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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.08.2021

PRONOUNCED ON : 11.08.2021

CORAM:

THE HON'BLE MR.JUSTICE ABDUL QUDDHOSE

SA NOS.632 AND 633 OF 1999

L.Devaraj

.... Appellant/Appellant/
Respondent in A.S.124/1997
in O.S 756/1991

versus

1. Vasantha
2. Padmanabhan (Died)
3. B.Sulochana
4. J.Vimala
5. S.Kokila
6. P.Ashok kumar

... Respondents/
Defendants/Plaintiffs

...Respondents

SA NO.633 OF 1999:-

L.Devaraj

.... Appellant/Appellant/
Plaintiff in A.S.123/1997
in O.S 2747/1990

versus

1. Vasantha
2. Padmanabhan (Died)
3. S.Selvaraj
4. C.Ramachandran
5. B.Sulochana
6. J.Vimala
7. S.Kokila
8. P.Ashok kumar

... 1 to 4 Respondents/
Respondents/ Defendants



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*RR3 to 6 brought on record as LR's of the deceased 2nd respondent Padmanabhan, vide order of the Court, dated 18.01.2021 made in CMP Nos.5495 to 5497 of 2018 in S.A. No.632 of 1999

*RR5 to 8 brought on record as LR's of the deceased 2nd respondent Padmanabhan, vide order of the Court, dated 18.01.2021 made in CMP Nos.5498 to 5500 of 2018 in S.A. No.633 of 1999

Prayer in S.A. No.632 of 1999 :

Second Appeal filed under Section 100 of Civil Procedure Code against the decree and judgment of the II Additional Appellate Court and II Additional District Judge, Coimbatore dated 31.08.98 and passed in A.S. No.124/97 confirming the decree and judgment of the Principal District Munsif Coimbatore, dated 01.04.1997 and passed in O.S. No.756 of 1991

Prayer in S.A. No.633 of 1999 :

Second Appeal filed under Section 100 of Civil Procedure Code against the decree and judgment of the II Additional Appellate Court, and II Additional District Judge, Coimbatore dated 31.08.98 and passed in A.S. No.123/97 confirming the decree and judgment of the Principal District Munsif Coimbatore, dated 01.04.1997 and passed in O.S.No.2747 of 1990

For Appellant in : Ms.K.Janani
both appeals for M/s.N.S.Sivakumar

For Respondents in : Mr.N.SridharR1, R3 to R6
appeals for M/s.V.Sanjeevi R1, R3, R5 to R8
in SA 633/99
R1,R3 to R6 in SA 632/99
Not ready in notice reg.R4

COMMON JUDGMENT

(This case was heard through Video Conferencing)

These Second Appeals have been filed challenging the concurrent findings of the Courts below.



2.The appellant is the plaintiff in the suit O.S. No.2747 of 1990 on the file of District Munsif Court, Coimbatore. The said suit was filed for permanent injunction against the respondents to restrain them from interfering with the appellant's peaceful possession and enjoyment of the property at Kallapatti Village, Survey No.337/1 measuring an extent of 4.02 acres, hereinafter referred to as the "suit schedule property".

3.The respondents are the defendants in the said suit. The respondents Nos.1 and 2 have also filed a separate suit in O.S.No.786 of 1991 against the appellant before the very same District Munsif Court at Coimbatore seeking for the very same relief of permanent injunction for the very same suit property.

4.The case of the appellant who is the plaintiff in O.S. No.2747 of 1990 is that he is the son-in-law of Narayanasamy Naidu, who had sold the suit schedule property to him under a registered sale deed dated 16.04.1981 (Ex.A2). According to the appellant, even after the death of his father-in-law Narayanasamy Naidu, the appellant and Narayanasamy's Naidu's son continued to pay the Kist for the suit schedule property to the Government and they are in possession of the suit schedule property. However, it is the case of the appellant that the original of the sale deed dated 16.04.1981 executed in his favour was retained by his father-in-law Narayanasamy Naidu. It is the case of the plaintiff that in the schedule to the sale deed dated 16.04.1981, due to a typographical error, the survey number was wrongly mentioned as GS No.338 instead of GS No.337. It is the case of the appellant that he had also requested his brother-in-law i.e. Narayansamy's son, his vendor to rectify the mistake. Since, he did not come forward to rectify the mistake, it is the case of the appellant that he was forced to file a suit O.S.No.807 of 1990 against Narayansamy's son N.Selvaraj for the purpose of rectifying the mistake with regard to the survey number in the schedule to the sale deed dated 16.04.1981. It is also the case of the appellant that a judgment and decree dated 26.07.1990 was passed in his favour in O.S. No.807 of 1990 filed against the appellant's brother-in-law (son of the deceased Narayanasamy Naidu). According to the appellant, he has been put in possession of the suit schedule property ever since 16.04.1981 when the sale deed was executed and registered in his favour.

5.It is the case of the appellant that the respondents/defendants interfered with his peaceful possession and enjoyment of the suit schedule property by attempting to trespass into the said property and by attempting to lay out the same as plots. According to the appellant, the respondents are total strangers to the suit schedule property.



6. However, it is the case of the respondents, who are the defendants in the suit O.S. No.2747 of 1990 and the plaintiffs in the suit O.S. No.756 of 1991 that they are the absolute owners of the suit schedule property. According to them, the appellant is a meddler and an interloper and is a total stranger to the suit schedule property. According to them, the first respondent (Vasantha), who is the first plaintiff in O.S. No.756 of 1991 is the owner of 2.01 acres out of the total extent of 4.02 acres which is the suit schedule property having got the same under the following documents :

a) V.Rangasamy Naidu purchased the said extent of 18.15 acres along with a larger extent totalling 25.53 acres in various survey fields including S.F.No.337/1 as auction purchaser under Sale certificate dated 28.03.1925 issued by District Munsif Court, Coimbatore in E.P.No.2694/1924 marked as EXA7. The appellant himself admitted during cross examination that the said court auction Sale was not cancelled till date under any other legal proceedings.

b) Sama Naidu's father Appa Naidu under Sale Deed dated 30.12.1933 (marked as EXA6) purchased an extent of 18.15 acres in various survey fields including S.F.No.337/1 from the said Rangasamy Naidu.

c) Sama Naidu was allotted various land along with S.F.No.337/1 under final decree dated 11.08.1986 (marked as EXB13) passed by District Munsif Court, Coimbatore in a partition suit.

d) The said Sama Naidu executed a registered Will dated 4.3.1988 (EXB11) in favour of her daughter Vasantha, the first plaintiff by and under which he bequeathed 2.01 acres in S.F.No.337/1 among other properties. Execution of the Will was proved in accordance to the law by examining one of the attestors to the Will by name Mani as DW2.

e) Further other registered documents marked as exhibits B14 dated 15.07.1957, B10 dated 10.04.1961 and B4 dated 23.11.1966 clearly refers that the lands of Sama Naidu in S.F.No.337/1 is the southern half.

7. It is also the case of the respondents that Padmanabhan, the second respondent herein and the second plaintiff in O.S. No.756 of 1991 is the owner of the remaining extent of 2.01 acres in the suit schedule property, he having got the same under the following title deeds :



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a) Under Partition Deed dated 4.7.1952 (EXB9) one Narayanasamy Naidu was allotted undivided half share measuring 2.01 acres out of the larger extent of 4.02 acres in S.F.No.337/1

b) The said Narayanasamy viz., allotted under EXB9 thereafter executed a registered Settlement Deed dated 15.07.1957 (EXB14) in favour his minor children Govindarajulu, Kanagaraj, Kumuthavalli represented by guardian Mother Bagyalakshmiammal settled the said extent of 2.01 acres and other lands.

c) The said minors viz., settles under EXB14 through their guardian old 2.01 acres on the Northern side on the East West direction out of 4.02 acres in S.F.No.337/1 with specific boundaries to Guruvanavithan under Sale Deed dated 10.04.1961 (EXB10)

d) The said Guruvanavithan sold the said extent of 2.01 acres on the Northern side on the East West direction out of 4.02 acres in S.F.No.337/1 with specific boundaries to Padmanaban under Sale Deed dated 23.11.1966 marked as EXB4.

8.The Trial Court framed issues in both the suits and a joint trial was conducted.

9.By a common judgment and decree dated 01.04.1997 passed in O.S. No.2747 of 1990 and O.S. No.756 of 1991, the learned District Munsif, Coimbatore dismissed the suit filed by the appellant in O.S. No.2747 of 1990 and decreed the suit in favour of the respondents in O.S. No.756 of 1991, i.e. the relief of permanent injunction was granted in favour of respondents and the relief of permanent injunction sought for by the appellant was rejected.

10.The Trial Court held in the aforesaid common judgment by giving a finding based on the materials and evidence available on record that the appellant or his alleged vendor did not have any title in SF No.337/1 measuring 4.02 acres, which is the suit schedule property. The Trial Court has also given a finding that the decree obtained by the appellant against his brother-in-law in O.S. No.807 of 1990 is a collusive decree. The Trial Court has therefore ignored the same and granted the relief of permanent injunction only in favour of the respondents, who had sought for the same in O.S. No.756 of 1991, but rejected the relief of permanent injunction sought for by the appellant, who is the plaintiff in O.S. No.2747 of 1990. The Trial Court has also in its finding has held that the sale



deed dated 16.04.1981 in favour of the appellant (Ex.A2) is only a nominal sale deed executed to enable the appellant to file the bare injunction suit against the respondents in O.S. No.2747 of 1990.

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11. Aggrieved by a common judgment and decree dated 01.04.1997 passed by the District Munsif Court, Coimbatore in O.S. No.2747 of 1990 and O.S. No.756 of 1991, the appellant, who is the plaintiff in O.S. No.2747 of 1990 and the defendant in O.S. No.756 of 1991 preferred two regular first appeals in A.S. Nos.123 of 1997 and 124 of 1997 before the II Additional District Court, Coimbatore.

12. The Lower Appellate Court by its common judgment and decree dated 31.08.1998 confirmed the findings of the Trial Court in O.S. No.2747 of 1990 and O.S. No.756 of 1991 and dismissed both the first appeals.

13. Aggrieved by the same, these Second Appeals have been filed by the appellant, who is the plaintiff in OS. No.2747 of 1990 and the defendant in O.S. No.756 of 1991.

14. Since Lower Appellate Court has disposed of A.S. Nos.123 and 124 of 1997 by a common judgment, which is the subject matter of challenge in these Second Appeals, this Court is also disposing of both these Second Appeals by a common judgment.

15. This Court at the time of admission of these Second Appeals on 29.04.1991 formulated the following substantial questions of law :

1. Is the suit of the appellant in O.S. No.2747 of 1990 for permanent injunction without a declaration of title bad in law as held by the lower appellate court in para 13 of the judgments especially when the suit of the respondents also in O.S. No.756 of 1991 is only for a permanent injunction without a prayer for declaration of title which has been allowed, when in both the suits title to the suit property has been questioned?

2. When the 1st respondent's father got only an undivided share in 5 Survey Nos. including the suit S.No.337/1 for 5.70 acres out of 29.57 acres as supported by earlier title deeds Ex.A4, A5, A7 and no specific extent in suit S. No.337/1 has been allotted to him under any instrument does the 1st respondent desire title under the will B11 of Sama Naicker giving the 1st respondent 2 acres?

16. Heard Ms.K.Janani, learned counsel for the appellant and



Mr.N.Sridhar, learned counsel for the respondents in both the Second Appeals.

Submissions of the learned counsels :

17.Ms.Janani, the learned counsel for the Appellant would submit that originally, the suit schedule property belonged to one Mr.Narayanasamy Naidu and his son Mr.N.Selvaraj and it is an ancestral property. According to her, as per the registered mortgage deed dated 10.06.1918 registered as Document No.554 of 1998 (Ex.A1) Mr.Narayana Naidu, the father of the Narayanasamy Naidu was the owner of the suit schedule property. She would further submit that the Appellant is the son-in-law of Narayanasamy Naidu who had executed a sale deed in his favour on 16.04.1981 (Ex.A2) for the suit schedule property. She would further submit that ever since the sale deed dated 16.04.1981 (Ex.A2), the Appellant/plaintiff is in possession of the suit schedule property.

18.According to Ms.Janani, learned counsel, the survey number and the extent was erroneously described as S.No.338/2 and as 5.15 acres in the sale deed dated 16.04.1981 (Ex.A2) and therefore the Appellant/plaintiff was constrained to file a suit for declaration and to correct the survey number and extent against his brother-in-law N.Selvaraj, who is the son of his father-in-law Narayanasamy Naidu in O.S.No.807 of 1990. She drew the attention of this Court to the judgment and decree dated 26.07.1990, passed in O.S.No.807 of 1990 wherein the District Munsif Court at Coimbatore in the said suit has directed Selvaraj, the brother-in-law of the Appellant/plaintiff and the son of Narayanasamy Naidu to rectify the sale deed dated 16.04.1981 (Ex.A2) by correcting the survey number and extent from G.S.No.338/2 to No.337/1 and the extent from 5.40 acres to 4.02 acres. Hence she would submit that the findings of the Courts below that only a deed of rectification should have been filed and that the decree obtained by the Appellant/plaintiff on 26.07.1990 in O.S.No.807 of 1990 (Ex.A9) is a collusive decree is a perverse finding.

19.She would also submit that the reasoning given by the Courts below that the boundaries in Ex.A1 mortgage deed dated 10.06.1918 executed by Narayanasamy Naidu do not tally with the boundaries of the suit schedule property is not tenable and is a perverse finding as according to her, the boundaries will naturally change by efflux of time.

20.Learned counsel for the Appellant would finally conclude her submissions by submitting that when there is a cloud over the title, it is settled law that a suit for permanent injunction without seeking a prayer for declaration is not maintainable. However, according to her, the Courts below have



by total non-application of mind to the settled law have entertained the suit filed by the respondents in O.S.No.756 of 1991 for a bare injunction and have also erroneously granted permanent injunction in their favour.

21.She would also submit that the Appellant/plaintiff who filed the suit in O.S.No.2747 of 1990 for a similar relief in respect of the same suit schedule property was prior in point of time, but however, the Trial Court has erroneously dismissed the same under the impugned common judgment by giving a perverse finding that he is not entitled for the relief of injunction.

22.Per contra, Mr.N.Sridhar, learned counsel representing Ms.V.Sanjeevi, counsel on record for the respondents at the outset would submit that the respondents are the absolute owners of the suit schedule property. He drew the attention of this Court to the title deeds which were marked as exhibits on the side of the respondents before the Trial Court to establish their title over the suit schedule property.

23.He would submit that Vasantha the first plaintiff in O.S.No.756 of 1991 and the first respondent in these Second Appeals is the absolute owner of 2.01 acres in S.F.No.331/7 which is a portion of the suit schedule property, apart from other properties and her title is traced under the following documents which were marked as exhibits before the Trial Court:

a) V.Rangasamy Naidu purchased the said extent of 18.15 acres along with a larger extent totalling 25.53 acres in various survey fields including S.F.No.337/1 as auction purchaser under Sale certificate dated 28.03.1925 issued by District Munsif Court, Coimbatore in E.P.No.2694/1924 marked as EXA7. The appellant himself admitted during cross examination that the said court auction Sale was not cancelled till date under any other legal proceedings.

b) Sama Naidu's father Appa Naidu under Sale Deed dated 30.12.1933 (marked as EXA6) purchased an extent of 18.15 acres in various survey fields including S.F.No.337/1 from the said Rangasamy Naidu.

c) Sama Naidu was allotted various land along with S.F.No.337/1 under final decree dated 11.08.1986 (marked as EXB13) passed by District Munsif Court, Coimbatore in a partition suit.

d) The said Sama Naidu executed a registered Will dated 4.3.1988 (EXB11) in favour of her daughter Vasantha, the first plaintiff by and under which he bequeathed 2.01 acres in S.F.No.337/1 among other properties. Execution of the Will was proved in accordance to the law by



examining one of the attestors to the Will by name Mani as DW2.

e) Further other registered documents marked as exhibits B14 dated 15.07.1957, B10 dated 10.04.1961 and B4 dated 23.11.1966 clearly refers that the lands of Sama Naidu in S.F.No.337/1 is the southern half.

24.Mr.N.Sridhar, learned counsel would then submit that the remaining portion of the suit schedule property measuring 2.01 acres in S.F.No.337/1 is absolutely owned by the second respondent (Padmanabhan)/second plaintiff (deceased). He having got the same under a sale deed dated 23.11.1966 marked as Ex.B4 before the Trial Court.

25.He also drew the attention of this Court to the various exhibits marked on the side of the respondents before the Trial Court which traces the title of Padmanabhan, the second respondent/second plaintiff (deceased) to the extent of 2.01 acres in S.F.No.332/1 and the documents are as follows:

a) Under Partition Deed dated 4.7.1952 (EXB9) one Narayanasamy Naidu was allotted undivided half share measuring 2.01 acres out of the larger extent of 4.02 acres in S.F.No.337/1.

b) The said Narayanasamy viz., allotted under EXB9 thereafter executed a registered Settlement Deed dated 15.07.1957 (EXB14) in favour his minor children Govindarajulu, Kanagaraj, Kumuthavalli represented by guardian Mother Bagyalakshmiammal settled the said extent of 2.01 acres and other lands.

c)The said minors viz., settles under EXB14 through their guardian old 2.01 acres on the Northern side on the East West direction out of 4.02 acres in S.F.No.337/1 with specific boundaries to Guruvanavithan under Sale Deed dated 10.04.1961 (EXB10).

d)The said Guruvanavithan sold the said extent of 2.01 acres on the Northern side on the East West direction out of 4.02 acres in S.F.No.337/1 with specific boundaries to Padmanaban under Sale Deed dated 23.11.1966 marked as EXB4.

26.After drawing the attention of this Court to the various exhibits marked on the side of the respondents, Mr.Sridhar, learned counsel would submit that the respondents are the absolute owners of the suit schedule property and they have also proved that they are in possession of the same.



27.He then drew the attention of this Court to the judgment and decree dated 26.07.1990 passed in O.S.No.807 of 1990 in favour of the Appellant/plaintiff against his brother-in-law Selvaraj wherein a mandatory direction was issued by the District Munsif Court, Coimbatore to the Appellant's brother-in-law to rectify the schedule under the sale deed dated 16.04.1981 (Ex. A2) by correcting the survey number and extent of the property as S.F.No.337/1 instead of S.F.No.338/2 and 4.02 acres instead of 5.15 acres. He would submit that the said decree is a collusive decree as the respondents were not made party in the said proceedings and behind their back, the said decree was fraudulently obtained by the Appellant/plaintiff.

28.He drew the attention of this Court to the findings of the Courts below and would submit that the Courts below have rightly given a finding that the Appellant/plaintiff is an interloper and meddler having no right and interest in the suit schedule property and the decree obtained by him in O.S.No.807 of 1990 is a collusive decree. He would further submit that having conclusively proved their title over the suit schedule property, there is no necessity for the respondents to seek the relief of declaration as submitted by the learned counsel for the Appellant. According to him, there is no cloud over the title of the suit schedule property since the respondents have proved their title by virtue of the title deeds marked as exhibits on their side before the Trial Court.

29.In support of his submissions, Mr.N.Sridhar, learned counsel drew the attention of this Court to the oft quoted judgment of the Hon'ble Supreme Court in the case of Anathula Sudhakar vs. P. Buchi Reddy (Dead) by LRs. and Ors. reported in AIR 2008 SC 2033 and in particular he would refer to paragraph No.17(d) of the said judgment and would submit that Hon'ble Supreme Court has categorically held that when persons having clear title and possession suing for injunction should not be driven to the costlier and more cumbersome remedy of a suit for declaration, merely because some meddler vexatiously or wrongfully makes a claim or tries to encroach upon their property.

30.Mr.N.Sridhar, learned counsel would submit that since the Appellant/plaintiff is a meddler and an interloper with regard to the suit schedule property, the suit for bare injunction filed by the respondents in O.S.No.756 of 1991 before the District Munsif Court at Coimbatore is perfectly valid and the Courts below have also rightly held the suit to be maintainable and the relief for permanent injunction in favour of the respondents was also rightly granted. According to him, there is absolutely no perversity in the findings of the Courts below which calls for any interference by this Court under Section 100



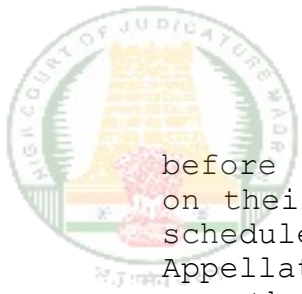
31.He would further submit that the factual issues have been duly and rightly considered by the Courts below. According to him, there is absolutely no substantial question of law involved in these Second Appeals.

Discussion:

32.Before the Trial Court, the Appellant in the joint trial in O.S.Nos.2747 of 1990 and 756 of 1991 has filed 11 documents which were marked as Exs.A1 to A11. The Appellant claims ownership of the suit schedule property pursuant to the sale deed dated 16.04.1981 executed by Narayanasamy Naidu in his favour which has been marked as Ex.A2.

33.Admittedly, the schedule to Ex.A2 sale deed dated 16.04.1981 mentions the survey number as S.F.No.338 and the extent as 5 acres and 15 cents. Whereas, the survey number and extent of the suit schedule property is different. The survey number of the suit schedule property is S.No.337/1 and its extent is 4.02 acres. The Appellant traces his title to a mortgage deed dated 10.06.1918 which has been marked as Ex.A1. The said mortgage deed dated 10.06.1918 (Ex.A1) executed by Chinnappan alias Narayana Naicken, who the Appellant claims to be his father-in-law Narayanasamy Naidu's father. As seen from the mortgage deed dated 10.06.1918 (Ex.A1), there is no reference as to how Chinnappan alias Narayana Naicken became the owner of the properties which included the property comprised in S.F.No.337/1. The sale deed dated 16.04.1981 (Ex.A2) executed by Narayanasamy Naidu in favour of the Appellant does not also pertain to S.F.No.337/1 and the extent is also different. As observed earlier, it pertains to S.F.No.338 and the extent mentioned in that sale deed is 5.15 acres, whereas the suit schedule property is comprised in S.F.No.337/1 and its extent is 4.02 acres. Eventhough, the Appellant would allege that Narayanasamy Naidu, the seller under his sale deed dated 16.04.1981 (Ex.A2) is his father-in-law, no oral and documentary evidence has been produced by him before the Trial Court to prove his relationship with Narayanasamy Naidu.

34.Admittedly, in the suit O.S.No.807 of 1990 filed by the Appellant against his brother-in-law N.Selvaraj, the respondents were not parties to the said suit. In the said suit, by a judgment and decree dated 26.07.1990, a mandatory direction has been issued to the brother-in-law (N.Selvaraj) to rectify the schedule under the sale deed dated 16.04.1981 (Ex.A2) by correcting the survey number as S.F.No.337/1 instead of S.No.338/2 and also by correcting the extent of the land as 4.02 acres instead of 5.15 acres. The respondents have produced



before the Trial Court their title deeds which have been marked on their side as exhibits to prove their ownership of the suit schedule property. The Trial Court as well as the Lower Appellate Court has also given a finding that the respondents are the absolute owners of the suit schedule property. This being the case, they are certainly necessary parties in O.S.No.807 of 1990. However, the Appellant has chosen to exclude the respondents as party defendants in the suit O.S.No.807 of 1990 for the reasons best known to him. Admittedly, only behind the back of the respondents, the judgment and decree dated 26.07.1990 was obtained in favour of the Appellant in O.S.No.807 of 1990. Before the Trial Court, the respondents have traced their title over the respective portions under the suit schedule property through various title deeds which will indicate that they are the absolute owners of the suit schedule property. Both the Courts below have concurrently held that Padmanabhan and Vasantha are the owners of their respective portions in the suit schedule property.

35. Before the Trial Court, the respondents have filed the following documents to prove the title of Vasantha and Padmanabhan over their respective properties:

(A) Vasantha (first respondent)

- a) V.Rangasamy Naidu purchased the said extent of 18.15 acres along with a larger extent totalling 25.53 acres in various survey fields including S.F.No.337/1 as auction purchaser under Sale certificate dated 28.03.1925 issued by District Munsif Court, Coimbatore in E.P.No.2694/1924 marked as EXA7. The appellant himself admitted during cross examination that the said court auction Sale was not cancelled till date under any other legal proceedings.
- b) Sama Naidu's father Appa Naidu under Sale Deed dated 30.12.1933 (marked as EXA6) purchased an extent of 18.15 acres in various survey fields including S.F.No.337/1 from the said Rangasamy Naidu.
- c) Sama Naidu was allotted various land along with S.F.No.337/1 under final decree dated 11.08.1986 (marked as EXB13) passed by District Munsif Court, Coimbatore in a partition suit.
- d) The said Sama Naidu executed a registered Will dated 4.3.1988 (EXB11) in favour of her daughter Vasantha, the first plaintiff by and under which he bequeathed 2.01 acres in S.F.No.337/1 among other properties.



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Execution of the Will was proved in accordance to the law by examining one of the attestors to the Will by name Mani as DW2.

e) Further other registered documents marked as exhibits B14 dated 15.07.1957, B10 dated 10.04.1961 and B4 dated 23.11.1966 clearly refers that the lands of Sama Naidu in S.F.No.337/1 is the southern half.

(B) Padmanabhan (second respondent deceased)

a) Under Partition Deed dated 4.7.1952 (EXB9) one Narayanasamy Naidu was allotted undivided half share measuring 2.01 acres out of the larger extent of 4.02 acres in S.F.No.337/1.

b) The said Narayanasamy viz., allotted under EXB9 thereafter executed a registered Settlement Deed dated 15.07.1957 (EXB14) in favour his minor children Govindarajulu, Kanagaraj, Kumuthavalli represented by guardian Mother Bagyalakshmiammal settled the said extent of 2.01 acres and other lands.

c) The said minors viz., settles under EXB14 through their guardian old 2.01 acres on the Northern side on the East West direction out of 4.02 acres in S.F.No.337/1 with specific boundaries to Guruvanavithan under Sale Deed dated 10.04.1961 (EXB10).

d) The said Guruvanavithan sold the said extent of 2.01 acres on the Northern side on the East West direction out of 4.02 acres in S.F.No.337/1 with specific boundaries to Padmanaban under Sale Deed dated 23.11.1966 marked as EXB4.

36. The Trial Court has gone into the title of the suit schedule property after examining the aforementioned documents as well as the documents filed by the Appellant which has been marked as exhibits and only thereafter has come to the categorical conclusion that the suit schedule property is absolutely owned by the respondents and that the Appellant has no right and interest over the same. The Courts below have also rightly given a finding that the judgment and decree dated 26.07.1990 obtained by the Appellant in O.S.No.807 of 1990 is a collusive decree as the respondents who are the absolute owners of the suit schedule property were not made parties to the said suit, despite the fact that they are claiming ownership of the very same property. Having obtained a decree behind the back of the respondents though, they are necessary parties, the Courts



below have concurrently and correctly held that the judgment and decree dated 26.07.1990 is a collusive decree and therefore both the Courts below have rightly ignored the same. Having conclusively proved their title over the suit schedule property, there is no necessity for them to file a suit for declaration as the Appellant/plaintiff is only a meddler and an interloper having no right and interest over the suit schedule property.

37.The principles laid down by the Hon'ble Supreme Court in Anathula Sudhakar case referred to supra will infact support the case of the respondents when they have conclusively proved their title over the suit schedule property. The Hon'ble Supreme Court in paragraph No.17(d) in Anathula Sudhakar's case referred to supra has held as follows:

17....

(d) Where there are necessary pleadings regarding title, and appropriate issue relating to title on which parties lead evidence, if the matter involved is simple and straight-forward, the court may decide upon the issue regarding title, even in a suit for injunction. But such cases, are the exception to the normal rule that question of title will not be decided in suits for injunction. But persons having clear title and possession suing for injunction, should not be driven to the costlier and more cumbersome remedy of a suit for declaration, merely because some meddler vexatiously or wrongfully makes a claim or tries to encroach upon his property. The court should use its discretion carefully to identify cases where it will enquire into title and cases where it will refer to plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case.

38.In the case on hand also, the respondents through their pleadings and oral and documentary evidence have conclusively established their title over the suit schedule property and therefore, they need not be driven to the costlier and more cumbersome remedy of a suit for declaration as claimed by the Appellant as he is only a meddler and an interloper having no right and interest over the suit schedule property.

39.Both the Courts below have given their findings only based on the materials and evidence available on record and there is no perversity in the same which calls for any interference by this Court under Section 100 CPC. There are no debatable issues of law involved in these Second Appeals and the factual issues have been adequately and correctly considered by the Courts below.



40. The substantial questions of law formulated by this Court at the time of admission of these Second Appeals are answered against the Appellant as there is no merit in the same and both these Second Appeals are dismissed. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

vsi2/pam

To

1. The II Additional District Judge,
II Additional Appellate Court,
Coimbatore.
2. The Principal District Munsif,
Coimbatore.
3. The Section Officer,
V.R.Section, High Court, Madras.

+1cc to M/s.N.S.Sivakumar, Advocate, S.R.No.40325
+1cc to M/s.V.Sanjeevi, Advocate, S.R.No.39938

S.A.Nos.632 & 633 of 1999

RLD(CO)
PM/01/10/2021