



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A.(MD)No.333 of 2010

and

M.P.(MD)No.4 of 2010

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1.D.Marianayagam (died)

2.B.Selvadoss (died) ... Appellants / Appellants / Defendants
Y.Maria Arputham (Died)

3.M.Amalonpava Mary

4.M.Albert Einstein

5.M.Latha Jalin

6.M.Gilbert Staline

(Appellants 3 to 6 are brought on record as Lrs of the deceased
1st appellant vide order dated 25.01.2022 made in
C.M.P.(MD)Nos.163, 169 & 170 of 2022)

7.S.Little Flower Mary

8.S.John Pimos

9.S.Fredline

10.S.Eunice

(Appellants 7 to 10 are brought on record as Lrs of the
deceased 2nd appellant vide order dated 25.01.2022 made in
C.M.P.(MD)No.171 of 2022)

... Appellants

-Vs-

1.K.Kanthiah (died) ... Respondent / Respondent / Plaintiff

2.Sivakami

3.Krishnan (died)

4.Velayutham ... Respondents

(Respondents 2 to 4 are brought on record as Lrs of the deceased
sole respondent vide order dated 23.03.2010 made in
M.P.(MD)Nos.1 to 3 of 2010)



5.K.Meena

6.Minor Kanthiah

7.Minor K.Loganayaki

(Respondents 5 to 7 are brought on record as Lrs of the deceased R3 vide order dated 13.09.2013 made in M.P.(MD)No.2 of 2013)

(minors represented by R5)

... Respondents

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 29.02.2008 in A.S.No.47 of 2007 on the file of the Principal District Court, Tirunelveli confirming the judgment and decree dated 22.11.2006 in O.S.No.53 of 2006 on the file of the Principal Sub Court, Tirunelveli.

For Appellants : Mr.K.Sekar
For R2 : Mr.Rajkumar
M/s.P.Jeyapaul Associates

JUDGMENT

The defendants in O.S.No.53 of 2006 on the file of the Principal Sub Court, Tirunelveli are the appellants herein.

2. The suit was filed by one Kanthiah for the relief of declaration that the suit 3rd schedule property belongs to him and for consequential permanent injunction restraining the defendants from interfering with his peaceful possession and enjoyment of the same and also for mandatory injunction for removal of a compound wall described as suit 4th schedule. The defendants filed written statement controverting the plaint averments. Based on the divergent pleadings, the trial court framed as many as five issues. On the side of the plaintiff, as many as three witnesses were examined. Ex.A1 to Ex.A11 were marked. The defendants did not enter the witness box or mark any documentary evidence. They were content to cross-examine the witnesses who were examined on the side of the plaintiff. After considering the evidence on record, the trial court by judgment and decree dated 22.11.2006 decreed the suit as prayed for. Aggrieved by the same, the defendants filed A.S.No.47 of 2007 before the Principal District Court, Tirunelveli. The first appellate court by the impugned judgment and decree dated 29.02.2008 confirmed the decision of the trial court and dismissed the appeal. Challenging the same, this second appeal came to be filed. During the pendency of the second appeal, the original respondent had passed away and his legal heirs have come on record. The second appeal was admitted on 20.04.2010 on the following substantial questions of law:-



"Whether the courts below are correct in holding that the plaintiffs have proved the case when in Ex.A3 it has not been stated how four plots were allotted to the vendor of the plaintiff?"

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3. The learned counsel appearing for the appellants reiterated all the contentions set out in the memorandum of grounds and called upon this Court to answer the substantial question of law in favour of the appellants and set aside the impugned judgment and decree and dismiss the suit.

4. Per contra, the learned counsel appearing for the respondents submitted that the impugned judgment and decree do not call for any interference.

5. I carefully considered the rival contentions and went through the evidence on record.

6. The suit property formed part of a larger extent and was owned by one Abdul Ali Asan. It was allotted to him in a family partition held on 24.11.1980. The said document was marked as Ex.A1. The dispute in the present case is only as regards 3rd suit schedule. The 3rd suit schedule is now a part of an approved layout and bears Plot Nos.40 & 41. The plaintiff purchased the same under Ex.A3 dated 10.01.2001. The appellants who also lay claim on the said property on the basis of Ex.A4 dated 10.02.1986. The learned counsel appearing for the appellants would point out that his title document is earlier in point of time and therefore, the claim of the plaintiff will have to give way.

7. I am not persuaded by this submission. This is primarily for the reason that even though the plaintiff's title deed is earlier in point of time, the plaintiff is tracing his title to Ex.A2 which is dated 15.09.1984. Under Ex.A2, the vendor had alienated 50 cents of land in favour of four persons namely Muthulakshmi, Velayutham, Sekar and Subbulakshmi. It is stated that out of the four purchasers, two of them namely Velayutham and Subbulakshmi executed a sale deed-Ex.A3 dated 10.01.2001 in favour of the plaintiff. Thus, the plaintiff is tracing his title to Ex.A2 which is anterior in point of time compared to Ex.A4 which is dated 10.02.1986. A comparison of the four boundary description set out in Ex.A2 & Ex.A4 is relevant. What was sold under Ex.A2 is the piece of land lying to the west of Samuthirapandian's property. Under Ex.A4, the defendants have purchased the property which was lying to the south of Samuthirapandian's property. Ex.A4 also states that the land sold in favour of Muthu Lakshmi and three others would be the eastern boundary. Thus, the property sold under Ex.A4 is clearly distinct from what was sold under Ex.A2 dated 15.09.1984.



8. Of-course, among strangers, there cannot be any oral partition. I would sustain the said contention of the learned counsel for the appellants. But then, this will not make any difference to the outcome. The appellants did not even bother to enter the witness box. They did not adduce any documentary evidence. Without doing so, only before this Court, a petition has been filed Order 41 Rule 27 of C.P.C. It is too late in the day. The property purchased by the plaintiff has been identified as the suit 3rd schedule. The plaintiff had also approached the town planning authority and got plan approval. The property purchased by the appellants is obviously lying to the west of the land purchased by the plaintiff. The appellants must take steps to locate their property. They cannot lay claim on the property belonging to the plaintiff. The courts below have analysed the facts and concurrently held in favour of the plaintiff. Therefore, even if I answer the substantial question of law in favour of the appellants by holding that the plaintiff has failed to establish as to how the four plots were allotted to his vendor, still that will not make any difference to the outcome.

9. In this view of the matter, the impugned judgment and decree are confirmed. The second appeal is dismissed. No cost. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

/06/2022

Sub Assistant Registrar(CS)

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To

- 1.The Principal District Judge, Tirunelveli.
- 2.The Principal Sub Judge, Tirunelveli.

Copy To

The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai(2 copies)

Judgment made in
S.A. (MD) No.333 of 2010
31.03.2022

srr(CO)

TR(27.06.2022) 4P 5C