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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

S.A.NO.832 OF 2021

AND

C.M.P.NO.16028 OF 2021

K.P.Krishna Pillai

...Appellant / Appellant /
1st Defendant

Vs.

1.E.Rajendran

...1st Respondent / 1st Respondent /
Plaintiff

2.M.R.Elumalai Chettiar

3.M.Santhammal

4.M.Dhanasekaran

5.M.Chandrasekaran

6.The Sub Registrar,
Avaraipakka, Tindivanam & Taluk,
Villupuram District.

...Respondents 2 to 6 /
Respondents 2 to 6 / Defendants 2 to 6

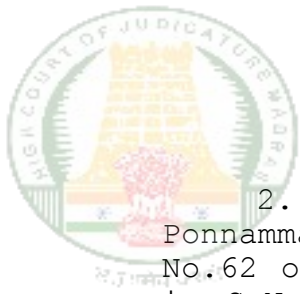
PRAYER : The Second Appeal is filed under Section 100 of the Civil Procedure Code against the judgment and decree passed by the II Additional District Judge, Tindivanam, in A.S.No.20 of 2018 (Villupuram Principal District Court in A.S.No.101 of 2018) dated 20.01.2021 confirming the judgment and decree passed by the Principal Subordinate Judge, Tindivanam, Villupuram District in O.S.No.49 of 2012 dated 18.06.2018.

For Appellant : Mr.A.Thiagarajan,
Senior Counsel
for M/s.S.Ramesh Kumar

For Respondent No.1 : M/s.R.Thanjan

J U D G M E N T

By consent of both the sides, the Second Appeal is taken up for final disposal at the admission stage itself.



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2. Originally, the property in dispute belonged to one Ponnammal by virtue of a registered Sale Deed bearing Document No.62 of 1930, dated 20.01.1930 measuring an extent of 20 Cents in S.No.16/2. She sold 10 cents out of the total extent of 20 cents to one Gengammal by virtue of a registered Sale Deed bearing Document No.1441 of 1930 dated 01.11.1930. The Pedigree produced before this Court shows that a common ancestor, one Arumuga Mudaliar had three sons namely, Vaiyapuri Mudaliar, Singara Mudaliar and Manjini Mudaliar. The original owner namely Ponnammal is the wife of Manjini Mudaliar and the purchaser of 10 cents namely, Gengammal, is the wife of Singara Mudaliar, who is the 2nd son of Arumuga Mudaliar and the brother of Singara Mudaliar.

3. While the matter stood thus, the sons of Vaiyapuri Mudaliar, who is the first son of Arumuga Mudaliar sold the entire extent of 20 cents in S.No.16/2 by virtue of a registered Sale Deed bearing Document No.368 of 1987 dated 08.04.1987 to one Santhammal, wife of Mani Chettiar. She in turn sold 12 cents out of 20 cents by virtue of a registered Sale Deed bearing Document No.1019 of 1995 dated 19.07.1995 to one K.P.Krishna Pillai, who is the first defendant.

4. However, the said sale was successfully questioned by the son of Gengammal, who had purchased the property by a registered Sale Deed dated 01.11.1930 in O.S.No. 543 of 1995 on the file of the Principal District Munsif Court, Tindivanam. The suit was decreed on 16.07.1999 declaring that the said Manicka Mudaliar, vendor of the plaintiff, is entitled only to an extent of 10 Cents in S.No.16/2. The legal heirs of Manicka Mudaliar viz., Dhanasekar and Chandrasekar sold 12 Cents in favour of the plaintiff by virtue of a registered Sale Deed bearing Document No.1028 of 2004, dated 17.05.2004. It is stated by the plaintiff that they are entitled to 12 Cents by virtue of their enjoyment with respect to 3 ½ Cents for which, they obtained patta. Thus, it is clear by the decree of the Competent Court, the vendor of the plaintiff, is the owner of the 10 Cents in S.No.16/2.

5. While the matter stood thus, the said Santhammal, who purchased the property from the branch of Vaiyapuri Mudaliar, sold an extent of 11 Cents in S.No.16/2 in favour of one Elumalai Chettiar by a registered Sale Deed bearing Document No.4716 of 2011, dated 14.07.2011. The said Elumalai Chettiar has sold the said property to the first defendant viz., K.P.Krishna Pillai by virtue of a registered Sale Deed bearing Document No.6958 of 2011, dated 07.10.2011. These Sale Deeds were questioned by the plaintiff, who had purchased the property from the legal heir of Gengammal.



6. The Court below has given a finding that there is no evidence of partition between the parties with respect to remaining 10 Cents of land owned by the original owner viz., Ponnammal. However, it is found that the legal heirs of Vaiyapuri Mudaliar without any title, sold the entire property of 20 Cents in favour of Santhammal on 08.04.1987. Insofar as that sale is concerned, it was not questioned by any of the legal heirs of Singara Mudaliar, at least by the plaintiff's vendor till 1995. The decree passed by the trial Court was only with respect to 10 Cents and the issue with regard to remaining 10 Cents was not decided. Now that the sale having not been questioned for the past 35 years, it cannot be questioned by the third party subsequent purchasers, who are not legal heirs of Arumuga Mudaliar. Therefore, in the present circumstances, it is very clear that the plaintiff is entitled to 10 Cents of land, which was purchased by Gengammal in the year 1930 plus whatever the land, which is in his possession by virtue of possession and patta. Insofar as the first defendant is concerned, he is entitled to remaining 10 Cents of land, which was sold by the legal heirs of Vaiyapuri Mudaliar by Sale Deed dated 08.04.1987.

7. Now that both parties submit that if 10 Cents of land is allotted to each of the parties plus whatever they enjoyed by them by virtue of patta, they do not have any grievance. Therefore, to give a quietus to this issue and by consensus of the parties, it is declared that the plaintiff is entitled to 10 Cents in S.No.16/2 and the first defendant is entitled to remaining 10 Cents in S.No.16/2, which was originally owned by Ponnammal.

With the above lines, the Second Appeal is disposed of. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Both the parties have undertaken to file a Joint Memo of Compromise in this regard on or before 26.11.2021.

Post the matter on 26.11.2021.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

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To

1.The II Additional District Judge,
Tindivanam.



2.The Principal Subordinate Judge,
Tindivanam.

Copy To

1.The Principal District Judge,
Villupuram.

2.The Section Officer,
V.R.Section,
High Court, Madras.

3.The Section Officer,
Judicial Department,
High Court, Madras.
(To List the Case on 26.11.2021)

S.A.No.832 of 2021
and C.M.P.No.16028 of 2021

GJ(CO)
RVM(25/11/2021)