



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A.(MD)No.955 of 2010

WEB COPY

1.S.Kughan

Arumughaperumal (died)

2.Govindammal

Jeyanthinathan (died)

3.Kannan

4.Shyamala

5.Shanthi

6.Minor Arumuga Sidhi

7.Minor Arumuga Abi ... Appellants / Respondents / Defendants
(Minors 6 & 7 are represented by their mother and natural guardian 5th appellant)

-Vs-

S.Mohanakumar ... Respondent / Appellant / Plaintiff

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree in A.S.No.133 of 2005 dated 29.04.2010 on the file of the 1st Additional Sub Court, Nagercoil, reversing the judgment and decree in O.S.No.144 of 2003, dated 22.09.2005 on the file of the Additional District Munsif Court, Eraniel.

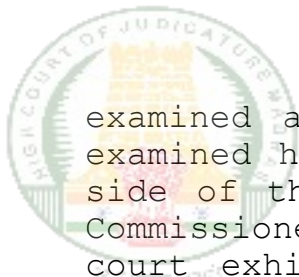
For Appellant : Mr.C.Godwin

For Respondent : Mr.P.Prabhakaran

JUDGMENT

The defendants in O.S.No.144 of 2003 on the file of the Additional District Munsif Court, Eraniel filed the second appeal.

2. During the pendency of the second appeal, the second appellant passed away and his legal heirs came on record. The suit was filed by the respondent herein for permanent injunction. The defendants filed written statement controverting the plaint averments. Based on the divergent pleadings, the trial court framed the necessary issues. The plaintiff examined himself as P.W.1 and his vendor Chellammal Nadachi as P.W.2 and one Ganapathy was



examined as P.W.3. Ex.A1 to Ex.A10 were marked. The defendant examined himself as D.W.1. One other witness was examined on the side of the defendant. Ex.B1 to Ex.B9 were marked. An Advocate Commissioner was appointed and his report and plan were marked as court exhibits 1 & 2. After consideration of the evidence on record, the trial court by judgment and decree dated 22.09.2005 dismissed the suit. Aggrieved by the same, the plaintiff filed A.S.No.133 of 2005 before the I Additional Sub Court, Nagercoil. By the impugned judgment and decree dated 29.04.2010, the decision of the trial court was reversed and the appeal was allowed and the suit came to be decreed. Challenging the same, this second appeal came to be filed. The first defendant and the legal heirs of the second defendant in O.S.No.144 of 2003 are the appellants in this second appeal. The second defendant died and his legal representatives came on record.

3. The second appeal was admitted on 21.12.2010 on the following substantial question of law:-

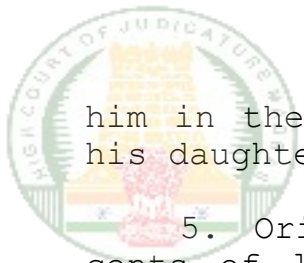
"1. Whether the lower appellate court is justified in law in granting a decree for injunction for three cents of land, whereas, the plaintiff's vendor had got only two cents of land under Ex.A2-partition deed?

2. Whether the lower appellate court is justified in law in granting a decree for injunction without considering the fact that under Ex.A2, the vendor of the plaintiff was not allotted a specific portion as her share and that there is no plea that subsequently her share was demarcated by metes and bounds?

3. Whether the lower appellate court has not committed an error in relying on the revenue sub-division effected without notice to the appellants?

4. Whether the finding of the lower appellate court is perverse in the light of the fact that she was allotted only two cents of land under Ex.A2-partition deed?"

4. The learned counsel appearing for the appellants reiterated all the contentions set out in the memorandum of grounds. He points out that the plaintiff claimed title and possession over the suit property on the strength of Ex.A1 sale deed dated 17.03.2003 executed by one Chellammal Nadachi in his favour. Chellammal Nadachi in turn derived her title only under Ex.A2-partition deed dated 25.05.1954 and Ex.B3-gift deed executed by Maya Neelan Nadar in her favour. He pointed out that a mere perusal of these documents would show that Chinnayan Nadar, Thankain Nadar & Maya Neelan Nadar who were brothers entered into a partition among them under Ex.A2. They had right over 1/6th share in 11 cents of land in old survey No.42/12. On account of partition, Maya Neelan Nadar has $\frac{1}{6}$ of 11 cents of land. What was allotted to



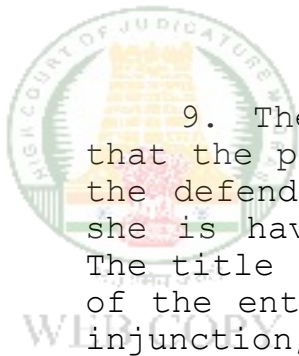
him in the partition was gifted by Maya Neelan Nadar in favour of his daughter Chellammal Nadachi under Ex.B3-gift deed.

5. Originally, Maya Neelan Nadar had only 5/8th share in 11 cents of land. While executing the gift deed, he purported to convey two cents of land. This enhancement was without any basis. When Chellammal Nadachi executed sale deed dated 17.03.2003 under Ex.A1 in favour of the plaintiff, two cents of land became three cents of land. That is why, the trial court rightly came to the conclusion that the plaintiff having sought permanent injunction over three cents of land had not established his title and possession and rightly non-suited him. According to the learned counsel for the appellants, the first appellate court did not come into close grips with the reasoning of the trial court and mechanically decreed the suit as prayed for by reversing the well considered decision of the trial court. He called upon this Court to answer the substantial questions of law in favour of the appellants and set aside the impugned judgment and decree and restore the decision of the trial court.

6. Per contra, the learned counsel appearing for the respondent submitted that no substantial question of law arises for consideration.

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

8. The suit property measures three cents of land and is comprised in Survey No.596/20 corresponding to old survey No.42/12 in Kadiapattinam Village, Kalkulam Taluk, Kanyakumari District and covered under Patta No.480. The learned counsel appearing for the appellants is right in his contention that Chellammal Nadachi while executing Ex.A1-sale deed dated 17.03.2003 in favour of the plaintiff did not convey title over the three cents of land. But then, the suit on hand is only for permanent injunction. In other words, the plaintiff only needed to prove his possession over the suit property. The plaintiff has marked Ex.A4-patta. The patta corresponds to the suit property. The plaintiff had also marked kist receipts Ex.A5, Ex.A6 & Ex.A7. Ex.A5, Ex.A6 & Ex.A7 are prior to the institution of the suit. Of-course, Ex.A7 is subsequent to Ex.A1. Ex.A6 is dated 08.03.2003, while the sale deed is dated 17.03.2003. It can be seen that Ex.A7 is in respect of three cents of land and corresponds to the suit property. On the other hand, the defendants have not filed any documentary evidence. They have not set up any rival claim over the suit property. If the defendants had set up any rival claim, then, certainly, the plaintiff might have been forced to claim the relief of declaration. But here, the defendants only pointed out certain defects in the plaintiff's case.



9. The first appellate court rightly came to the conclusion that the plaintiff had projected a better case compared to that of the defendants. Even in Ex.A1, Chellammal Nadachi has stated that she is having three cents of land based on title and possession. The title is over two cents of land, while possession is in respect of the entire three cents of land. Since the suit is one for mere injunction, since the plaintiff had proved his possession over the property and since the defendants have failed to establish any rival claim, the first appellate court rightly reversed the decision of the trial court. The substantial questions of law are answered against the appellants. The judgment and decree passed by the first appellate court is confirmed. The second appeal is dismissed. No cost.

Sd/-

Assistant Registrar(CS II)

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/ /2022

Sub Assistant Registrar(CS)

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To

1.The 1st Additional Sub Court, Nagercoil.

2.The Additional District Munsif Court, Eraniel.

Copy To

The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.P.PRABHAKARAN, Advocate (SR-12133[F] dated 15/03/2022)

+1 CC to M/s.C.GODWIN, Advocate (SR-12250[F] dated 15/03/2022)

Judgment made in
S.A.(MD)No.955 of 2010
15.03.2022

MK/19.04.2022/4P/7C