



S.A.No.138 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.11.2022

C O R A M

THE HONOURABLE Ms.JUSTICE P.T.ASHA

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1. Venkatesan
2. Harikrishnan
3. Elumalai

.. Appellants

-Vs.-

1. Rajalingam
2. Malliga
3. Sujatha
4. Saravanan
5. Radhakrishnan

.. Respondents

PRAYER: This Second Appeal is filed under Section 100 of C.P.C., against the judgment and decree dated 30.04.2014 passed in A.S.No.25 of 2012 by the Subordinate Judge at Madurantakam, by confirming the decree and judgment dated 01.11.2010 passed in O.S.No.360 of 2007 by the District Munsif, Madurantakam.

For Appellants	: M/s.N.Nagu Sai
For Respondents-1 to 4	: Ms.C.R.Rukmani
For Respondent-5	: Given up.



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JUDGMENT

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The defendants 1, 3 and 4 in a suit O.S.No.153 of 2013 on the file of the District Munsif, Madurantakam are the appellants before this Court.

2. The facts in brief are herein below narrated and the parties are referred to in the same ranking as before the trial Court.

3. After the appeal was argued at length and taking note of the fact that serious dispute with reference to identity and situation of the suit property, the learned counsel on both sides had agreed that the suit be remitted back to the District Munsif, Madutantakam for fresh disposal to identity the suit property and to fix its location.

4. Though this judgment is being pronounced by consent of both counsels, in order to clarify the scope of the remand, it would be necessary to briefly touch upon the facts of the case.



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5. The case of the plaintiffs is that they are the absolute owners of an extent of 0.88 cents in S.No.63/1B in Kunnankulathur Village, Madurantakam. The first plaintiff, Rajalingam and his brothers Sambandam and Manickam owned the same. The said Sambandam died intestate in the year 1996 leaving behind him surviving the second plaintiff, his wife and the third plaintiff, his daughter and the 4th plaintiff his son. On the death of the said Sambhandam, the entire extent of 0.88 cents in S.No.65/1B was in joint possession and enjoyment of the plaintiffs along with Manickam. On 24.08.2005, the first and second plaintiffs along with Manickam had sold 0.49 cents in Survey No.65/1B to one Venu, the remaining extent of 0.39 cents continued to be in possession and enjoyment of the plaintiffs. The said Manickam had died intestate on 10.03.2006 leaving behind no issues, since his wife Pushpa had pre-deceased him. The plaintiffs alone were legal representatives of the said Manickam. The UDR patta stood in the name of Sambhandam.

6. The defendants who were strangers to the suit property having



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no right or interest over the same tried to interfere with the peaceful possession and enjoyment of the suit property and one such attempt was made on 04.11.2007, which was successfully averted. However, the defendants have given out that they would trespass into the suit property. Hence the suit. The plaintiffs sought title on the basis of the UDR patta granted to Sambandam.

7. The plaintiffs have described the suit property as follows:-

“In Kancheepuram District, Madurantakam Taluk, Kunnankulathur Village, S.No.65/1B – 0.39 cents, bounded on the north by Thanikachalam and Singaram lands, south by Dhananchezhiyan land, west by venkatesan land, and on the east by 0.49 cents in suit S.Number sold to venkatesan.”

8. The defendants had filed a written statement *inter-alia* contending that one Rathina Naicker had purchased 0.20 cents in S.No.61 under a registered Sale Deed 04.07.1896, which has been marked as Ex.B1.



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There was a partition on 14.12.1907 (Ex.B2) between the said Rathnanaicker and his brothers and in the partition, 0.20 cents was allotted to Rathnanaicker. Under Ex.B3-Mortgage Deed dated 14.12.1907, the said Rathnanaicker had mortgaged the property. Once again, Rathnanaicker purchased 0.21 cents from one Kanniappa Naicker under a Sale Deed dated 02.08.1909 (Ex.B4). Therefore, the said Rathnanaicker was in possession and enjoyment of 0.41 cents in S.No.65. He died leaving behind him surviving his sons Lakshmananaicker, Ganapathy and Srinivasan. After the death of Rathnanaicker, his son Lakshmananaicker was in possession and enjoyment of the suit property. Under Ex.B5 dated 21.10.1951, the said Srinivasan sold his share to Lakshmananaicker. The remaining 1/3rd share belonged to Ganapathy, who died leaving behind his son Elumalai. The said Lakshmananaicker had sold some properties to one Chandrasekaran and by mistake, the suit property was also included. On 06.10.1980, the said Chandrasekar had executed a sale deed in favour of Lakshmananaicker. The defendants 1 to 3 who are the legal heirs of the said Lakshmananaicker are entitled to a 2/3rd share. They had denied the patta granted in favour of the plaintiffs.



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9. The trial Court had framed the following issues:

(i) *Whether the plaintiffs have right and title over the plaint schedule property?*

(ii) *Is the plaintiff entitled for the relief of declaration and consequential relief of permanent injunction?*

(iii) *What are all the other reliefs and cost plaintiff is entitled for?*

10. The plaintiff had examined himself as P.W1 and marked Exs.A1 to A6. On the side of the defendants, the 2nd defendant had examined himself as D.W1 and one Murugesu Gounder as D.W2 and marked as Exs.B1 to B7.

11. The plaint schedule was restricted to 0.39 cents. It is stated by



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the learned counsel for the appellant that the suit property measured a total extent of 0.88 cents. The plaintiffs would submit that they were originally allotted an extent of 0.88 cents. The first defendant would submit that he has purchased 0.20 cents and 0.21 cents under two sale deeds thereby having ownership over 0.41 cents alone. The plaintiffs in the course of the evidence have marked Exs.A5 and A6, which are dated 04.07.1896 and 24.08.1905 in an attempt to trace her title to the property. On the other hand, the defendants have filed documents from the year 1896 stating that these documents relate to the suit property. Admittedly, S.No.65 consists of a large extent and the land in which the plaintiffs as well as defendants have purchased the properties is situate within this large extent. However, there is no clarity as to location of the properties purchased by both the parties. No Advocate Commissioner has been appointed and the properties of both the plaintiffs and defendants were not identified on the basis of the documents of title as well as revenue records. The suit has been decreed in favour of the plaintiffs, against which, the defendants had filed an appeal in A.S.No.25 of 2012 which had also gone against the defendants. Therefore, they are before this Court.



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12. The second appeal has been admitted on 10.03.2017 on the following substantial questions of law:

(i) Whether the Courts below right in law in declaring the plaintiff's title over the suit property based on UDR Patta when the patta is not the document of title?

(ii) Whether the Courts below right in law shifting the burden of proof on the defendants to prove their title over the suit property when the plaintiff failed to discharge their burden of proving their title over the suit property?

13. In the light of the above discussion, neither the pleadings nor the evidence give clarity as to where the suit property is situate. The plaintiffs have based their title upon a UDR patta. Though in the plaint, it has been stated that they claimed a right under the patta, however in the course of the evidence, they have submitted certain documents and the same



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is not supported by the pleadings. Unless and until there is a clarity about the location of the property and clarity has to be provided whether the suit property is the one in respect of which the UDR patta is granted to Sambhandam or whether it falls within 41 cents which has been allotted to the defendants through various documents of title given in the written statement and documents. Therefore, there is a compelling need to identify the suit property in consonance with the documents of title as well as the revenue records so as to bring an end the dispute between the parties.

14. Therefore, with the consent of both parties, the matter is remitted back to the District Munsif, Madurantakam for considering and identifying the lie of the land and its location. The plaintiffs and defendants are permitted to adduce oral as well as documentary evidence to assist the Court in identifying the suit schedule property. Leave is granted to both the plaintiffs as well as the defendants to produce additional documents, which are required to assist the Court in identifying the suit property. If necessary, the trial Court shall also appoint an Advocate Commissioner to identify and measure the property as per the Revenue Records and documents of title.



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15. With the above directions, this Second Appeal appeal is allowed and the judgment and decree of the Courts below are set aside and the matter is remitted back to the trial Court for fresh disposal with the above directions. The learned District Munsif shall endeavour to dispose of the suit within a period of 6 months from the date of receipt of a copy of this order. No costs.

11.11.2022

srn

To

1. The Subordinate Judge, Madurantakam
2. The District Munsif, Madurantakam.
3. The Section Officer, V.R.Section, High Court, Madras

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P.T.ASHA, J.,

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