



S.A.(MD) No.238 of 2011

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.06.2022

CORAM: JUSTICE N.SESHASAYEE

S.A.(MD) No.238 of 2011

1.Angamuthu
2.Subramanian
3.Vellimalai

... Appellants/Appellants/
Defendants 3 to 5

-VS-

1.Ramasamy Servai
2.Raju

... 1st Respondent/Respondent/
Plaintiff
... 2nd Respondent/Respondent/
1st Defendant

Prayer:- Appeal filed under Section 100 of Civil Procedure Code to set aside the judgment and decree dated 26.08.2010 in A.S.No.14 of 2007 on the file of the Additional Subordinate Judge, Dindigul confirming the judgment and decree dated 15.12.2006 in O.S.No.111 of 1995 on the file of the District Munsif cum Judicial Magistrate, Vendasandur.

For Appellant : Mr.R.R.Kannan

For Respondent-1 : Mr.G.Gomathi Sankar

For Respondent-2 : Mr.B.S.Meltiue



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JUDGMENT

Defendants 3 to 5 who have successive decrees declaring the title of the plaintiff both before the trial court in O.S.No.111 of 1995 and also in A.S.No.14 of 2007 which they filed, have preferred this appeal. The suit was instituted against four defendants, of whom the first defendant remained ex-parte.

2. For narrative convenience, the parties are referred to by their rank before the trial Court.

3. Defendants 3 and 4 are the two sons of the second defendant. They claim independent half share in the suit property, whereas the second defendant claims right to the other half share in the same property. During the pendency of the suit the second defendant died, and his right devolved equally on his sons, the third and the fourth defendants and another son who came to be impleaded as the 5th defendant.



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4.1 The suit property is described as a piece of agricultural property measuring 36 cents in Survey No.138/1 of Puthur Village, Vedasanthur Taluk, Dindigul District. The case of the plaintiffs is that:

- The suit property was originally assigned in the name of certain Subbarayan and this is evidenced by Ext.A10, an extract from the settlement registered in the year 1914.
- Subbarayan died whereupon the property devolved on his only daughter Koppayee Ammal.
- Plaintiff is Koppayee Ammal's son. While so, on 23.12.1985, vide Ext.A3, Koppayee Ammal settled the suit property in favour of her son, the plaintiff.

When the plaintiff faced threat to his title and possession over the suit property, he laid the suit. It may be mentioned that the suit was originally laid only for bare injunction before the Vacation Court at Dindigul in O.S.No.654 of 1991 and later came to be amended to include the prayer of declaration, and was since transferred to the District Munsiff cum Judicial



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Magistrate Court, Vedansanthur and was taken on file in the transferee Court as O.S.No.111 of 1995.

4.2 Disputing the title and assertion of the same by the plaintiff, the defendants have contended as below:

- The suit property was originally registered in the name of a certain Raja Muthiah Servai under Patta No.116. He is stated to be the younger brother of Subbarayan. This is borne out by Ext.B12, a notice issued by the Surveyor in favour of Raja Muthiah Servai. This document provides both the patta number and the survey number. This is further buttressed by Ext.B13 Land Tax receipt, which is issued in May 1924 in favour of Raja Muthiah Servai,(This document does not provide the survey number but indicates the patta number as 116). Raja Muthiah Servai is stated to have another brother by name Perumal Servai. Even though the property was registered in the name of Raja Muthiah Servai, he had only half share in it and the other half belongs to his brother Perumal Servai.



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- On 30.05.1951, under Ext.B4, Perumal Servai sold his half share in the property (to the extent of undivided 18 cents) to a certain Ramasamy Servai. Ramasamy Servai in turn sold the property vide Ext.B5-sale deed, dated 20.07.1952 to one Krishnappan Servai. This Krishnappan Servai is the son of Raja Muthiah Servai. The effect of these transactions would mean that Krishnappan Servai would be entitled to half share in the property. His father Raja Muthiah Servai would be entitled to the other half share in the property.
- It appears that Krishnappan Servai had not paid the entire sale consideration to his vendor Ramasamy Servai and hence, on 24.07.1952, vide Ext.B6, Krishnappan Servai has created a mortgage in favour of his vendor Ramasamy Servai.
- Be that as it may, on 17.11.1969, vide Ext.B7, both Raja Muthiah Servai and Krishnappan Servai jointly executed a deed of simple



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mortgage as concerning the entire 36 cents in favour of Subramanian.

Subsequently, on 04.09.1973, under Ext.B8, Raja Muthiah Servai had sold his half share in 36 cents property in favour of the very mortgagee. Thus, the mortgagee had become a title holder as concerning half share in the property.

- Subsequently, on 03.09.1976, vide Ext.B9-sale deed, the aforesaid Subramanian had sold the property covered under Ext.B8 to the second defendant. Thereafter, on 18.03.1991, under Ext.B10, Krishnappan Servai had sold his half share to the defendants 3 and 4, who, as already indicated, are the sons of the second defendant. They would also submit that ever since they are in exclusive possession and have been paying kist etc.

5.1 The dispute went to trial and before the trial Court, the plaintiff examined himself as P.W.1 and examined the Taluk Surveyor as P.W.2, through whom Ext.X1 to Ext.X13 were marked. These documents are



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adangal for fasli years 1381, 1383, 1385 to 1388, 1390, 1392, 1394 to 1397 and 1398. For the defendants, the 5th defendant examined himself as D.W.1 and he examined two other independent witnesses as D.W.2 and D.W.3. The plaintiff has produced Ext.A1 to Ext.A10 of which, reference has already been made to Ext.A3 and Ext.A10. The rest of the documents are essentially revenue records, which include the patta, adangal and the tax receipts. The defendants have produced Ext.B1 to Ext.B17 of which reference has already been made to many of the documents based on which the defendants claim title to the suit property.

5.2 It may have to be mentioned here that during trial, the plaintiff has produced Ext.A2, a document under which Krishnappan Servai is stated to have released all his rights in favour of Koppayee Ammal. After appreciating the evidence before it, the trial court decreed the suit. Its line of reasoning essentially are that:

- (a) Ext.A10, the extract of the settlement register of the year 1914 taken along with the testimony of P.W.2 and Ext.X1 to Ext.X13,



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would indicate the property belonged to Subbarayan and thereafter to Koppayee Ammal.

(b) Even though Ext.A-2 the release document is not pleaded, yet on comparing the purported signature of Krishnappan Servai in Ext.A2 along with his admitted signature in Ext.B6, it is proved that Ext.B2 is executed by Krishnappan Servai.

(c) So far as defendants' title is concerned, Raja Muthiah Servai had executed Ext.B8-sale deed as pertaining to his half share in favour of the mortgagee of the property, Subramanian and again purported to deal with another 18 cents and sold it to the defendants 3 and 4 under Ext.B10. When, according to the defendants, Raja Muthiah Servai had only half share in the property, it is inconceivable that he could sell the same property twice over and this contradiction is not adequately explained.



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(d) That the property could belong only to Koppayee Ammal is also borne out by Ext.B1 to Ext.B5, the adangal documents produced on the side of the defendants.

6. Aggrieved by the said decree, the defendants 3 to 5 preferred A.S.No.14 of 2007. The first appellate court adopted the same line of reasoning as the trial court and dismissed the appeal. Hence this second appeal at the instance of the aforesaid defendants. The appeal is not yet admitted.

7. Heard the learned counsel for the appellant as well as the learned counsel for the respondents. The core issue is whether the plaintiff has created a preponderance of probability of her case. To start with, there is a document in Ext.A10, which is an extract of the settlement register of the year 1914, which shows that the plaintiff's maternal grandfather Subbarayan as the registered owner of the suit property. It has come out in evidence that Raja Muthiah Servai under whom the defendants ultimately claim title is stated to be the brother of Subbarayan, and to support that Raja Muthiah Servai was



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the owner of the property, the defendants have produced Ext.B-12 and Ext.B-13. While Ext.B12 is only a notice and it is not a conclusive evidence of any statement made therein *vis-a-vis* the title of the property in question. Ext.B13 tax receipt may have greater evidentiary value. However, in Ext.B13 only the patta number is indicated as 116, but the contents of this patta is wrapped in mystery. It could not also be ascertained if Raja Muthiah Servai was holding the entire extent of 36 cents, or only part thereof. This may require greater proof but the same is not available. However, what is now significant is whether Ext.A2-release deed, stated to have been executed by Raja Muthiah Servia's son Krishnappan Servai can be believed. If even assuming Raja Muthiah Servai had some interest in the suit survey number property, then Ext.A2 may take a way even that right from his branch. It is true that Ext.A2 was not pleaded. The trial court has ventured into comparing the signature of Krishnappan Servai as available in Ext.A2 with its admitted signature in Ext.B6, and had come to the conclusion that the admitted signature of Krishnappan Servai reconciles with the purported signature of Krishnappan Servai in Ext.A2. Indeed, the



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trial court need not have travelled that much. Section 90 of the Indian Evidence Act enables the trial court to apply the presumption as to the signature of the executant of the document.

8. The issue now boils down to ascertaining if Ext.A2 could at all been executed. At this distance point of time the presumption in favour of Ext.A2 looms large against the defendants, and the burden is on the defendants to disprove that Ext.A2 was not executed by Krishnappan Servai. Here, the defendant meets the contentions of the plaintiff with an allegation that Ext.A2 was not pleaded. Now even if this argument is accepted, then what this Court cannot ignore is how parties conducted this after 1942. Here, it is not just Ext.X1 to Ext.X13 adangal, but even Ext.B-1 to Ext.B-3 showed Koppayee Ammal, the mother of the plaintiff, as the registered owner of the property. Now how to appreciate these documents if only there were no Ext.A2? Therefore, even if Ext.A2 is taken away from the line of consideration, Ext.X1 to Ext.X13, and Ext.B1 to Ext.B3 would show that the property was continuously with the branch of Subbarayan. In all the



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documents of title which have been executed commencing from Ext.B4 to Ext.B10, which the defendants rely on, neither Koppayee Ammal nor the plaintiff are parties.

9. This Court, therefore, holds that there is a strong preponderance of probability created in favour of the plaintiff and the approach of the courts below cannot be faulted for this Court to interfere on the findings on the fact by them. In conclusion, the appeal is dismissed. No costs.

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Internet : Yes/No

Index : Yes/No

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To

- 1.The Additional Subordinate Court,
Dindigul.
- 2.The District Munsif cum
Judicial Magistrate Court,
Vedasandur.



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N.SESHASAYEE, J.

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