



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A. (MD)No.893 of 2010

M.Anbu

... Appellant / Respondent / Plaintiff

-Vs-

N.S.Jesu Doss

S/o.Suvakin,

President of the Congregation of the

Brothers of the Sacred Heart of Jesus Society,

(Jusuvin Thiru Irudhaya Sabai)

represented through its

President.

... Respondent / Appellant / Defendant

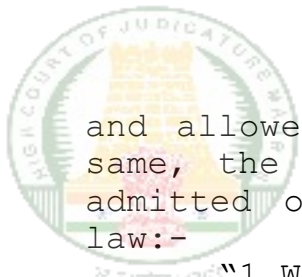
PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 24.03.2010 made in A.S.No.6 of 2010 on the file of the Additional Subordinate Judge, Tirunelveli reversing the judgment and decree dated 25.11.2009 made in O.S.No.275 of 2008 on the file of the Principal District Munsif, Tirunelveli.

For Appellant	: Mrs.N.Krishnaveni Senior Counsel for Mr.P.Thiagarajan
For Respondent	: Mr.V.Meenakshi Sundaram for Mr.D.Nallathambi

JUDGMENT

The plaintiff in O.S.No.275 of 2008 on the file of the Principal District Munsif Court, Tirunelveli is the appellant in this second appeal.

2. The suit was for declaration and permanent injunction. The respondent herein filed written statement controverting the plaintiff averments. Based on the divergent pleadings, the trial court framed the necessary issues. The plaintiff examined himself as P.W.1 and one Manisekaran was examined as P.W.2. Ex.A1 to Ex.A25 were marked. On the side of the defendant congregation, D.W.1 was examined. Ex.B1 to Ex.B6 were marked. After consideration of the evidence on record, the trial court by judgment and decree dated 25.11.2009 decreed the suit as prayed for. Aggrieved by the same, the defendant filed A.S.No.6 of 2010 before the Additional Sub Court, Tirunelveli. By the impugned judgment and decree dated 24.03.2010, the first appellate court reversed the decision of the trial court



and allowed the appeal and dismissed the suit. Aggrieved by the same, the second appeal came to be filed. The second appeal was admitted on 07.12.2010 on the following substantial questions of law:-

"1. Whether the lower appellate court has committed an error in non-suiting the appellant herein / plaintiff on the ground of non-joinder of parties without a specific issue having been framed to that effect?

2. Whether the finding of the lower appellate court that the appellant herein / plaintiff failed to prove either title or possession of the suit property is perverse?"

3. Heard the learned Senior Counsel appearing for the appellant. The learned Senior Counsel reiterated all the contentions set out in the memorandum of grounds and called upon this Court to answer the substantial questions of law in favour of the appellant and set aside the impugned judgment and decree and restore the decision of the trial court.

4. Per contra, the learned counsel appearing for the respondent submitted that the impugned judgment and decree do not call for any interference.

5. I carefully considered the rival contentions and went through the evidence on record.

6. As already pointed out, the suit is one for declaration and permanent injunction. The suit property has been described as comprised in Survey No.55/1 in Munneerpallam Village and measuring 1 acre and 25 cents on the southern side. A clear four boundary description has also been given. The plaintiff traces his title to the Will dated 06.09.1984 executed by his mother Ponnambala Thayammal. Under the said Will, the plaintiff was given 2 acres and 50 cents in the southern side of Survey No.55/1, Munneerpallam Village. However, the testatrix Ponnambala Thayammal had sold 1 acre and 25 cents on the northern half of the southern portion of Survey No.55/1 in favour of one Hariharasuthan under sale deed- Ex.A23 dated 23.08.2001. Ponnambala Thayammal had purchased the southern portion measuring 2 ½ acres from the sons of Gnanakkannu Nadar under sale deed- Ex.A2 dated 04.03.1975. The father of the said vendors had purchased 2 ½ acres from Ponnammai Nadathi under Ex.A1 dated 02.09.1929. The tracing of title of the appellant on the face of it is impeccable.

7. I have no doubt whatsoever in my mind that the appellant does have title over 1 acre and 25 cents of land in Survey No.55/1 in Munneerpallam Village. The only difficulty is the exact location and identification of the said 1 acre and 25 cents. When Ponnammai Nadathi sold 2 ½ acres in favour of Gnanakkannu Nadar under Ex.A1 dated 02.09.1929, what was sold was only undivided share in 5 acres



in Survey No.55/1. But, when the legal heirs of Gnanakkannu Nadar sold 2 ½ acres in favour of Ponnambala Thayammal under Ex.A2 dated 04.03.1975, the property sold had definite boundaries. In other words, the southern half of Survey No.55/1 was sold to Ponnambala Thayammal. There is evidence to show that Ponnammal Nadathi had sold the other 2 ½ acres in favour of Nallathambi Nadar. The said Nallathambi Nadar had two sons namely Kovilpillai Nadar and Deva Iraka Nadar. Kovilpillai Nadar sold 1.25 acres in favour of his brother Deva Iraka Nadar under Ex.A17 dated 19.03.1952. A careful perusal of Ex.A17 would show that Kovilpillai Nadar sold only undivided share in favour of Deva Iraka Nadar. But Deva Iraka Nadar sold 2 ½ acres (1.25 acres inherited from his father Nallathambi Nadar and the remaining 1.25 acres purchased from his brother Kovilpillai Nadar) in favour of one Francis Xavier under Ex.A18 dated 08.11.1971 with definite boundaries. Francis Xavier appears to have purchased the northern half portion of Survey No.55/1. If the matters had remained thus, there would not have been any difficulty.

8. What had complicated the issue was sub dividing of Survey No.55/1 and issuance of separate patta some time in the year 1985. Survey No.55/1 was sub divided into 55/1A, 55/1B & 55/1C. Ponnambala Thayammal was given patta for survey No.55/1B. Francis Xavier was given patta only for 1.25 acres in Survey No.55/1A. The defendant congregation was given patta for Survey No.55/1C. While Survey No.55/1A and Survey No.55/1C each measured only 1.25 acres, Survey No.55/1B measured 2 ½ acres. It appears that Ponnambala Thayammal raised her objections regarding the sub dividing. But the request appears to have been rejected. It is not known as to why Ponnambala Thayammal did not file a suit then and there. Be that as it may, even though as per Ex.A18, Francis Xavier appears to have purchased 2 ½ acres, it is not known as to why he kept quiet, though the patta issued in his name was confined only to 1.25 acres on the northern side. The defendant traces their title under Ex.B2 dated 17.09.1958. One Konathu Ali Tharaganar had sold 1.25 acres of undivided share in Survey No.55/1 in favour of the defendant congregation. He in turn purchased the undivided share of 1.25 acres in the very same survey number from one Ponnammal Nadathi under Ex.B1 dated 06.05.1946. It is admitted by the defendant that the executant of Ex.B1 and the executant of Ex.A1 dated 02.09.1929 though having the same name are not different persons. This adds to further confusion.

9. In my view, even though the plaintiff had convincingly established his title over 1.25 acres in Survey No.55/1, he ought to have impleaded all the other stake holders in the undivided Survey No.55/1. In other words, apart from the defendant congregation, he should have impleaded Hariharasudhan and Francis Xavier and the purchasers from Hariharasudhan and Francis Xavier. The defendant could have also prayed for the relief of demarcation.



10. The first appellate court ought to have remanded the matter, instead of dismissing the suit in toto. Since the title of the plaintiff over 1.25 acres is so apparent and evident, I set aside the impugned judgment and decree passed by the first appellate court and remand the matter to the file of the trial court. The appellant is permitted to file an amendment petition for impleading the other stake holders and also for adding the relief of demarcation. The trial court is directed to allow the same. The defendant is also permitted to file an additional written statement. Since the suit is of the year 2008, the trial court is directed to conclude the trial itself on merits and in accordance with law within a period of nine months after the proposed defendants enter appearance. The parties herein shall appear before the trial court on 22.04.2022. Registry shall dispatch the records to the file of the trial court immediately. The second appeal is allowed on these terms. No cost.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

- 1.The Additional Subordinate Judge, Tirunelveli.
- 2.The Principal District Munsif, Tirunelveli.

Copy To

The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.(2 copies)

+1 CC to M/s.P.THIYAGARAJAN, Advocate SR-15505[F] dated 30/03/2022

Judgment made in
S.A.(MD)No.893 of 2010
29.03.2022

KMK(CO)

TR(19.04.2022) 4P 6C