



S.A.(MD)Nos.447 and 448 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 07.07.2022

CORAM: JUSTICE N.SESHASAYEE

S.A(MD).Nos.447 and 448 of 2012

In S.A(MD).No.447 of 2012

Rajalakshmi

...Appellant/Appellant/Defendant

Vs

1. Rajmohan
2. Duraisamy Nadar (Died)
3. D.Jeyakumar
- 4.Najeshwari
5. Vellaiammal
- 6.Uma Maheshwari

... Respondents/Respondents/Plaintiffs

(R1, who is already on record, is recorded as LR of deceased R2 vide Court order dated 18.12.2020 made in CMP(MD).Nos.5547 and 5973 of 2020 in SA(MD).Nos.447 and 448 of 2012)

(R3 to R6 were impleaded Vide court order dated 18.12.2020 in CMP (MD) Nos. 5971 and 5974 of 2020 in SA(MD) Nos.447 and 448 of 2012)

Prayer : Second Appeal is filed under Section 100 of Code of Civil Procedure, against the judgment and decree in A.S.No.155 of 2006, dated 08.04.2010 on the



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file of the Subordinate Court, Tuticorin, confirming the judgment and decree in O.S.No.356 of 2004, dated 20.09.2006 on the file of the Additional District Munsif Court, Tuticorin.

In S.A(MD).No.448 of 2012

Rajalakshmi

...Appellant/Appellant/Plaintiff

Vs

1. Rajmohan
2. Duraisamy Nadar (Died)
3. D.Jeyakumar
- 4.Nageshwari
- 5.Vellaiammal
- 6.Uma Maheshwari

... Respondents/Respondents

(R1, who is already on record, is recorded as LR of deceased R2 vide Court order dated 18.12.2020 made in CMP(MD).Nos.5547 and 5973 of 2020 in SA(MD).Nos.447 and 448 of 2012)

(R3 to R6 were impleaded Vide court order, dated 18.12.2020 in CMP (MD) Nos. 5971 and 5974 of 2020 in SA(MD) Nos.447 and 448 of 2012)

Prayer : Second Appeal is filed under Section 100 of Code of Civil Procedure, against the judgment and decree in A.S.No.161 of 2006, dated 08.04.2010 on the file of the Subordinate Court, Tuticorin, confirming the judgment and decree in O.S.No.357 of 2004, dated 20.09.2006 on the file of the Additional District Munsif Court, Tuticorin.



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In both appeals:

For Appellants : Mr.M.P.Senthil
For Respondents : Mr.G.Prabhu Rajadurai (for R1)
R2 (died)

COMMON JUDGMENT

1.1 A certain Rajmohan and Thuraisamynadar joined to file O.S.No.153 of 1997 before the Subordinate Court, Thoothukudi for declaration of their title and for recovery of property along with an ancillary relief of injunction *vis-a-vis* the two items of suit properties. The defendant in that said suit later instituted O.S.No. 215 of 1997 before the Subordinate Court, Thoothukudi for declaration of her title and for injunction over the same property. Later, owing to change in the pecuniary jurisdiction of the civil Court, both the suits came to be transferred to the Additional District Munsif Court, Thoothukudi, where O.S.No.153 of 1997 was taken on record as O.S.No.356 of 2004 and O.S.No.215 of 1997 was taken as O.S.No.357 of 2004.

1.2 Both O.S.Nos.356 and 357 of 2004 came to be tried jointly and evidence was recorded in O.S.No.356 of 2004. On conclusion of trial, the trial Court decreed



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O.S.No.356 of 2004 and dismissed O.S.No.357 of 2004. Aggrieved by the same, the defendant in O.S.No.356 of 2004 , who is also the plaintiff in O.S.No.357 of 2004 preferred two separate appeals in A.S.No.155 of 2006 and A.S.No.161 of 2006. The first appellate Court concurred with the findings of the trial Court and dismissed both the appeals. Hence, these Second Appeals. For narrative convenience, the parties would be referred to by their rank in O.S.No.356 of 2004, the same way the trial Court has adopted.

2.1 The case of the plaintiffs may be briefly stated:

- Certain Chinnaraman was entitled to 57 cents of vacant plot in S.No. 483/22. On his demise, this property devolved equally on his two sons Karuppasamy Kudumpan and Vairava Kudumpan. There was an oral partition between the brothers in which Karuppasamy Kudumpan was allotted western 27 cents, and his brother Vairava Kudumpan was allotted the remaining eastern 30 cents.
- While so, on 28.10.1921 vide Ext.A.5, sale deed, Karuppasamy Kudumpan sold 18 cents out of his 27 cents to one Santhanamariyan, Michael and Marutheennadar. These three purchasers subsequently divided this plot of



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18 cents orally, in which Santhamariyan got 9.5 cents, and Michael and Marutheennadar jointly got 8.5 cents.

- Both Michael and Marutheennadar are said to have orally sold their 8.5 cents to one Velayuthanadar. On 02.07.1926 under Ext.A.6 Velayuthanadar sold 8.5 cents to Santhanamariyan. Santhanamariyan thus became entitled to the entire 18 cents covered under Ext.A.5, sale deed. The balance 9 cents still remained with Karuppasamy Kudumpan, the vendor under Ext.A.5.
- On 27.02.1933, Santhanamariyan executed Ext.A.7, sale deed, conveying his 18 cents to one Shanmugampillai. Even now, the balance 9 cents continue to remain with Karuppasamy Kudumpan.
- This Shanmugam Pillai is stated to have sold the 18 cents that he had purchased under Ex.A.7, to a certain Subburayulu Naidu.
- On 22.12.1995, the heirs of Karuppasamy Kudumpan sold the 9 cents that they had to the first plaintiff vide Ext.A.1, sale deed .

2.2 This Shanmugam Pillai is stated to have sold 18 cents and he had purchased under Ext.A.7, to a certain Subburayulu Naidu. While so, the purchase under



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Ext.A.3/Ext.A.4 taken together are stated to have sold 18 cents to certain Ramasamy. The details are not available. This leaves the balance of 12 cents, traceable to the branch of Vairavakudumpan. In the meantime, under Ext.A.10 dated 18.01.1989 Rajapandiya Nadar sold whatever share he has left in the balance in favour of the second plaintiff.

2.3 Moving to Vairava Kudumpan branch, as earlier stated, he was entitled to 30 cents. On his demise, the property devolved on his son, Madasamy. Madasamy's son is a certain Muniyasamy. While so, on 20.07.1966, under Ext.A.3 both Madasamy and Muniyasamy had sold their 30 cents to the second plaintiff and another Rajapandiya Nadar. While the property admittedly was blocked in Survey No.483/22 in Ext.A.3 sale deed, survey number was denoted as 483/23 and 483/24. Some 22 years later, on 08.01.1985 to be precise, Muniyasamy, one of the vendor of Ext.A.3, had executed Ext.A.4 rectification deed to correct the survey number of the property covered under Ext.A-3. It may be stated Madasamy, the co-executant of Ext.A.3, had passed away by then.



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2.4 To sum up the plaintiffs' case, it may be stated :

- ◆ The first plaintiff has title to 9 cents under Ext.A.1;
- ◆ Subburayulu Naidu has 18 cents based on the sale by Shanmugam Pillai, the purchaser under Ext.A.7;
- ◆ Ramasamy has 18 cents under sale from the second plaintiff, Rajapandiya Nadar; and
- ◆ The second plaintiff has 12 cents as a combined effect of Ext.A.3/Ext.A.4 and Ext.A.10. Of them, (a) and (b) exhausts Karuppasamy Kudumpan's branch (b) and (d) exhausts Vairavakudumpan's branch.

2.5 The plaintiffs faced challenge to their title from the defendant in the following manner:

- Santhana Mariyan's son Santhana Nadar had sold 18 cents to one Petchi Muthu Vide Ext.B.1, sale deed, dated 07.08.1981. This Petchi Muthu had now nominated a certain Muthu Naidu as his power of attorney, through whom he sold 5 cents under Ext.B.3 sale deed, dated 11.04.1989 to one Murugan and Manonmani. These purchasers of 5 cents again re-sold the property to Petchi Muthu Vide Ext.B.11, dated 09.10.1992. This implies



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that the said Petchi Muthu who is a purchaser under Ext.B.11, dated 09.10.1992 had sold 18 cents to the defendant vide Ext.B.2 sale deed dated 12.05.1995.

In short, quintessence of the plaintiffs' case is that after executing Ext.A.7, sale deed, dated 28.02.1933, Santhana Mariyan had no property left with him in Survey No.483/22 for his son Santhana Nadar to inherit, and that Ext.B.1, sale deed executed by Santhana Nadar in favour of Petchi Muthu and the subsequent sale in favor of the defendant under Ext.B.2 are incompetent.

2.6 Since on the strength of Ext.B.2 sale deed, the defendant had occupied 18 cents, the plaintiffs laid the suit. According to the plaintiffs the disputed 18 cents is since divided into 2 halves, of which, eastern 9 cents is claimed by the first plaintiff and western 9 cents is claimed by the second plaintiff. These plots are described in plaint in O.S.No.447 of 2012 as item Nos. 1 and 2 respectively. These two items are clubbed together and are described as the suit property in the other suit in O.S.No.448 of 2012.



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3. The dispute went to trial. Before the trial Court, on the side of the plaintiffs, P.W.1 to P.W.7 were examined and Ext.A.1 to Ex.A.36 were marked. On the side of the defendants, D.W.1 to D.W.3 were examined and Ext.B.1 to Ext.B.12 were marked. Appreciating both oral and documentary evidence, the trial Court and the first appellate Court have decreed the suit filed by the plaintiffs and dismissed the suit filed by the defendant.

4. If the line of reasoning when distilled to arrive to address the core point involved in these cases, both the Courts upheld that after sale by Santhana Mariyan all his 18 cents under Ext.A.7 sale deed, dated 28.02.1933, there is nothing that his son Santhana Nadar could inherit, and hence Ext.B.1, sale deed is incompetent and Ext.B.2, sale deed as well. Hence, these appeals.

5. The second appeals are admitted for considering the following substantial questions of law:

i) Whether the Courts below are correct in law in granting a decree in favour of the respondents by taking into consideration Ex.A.4, Rectification Deed dated 08.01.1985, which came into being only after 19



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years from the date of execution of Ex.A.3-Registered Sale Deed dated 20.07.1966?

ii) Whether the Courts below committed error in law in decreeing the suit filed by the respondents in O.S.No.356 of 2004 on the basis of Ex.A.9 even without adverting the appellant is not plaintiff in O.S.No.356 of 2004 and as such the bar under Order 9 Rule 9 of CPC will not attract, especially even otherwise the cause of action as well as the relief sought in the present proceedings in both the suits in O.S.Nos.356 and 357 of 2004 are entirely different than the earlier suit under Ex.A.9?

iii) Whether the Courts below have committed error in law in upholding the claim of the respondents absolutely in the absence of any iota of evidence to substantiate the possession or enjoyment of the property in S.No. 483/22C, prior to the dispute arose?

6. The learned counsel for the appellant argued:

a) The first plaintiff claimed 9 cents under Ext.A.1, sale deed, and he is none other than the son of the second plaintiff, who claimed to have obtained a power of attorney from the heirs of Karuppasamy Kudumban.



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But then the power of attorney document was not marked to show that he had the authority to execute Ext.A.1.

b) After execution of Ext.B.3 sale deed, the rectification deed was executed some 22 years thereafter, and in between the entire property was subdivided by the revenue authorities, and this had resulted in bringing out Ext.B.6 proceedings dated in 1981. If Ext.B.6 is the basis, then it does not reconcile with the title claimed by the second plaintiff under Ext.A.3 r/w Ext.A.4 and Ext.A10.

c) The plaintiffs introduced a certain Ramasamy as the purchaser of 18 cents from the vendors of Ext.A.3 and Ext.A.4, and it is not shown where his plot lies. In other words, the plaintiffs have not correctly identified the plot. It is a case where the trial Court ought to have appointed a Commission to identify the plot. But, this was not done.

7. Per contra, the learned counsel for the respondents argued that the plaintiff has come forward with the least complicated line of defence. According to her, one



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Petchi Muthu had purchased the property from Santhana Mariyan's sons under Ext.B.1, from whom, she has purchased the property under Ext.B.2. If Santhana Mariyan's sales to Shanmugam Pillai, Vide Ext.A.7 sale deed remains unimpeached, then, his son Santhana Nadar could not have any property to sell to Petchi Muthu, the vendor of the defendant under Ext.B.1 and supported the reasoning of the courts below.

8. After weighing the rival submissions and on perusing the records, this Court identifies not just one aspect but two aspects, the second of which even the Courts below appeared to have omitted to note. The first of two points, has been stated a few times and more succinctly by the counsel for the plaintiffs/respondents in his argument. The other aspect is what emerges out of a comparison of the boundaries of the plots sold under Ext.A.7, Ext.B.1 and Ext.B. 2. The boundaries in Ext.B.1 and Ext.B.2 are identical. As has been already narrated Vide Ext.A.7, 18 cents were sold by Santhana Mariyan to Shanmugam Pillai. The western boundary of this 18 cents is stated to be Vairava Kudumpan's property. This reconciles with the plaintiffs' narration of the case. After all, it is an admitted case that Vairva Kudumban was allotted the western 13 cents. It is not



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in dispute that Shanmugam Pillai had sold this 18 cents to certain Subburayulu Naidu. This sale deed is made available on record. But if Ext.B.1, under which Santhana Mariyan's son Santhana Nadar had purported to deal with a certain 18 cents, it shows Subburayulu Naidu's property as the western boundary and Madasamy and Muniyasamy's property as the owners of the eastern property. This implies that Santhana Nadar knew about the sale in favour of Subburayulu Naidu. But if this description taken along with Ext.A.7 is taken into account, then there cannot be any property between the properties purchased by Subburayulu Naidu and the property belonged to Vairava Kudumpan's branch represented by Madasamy and Muniyasamy. Therefore, the property covered under Ext.B.1 and Ext.B.2 are artificially created as if it lies between the property of Subburayulu Naidu and Madasamy and Muniyasamy's property.

9. From whichever angle the matter is approached, the defendant/appellant in SA(MD)No.447 of 2012 is found caught on the wrong foot. At this point, the learned counsel for the appellant submitted that at least an opportunity may be given to the defendants to re-negotiate with the plaintiff for purchase of whatever property that they could buy. The learned counsel for the respondents, however,



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submitted that his reading of his clients' mindset only indicate that they may not be amenable.

10. This Court considers that the game is in the mid-way stage and the execution of the decree is awaiting the plaintiffs. If at all, there is an element for compromise between the parties, the same can be done even at the later stage and during execution.

11. In the result, the appeals are dismissed and the judgment and decree passed in A.S.Nos.155 and 161 of 2006 on the file of the Subordinate Court, Thoothukudi dated 08.04.2010 confirming the judgment and decree passed in O.S.Nos.356 and 357 of 2004 on the file of the Additional District Munsif Court, Thoothukudi dated 20.09.2006 are confirmed. No costs.

07.07.2022

Index: Yes/No
Internet: Yes/No
Rmk/CM



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To,

1. The Subordinate Court, Tuticorin
2. The Additional District Munsif, Tuticorin.
3. The Recover Keeper, VR Section,
Madurai Bench of Madras High Court, Madurai.



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N.SESHASAYEE,J.

Rmk

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