



S.A.(MD).No.280 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

JUDGMENT RESERVED ON : 03.03.2022

JUDGMENT PRONOUNDED ON : 14..06.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

**S.A.(MD).No.280 of 2019
and
CMP(MD).No.5418 of 2019**

1.Samuthiram

2.Guruvaiah

...Appellants/Appellants
/Plaintiffs

(The appellants for themselves and on behalf of Nadar Community people of Chockalingapuram Village, Panaiyur Village, Majara, Sankarankovil Taluk)

Vs

1.Ammasi @ Shanmugiah Konar

2.Ramasamy Konar(died)
(Memo dated 28.06.2018 is recorded)

....Respondents/Respondents
/Defendants

(For themselves and on behalf of Yadhava Community People of Chockalingapuram Village, Panaiyur Village, Majara, Sankarankovil)

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PRAYER : Second Appeal is filed under Section 100 of C.P.C, to allow the second appeal and call for the records relating to the impugned judgment and decree passed by the Subordinate Judge, Sankarankovil in A.S.No.16 of 2013 dated 06.02.2015 confirming the judgment and decree passed by the Principal District Munsif, Sankarankovil in O.S.No.59 of 2010 dated 27.06.2013 and set aside the same and consequently allow the suit.

For Appellants : Mr.N.Dilipkumar

For R1 : Mr.R.J.Karthick

R2 : Died

JUDGMENT

The plaintiffs are the appellants.

2.The plaintiffs have filed O.S.No.59 of 2010 before the Principal District Munsif Court, Sankarankovil for the relief of declaration of title and permanent injunction over the second item of the suit schedule property. The suit was dismissed by the trial Court. The plaintiffs filed A.S.No.16 of 2013 before the Subordinate Court, Sankarankovil. The learned Subordinate Judge concurred with the findings of the trial Court and dismissed the first appeal. As against the same, the present second appeal has been filed by the plaintiffs.



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3.The plaintiffs have claimed that both items were originally belonged to one Yoseph Konar ancestrally. The said Yoseph Konar has executed a registered sale deed with regard to the first item under Exhibit A1 on 21.05.1956 in favour of the plaintiffs' Sangam. In the said property, the plaintiffs' community had dug a Well and also put up a surrounding wall and they have been enjoying the same by drawing water from the Well. The plaintiffs had further contended that the second item is located on the eastern side of the first item which was purchased by the plaintiffs' community under Exhibit A2 on 30.05.1958. According to the plaintiffs, both the items are located in Natham Kudiyruppu area and hence, the Government or local body have no right whatsoever over the said property. The plaintiffs had further contended that the plaintiffs and the people belonging to the plaintiffs' sangam are drawing water from the Well for their house hold requirements and also for the temple festival connected to the community. The plaintiffs had further contended that the last rites of the plaintiffs' community people being conducted near the Well. The defendants have no connection whatsoever with the suit schedule property, but they are objecting to the rights of the plaintiffs and hence, the present suit.



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4.The defendants had filed a written statement disputing Exhibits A1 and A2 sale deeds in favour of the plaintiffs' community. The defendants had further disputed the fact that the suit schedule property is Natham poramboke. The defendants have also disputed the exclusive right of the plaintiffs' community to draw water from the suit Well. According to the defendants, the suit schedule property namely Survey No.460/1 is a Manthai poramboke as per revenue records. In the said Manthai poramboke, the suit Well is located and the Well belongs to the Panchayat. The general public from all communities are drawing water from the said Panchayat Well. The defendants have further contended that there is no survey number in Exhibit A1 or A2 and hence, those documents cannot be related to the suit schedule property. According to the defendants, the Government as well the local body is a necessary party and the present suit is bad for non joinder of necessary party.

5.The trial Court mainly relied upon the Commissioner's report in Exhibits C1 to C3 to arrive at a finding that the suit Well is located in Survey No.463 and not in suit Survey No.460/1. The trial Court further



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found that as per Commissioner's report, the entire suit schedule properties are located only in Survey No.460/3. The trial Court further found that since there is no Survey number in Exhibit A1 or A2, the said document cannot be said to be connected with the suit schedule property. The trial Court further found that there is no documentary evidence whatsoever on the side of the plaintiffs to establish the fact that the plaintiffs' community have purchased the suit survey number and they are in exclusive enjoyment of the suit schedule property. However, the trial Court found that neither the State Government nor the local authorities are necessary parties to the suit. Based on the said findings, the suit was dismissed by the trial Court.

6.The First Appellate Court considered the deposition of DW1 to arrive at a finding that the defendants have admitted the four boundaries found in Exhibits A1 and A2. However, the First Appellate Court held that there is no proof whatsoever that the suit survey number was purchased by the plaintiffs' community under Exhibits A1 and A2. The First Appellate court further found that the entire burden is upon the plaintiffs to establish that the suit survey numbers have been purchased by them under Exhibits



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A1 and A2 by relying upon other documents, when the survey numbers are not found in Exhibits A1 and A2.

7.The First Appellate Court further found that as per Commissioner's report in Exhibit C3, Survey No.463 has been classified as Sarkar Poramboke. The Commissioner's report also indicates that the four boundaries as reflected in Exhibits A1 and A2 squarely fall within Survey No.463 and hence, not in Survey No.460/1 as contended by the plaintiffs. When the suit schedule property falls within river bed, the question of granting title or permanent injunction in favour of the plaintiffs does not arise. Based upon the said findings, the First Appellate Court, dismissed the appeal after confirming the judgment and decree of the trial Court. As against the same, the present second appeal has been filed.

8.The second appeal has been admitted on the following substantial questions of law:

“(i)Whether the operation of the Indian Evidence Act, particularly, proviso to Section 68 and Section 90 had been properly appreciated and had the appellant proved Exhibits A1 and A2?



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(ii) Whether the Courts below were correct in rejecting the relief for declaration and injunction when the title of the plaintiff's was accepted as per the suit schedule properties mentioned in the sale deed marked as Ex.A1 and Ex.A2?

(iii) Whether any reliance can be placed upon the report and plan submitted by the Advocate Commissioner without the same being marked in the prescribed manner and without examining the said advocate Commissioner?

(iv) Whether the findings of the Courts below that the suit Well is situated in S.No.463 and not in S.No.460/1 in the absence of any evidence as legally sustainable?"

9.The learned counsel for the appellants had contended that the plaintiffs have established the fact that the plaintiffs' community have purchased the suit items 1 and 2 through Exhibits A1 and A2 sale deeds. He had further contended that the other side have not produced any document whatsoever nullifying to establish the fact that the plaintiffs' community is not entitled to the suit schedule property. The only contention that was put forward by the defendants is that the suit schedule property is a Manthai poramboke and the Well in the suit property belongs to Panchayat and not to the plaintiffs' community. The learned counsel had also pointed out that the defendants have not made any rival claim for their community in the suit



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schedule property. He had further contended that DW1 had categorically admitted in his deposition that the four boundaries of the suit schedule property tally with the boundaries mentioned in Exhibits A1 and A2. He had further contended that the Commissioner's report cannot be a guiding factor for deciding the suit. But, the trial Court as well as the First Appellate Court have decided the title of the plaintiffs based upon the commissioner's report. The learned counsel for the appellants had further contended that the plaintiffs have filed an objection to the Commissioner's report and the same has not been considered by the Courts below. When both the Courts below have arrived at a finding that the Government and local body is not a necessary party, the Courts below ought to have granted a decree to the plaintiffs based upon Exhibits A1 and A2. He had further contended that the dispute is only interse with the plaintiffs and the defendants with regard to the title and possession of the suit schedule properties and the Courts below have fixed the title on a third party to the suit namely the Government or local authority. Hence, he prayed for allowing the second appeal.

10.Per contra, the learned counsel for the respondents had contended that when the plaintiffs have filed a suit for declaration of title,



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entire burden is upon them to establish the same. In the present case, except Exhibits A1 and A2 sale deeds, no other document has been produced on the side of the plaintiffs to establish their title or possession. In fact, there are no survey number in Exhibits A1 and A2 to correlate the same with the survey number namely 460/1. Though the plaintiffs claimed that the suit schedule properties have been purchased in the year 1956-1958, no revenue records have produced on the side of the plaintiffs for more than 40 years. He had further contended that the Well that is located in Survey No.463 belongs to the Panchayat and it is being used by all community people and the same is maintained by the Panchayat. He had further contended that the Courts below have rightly arrived at a finding that the plaintiffs have not established their title over the suit schedule property. Since no question of law arises, the second appeal may be dismissed.

11.I have given careful consideration to the submissions made on either side.

12.It is the specific case of the plaintiffs that the plaintiffs' community has purchased the suit items 1 and 2 under Exhibits A1 and A2 sale deeds.



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The defendants have specifically disputed these two documents in their written statement. However, the defendants are not making any rival claim to the said property. Moreover the objection of the defendants in the written statement relates to the Well said to be located in a portion of survey No. 460/1.

13.The defendant have contended that the Well has been maintained by the Panchayat and it is being used by the people belonging to all communities and it is a public Well. On the other hand, the plaintiffs have claimed that the Well located in their private property and it is in exclusive enjoyment of the plaintiffs' community. However, on the side of the plaintiffs, no oral or documentary evidence has been placed on record to establish the fact that the Well exclusively belongs to the plaintiffs community.

14.In the deposition, DW1 has categorically admitted that the four boundaries in Exhibits A1 and A2 tally with the suit schedule property. The Courts below have also arrived at a concurrent finding that the Government or local body is not a necessary party to the suit .



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15.Both the Courts below have mostly relied upon the Advocate Commissioner's report namely Exhibits C1 and C3 to arrive at a conclusion that the suit schedule properties are not located in Survey No.460/1, but only in 463. Except the Commissioner's report, no other document has been produced on the side of the defendants to decide the title of the plaintiffs with regard to the properties that are purchased under Exhibits A1 and A2. No rival document has been placed on the side of the defendants. It is also not the case of the defendants that the property acquired under Exhibits A1 and A2 are different from that of the suit schedule property. A perusal of Exhibits A1 and A2 would show that the southern boundary of both items of the properties are Nitcheba Nathi. Hence, it is clear that the properties that are located on the north of Nitcheba Nathi have been purchased by the plaintiffs' community under Exhibits A1 and A2. The commissioner's report which indicates that the boundary recitals in Exhibits A1 and A2 are lying within Survey No.463. (river bed) may not be correct. The southern boundary has been specifically mentioned as Nitcheba Nathi in Exhibits A1 and A2. Only north of the said river, properties have been purchased by



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the plaintiff. The commissioner's report may not be correct to the fact that the plaintiffs' property is now located in Survey No.463 which is a river bed.

16.The Commissioner's report has specifically found that the Well in dispute is located in the river bed and the same is being used by general public. There is also no evidence on the side of the plaintiffs that the Well is exclusively used by the plaintiffs' community. In view of the above said discussion, we can safely come to a conclusion that the Well does not fall within the sale deeds namely Exhibits A1 and A2 and the same is located in the river bed. Hence, the plaintiffs cannot claim any title or possession or enjoyment of the suit Well exclusively.

17.However, the plaintiffs through Exhibits A1 and A2 they have established the title over the suit schedule property. The defendants in their depositions have also admitted that the boundary recital in Exhibits A1 and A2 tally with the suit schedule property. The only ground on which the Courts below rejected the prayer for declaration of title is based upon the Commissioner's report. As already held, the southern boundary in Exhibits



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A1 and A2 have not been properly appreciated by the Courts below and they have solely relied upon the Commissioner's report to non suit the plaintiffs. The commissioner's report cannot be a deciding factor to decide about the title of the suit schedule property, especially when the boundary recitals are very clear in Exhibits A1 and A2. Hence, the findings of the Courts below with regard to the declaration of title and possession suffers from infirmity and they are liable to be set aside.

18.In view of the above said discussions, the substantial questions of law are answered in favour of the appellants. The plaintiffs shall be entitled to a decree for declaration of title and permanent injunction with regard to both the suit items excluding the Well mentioned in the suit first item. The second appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

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To

- 1.The Subordinate Judge, Sankarankovil
- 2.The Principal District Munsif
Sankarankovil
- 3.The Section Officer
V.R.Section
Madurai Bench of Madras High Court
Madurai



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R.VIJAYAKUMAR,J.

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Pre-delivery Judgment made in
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