



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date: 01.09.2020

CORAM

THE HONOURABLE MR.JUSTICE **N.SESHASAYEE**

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S.A(MD)No.314 of 2020
and C.M.P(MD)No.3696 of 2020

1.R.Vellaisamy
2.T.Tamilselvan

: Appellants/Respondents 1 & 2/
Plaintiffs

Vs.

1.P.Pichaimuthu
2.P.Karthika
3.Vennila
4.Magudeeswaran

: Respondents/Appellants/
Defendants 1 to 4

5.Muthayammal
6.Muthayi

: Respondents 5 and 6/Respondents 3 & 4/
Defendants 5 and 6

PRAYER: Second Appeal is filed under Section 100 of C.P.C, against the Judgment and Decree dated 05.02.2020 passed in A.S.No.76 of 2018 on the file of the learned Sub-Court, Palani reversing the Judgment and Decree dated 25.07.2018 passed in O.S.No.151 of 2014 on the file of the learned District Munsif Court, Oddanchathram.

For Appellants : Mr.D.Venkatesh

For Respondents : Mr.N.S.Ramakrishnadass

J U D G M E N T

The plaintiffs, in a suit for declaration of title, are the appellants herein. They were successful before the trial Court but, suffered a reversal before the first Appellate Court in an appeal preferred by the defendants.

2.The plaintiffs allege that a property measuring 2.03 acres in Sy.No.682/1 of Kedhaiyarumbu Village originally belonged to one Rangasamy. Rangasamy was married twice. The first Plaintiff is his son born to him through his second wife. The defendants represent the branch through Rangasamy's first wife. It could be gathered from the plaint that through his first wife Rangasamy had two sons namely Palanisamy and Kandasamy. Palanisamy is no more and his children are the first and sixth defendants. Defendants 2 to 4 are the children of the first defendant and the fifth defendant, is the



widow of Kandasamy.

3. After the demise of Rangasamy, on 02.10.1971, both the branches of Rangasamy through his two wives partitioned the suit property and based on that, the western 1.015 a was allotted to the share of Palanisamy and Kandasamy (as already indicated they are Rangasamy's sons through his first wife) and the eastern 1.015 a was allotted to the share of the first plaintiff.

4. While so, sometime in 1996, 0.050 h was acquired by the Government for some public purpose. The property acquired was sub-divided and was assigned Sy.No.682/1A1. The property allotted to the first plaintiff was in Sy.No.682/1B and the one allotted to the defendants was in Sy.No.682/1A2. After acquisition by the Government of an extent of 12.5 cents, the property available to the defendants is only 89 cents. So far as the first plaintiff's property is concerned, the original holding in terms of the partition deed was not affected. A patta was issued to the defendants for 97.5 cents. Whereas, for the plaintiff, patta was granted for a lesser extent. It is based on the patta issued to the defendants, the defendants are attempting to disturb plaintiff's possession and hence, the suit was laid.

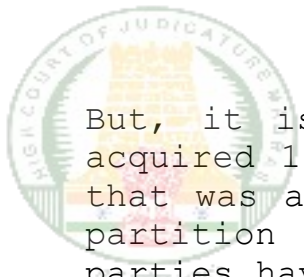
5. In the written statement, it is alleged that contrary to the actual extent available on lie, patta was granted for 94 cents in Sy.No.682/1B to the first plaintiff. Whereas, for the defendants, patta was granted for an extent of 97.5 cents in Sy.No.682/1A2. There is no such property as 1.015 a as claimed by the plaintiffs.

6. The matter went to trial. After evaluating the evidence before it, the trial Court decreed the suit. Whereas, in an appeal preferred by the defendants in A.S.No.76 of 2018, the appeal was allowed and the plaintiffs were non-suited. Hence, this second appeal.

7. The suit came up for admission and the defendants are represented by their counsel.

8. After hearing both sides, this Court has noted the following points:

- a) Both sides claim title based on Ext.A.3, partition deed and that Ext.A.3 deals with 2.03 a in Sy.No.682/1
- b) both sides admit that the Government has acquired 12.5 cents and this acquired portion was assigned Sy.No.682/1A1.
- c) it is simple arithmetic that after acquisition, the total extent available should be 1.905 a.
- d) both sides do not dispute that the first plaintiff was issued patta for Sy.No.682/1B and the defendants were granted patta for Sy.No.682/1A2.



But, it is not very evident from whose property Government has acquired 12.5 cents or if the acquisition had affected the extent that was allotted to both the branches of Rangasamy under Ext.A.3 partition deed, and if so, the exact extent that each of the parties have lost in acquisition.

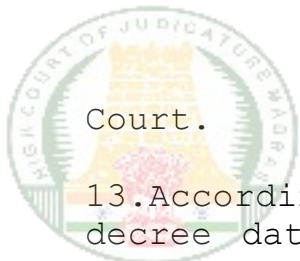
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9.The learned counsel for the appellants took this Court extensively through the testimony of the first defendant, who was examined as D.W.1 and argued that the first defendant has categorically admitted entitlement of the plaintiffs and in the fitness of things, the first Appellate Court ought to have acted on the said admission of D.W.1 and should have confirmed the trial Court's decree.

10.Refuting strongly, the learned counsel for the respondent argued that P.W.1 in his evidence has categorically stated that the plaintiffs' plot and the defendants' plot lie on two different levels and that there is a bund that separates both their properties and that the plaintiffs do not claim any title over the property that lies beyond the dividing bund. He also added that the suit is laid for bare injunction and necessarily, the plaintiffs have to prove possession of the property and at any rate, cannot claim title to any property beyond the dividing bund.

11.If the merit of the submissions made by the learned counsel for the respondents is considered carefully, it pre-supposes that the plot of land that comes within the dividing bund of either side is in specific enjoyment of plaintiffs and the defendants, as the case may be. The issue here is where lies the dividing line and what is the extent available within the property so enjoyed. Secondly, the extent occupied by the bund itself is not known. Prima facie, it is more possible that the bund should form part of the property situated on a higher plane than the property is situate on the lower plane. However, this is only a supposition and it has to be ascertained. This Court is also conscious to the fact that the properties are open lands and therefore, possession over a specific extent cannot be easily be made out based merely on oral testimony. This apart, it has also come in evidence that there are some trees standing in the bund dividing the plot allotted to the plaintiffs and the plot allotted to the defendants.

12.Given the scenario and to give a quietus to the dispute between the close relatives, this Court considers it appropriate that a Commissioner be appointed for local inspection to measure the property and to provide a report. To enable this, this Court considers that remanding the matter would be the better option. More so, because the number of cases that the first Appellate Court has to handle are much less than those handled by this



Court.

13. Accordingly, the Second Appeal is allowed and the Judgement and decree dated 05.02.2020 in A.S.No.76 of 2018 on the file of the Sub-Court, Palani is set aside and the matter is remanded back to the Sub Court, Palani for fresh consideration of the matter. No costs. Consequently, the connected miscellaneous petition is closed.

14. The Sub Court, Palani is directed to appoint a Commissioner who shall identify the property acquired by the Government in Sy.No.682/1A1 and also denote what is the extent to which both the parties have suffered diminution to the extent that was allotted to each of them under Ext.A.3, partition deed. The Commissioner, in particular shall also measure the extent occupied by the bund dividing the plots allotted to the plaintiffs and the defendants, and ascertain under which survey number the same comes in.

15. For this purpose, the Sub Court, Palani is required to appoint any Advocate Commissioner of reasonable standing in the civil side and he is to be assisted by the Taluk/Firka Surveyor. Once, the Commissioner's report is made available, parties are free to file their objections to the same and to produce such necessary evidence to establish their case. The parties are directed to appear before the Sub Court, Palani on 05.10.2020. The present status quo shall be preserved till then.

Sd/-

Assistant Registrar(CO)

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Sub Assistant Registrar(CS)

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To

1. The Sub-Judge, Palani.

2. The District Munsif Court,
Oddanchathram.

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and C.M.P(MD)No.3696 of 2020
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