



S.A.(MD) No.909 of 2010

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.08.2022

CORAM : JUSTICE N.SESHASAYEE

S.A.(MD) No.909 of 2010

1.Muniandi
2.Muthuchamy
3.Sathiah (Died) ... Appellants 1 to 3/Appellants/
Plaintiffs
4.Gomathi
5.Babitha
6.Kavitha
7.Chandru ... Appellants 4 to 7/
LRs of deceased 3rd Appellant

*[Appellants 4 to 7 – Brought on record as LR's of the deceased
3rd appellant vide order dated 01.02.2022 made in C.M.P.(MD)
Nos.6238 to 6240 of 2021 in S.A.(MD) No.909 of 2010]*

Vs

1.Sulochana
2.Boominathan ... Respondents/Respondents/
Defendants

Prayer:- Appeal filed under Section 100 of Civil Procedure Code to set aside the judgment and decree dated 24.08.2010 made in A.S.No.18 of 2010 on the file of the Sub Court, Paramakudi, confirming the judgment and decree dated 30.10.2009 made in O.S.No.123 of 2008 on the file of District Munsif Court, Paramakudi.



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For Appellants : Mr.S.Srinivasa Raghavan
For Respondents : Mr.Gomathisankar for R1
: No appearance for R2

J U D G M E N T

The plaintiffs, who have been successively unsuccessful both before the trial Court in their suit in O.S.No.123 of 2008 on the file of the District Munsif Court, Paramakudi, and also in their first appeal in A.S.No.18 of 2010 on the file of the Sub Court, Paramakudi, are the appellants 1 to 3 herein. Pending the appeal, the third appellant has died and his legal representatives were brought on records as appellants 4 to 7. For narrative convenience, the parties are referred to by their rank before the trial Court.

2. The plaintiffs claim title to a vacant site having an extent of 2850 sq.ft. in Natham S.No.316 of Peeyanendhal Village, Paramakudi Taluk, obtained by their father Karuppiyah vide Ext.A.1-sale deed, dated 15.06.1987 executed by certain Alli and another Neelakandan. On the demise of Karuppiyah, the property devolved on the plaintiffs and when they faced certain threat to their possession from the defendants, they laid the suit.



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3. The defence was that the property was a natham poramboke property and it was sub-divided and assigned to the defendants vide Ext.B1 to Ext.B3-assignment, dated 27.10.2006.

4. The suit went to trial and both sides adduced oral and documentary evidences. And both the Courts below concurrently accepted Ext.B.1 to Ext.B.3-assignment, dated 27.10.2006 and dismissed the suit. Hence, the second appeal. The appeal is not yet admitted and only notice was ordered to the respondents.

5. Heard both sides.

6. The learned counsel for the appellants made a valiant attempt to stress the point that the property being a natham property, there would not be any document of title and that the Government was wrong in assigning a property in favour of the defendants without notice to the plaintiffs or their predecessor in title, and that the Courts below have erred in relying on Ext.B.1 to Ext.B.3 to supersede the effect of Ext.A.1.



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7. This Court is not convinced about the submission of the learned counsel for the appellants for the reason that the pleading rooted in Ext.B.1 to Ext.B.3, the plaintiffs ought to have challenged the aforesaid assignment made by the Government. In the absence of the Government in the party array, it may not be appropriate to rely exclusively on Ext.A.1-sale deed dated 15.06.1987. More significantly, the plaintiffs have not examined any of the executants of Ext.A.1 in order to ascertain the quality of title they possessed.

8. In fine, this Court does not find merit in this Second Appeal and the same is dismissed. The plaintiffs, however, may challenge Ext.B.1 to Ext.B.3-assignment within the frame work of law, if they are so desirous. No costs.

01.08.2022

Internet:Yes
Index:Yes/No

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To

1.The District Munsif Court,
Paramakudi.

2.The Sub Court,
Paramakudi.



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N.SESHASAYEE, J.

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