



S.A.(MD) No.280 of 2012

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.11.2022

CORAM : JUSTICE N.SESHASAYEE

S.A.(MD) No.280 of 2012

and

M.P.(MD) No.2 of 2012

and

C.M.P.(MD) Nos.3027 of 2017 and 916 & 918 of 2020

Krishnan

... Appellant/1st Respondent/
Plaintiff

Vs

1.Baluchamy (Died)

... 1st Respondent/Appellant/5th Defendant

2.Rajangam

3.Leelavathi

4.Peri. Krishnan

5.Aru. Krishnamoorthi

... Respondents 2 to 5/

Respondents 2 to 5/Defendants 1 to 4

6.Meenakshi

7.Maheswari

8.Jeyamani

... Respondents 6 to 8

*[Respondents 6 to 8 were brought on record as LR's of the
deceased 1st respondent vide order dated 19.09.2022 made in
C.M.P.(MD) No.7180 of 2022 in S.A.(MD) No.280 of 2012]*

9.The State of Tamil Nadu,

Rep., by the District Collector,

Sivagangai District.

... 9th Respondent

*[R9 – suo motu impleaded vide order dated
04.11.2022 in S.A.(MD) No.280 of 2012]*



S.A.(MD) No.280 of 2012

Prayer:- Appeal filed under Section 100 of Civil Procedure Code to set aside the judgment and decree dated 12.01.2011 made in A.S.No.56 of 2010 on the file of the Sub Court, Sivagangai, reversing the judgment and decree dated 05.04.2010 made in O.S.No.51 of 2007 on the file of the District Munsif's Court, Sivagangai.

For Appellant	:	Ms.J.Anandhavalli
For Respondents	:	Mr.H.Arumugam for R6 to R8
	:	Mr.Vilavan Gothai
	:	Additional Govt. Pleader for R9
	:	No appearance for R2 to R5

J U D G M E N T

The plaintiff, who was successful before the trial Court in securing a decree for declaration of his title and for ancillary relief of prohibitory injunction in O.S.No.51 of 2007 on the file of the District Munsif's Court, Sivagangai, but having lost before the first appellate Court in A.S.No.56 of 2010 on the file of the Sub Court, Sivagangai, filed by the fifth defendant, has come forward with the present appeal.

2. The facts fall under very narrow compass and it can be summed up:

- The suit property is described as 2.39 acres of dry land in S.No.81/6B of Marathur Village, Sivagangai District.



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➤ According to the plaintiff, this property belonged to a certain Balu, son of Vellaichami Thevar and he was granted Ext.A.2-UDR Patta on 30.09.1985. The said Balu had executed Ext.A3-sale deed dated 17.01.2006 in favour of the plaintiff conveying the suit property to him, and that the plaintiff too has been issued with a patta.

As the plaintiff faced some threat to his title initially from defendants 1 to 4, he laid the suit for declaration of his title and for injunction.

3. These defendants entered appearance and filed their written statements wherein they contended that the property indeed belonged to a different Balu, son of Vellaichami Thevar, belonging to the same village and he is not the vendor of the plaintiff. Accordingly, the plaintiff impleaded the said Balu, son of Vellaichami Thevar, the one whom the defendants claim as the true owner of the property as the fifth defendant. The fifth defendant entered appearance and contended that the property originally was a poramboke property and that it was assigned to him vide Ext.B3, the proceedings of assignment, dated 30.06.1971.



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4.1 The matter went to trial and before the trial Court, the plaintiff examined himself as P.W.1 and he examined his vendor as P.W.2. He also examined two other witnesses as P.W.3 and P.W.4. The plaintiff had produced Ext.A.1 to Ext.A.20 of which, Ext.A2 and Ext.A3 have already been introduced. Substantial number of other documents are revenue documents. Ext.A19 and Ext.A20 are Court proceedings pertaining to the application taken out for impleading the fifth defendant. For the defendants, the second defendant examined herself as D.W.1, the third defendant was examined as D.W.2, the Village Administrative Officer was examined as D.W.4 and the fifth defendant was examined as D.W.5. The defendants also examined the brother of the plaintiff's vendor on their side as D.W.3. These defendants have produced Ext.B.1 to Ext.B.4 of which Ext.B.3 has already been introduced, and Ext.B.4 is a notice dated 23.02.1985.

4.2 On appreciating the evidence before it, the trial Court decreed the suit whereas the first appellate Court chose to reverse the decree of the trial Court. Hence, the second appeal at the instance of the plaintiff. The appeal



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was admitted for considering the following substantial question of law:

“Whether the Lower Appellate Court is right in law in dismissing the suit filed by the appellant ignoring the admission made by D.W.3?”

5. Heard the learned counsel for the appellant/plaintiff, the learned counsel for respondents 6 to 8/LRs of the deceased 5th defendant and the learned Additional Government Pleader for the State.

6. There are two Balu, both of whose father shared identical name Vellaichamy Thevar. One is the plaintiff's vendor and the other is the 5th defendant. The first endeavour of the learned counsel for the plaintiff is that the 5th defendant was known by the name Baluchamy, son of Vellaichamy Thevar and not Balu. However, the 5th defendant himself has entered the box and has produced Ext.B.3, a document of assignment of the suit property in his favour and also Ext.B.4, a notice issued to him to show cause as to why Ext.B.3 should not be cancelled. This show cause notice is dated 23.02.1985, and the plaintiff's vendor was granted patta on 30.09.1985. If in terms of Ext.B.4-show cause notice, the assignment granted to the 5th



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defendant was cancelled, then it may be possible for the revenue officials to issue Ext.A.2-patta to the plaintiff's vendor. But beyond Ext.B.4, there is hardly any material before this Court to ascertain whether the revenue officials proceeded to cancel Ext.B.3-patta issued to the 5th defendant. This is critical for a decision on this case.

7. In order this controversy could be shortened, this Court *suo motu* impleaded the State of Tamil Nadu, represented by the District Collector, Sivagangai as the 9th respondent. The learned Additional Government Pleader was also required to take notice on behalf of the State, and was required to place necessary information before the Court supported by necessary documents.

8. In deference to the direction of this Court, the learned Additional Government Pleader has filed his report dated 21.11.2022. But the report is hardly useful, as it did not provide the information required by this Court. Indeed the report runs tangentially dealing with 'A' register entries merely, and speaks nothing about Ext.B.4.



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9. Left with no option, this Court is now constrained to remand the matter back to the first appellate Court before which both sides are entitled to produce necessary oral and documentary evidence *vis-a-vis* Ext.B.4. The Court may also *suo motu* summon such document which it may consider necessary for a proper and final adjudication of the matter.

10. In conclusion, this Second Appeal is allowed, the judgment and decree dated 12.01.2011 made in A.S.No.56 of 2010 on the file of the Sub Court, Sivagangai, reversing the judgment and decree dated 05.04.2010 made in O.S.No.51 of 2007 on the file of the District Munsif's Court, Sivagangai, is set aside and the matter is remanded back to the Sub Court, Sivagangai. Both sides are required to appear before the Sub Judge, Sivagangai, on 12.12.2022. The Sub Judge, Sivagangai, is required to dispose of the matter within a period of four months from 12.12.2022. No costs. Consequently, connected miscellaneous petitions are closed.

Internet: Yes

23.11.2022

Index: Yes/No

Note: Issue copy on 06.12.2022.

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N.SESHASAYEE, J.

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To

- 1.The Sub Judge,
Sivagangai.
- 2.The District Munsif,
Sivagangai.
- 3.The District Collector,
Sivagangai District.
- 4.The Section Officer, VR Section,
Madurai Bench of Madras High Court,
Madurai.

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