



S.A.(MD) No.28 of 2011

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.06.2022

CORAM : JUSTICE N.SESHASAYEE

S.A.(MD) No.28 of 2011

and

M.P(MD).Nos.1 of 2011 and 1 of 2012

1.Muppidathi (Died)

... 1st Appellant/Appellant/
Defendant

2.Jayaseeli

3.Vairachandra

4.Arputharani

5.Rajachandra sekar

6.Sudharani

... Appellants 2 to 6/
LRs of deceased 1st Appellant

***[Appellants 2 to 6 brought on record as LRs
of deceased sole appellant vide Court order
dated 09.03.2016 made in M.P.(MD) No.1 of
2013 in S.A.(MD) No.28 of 2011]***

Vs

S.Ramaraj

... Respondent

Prayer:- Second Appeal filed under Section 100 of Civil Procedure Code to set aside the judgment and decree dated 29.09.2010 passed in A.S.No.71 of 2005 passed by the learned Sub-ordinate Judge, Ambasamudram confirming the Decree and judgment in O.S.No.63 of 2003 passed by the learned Additional District Munsif, Ambasamudram dated 21.02.2005.



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For Appellants : Mr.C.Rajesh

For Respondents : Mr.S.S.Thesigen.

JUDGMENT

The legal heirs of the defendant, who successively suffered decree both before the trial Court and the first appellate Court in a suit for declaration and for associated ancillary reliefs laid in O.S.No.63 of 2002, are the appellants herein. For narrative convenience, parties would be referred to by their rank before the trial court.

2. The suit property is described as a vacant site measuring 1.90 cents in Sy.No.1055/4 of Keelkadayam Village. According to the plaintiff, the suit property is part of a larger extent, which was purchased by his father Sudalaimadanadar under Ext.A.1-sale deed, dated 02.11.1956. After the demise of Sudalaimadanadar, it devolved on his heirs. While so, sometime in 1982, there was an oral partition in the family of the plaintiff, in which the suit property was allotted to him. The property to the immediate south of



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the suit property belonged to a certain Vairavanadar, which he had purchased under Ext.A2 sale deed, dated 26.04.1938. The defendant is one of the sons of Vairavanadar, and when the plaintiff faced threat to his title and possession from the defendant, he laid the suit.

3. In the written statement, it is alleged that in 1994, the plaintiff and his co-sharers had sold their property to one Shanmuganathan under Ext.B.1-sale deed dated 04.11.1994, and he in turn sold the said property to one Balammal under Ext.A.3-sale deed dated 27.11.2000. This apart, the defendant's brothers had sold their share in the property (covered under Ext.A2) to the defendant Vide Ext.B.6-sale deed dated 10.04.1995. The plaintiff has no subsisting right in the suit property covered under Ext.A.1. There is no cause of action for the suit.

4. The dispute went to trial and before the trial Court, the plaintiff examined himself as P.W.1 and he also examined a certain independent witness as P.W.2. The defendant examined himself as D.W.1. While the plaintiff



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produced Ext.A.1 to Ext.A.3, all of which, are already introduced, the defendant has produced Ext.B.1 to Ext.B.6, of which, Ext.B.1 and Ext.B.6 have already been referred to. Besides, the trial Court also appointed an Advocate Commissioner for local inspection whose report and plan came to be marked as Ext.C.1 and Ext.C.2.

5. On appreciating the evidence, the trial Court chose to dismiss the suit and it's line of reasoning is essentially founded on a comparison of the boundaries in Ext.A.1, Ext.B.1 and Ext.B.6. Aggrieved by the same, the defendant preferred A.S.No.71 of 2005 before the Sub-ordinate Court, Ambasamudram. The appellate Court concurred with the findings of the trial Court and dismissed the appeal. Hence, the defendant is before this Court with the present appeal.

6. The learned counsel appearing for the appellants made a valiant effort to convince this Court that the plaintiff has no land to the north of his property covered under Ext.B.1 read in combination with Ext.B.6. Hence, he does



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not have any *locus standi*. Secondly, he argued that the burden is on the plaintiff to establish that his property lies to the north of the property of the defendant and he has not taken any steps to identify his property.

7. The learned counsel appearing for the respondent, however, would submit that the defendant has built a case on a misconception that the plaintiff and his siblings have sold their property on the North to a certain Shanmuganathan under Ext.B.1, whereas, Ext.B.1 shows the southern boundary as the property of the plaintiff. In other words, the northern boundary in Ext.B.1 is a mis-description, in that, instead of stating that the immediate property on the north belonged to the plaintiff, it was denoted as Shanmuganathan's property. He also added that the findings of the Courts below are on facts and this Court may not interfere with the findings in second appeal.

8. After carefully weighing the rival submissions, this Court finds that there is considerable merit on the submissions of the learned counsel for the



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respondent. The admitted position is that a certain Sudalaimadanadar had a property to the north of Vairava Nadar's property. The plaintiff is one of the sons of Sudalaimadanadar and the defendant is one of the sons of Vairava Nadar. This would imply that the plaintiff would be entitled to some share in the northern property whereas the defendant would be entitled to a share in the southern property. This is not in dispute. However, under Ext.B.1, the plaintiff's siblings have sold their shares to one Shanmuganathan, leaving the southernmost plot to the plaintiff. Hence, in this property, the southern boundary is denoted as plaintiff's property. Shanmuganathan, indeed, has sold the property under Ext.A.3 to a certain Balammal, which reiterates the same boundary description. It is only, when the sale deed executed by the defendant's co-sharers in the former's name in Ext.B.6, there crept in an apparent mis-description in denoting the northern boundary. A unilateral statement by the siblings of the defendant as to the boundary description in Ext.B6 cannot create a title to the defendant over his neighbour's property on the north. On a careful perusal of the judgments of the Courts below, this Court finds that the reasoning of the Courts below are in order.



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9. In fine, this Court does not find any merit in this appeal. Hence, this Second Appeal is dismissed. No costs. Connected miscellaneous petitions are dismissed.

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Internet: Yes

Index: Yes/No

rmk/ssb/abr

To

1. Sub-ordinate Judge,
Ambasamudram

2. Additional District Munsif Court,
Ambasamudram



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N.SESHASAYEE, J.

ssb/abr

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