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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :19.07.2021

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.902 of 2009

1.Ayyadurai Mudaliar (died)
2.K. Arul
3.Minor Venkatesan
rep by mother and Natural guardian
Soundhari

...Appellants/Defendants

Vs.

1.Raman Chettiar (died)
2.K.Vellachi
3.R. Govinda Samy
4.R. Kandhasamy
5.S.Meenakshi
6.K. Chinnaponnu
7.R. Anjalai

...Respondents/Plaintiff

(Appellants 2 and 3 brought on record as legal representatives of the deceased sole appellant vide order of this Court dated 14.06.2019 in C.M.P.No.12404 of 2019 in S.A.No.902 of 2009)

(R2 to R7 brought on record as the legal representatives of the deceased sole respondent vide order of this Court dated 14.06.2019 in M.P.No.1 of 2014 in S.A.No.902 of 2007)

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 24.07.2009 made in A.S.No.35 of 2007 on the file of the learned Subordinate Judge, Kallakurichi, modifying the Judgment and Decree dated 26.04.2007 made in O.S.No.885 of 1986 on the file of the learned Principal District Munsif, Kallakurichi.

For Appellant :Mr.T.R.Rajagopalan, Senior Counsel
for Mr.R.Balasubramanian



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For Respondent : Ms.Hema Sampath,
Senior Counsel
for Ms. Meenal for R2 and R7

R1-died

JUDGMENT

After the Second Appeal was argued at length both the learned counsels consented for the following orders:

The Appeal arises in respect of a suit for declaration of title of the plaintiff to the suit property and for a consequential injunction. The plaintiff had claimed a right to the extent of 3.36 acres out of 4.29 acres in Karadichittoor Village, Kallakurichi Taluk comprised in R.S.No.27/2.

2.The claim was resisted by the defendants. The suit O.S.No.885 of 1986 was partly decreed by the learned District Munsif, Kallakurichi by his Judgment and Decree dated 26.04.2007. The said Judgment and Decree was taken up on appeal in A.S.No.77 of 1994 on the file of the learned Subordinate Judge, Villupuram and the plaintiff's appeal was allowed. As against which, the defendants had filed S.A.No.552 of 1995 before this Court. Since there was no clarity with reference to the property in question this Court had remanded the matter back to the learned District Munsif giving liberty to the parties to adduced fresh oral and documentary evidence and also to get the assistance of an Advocate Commissioner for fixing the boundaries. After remand the Advocate Commissioner who was appointed had inspected/surveyed the suit property with the help of the Surveyor to fix the boundaries and has submitted his Report and Plan along with the two Surveyors plans. The Advocate Commissioner's Report and Plan as well as the Surveyors plans have been marked as Ex.C1 to Ex.C.4. Thereafter, the suit O.S.No.885 of 1986 was decreed partly i.e., the plaintiff's title to an extent of 3.29 cents in S.No.27/2B2 as indicated in the Commissioner's Plan was declared and similarly, the defendant's title to the property was declared comprised in S.No.27/2A measuring 0.79 cents and S.No.27/2B1 to an extent of 0.21 cents were declared. The plaintiff's claim for permanent injunction was dismissed. Challenging the above Judgment and Decree, the plaintiff had filed A.S.No.15 of 2007 on the file of the learned Subordinate Judge, Kallakurichi. That apart, although the plaintiff's title had been declared to an extent of 2.29 acres and the injunction has been rejected in entirety.



3.The Appellate Court reversed the Judgment and Decree of the trial Court and allowed the appeal and reversed the Judgment and Decree of the trial Court and declared the plaintiff's right to the suit property and granted an order of injunction. Against which, the defendant is before this Court.

4.The matter was extensively argued by the learned Senior Counsels on either side. Thereafter, the parties have agreed to bring about a quietus to the dispute which has been instituted a score and 5 years ago (25 years). After the Advocate Commissioner had been appointed pursuant to the remand order, the parties had come to know that the property had been subdivided and it was also found that the plaintiff had encroached into the property of the defendants. However, the defendants have agreed to give up their right to the encroached portion to buy peace. The Commissioner's Plan Ex.C.2 is taken as the basis for showing/defining the rights of the defendants and the plaintiffs to their respective share. To describe the encroached portion, I have added the alphabets K and J. The alphabet K is added between the points C and D and the alphabet J between the points G and E. Therefore, as per the Commissioner's Report, the portion said to be encroached by the plaintiff is the points K, D, E, J. The two houses in this portion has been identified as No.6 by the Advocate Commissioner.

5.Therefore, the plaintiff's property is declared with reference to the property comprised in A, B, F, E, J, K, C, A and the injunction is granted with reference to this property. The defendant's property is declared with reference to the property comprised in K, J, G, I, H, C, K. Ex.C.2 - Plan is modified by this Court by adding the alphabets K and J between the points C - D and G - E respectively and this Plan shall form part of the Decree.

The Second Appeal is allowed on the above lines. There shall be no order as to costs.

s/d-
Assistant Registrar

//True Copy//

Sub-Assistant Registrar



mps

To

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1.The Subordinate Judge,
Kallakurichi.

2.The Principal District Munsif,
Kallakurichi.

Copy to
The Section Officer
VR Section
High Court, Madras 104.

+1 CC to Ms. Meenal, Advocate sr 34493(07/01/2022)

S.A.No.902 of 2009

AD(CO)
SP(09/12/2021)