



S.A(MD).No.15 of 2011

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 22.06.2022

CORAM: **JUSTICE N.SESHASAYEE**

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1.Rajamani
2.Paripuranam
3.Devi
4.Sorimuthu
5.Parthiban

.... Appellants/Appellants/Plaintiffs
Vs.

1.Gnanamuthu nadar
2.Ponnusamy Nadar
3.Sivathi Gnanamuthu Nadar
4.Mahesh ..Respondents/Respondents/Defendants 1 to 4

Prayer : Second Appeal is filed under Section 100 of Code of Civil Procedure, against the judgment and decree dated 24.08.2009 in A.S.No.28 of 2008 on the file of the Principal Subordinate Court, Thenkasi confirming the decree and judgment dated 21.04.2007 in O.S.No.728 of 2005 on the file of the District Munsif Court, Thenkasi.

For Appellants	: Mr.T.A.Ebenezer
For R1 to R3	: Mr.J.Madhan
For R4	: Mr.S.Meenakshi Sundaram Senior Counsel for Mr.N.G.A.Natraj

JUDGMENT

Challenging a concurrent finding both before the trial court and the First Appellate Court, the plaintiffs have come forward with the present Second Appeal. For narrative convenience, the parties are referred to as per their



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rank before the trial court.

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2.The plaint provides a complicated narration of the pleadings. However, it is shortened to an extent to infuse clarity in reading. The material facts that could be gathered are:

- On 12.12.1907 under Ext.B.10, certain Shanmuga Nadar, his brother Gnanamuthu Nadar and his sister-in-law Lakshmi Ammal the wife of Shanmuga Nadar's another brother Yacobu Nadar have jointly purchased about 86 cents in Survey No.287/B.
- The aforesaid Shanmuga Nadar had two sons, namely, Sorimuthu Nadar (hereinafter referred to as 'SSN') and Ramasamy Nadar (hereinafter referred to as 'SRN').
- There was an oral partition between the brothers, in which, some 23 cents came to be allotted to the share of SSN. Out of this, about 7 cents on the far west was acquired for widening Ambasamudram and Alangulam road. That left a balance at 16.5 cents.
- While so, on 12.01.1920 under Ext.A.2, SSN sold 16.5 cents to his paternal uncle Gnanamuthu Nadar.
- Gnanamuthu Nadar, the purchaser under Ext.A.2 had two sons and a



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daughter. His sons are Ramasamy Nadar (hereinafter will be referred to as GRN) and Sorimuthu Nadar (hereinafter will be referred to as GSN).

- They divided 16.5 cents that their father Gnanamuthu Nadar had purchased into northern 8.5 cents and southern 8.5 cents. Of them, the northern 8.5 cents allotted to the share of GRN, and the southern 8.5 cents came to be allotted to GSN.
- GRN had two sons and a daughter. His sons are the first and second defendants. GSN had one son and a daughter, and this son of GSN is the third defendant. It may have to be mentioned that both the first and the third defendants shared the same name.
- The first plaintiff is the son of the first defendant and the plaintiffs 2 and 5 are born to the third defendant.
- While so, both the first defendant and third defendants were planning to sell the western most 10 cents abutting the main road. Of this 10 cents, 5 cents is in northern half belonged to the first defendant's branch and the other 5 cents belonged to the third defendant's branch.

It is in these circumstances to prevent the said sales from taking place, the



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suit is laid seeking declaration of title that the suit III schedule property belongs to the first appellant and the suit IV schedule property belongs to the plaintiffs 2 to 5 and the third defendant and consequential injunction against the alienation by the other defendants.

3.1 In the written statement filed by the defendants 1 to 3, they have pleaded that a certain Ramasamy Nadar owned 98 cents in S.No.287/2, that he had four sons namely Sivanthi Nadar, Sivanthi Shanmuga Nadar, Sivanthi Yakkobu Nadar and Sivanthi Gnanamuthu Nadar. (Of them, Shanmuga Nadar and Gnanamuthu Nadar have been already referred to in the plaint). Of the 98 cents, the western 9 cents was acquired for widening Alangulam-Ambasamudran road. Of the remaining extent that was lying to the east of the road, the western most 16.5 cents was allotted to the share of Shanmuga Nadar and the balance 74.5 cents was allotted to the share of Shanmuga Nadar's brother Gnanamuthu Nadar.

3.2 The defendants 1 to 3 are the grand-sons of Gnanamuthu Nadar of whom, the defendants 1 and 2 are the sons of GRN and the third defendant is the son of GSN. There was an oral partition. The defendants 1 and 2



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became entitled to northern 8.25 cents and the third defendant became entitled to southern 8.25 cents. So far as northern 8.25 is concerned, this came to be allotted to the share of the first plaintiff pursuant to oral relinquishment by other sharers. The third defendant however, would contend that he claims that they are in joint possession exactly. In other words, both the defendants 1 and 3 supported the contention of the respective children as the plaintiffs.

3.3 The fourth defendant claims title under Shanmuga Nadar's son Ramasamy Nadar (SRN). According to him, on 19.08.1983 SRN sold an extent of 9.5 cents on the west in Survey No.287/2B to one Selvam Nadar, the father of the fourth defendant. Subsequently, after demise of Selvam Nadar, the property devolved on his children which includes his son, the fourth defendant. While so, on 20.06.2005, Vide Ext.B.15, the other siblings of the fourth defendant executed a deed of relinquishment and parted their share in the property in favour of the fourth defendant. This has now become the bone of contention.

4. The dispute went to trial. Before the trial court, for the plaintiffs, the



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mother of the plaintiffs 2 to 4 (who is also the wife of the third defendant) was examined as P.W.1. They produced Ext.P.1 to Ext.P.6, of which couple of documents are mortgage deeds of the year 1962, and Ext.A.3 the mortgage deed executed by GSN. Ext.P.4 and Ext.P.5 are the receipts executed while redeeming these mortgages. For the defendants, the third defendant was examined himself as D.W.1 and one Yacobu Nadar was examined himself as D.W.2. The contesting fourth defendant was examined himself as D.W.3. The defendants have produced Ext..B.1 to Ext.B.17, of which Ext.B.10 and Ext.B.17 were produced by the fourth respondent. A Commissioner assisted by a surveyor was appointed by the trial court and his reports were taken on record as Ex.C.1 and Ex.C.3.

5.1 Appreciating the evidence, the trial court dismissed the suit. The trial court has expressed its difficulty in comprehending the case of the plaintiff and still spent some time to ascertain the facts alleged in the pleadings and evidence, and ended up disbelieving the case of the plaintiffs as they did not match the shares that the parties might be entitled to.

5.2 In the First Appeal preferred by the plaintiffs in A.S.No.28 of 2008, the



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Principal Sub Court, Tenkasi, came to an identical conclusion. Hence, the present Second Appeal. This Second Appeal is not admitted. However, both sides made their submissions before the court.

6. This Court does not consider that the case involves some substantial questions of law. Indeed, it finds that the approach of the courts below vis-a-vis its appreciation of the pleadings and evidence are not so gravely faulty as to disturb the conscience of this Court. The reasons are:

- The basic premise on which the plaintiffs' case can be rested is Ext.B. 10 sale deed dated 12.12.1907. Under this, some 86 cents were purchased in the name of three persons jointly. This would mean each of the sharers would be entitled to 28.06 cents or roughly 29 cents. Now this Court is concerned essentially with the share of one of the purchasers in Ext.B.10 namely Shanmuga Nadar. As has been outlined earlier, SN had 2 sons SSN and SRN. Effectively SSN and SRN would be entitled to half share in the property, and this implies that each one would be entitled to 14.05 cents each. According to the plaintiffs, some extent on the west was acquired for widening Ambasamudram-Alangulam road. But defendants 1 to 3 assert that 9



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cents were so acquired for that purpose. No evidence, however, was made available by any. The defendants 1 to 3 have to clarify the exact extent acquired, but even if it is presumed that 9 cents were acquired as was contended by defendants 1 to 3, still it leaves doubt regarding the 20 cents in which SSN would be entitled to 10 cents and SRN would be entitled to other 10 cents.

- But, now comes the problem. On 12.01.1990, SSN executed the sale deed for 16.5 cents in favour of his paternal uncle Gnanamuthu Nadar under whom both the plaintiffs and the defendants 1 to 3 claim right. While the plaintiffs make a sweeping statement that SSN got some 23 cents in an oral partition within his branch and that 23.5 cents dwindled to 16.5 cents after acquisition of 7 cents for widening the road, yet it is a unilateral statement made, and it is not supported by other evidence. This may now imply that SSN had sold at least 6.5 cents in excess of his title in favour of his paternal uncle Gnanamuthu Nadar under Ex.A.2.

7. Now the entire narration between the plaintiffs and the defendants 1 to 3 which is sought to be proved by the family of the third defendant appears so



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sweeping and almost every partition or relinquishment are essentially done orally. In fact, there is nothing fundamentally wrong in parties attempting for oral partition. When the court deals with an allegation of oral partition said to have taken place about more than a century ago, it at least requires how the parties conducted themselves with reference to the said oral partition. Here, the property is lying vacant for a century. Now in this scenario, unless it is established that the parties who assert title had exercised their right of ownership over the property said to have been allotted to them, it will be nigh difficult to presume that there was an oral partition. As already indicated, the entire property was lying fallow and vacant for a century and there is no evidence that neither defendants 1 to 3 nor their parents GRN and GSN, as the case may be, have exercised their right of ownership by doing something tangible and perceptible in the property said to have been allotted to their share in certain oral partition that was allotted.

8. This apart, this Court does not find anything from the pleadings of the plaintiffs or the defendants 1 to 3 that SRN was ousted of his share in the property. It is very apparent that the defendants 1 to 3 and the plaintiffs



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speak in unison only to defeat the right of the fourth defendant. As already found, SRN has undivided 10 cents in the suit property and there is no expectation forthcoming as to how his right has been devastated unless it is pleaded and proved that SRN's right has already been parted with. That right continues to subsist in him. It is in these circumstances, SRN had executed Ext.B.11 sale deed in 1983 in favour of Selvam Nadar under whom his son, the fourth defendant claims title. This cannot be faulted.

9. In conclusion, it would have been appropriate for the plaintiffs to go for suit for partition instead they have sought declaration of their title over specific plots. Since this Court does not find anything to impeach the correctness of the judgment of the courts below, it does not consider it necessary to entertain this Second Appeal and accordingly, this Second Appeal is dismissed. No costs.

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Index : Yes/No

Internet: Yes/No

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To

- 1.The Principal Subordinate Court, Thenkasi
- 2.The District Munsif Court, Thenkasi.
- 3.The Section Officer,
VR Section, Madurai Bench of Madras High Court,
Madurai.



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