



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A.(MD)No.626 of 2010

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1.Vijayarajan (died) ... Appellant/Appellant/Plaintiff
2.Vidyalakshmi
3.Rajavel
4.Latha ... Appellants

(Appellants 2 to 4 are *suo motu* impleaded as Lrs of the deceased sole appellant vide order dated 21.02.2022)

-Vs-

1.K.S.N.P.T.Sundaravel (died)
2.Athilakshmi (died)
3.Periathambi
4.Sudanthira Rani
5.Hemalatha ... Respondents / Respondents / Defendants 2 to 6
6.Nagalakshmi
7.Maldevi
8.Ramesh Nachiappan
9.Manohari
10.Murugavel

(Respondents 6 to 10 are *suo motu* impleaded as Lrs of the deceased 1st respondent vide order dated 21.02.2022)

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the decree and judgment passed in A.S.No.91 of 2007 on the file of the Principal Subordinate Judge, Dindigul, dated 25.11.2009 confirming the Judgment and decree passed in O.S.No.43 of 2004 on the file of the District Munsif Court, Nilakottai dated 14.03.2007.

For Appellants : Mr.N.Dilipkumar
For R 3 to R5 : Mr.H.Lakshmi Shankar
For R6 to R10 : Mr.T.R.Subramanian

JUDGMENT

The plaintiff in O.S.No.43 of 2004 on the file of the District Munsif Court, Nilakottai is the appellant. During the pendency of
<https://hcservices.ecourts.gov.in/hcservices/>



the second appeal, he passed away and his legal heirs have come on record.

2. The suit was filed for the relief of declaration and permanent injunction. The defendants filed written statement controverting the plaint averments. Based on the divergent pleadings, the trial court framed the necessary issues. The plaintiff examined himself as P.W.1. Ex.A1 to Ex.A17 were marked. The second defendant examined himself as D.W.1. Ex.B1 to Ex.B6 were marked. After considering the evidence on record, the trial court by judgment and decree dated 14.03.2007 denied the relief of declaration but granted the relief of permanent injunction. Though the decree does not state in so many words, from a reading of the judgment of the trial court, one can infer that the relief granted to the plaintiff was only that he should not be dispossessed except by due process of law. Aggrieved by the denial of declaratory relief, the plaintiff filed A.S.No.91 of 2007 before the Principal Sub Court, Dindigul. By the impugned judgment and decree dated 25.11.2009, the first appellate court confirmed the decision of the trial court and dismissed the appeal. Challenging the same, this second appeal came to be filed. Though the second appeal was filed way back in the year 2019, only notice was ordered and it has not been admitted till date.

3. The learned counsel appearing for the appellants has filed detailed written arguments. He reiterated all the contentions set out therein and called upon this court to frame the substantial question of law and admit this second appeal and take it up 'for disposal' later.

4. Per contra, the learned counsel appearing for the respondents submitted that no substantial question of law arises for consideration.

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

6. There is no dispute that the suit property originally belonged to K.S.N.Periyathambi Nadar. The issue whether it was self acquired property or joint family property need not detain the Court. Periyathambi Nadar has four sons namely K.S.N.P.Natarajaperumal, K.S.N.P.Thangadurai, K.S.N.P.Rajarathinam & K.S.N.P.Nagooran. The case of the plaintiff is that the suit property was allotted to the elder son, namely, Natarajaperumal Nadar under the partition deed-Ex.A1 dated 30.08.1949. Though the learned counsel appearing for the respondents would impeach the circumstances under which Ex.A1 was executed, I am of the view that it is not necessary to go into the same. The suit items form part of a larger extent of property which is an integral unit. The larger unit appears to have been partitioned into four portions. The four portions had been allotted to Natarajaperumal Nadar



under Ex.A1 dated 30.08.1949. According to the plaintiff, Natarajaperumal Nadar had three sons and in a family partition held on 29.02.1972, he was allotted the suit items. The said document has been marked as Ex.A2.

7. It has been brought out in evidence that the suit items along with the entire house property was sold in an auction held on 24.12.1952 in E.P.No.475 of 1951. The suit was filed by one Periyannan Chettiar against Periyathambi Nadar. Periyathambi Nadar passed away in the year 1951. In the execution proceedings, all the four sons of Periyathambi Nadar were shown as respondents. In other words, the father of the plaintiff namely Natarajaperumal Nadar was also one of the respondents in E.P. The entire house property which included the suit items was purchased by Periyannan Chettiar in the court auction sale under Ex.B4.

8. The case of Thangadurai Nadar / uncle of the plaintiff was that Periyannan Chettiar entered into a lease agreement with him and that is how, all the four sons continued to reside in the house. In other words, according to him, Natarajaperumal Nadar and his sons were permitted to occupy by him. It has again been brought out in evidence that the entire house including the suit items was sold in favour of Thangadurai Nadar and his sons under Ex.B6. Ex.B6 was executed by one Muthiah who is none other than the power agent of Periyannan Chettiar. That is why, the courts below have concurrently rendered a finding that Natarajaperumal Nadar lost title over the suit items in the year 1952 itself. Therefore, the relief of declaration was rightly denied. I do not find any ground to interfere with the same. No substantial question of law arises for consideration.

9. The second appeal is dismissed. No cost.

Sd/-

Assistant Registrar (CS-II)

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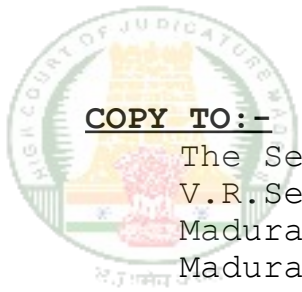
Sub Assistant Registrar(CS)

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To

1.The Principal Subordinate Judge,
Dindigul.

2.The District Munsif,
Nilakottai.



COPY TO:-

The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

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+1 CC to M/s.H. LAKSHMI SHANKAR, Advocate (SR-16590[F]
dated 05/04/2022)

+1 CC to M/s.T.R. SUBRAMANIAN, Advocate (SR-16472[F]
dated 05/04/2022)

+1 CC to M/s.N. DILIPKUMAR, Advocate (SR-16922[F]
dated 06/04/2022)

Judgment made in
S.A.(MD)No.626 of 2010
04.04.2022

SS (CO)

GC (03.06.2022) 4P 8C