



S.A(MD).No.236 of 2011

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 09.09.2022

CORAM: JUSTICE N.SESHASAYEE

S.A(MD).No.236 of 2011
and M.P(MD).Nos.1 and 2 of 2011

Arulraj ...Appellant/Appellant/Defendant

Vs.

Maria dossRespondent/Respondent/Plaintiff

Prayer :Second Appeal is filed under Section 100 of Code of Civil Procedure, against the judgment and decree passed in A.S.No.58 of 2008 dated 22.01.2009 on the file of the I Additional Subordinate Court, Tirunelveli confirming the judgment and decree passed in O.S.No.221 of 2006 dated 23.09.2008 on the file of the Principal District Munsif Court, Tirunelveli.

For Appellant : Mr.H.Arumugam
For Respondent : Mr.Vaisak Ali
for Mr.D.Nallathambi

J U D G M E N T

The sole defendant, who has lost successively before the Courts below in a suit in O.S.No.221 of 2006, a suit laid for declaration of plaintiff's title and for consequential injunction and also his own appeal in A.S.No.58 of 2008,



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is the appellant herein. For narrative convenience, the parties are referred to as per their rank before the trial Court.

2. The dispute is over a vacant plot measuring 6 cents in Survey No.666/2C of Tharuvai Village, which is the vacant house site. In the context of the suit, the boundary description of the suit property is significant and it is introduced straight away:

- ♦ The suit property is bounded on the north by a street, on the west by the property of the defendant, on the south by the property of Kovilmani and on the east by property of Shanmugam @ Sabaridasan.
- ♦ According to the plaintiff, the suit property originally belonged to Vanniyan and Jabamani, of them, Vanniyan had purchased about 1/24th undivided share *inter alia* in Survey No.666/2 and 4, Vide Ext.A.2 sale deed, dated 13.03.1933. Subsequent to Vanniyan's demise, his right devolved on his son, namely, Shanmugam @ Sabaridasan. While so, on 26.07.2005, both Sabaridasan and Jabamani joined to execute a sale deed in favour of the plaintiff conveying the suit property to the latter. As the plaintiff found some obstruction to his title, he laid the suit.



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3. The defence is candid:

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♦ According to the defendant, the property originally belonged to certain Mani and another Kandhan @ Gabriel. While so, on 31.08.1978 Vide Ext.B.2, they sold the property to one Rajamani. Rajamani, in turn, settled his property Vide Ext.B.3, dated 23.04.2002 to his son, the defendant herein. The defendant also pleads adverse possession.

4. The dispute went to trial, before which, both sides adduced oral and documentary evidence and the principal documentary evidences have already been introduced. Of the oral evidence made available before the trial Court, evidence of P.W.3, the VAO, has some relevance. On appreciating the evidence before it, the trial Court decreed the suit. Its line of reasoning is:

- The village 'A' Registrar prepared sometime in 1985 indicates that the property in Survey No.666/2 was not sub-divided. Secondly, Shanmugam @ Sabaridasan and Jabamani along with couple of others were recorded as the registered owners of the property. Survey No.666/2 was sub-divided *inter alia* into 666/2C, only subsequently. To counter this, the defendant has not produced any



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satisfactory evidentiary material.

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- According to the defendant, he had his house in Survey No.667/1. He also admits that the suit property lies to the east of his house. If that is so, in Ext.B.2, sale deed, under which, the defendant's father had purchased the property in Ext.B.2, the western boundary ought to have been shown as the defendant's property in Survey No.667/1.
- This boundary description does not reconcile with what is available on the site. This is again carried forward in Ext.B.3, settlement deed, which defendant's father had executed in the name of the defendant and in the plaint, the western boundary of the suit property is given as the defendant's property.
- These materials would indicate that the property covered under Ext.B.2 and Ext.B.3 cannot be the suit property.
- The defendant had not produced any material to establish that the original owner of the suit property was Kandhan @ Gabriel and Mani.



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5. When the matter reached, the first appellate Court in A.S.No.58 of 2008, the first appellate Court found no reason to disturb the findings of the trial Court. Hence, this appeal at the instance of the defendant. The appeal is not yet admitted.

6. Heard both sides.

7. There are two parts to this appeal. When once both sides rest the title to independent sources, then, both are under an obligation to establish the title to enable the Court to find which of the claims are more probable. Here, the defendant suffered is part-2 for inadequate to upset the proof offered by the plaintiff. The second part is about need for interfering with the finding of the Courts below. This Court finds given the nature of evidence available before the Court, there is nothing to falsify their findings. Hence, this Court does not find any need to interfere with the judgment and decree of the first appellate Court.

8. Having concluded thus, this Court may have to make a statement that Survey No.666/2, admittedly, has an extent of 13 cents. It may be, only a may be, that the property which the defendant has purchased might be in



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some other sub-division of 666/2. It also appears that the defendant tried to identify the property covered under Ext.B.2. Therefore, the best course open to the defendant is to locate the property. If at all there is a legal ground for him to raise it elsewhere in Survey No.666/2, if it is so available for him.

9. To conclude this appeal, there is no merit and the same is dismissed. No costs. Consequently, connected Miscellaneous Petitions are also dismissed.

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Index : Yes/No

Internet: Yes/No

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To

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



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