



S.A.No.424 of 2002

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.12.2022

CORAM :

THE HON'BLE Ms.JUSTICE P.T.ASHA

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Gnanadhikkam (died)
Appadurai

... Appellants

[***Mr.Gnanadhikkam, 1st defendant/1st appellant
died leaving the appellant herein as his sole heir,
hence, not shown in the cause title.]

Versus

Arokiasamy (Deceased)
Selvaraj (Deceased)
1.Arokiyammal
2.Immanuel Raj
3.Amalorpavam
4.Tennismary
5.Sagayamary
6.Jansimary
7.Stella
8.Nirmala
9.Diraviyam
10.Soloman

... Respondents

[***Cause title accepted as per order of this Court
dated 22.02.2002 made in C.M.P.No.1859 of
2002]



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Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure, to allow the second appeal setting aside the judgment and decree dated 22.12.2000 made in A.S.No.66 of 1998 on the file of the Sub Court, Tiruchirapalli, confirming the judgment and decree dated 25.07.1994 made in O.S.No.5 of 1985 on the file of the District Munsif Court, Ariyalur.

For Appellants : Mr.T.Sathiyamoorthy
for M/s.G.M.Mani Associates

For Respondents : Mr.N.Manokaran,
Amicus Curiae for R1 to R10
vide order dated 06.09.2022.

JUDGMENT

The second defendant is the appellant before this Court and the suit had been filed for declaration and injunction in respect of the vacant site, which has been described as ABC1D1 in the plaint plan and measures 33 feet East to West and 41 feet North to South.

2. The parties are referred to in the same rank as before the trial Court in the narration of the case given herein below:-



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2.1. The plaintiff's case is that the vacant site, which has been shown delineated as ABCD in the rough plan belonged to one Chinnappa Nadhanadiyar, who is the paternal grandfather of the plaintiffs. The said Chinnappa Nadhanadiyar had three sons namely, Chinnayya @ Gnanamuthu, Picchai Nadhanadiyar and Duraisaamy. The father, Chinnappa Nadhanadiyar passed away in the year 1954 and being Christians, the daughters did not have any share in the property. The brothers had partitioned the properties amongst themselves with the eldest brother/Chinnayya @ Gnanamuthu getting one third on the Northern portion of the property, the plaintiff's father/Picchai Nadhanadiyar was allotted the middle portion and Duraisaamy was allotted the Southern portion. Duraisaamy was a bachelor and he was under the care of the plaintiff's father. The said Duraisaamy had sold his Southern one-third portion under a registered sale deed dated 19.07.1954 to the plaintiff's father/Picchai Nadhanadiyar. Likewise, under a sale deed dated 29.07.1954, Chinnayya @ Gnanamuthu has sold his share to his sister Mariyammal. Marriyammal in turn sold her property to the second plaintiff/Selvaraj under a registered sale deed dated 25.06.1995. By reason



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of the above sale, the entire extent of the property belonged to the plaintiffs. The vacant site was situate to the East of the Eastern wall of the defendant and others, who are the owners of the portion to the West of the wall. They had no right to the property East of the Eastern wall.

2.2. In the year 1971, there was dispute with reference to the portion of the property East of the Eastern wall wherein, the first defendant in the instant suit and two others had filed the suit in O.S.No.1833 of 1971 against the present plaintiff and others to declare their right to the 5 feet by 82 feet vacant site, which belonged to the plaintiff's predecessor in title, lying immediately East of the Eastern wall (BC). This suit was ultimately compromised, in and by which the plaintiffs therein were permitted to use the 4 feet vacant site immediately East of the wall only for the purpose of painting the wall or putting up roof. The compromise decree has recognised the fact that the plaintiffs in that suit had no right to the property East of the Eastern wall except the usage of the space for carrying out the repair works and painting.



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2.3. It is the case of the plaintiff that on 16.12.1984, they had constructed a cattle shed, described as S, S1, S2 and S3, in the suit schedule and when the plaintiffs were away on 17.12.1984, the defendants had trespassed into the property, chased away the cattles and occupied the space. On 18.12.1984, a complaint was lodged with the police authorities and defendants have given assurance before the police authorities that they would not disturb the plaintiffs possession and a Muchilika to this effect was executed. However, the second defendant started issuing threats and started claiming a right in the Southern portion of the suit property, marked as ABCD and the plaintiff would submit that the defendants once again attempted to occupy the cattle shed. Therefore they come forward with the suit in question.

3. The written statement was filed by the first defendant and was adopted by the second defendant. They have denied the allegations in the plaint and on the contrary would submit that the said property, marked as ABCD belongs to one Sabari Ayi. It is their case that on 13.03.1905, the said Sabari Ayi executed a registered gift deed in favour of her daughter



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Arokiammal on 25.06.1932, Arokiammal sold property to Sowriammal, the mother of the first defendant, who has remained in possession and enjoyment of the property till her death. The first defendant being her only male heir is in possession and enjoyment of the property for over two decades. The defendants would submit that the plaintiff has no right to the said property. They would therefore seek to have the suit dismissed.

4. Initially the suit was decreed and in the appeal filed challenging the said decree, the matter was remitted back to the trial Court as there was no clarity with reference to the property and also its measurement. Pursuant to the remand, the trial Court had framed the following issues:-

- “(1) தாவா சொத்தின் அளவு என்ன என்பதை
வாதிகள் மெய்ப்பித்துள்ளாரா ?
(2) தாவா சொத்து வாதிகளுக்கு எதன்மூலம்
பாத்தியப்பட்டது ?
(3) வாதிகளுக்கு என்ன பரிகாரம் ?”

5. On considering the evidence on records, the learned Judge observed that in the light of the decree in O.S.No.1833 of 1971, the defendants had no right to the suit property. Challenging this judgment



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and decree the defendants had filed A.S.No.66 of 1998 on the file of the Sub-Court, Thiruchirapalli.

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6. The learned Subordinate Judge, by his judgment and decree dated 22.12.2000, confirmed the judgment and decree of the trial Court against, which this second appeal has been filed.

7. The second appeal is admitted on the following substantial questions of law:-

“Whether the judgment and decree of the Lower Court is sustainable in law as it has not considered the evidence which is relevant to decide the issue and the relevant question of law applicable to the facts of the case.”

8. The respondent though served, did not entered appearance either in person or through pleader and therefore this Court had appointed Mr.N.Manokaran, learned Advocate as *Amicus Curiae* by its order dated 06.09.2022.



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9. The learned counsel for the appellant would primarily try to overcome the judgment and decree in the earlier suit in O.S.No.1833 of 1971 by stating that there is an error in the said compromise decree. He would submit that the defendants have traced their title to the suit property from the year 1905 under Ex.B1, gift deed and Ex.B2, sale deed in favour of the defendant's mother. He would submit that both the Courts below have not appreciated this fact and have simply relied upon the decree in O.S.No.1833 of 1971 (Ex.A5).

10. The learned counsel for the appellant would further argue that in the earlier suit, the issue involved was totally different as it only related to declaration of the right of the plaintiff therein, who is the first defendant in the instant suit to a 5 feet by 84 feet vacant site immediately to the East of the Eastern wall whereas, the suit property in the instant case is an extent of measuring 33 feet East to West 41 feet North to South.

11. Mr.N.Manokaran, learned *Amicus Curiae* would submit that the defendants are now trying to establish title to the property, which in the earlier litigation they had conceded as belonging to the plaintiff herein. In



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fact, the suit property is the property, which has described East of the Eastern wall in the earlier suit in O.S.No.1833 of 1971. Therefore, the concurrent judgments of the lower Courts based on evidence has to be uphold.

12. Heard the learned counsel on either side and perused the materials available on the record.

13. The earlier suit, which forms part of the decree, Ex.A5, related to the pathway, described as ABCD therein. The property to the East of this pathway was described as defendant's property, they are the plaintiffs herein and the property to the west of the wall (AD) was described as plaintiff's property namely the property of the first defendant herein and others. The decree in O.S.No.1833 of 1971 would read as follows:

“1. that the eastern limit of the 1st plaintiff's vacant site is the brick wall running South to North on the east and it is for the present the eastern wall of the 2nd plaintiff, and 3rd plaintiff and hence 4 human feet space should be kept vacant site east all along the said brick wall of plaintiffs 1 to 3.



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2. that the plaintiff has right of access through the 4 human feet vacant space on the east of their house to repair their eastern wall running south to north;

3. that no wall or any other blockings on the said vacant space detriment to the said right of plaintiff;

4. and that the parties do bear their own cost.”

14. A Clear reading of this decree would establish the fact that beyond the Eastern wall, which has been shown as AD, the plaintiff in that suit, namely defendants in the instant suit, only had a right to the property running up to the Eastern wall and beyond the Eastern wall, they had been allotted 4 human feet vacant space just to repair their Eastern wall running North to South. This decree is the result of a compromise between the parties contesting in the suit O.S.No.1833 of 1971. Therefore, the defendants herein are bound by the said judgment.

15. The defendants in the earlier suit are the plaintiffs herein and the representatives of Mariammal, who have been allotted the portion North of the present property herein marked as AB1C1D1. Although the earlier suit was filed for declaration with reference to just the 4 feet lane, the plaintiff



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therein namely the first defendant herein and others have categorically admitted to the fact that their property stops at the Eastern wall and the property beyond that place belongs to the defendants, who are the present plaintiff herein.

16. In view of the above, this suit is nothing but a case of re-litigation and abuse of process of law and both the Courts below have rightly dismissed the suit. Therefore, I see no reason to interfere in the said judgment and decree and the substantial question of law is answered against the appellant. Accordingly, this Second Appeal is dismissed. There shall be no order as to costs.

05.12.2022

Index : yes/no
Speaking order/Non-speaking order
nsa

To

1.The Sub Court,
Tiruchirapalli.

2.The District Munsif Court,
Ariyalur.



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P.T.ASHA. J.,

nsa

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