Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)

sjj

To

1.The Additional Subordinate Judge, Tenkasi.

2.The Principal District Munsif, Tenkasi.

Judgment made in
S.A.(MD).No.977 of 2006
03.12.2019

JMN(13.02.2020) 3P : 3C