



S.A.(MD) No.218 of 2011

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.08.2022

CORAM : JUSTICE N.SESHASAYEE

S.A.(MD) No.218 of 2011

- 1.Veluchamy
- 2.Thangaraj
- 3.Natarajan
- 4.Duraichamy
- 5.Samuthirapandi

.. Appellants/Respondents 1,3,4,5&9/
Defendants 1, 3, 4, 5 & LR of D6

Vs

- 1.Kaliappan (Died)

.. 1st Respondent/Appellant/
Plaintiff

- 2.Krishnan
- 3.Palaniammal
- 4.Subburaj
- 5.Sundaram
- 6.Nagaraj

.. Respondents 2 to 6/
Respondents 2, 7, 8, 10 & 11/
2nd Defendant & LR of D6

- 7.Panjavarnam
- 8.Gopalakrisnan
- 9.Kanthi
- 10.Thanga Muniyasamy
- 11.Thamilselvi

.. Respondents 7 to 11/
LRs of deceased R1

***[Respondents 7 to 11 – Brought on record as LR of the deceased
1st respondent vide order dated 04.08.2022 made in C.M.P.(MD)
Nos.6891 to 6893 of 2022 in S.A.(MD) No.218 of 2011]***



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Prayer:- Appeal filed under Section 100 of Civil Procedure Code to set aside the judgment and decree dated 20.12.2010 made in A.S.No.426 of 2004 on the file of the Principal Subordinate Court, Dindigul, modifying the judgment and decree dated 28.09.2000 passed in O.S.No.931 of 1997 on the file of the I Additional District Munsif Court, Dindigul.

For Appellants	:	Mr.M.R.Sreenivasan
For Respondents	:	Mr.A.R.Sethupathy for R7 to R11
	:	R2 – Dismissed
	:	R3 to R6 - No appearance

JUDGMENT

The defendants 1, 3, 4, 5 and 6 in O.S.No.931 of 1997 on the file of the I-Additional District Munsif Court, Dindigul, have filed the present Second Appeal. During pendency of this appeal, the sixth defendant died and his legal representatives were impleaded.

2.1 The suit was laid for declaration of title and injunction. The suit was decreed partially by the trial Court and the plaintiff preferred a first appeal in A.S.No.426 of 2004 before the Principal Sub Court, Dindigul and that came to be allowed. Hence, the defendants 1, 3, 4, 5 and 6 are before this Court.



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2.2 The scope of the litigation falls under a very narrow compass. The suit property was described as an agricultural land measuring 1.74 acres in S.No. 283/1B1 of Thamaraipadi Village, Dindigul Taluk, Dindigul District. This property originally belonged to certain Sheik Mohammed. On 31.12.1989, under Ext.A.1, Sheik Mohammed sold the property to the plaintiff. As the plaintiff faced certain obstruction to his title from the defendants, the suit was laid.

3. The defendants offered contest only about 7 cents somewhere on the south-eastern portion of the entire property. Their contention is that this 7 cents property was used as a burial ground for several years.

4.1 The dispute went to trial and both sides adduced oral and documentary evidences. Two critical evidence in the context of the present appeal are the testimony of P.W.2 and Ext.B.4. P.W.2 is the son of plaintiff's vendor. He in his chief examination, supported the case of the plaintiff and in his cross examination, he changed gears and supported the defendants. Ext.B.4 is the proceedings of the Peace Committee Meeting said to have held before the



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Tahsildar. Ext.B.1 to Ext.B.3 are some of the signatures of the parties to Ext.B.4. To counter Ext.B.4, the plaintiff has produced Ext.A.13, wherein the same Tahsildar who is said to have conducted the Peace Committee Meeting leading to Ext.B.4 has directed the plaintiff to approach the civil Court for resolution. This implies, the Peace Committee Meeting resolution has not brought about any desired results.

4.2 While appreciating the evidence before it, the trial Court appreciated chiefly relied on the evidence of P.W.2, who in his cross examination had testified that in the disputed 7 cents property that concerns the interest of the defendants, bodies have been buried or cremated even when his father was alive and granted a decree for the entire suit property except the 7 cents. The trial Court also appointed a Commissioner whose report and plan were taken on record as Ext.C.1 and Ext.C.2.

4.3 The matter was taken in appeal by the plaintiff before the first appellate court. Now the scope of the suit is narrowed to a mere 7 cents. The appellate Court has not concurred with the approach of the trial Court and



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granted a decree for the disputed 7 cents as well. It held that this 7 cents property cannot be treated as a burial ground as claimed by the defendants merely because few bodies were buried by the villagers and placed reliance on the judgment in ***T.Ramesh Vs The District Collector, Ramanathapuram*** [W.P.(MD) No.5769 of 2005 dated 28.08.2007].

5. This decree of the first appellate Court is now under challenge. This Second Appeal was admitted on 08.06.2022 for considering the following substantial question of law:-

“Is not the first appellate Court in egregious error in ignoring the testimony of P.W.2 and Ex.B.4?”

6. The learned counsel for the appellants pivoted his arguments on Ext.B.4 and the testimony of P.W.2, and vehemently argued that when the plaintiff purchased the property in 1989, he knew or at least ought to have known that there are bodies buried in the disputed 7 cents. Therefore, when he purchased the property, he purchased the property with knowledge on this 7 cents and therefore, he cannot plead ignorance. P.W.2 in effect, has only



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corroborated this state of affairs and no more. Secondly, there indeed was a Peace Committee Meeting, wherein Ext.B.4 document did come into existence in which the plaintiff had agreed to set aside this 7 cents for burial purposes and had also signed the document. This is overlooked by the first appellate Court, contended the learned counsel.

7.1 Per contra, the learned counsel for the plaintiff would submit that the plaintiff was forced to sign Ext.B.4 and added that Ext.B.4 came into existence on 01.11.1997 whereas on 02.12.1997, the same Tahsildar had required the plaintiff Vide Ext.A.13 to approach the Court. So ultimately, Ext.B.4 read with Ext.A.13 when read conjointly would indicate that there was no peace and that the difference continued to be simmering even after Ext.B.4. This would also incidentally provide circumstances to draw an inference that the plaintiff might have been forced to sign Ext.B.4.

7.2 Turning to the testimony of P.W.2, he literally speaks against the statute and that cannot be countenanced. This is amplified in the judgment of this Court in **T.Ramesh** (supra) and the first appellate Court has travelled along



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the line of legality and this cannot be overturned solely based on the testimony of P.W.2.

8. The suit is for declaration of title and for injunction and the defence offered in effect seeks to declare that the 7 cents property is a burial ground. This is something the local body ought to do under the relevant statute and the rules. And, if at all it has to take a private property for the purpose, it has to resort to land acquisition. That was not done. This Court, therefore, is in absolute concurrence with the findings of the first appellate Court in A.S.No.426 of 2004 dated 20.12.2010.

9. To conclude, this Court does not find merit in the appeal and the same is dismissed. No costs.

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Internet: Yes
Index: Yes/No

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N.SESHASAYEE, J.

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To

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

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