



S.A.No.876 of 2012

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.12.2021

PRONOUNCED ON : 01.04.2022

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

S.A.No.876 of 2012

and

M.P.No.1 of 2012

G.Subramani

... Appellant / Plaintiff

Vs.

1.Nagarajan

2.Thangaraj

3.Banumathi

4.Vijalakshmi

5.Rlazuddin

6.Domenic

7.Pushpalatha

8.Padmini

9.Devahar

10.Loganathan

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11.Sridevi Shesaish

... Respondents / Defendants

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure against the decree and judgment, dated 23.09.2011 passed in A.S.No.537 of 2009 by the learned VII-Additional Judge, City Civil Court, Chennai, confirming the decree and judgment dated 30.06.2009 passed in O.S.No.5442 of 2002 by the learned VII-Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr.K.P.Gopalakrishnan

For RR1 to 5,7,8,10 &11 : No appearance

For RR6 & 9 -Given up

J U D G M E N T

The unsuccessful plaintiff is the appellant herein.

2.For the sake of convenience, the parties are referred to as per their ranking before the trial Court.

3. The plaintiff/appellant filed suit for declaration of his title to the 'A'



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schedule property and for declaration that 'B' schedule property is a common property and along with injunction not to disturb the use of 'B' schedule property and for mandatory injunction to remove the obstruction in the 'B' schedule property.

4.The plaint proceeds on the basis that the land measuring about 36 cents in S.No.51/3 'A' originally belonged to one Seetharaman Reddiyar. After his death his wife Jalendra Ammal, W/o Loganatha Reddiyar and Kanthammal, W/o Lakshminatha Reddiyar became the owners of the suit property measuring 9 cents of land mentioned in the schedule and this 9 cents of land in S.No.53/3A was allotted to the share of Jalendrammal under the partition deed dated 29.09.1978 Document NO.2680/78 and ever since she and her children were in possession. In this partition deed, Kanthammal wife of Lakshminatha Reddiyar and her 3 children were parties. The 9 cents of land is the suit 'A' schedule property. The land measuring 27 cents in S.No.51/3A out of 36 cents of land was dealt with by Loganatha Reddiyar and Kanthammal and Navaneethammal, wife of Seetharaman Reddiyar, by



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preparing a layout in 27 cents of land and divided as 6 plots and sold to 6 various persons.

5. The defendants filed a written statement alleging that the property is also sold.

6. Before the trial Court as many as eight issues have been framed. On the side of the plaintiff, PW1 was examined and Exs.A1 to A6 were marked. On the side of the defendants, DW1 was examined and Exs.B1 to B23 were marked.

7. The trial Court dismissed the suit and allowed the cross objection. Aggrieved against the said order, the plaintiff has filed A.S.No.5442 of 2002 wherein the appeal was allowed in part in setting aside the counter claim of the defendants. However, the suit prayer stands dismissed on confirmation and hence the present second appeal.

8. As against the disallowed portion in the appeal suit regarding the



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cross counter claim of the defendants, they have not preferred any second appeal. At the time of admitting the second appeal, the following Substantial Questions of Law were framed:

1.Are the Courts below are right in dismissing the suit eventhough the defendants have no title to the plaintiff's property?

2.Are the Courts below are right in interpreting the words 'vacant land left by us common for all plot person'?

9.The defendants have entered appearance through their counsel, despite adjournment given for reply, they have not appeared personally or through their counsel and hence, they called absent and set exparte.

10. The sum and substance of the submissions made by the learned counsel for the appellant/plaintiff is that Exs.A1 to A6 sale deeds which will show that the respondents have not purchased 9 cents of land belonging to



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the plaintiff. The defendants are purchased only 6 plots and their sale deed do not convey the land of 9 cents sold to the plaintiff. The total lands are 36 cents and only 27 cents were purchased by the defendants and retained land of 9 cents sold to the plaintiff. He further relied upon the Government revenue records, viz., Exs.A4, A5 and A6. It is a specific case of the plaintiff that as per Ex.A1-partition deed 9 cents of lands were retained that was purchased by the plaintiff. When the defendants have not purchased 9 cents of the land, according to the learned counsel, both the Courts below erred in reading the sale deed in respect of land shown as 'pothu property'. Accordingly, the above said two substantial questions of law were addressed.

11.The submissions made by the learned counsel for the appellant is considered in the light of the documentary evidence filed before the trial Court as stated supra. The plaintiff has filed Ex.A1-partition deed dated 29.09.1978 and Ex.A2-subsequent patta in the name of Jalendra Ammal (plaintiff's vendor) dated 01.03.1988 and the sale deed executed by the said



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Jalendra Ammal in favour of the plaintiff under Ex.A3 dated 25.04.1988. On a combined reading of the various sale deeds filed by the defendants under Exs.B1, B3, B5, B11 and B16 it shows that a common passage is running north to south as shown in 'B' schedule property. The plaint schedule property along with the sketch and Ex.B23, clearly demonstrates that the northern side of the all plots measuring about 9 cents of land was not sold to anybody of the above 6 persons/defendants. All the plots sold totally measure only 11763 sq. feet and the balance is 3933 sq. feet, which is equivalent to 9 cents which was not sold by above said 3 persons Loganatha Reddiyar, Navaneethammal, wife of Seetharama Reddiyar and Kanthammal to anybody much less to the defendants. Hence, I find that the defendants have not purchased the 9 cents of the land since the defendants are not demonstrated that they purchased the property in the 9 cents of land, which is set apart for common usage of the previous vendor. That 9 cents which was not sold to anyone fell to the share of Jalendra Ammal in the Ex.A1-partition deed, dated 29.09.1978 and she got the property for the partition deed to deal with the property and she along with her children under Ex.A3



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dated 25.04.1988 sold the same to the plaintiff wherein there is a clear recital regarding the partition deed Ex.A1. It remains to be stated that the Kanthammal is also one of the party to the partition deed. Though Exs.B1, B3, B5, B8, B11 and B16 were sold on 12.09.1964, 12.09.1964, 12.09.1964, 12.09.1964, 12.09.1964 and 12.09.1964 respectively.

12. On a combined reading of these documents executed in the year 1964 only 6 plots with 12 feet common passage has been sold and the balance of 9 cents of land remains unsold. Therefore, I find that the case of the plaintiff stands duly established by the above said sale deeds on consequential I have no hesitation to hold that in the absence of any title to the defendants both the Courts below have concurrently rendering a contra findings. Accordingly, Substantial Question of Law No.1 is answered in affirmative in favour of the plaintiff.

13.At this juncture, it remains to be stated that it is not the case of the



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defendant that the entire 36 cents of the land has been disposed of by Jalendra Ammal, namely, the vendor of the plaintiff and she did not have anything to sell. It remains to be stated that under Exs.A2 and A9, the possession and enjoyment of the said 9 cents is with the plaintiff.

14. The counter claim filed by the defendant was initially allowed by the trial Court, however, set aside in the appeal by the Appellate Court in the absence of any cross appeal I am not inclined to deal with the same.

15. In view of the discussions stated supra I find both the Courts below have committed an error as to whether the defendants are the owners of the 9 cents of the property which fell into the shares of the vendor of the plaintiff. In view of the specific recitals in the sale deeds in favour of the defendant a common passage has shown in the sketch 9 cents of land is given as common to the vendor of the plaintiff and common to the defendants and hence both the Courts below has committed an error in interpreting the word “v';fs; gpshl;oy; ml';fpa gpw egh;fSf;Fk; bghJtpy;



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“common property” and hence, it is a common property for all the persons and it does not belong to the any individual defendant and hence the Substantial Question of Law No.2 is also answered in affirmative in favour of the plaintiff/appellant against the defendants.

16. In the result, the Second Appeal is allowed. No Costs. Consequently the judgement and decree dated 23.09.2011 passed in A.S.No.537 of 2009 by the learned VII-Additional Judge, City Civil Court, Chennai, confirming the decree and judgment dated 30.06.2009 passed in O.S.No.5442 of 2002 by the learned VII-Assistant Judge, City Civil Court, Chennai are hereby set aside and the Suit in O.S.No.5442 of 2002 on the file of the learned VII-Assistant Judge, City Civil Court, Chennai, stands decreed as prayed for. Consequently, connected miscellaneous petition is closed.

01.04.2022

Index : Yes / No
PJM



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To

1. VII-Assistant Judge,
City Civil Court,
Chennai.
2. VII-Additional Judge,
City Civil Court,
Chennai.
3. The Section Officer,
V.R.Section,
High Court, Madras.



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RMT.TEEKAA RAMAN,J.

PJL

**Judgment made in
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