

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.08.2021

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

S.A. No.13 of 2004

- 1.Andal
- 2.Ramu alias Ramasamy
- 3.Alagudurai
- 4.Ganesan alias Muthu Ganesan
- 5.Lakshmi

.... Appellants

Versus

- 1.Ulaganathan
- 2.Maruthambal

... Respondents

Second Appeal filed under Section 100 of the Civil Procedure code, against the decree and judgment passed in A.S. No.166 of 1991 dated 08.10.2001 on the file of Sub Court, Ariyalur, confirming the judgment and decree dated 12.03.1990 in O.S.No.184 of 1983 on the file of District Munsif, Ariyalur.

For Appellants : Mr.S.Kamadevan

For Respondents 1 and 2 : Served

JUDGMENT

(Heard through Video Conference)

This Second Appeal is filed challenging the concurrent findings of the Courts below.

2. The parties are described as per their litigative status in the suit.

3. The appellants are the legal representatives of the deceased plaintiff Muthuvel. The plaintiff/Muthuvel filed a suit for declaration and injunction in respect of the property measuring 2.26 acres in Survey No.399/3, which is the suit schedule property against the defendants.

4. The case of the plaintiff is that Karuppusamy Padayachi and Nallathambi Padayachi were cousin brothers (their fathers were brothers) and they were equally enjoying the suit property till their death. According to the plaintiff, Nallathambi remained unmarried and he died long back and Karuppusamy Padayachi also died issueless in 1947 and his wife Karuppayee Ammal was enjoying the entire suit schedule property till her death. The

plaintiff was the sister's son of Karuppayee Ammal. She executed a Will on 09.05.1951 in favour of her sister's son/plaintiff (Muthuvel) in respect of 1.13 acres on the eastern side of the suit property. But she was enjoying the entire extent of 2.26 acres till her death and after her death, the plaintiff was enjoying the entire extent of 2.26 acres. According to the plaintiff, he is the owner of the suit schedule property by virtue of Will dated 09.05.1951 executed by Karuppayee Ammal.

5. However, the defendants in their written statement have disputed the contentions of the plaintiff. According to the defendants, the plaintiff is entitled only to the extent of 1.13 acres on the eastern side of the suit schedule property and not the entire extent of 2.26 acres, as claimed by him. They have also pleaded in the written statement that the first defendant is the sister's son of Nallathambi Padayachi and he has already sold an extent of 1.13 acres on the western side to the second defendant on 23.06.1986, which is marked as Ex.B.1 before the trial Court. A specific stand has been taken in the written statement that the plaintiff is entitled only to the extent of 1.13 acres on the eastern side and not the entire extent of 2.26 acres.

6. During the pendency of the suit, the first defendant died and his wife/third defendant, who was already on record, was brought on record as legal representatives of the deceased first defendant.

7. Before the trial Court, 33 documents were marked as Ex.A.1 to A.33 on the side of the plaintiff and Exs.B.1 to B.11 were marked on the side of the defendants. The plaintiff/Muthuvel himself was examined as P.W.1 and one Shanmuga Padayachi was examined as P.W.2. On the side of the defendants, Ulaganathan and Appasamy were examined as D.W.1 and D.W.2.

8. The trial Court, after framing issues and after giving due consideration to the evidence available on record, decreed the suit for declaration in favour of the plaintiff insofar as 1.13 acres on the eastern side of the suit schedule property is concerned and rejected the claim of the plaintiff in respect of western side by judgment and decree dated 12.03.1990 in O.S.No.184 of 1983. Aggrieved by the same, the plaintiff preferred a regular first appeal before the Sub Court, Ariyalur in A.S.No.166 of 1991. By judgment and decree dated

08.10.2001, the Sub Court, Ariyalur confirmed the judgment and decree passed by the trial Court and thereby dismissed the appeal. Aggrieved by the same, the plaintiff has preferred the present second Appeal.

9. Till date, the second appeal has not been admitted even though the same was filed in the year 2004. Only notice was ordered to the respondents. The respondents have also been duly served in the second appeal and their names have also been printed in the cause list.

10. Admittedly, an extent of 1.13 acres on the western side of the suit schedule property is claimed by the plaintiff by way of adverse possession. It is an admitted fact that during the pendency of the suit, the the first defendant has already sold an extent of 1.13 acres on the western side to the second defendant on 23.06.1986 which is marked as Ex.B.1 before the trial Court.

11. As seen from the evidence available on record, the plaintiff has not produced any document to prove that he was in continuous possession of 1.13 acres on the western side of the suit schedule property. The trial Court as well

as the lower Appellate Court after giving due consideration to the evidence available on record has rejected the claim of the plaintiff insofar as 1.13 acres on the western side of the suit schedule property is concerned.

12. Therefore, this Court is of the considered view that all the factual issues have been correctly considered by the Courts below and hence, there is no substantial question of law involved in this Second Appeal.

13. In the result, there is no merit in the contentions of the appellants in the Second Appeal and the Second Appeal is dismissed. No costs.

26.08.2021

Index: Yes/No

Speaking Order/Non-Speaking Order
sr

To

1. The Sub Court, Ariyalur
2. The District Munsif Court, Ariyalur

S.A. No.13 of 2004

ABDUL QUDDHOSE,J.

sr



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