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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.11.2022

CORAM : JUSTICE N.SESHASAYEE

S.ANo.1452 of 1994

1. C.K.Muniyandi Ambalam (died) .. Appellant/Appellant/Defendant
2.M.Pandian
3.M.Krishnan (died)
4.M.Karuppiah (died) ... Appellants 2 to 4/LRs of the 1st appellant
5.Rani @ Eswari
6.M.K.Chinnasamy
7.Sasikala
8.M.Angupriya ...Appellants 5 to 8/LRs of the deceased 4th appellant
9. Indirani
10. Manikandan
11.Kannan
12. Petchiammal ..Appellants 9 to 12/LRs of deceased 3rd appellant

(Appellants 2 to 4 are brought on record as LRs of the deceased first appellant as per the order of the Court dated 11.07.2011 made in C.M.P. Nos. 3951 to 3953 of 2009)

(Appellants 5 to 8 are brought on record as LRs of the deceased 4th appellant Vide Court order dated 10.11.2022 made in C.M.P(MD)Nos.9575 to 9577 of 2010 and 9591 to 9593 of 2019 and C.M.P(MD)No.322 of 2021 in SA.No.1492 of 1994 by NSSJ)

(Appellants 9 to 12 are brought on record as LRs of the deceased 3rd appellant Vide Court order dated 28.03.2022 made in C.M.P(mD)Nos.9594, 9585 and 9586 of 2019 in SA.No.1452 of 1994 by RTJ)

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Vs.

S.K.Muniyandi (died) ... Sole Respondent/Respondent/Plaintiff
2.M.Malaisamy
3.M.Duraisamy (died) ..Respondents 2 & 3/LRs of the sole respondent
4. Pechiammal
5.Gunasundari
6.Gunashanthi
7.Gunamathi
8.Gunabalan ..Respondents 4 to 8/Lrs of deceased 3rd appellant
9.V.Pandiselvi
10.Sathiya
11.K.Pugalenthi ...Respondents 9 to 11/Lrs of the sole respondent

(Respondents 2 and 3 are brought on record as LRs of the deceased sole respondent Vde Court order dated 10.11.2022 made in C.M.P(MD)Nos. 9575 to 9577 of 2019 and 9591 to 9593 of 2019 and C.M.P(MD)No.322 of 2021 in SA.No.1452 of 1994)

(Respondents 4 to 8 are brought on record as Lrs of the deceased 3rd respondent ide Court order dated 10.11.2022 made in C.M.P(MD)No.322 of 2021 in SA.No.1452 of 1994 by NSSJ)

(Respondents 9 to 11 are brought on record as LRs of the deceased sole respondent Vide Court order dated 21.11.2022 made in C.M.P(MD)No. 107779 of 2022 in SA.No.1452 of 1994 by NSSJ)

Prayer:- Second Appeal is filed under Section 100 of Civil Procedure Code to set aside the judgment and decree dated 11.03.1994 made in A.S.No.111 of 1992 on the file of the District Judge Court, Sivaganga confirming the judgment and decree dated 17.11.1992 made in O.S.No.91 of 1992 on the file of the District Munsif Court, Manamadurai.

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For Appellants : Mr.V.Meenakshi Sundaram
for Mrs.S.Prabha

For R2 : Mr.Raghuvaran Gopalan
for Mr.G.Mohan Kumar

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J U D G M E N T

The defendant in O.S.No.91 of 1992 on the file of the District Munsif Court, Manamadurai (originally O.S.No.96 of 1989 on the file of the District Munsif Court, Sivagangai) is the appellant herein.

2. The suit was laid for declaration of the plaintiff's title and for ancillary relief of injunction. The suit came to be decreed and the defendant lost his first appeal in A.S.No.111 of 1992. Hence, this appeal.

3. The facts commence with a single line admission but later it differs as below:

- The suit property is described as the western 7.585 acres in S.No. 248/2 of Arasanoor Village. According to the plaintiff, S.No.248/2 has a total extent of 9.10 acres. In the settlement, this property came

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to be registered in the name of the plaintiff and one Karuppannan, s/o one Mookapuri.

- According to the plaintiff, the entire extent of 9.10 acres was divided equally between the plaintiff's branch and the aforesaid Karuppannan's branch in which the plaintiff became the holder of western 4.55 acres and Karuppannan became entitled to the eastern 4.55 acres. Ext.A.1 to A.4 tax and kist receipts show that the property stood the way it was indicated above between the plaintiff and the aforesaid Mookapuri.
- Besides Karuppannan referred to above, Mookapuri had another son Veerannana and the share of Mookapuri devolved on his two children after his demise. Accordingly, Karppannan and Veerannnan became entitled to 2.275 acres each.
- Karuppannan had 3 sons namely, Ramasamy, Subramani and Mookkan. Veerannnan had a daughter, Iyyammal. The plaintiff contends that Karuppannan's 2.275 acres devolved equally on his 3 sons with each obtaining 76 cents. The entire share of Veerannnan devolved on his daughter Iyammal. While so, the plaintiff had

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purchased the entire share of Iyyammal (Veerannan's branch) measuring 2.275 acres under Ext.A.6 sale deed dated 06.06.1978. On the same date, he had also purchased 76 cents from Subramani (one of the sons of Karuppannan referred to above) under Ext.A.7 sale deed. Thus, he claims whole of 4.455 acres + an additional extent of western 3.035 acres in S.No.248/2.

4. The case of the defendant is that the property was originally held between Mookapuri and one Periya Karuppannan. The defendant also admits Mookapuri became entitled to the eastern 4.55 acres and Periya Karuppannan became entitled to western 4.55 acres. On the demise Periya Karuppannan, the property devolved on his daughter Karuppi. After her demise, it devolved on Karuppi's son, the defendant herein.

4.1 So far as Mookapuri's share is concerned, while the defendant admits Mookapuri had 2 sons Karuppannan and Veerannan, he would plead that in a family partition, the entire 4.55 acres came to be allotted to the share of Karuppannan. Accordingly, on demise of Karuppannan, his property

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devolved equally on his 3 sons namely, Ramasamy, Subramani and Mookkan and each will have 1.52 acres, contrary to 76 cents as pleaded by the plaintiff.

4.2 While so, the defendant had purchased 1.52 acres belonging to Ramasamy and Mookkan Vide Ext.B.1 and Ext.B.2 sale deeds dated 20.05.1978 and 21.05.1978 respectively. Though Ext.B.1 was executed on 20.05.1978, it was registered on 07.09.1978. Similarly, Ext.B.2 was executed on 21.05.1978 but it was registered on 08.09.1978.

5. The dispute went to trial and before the trial court, both sides adduced oral and documentary evidence. For the plaintiff, the plaintiff examined himself as P.W.1 and examined one Kakkammal as P.W.2. For the defendants, the defendant examined himself as D.W.1 and examined one Sundarrajan as D.W.2. The trial court decreed the suit granting declaration and injunction for the suit property. When the matter reached the First Appellate Court, the judgment of the trial court is confirmed. Hence, the defendant has filed the present Second Appeal.

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6. This Second Appeal was admitted for considering the following questions of law:

i)Whether the lower appellate court was justified in confirming the judgment and decree of the trial court by dishoarding the evidence such as the statutory proceedings starting from the Tahsildar's order, culminating in the District Revenue Officer's order, which were marked as Ext.B.3, B.6 and B.7?

ii) Whether the lower appellate court was correct in declaring the title and possession of the property in favour of the plaintiff on the basis of the oral evidence of P.W.2 who herself admitted that the property was already sold thirty years ago and especially when she failed to produce the alleged partition deed between her three sons?

iii) Whether the lower appellate court was correct in granting the relief of declaration and injunction against the co-owner when both the parties admit joint possession?

7. The twin issues that face this Court are:

(a) whether Periya Karuppannan under whom the defendant

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claims right, possessed that kind of title, the defendant asserts? and

(b) whether Veerannan's daughter was denied any share in the properties of Mookapuri?

8. Both the trial Court and the First Appellate Court essentially relied on Ext.A1 to Ext.A5 and Ext.A.12 to negate the contentions of the defendant. Survey No.248/2 which is involved in this litigation admittedly was an estate land. Prior to the Tamil Nadu Estates (Abolition and Conversion into Rytowari) Act 26 of 1948, kist receipts were issued vide Ext.A1 to Ext.A4 in favour of the plaintiff and Mookapuri under Patta No.102. Post Tamil Nadu Estates (Abolition and Conversion into Rytowari) Act and the settlement thereunder, Ext.A5, patta was issued under Patta No.952 in favour of the plaintiff and Mookapuri's son Karuppannan. Ext.A.12 provides corresponding patta number prior to settlement and post settlement. The Courts below found that these documents preponderate a very strong probability of the plaintiff's case and found against the defendant's case.

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9. This Court in absolute concurs with the findings of the trial Court and accordingly, rejects the claim of the defendant to the western 4.55 acres in Survey No.248/2.

10. Turning to the eastern half, the defendant claims title to 3.04 acres under Ext.B1 and Ext.B2. There was some discussion in the judgments of the Courts below *vis-a-vis* the time of the registration. Whether the sale deed will take back to the date of execution? This Court for the reasons to be stated finds that this investigation may not be necessary. It is not in dispute that Mookapuri had two sons namely Karuppannan and Veerannan. Unless it is proved otherwise, both Karuppannan and Veerannan would be entitled to the entire extent of 4.55 acres which their father possessed in equal shares and to disappoint the defendant, Karuppannan's wife who was examined as P.W.2 speaks to the fact that Veerannan also enjoyed the property equally with her husband. Necessarily, Veerannan would be entitled to 2.275 acres. Once it is established that Veerannan did have 2.275 acres, necessarily it would devolve on his daughter, Iyyammal on the former's demise. This would leave Karuppannan's branch only with 2.275 acres. As indicated

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earlier, this would be divided into three shares and the plaintiff had already purchased one share equivalent to 76 cents from one Subramaniyan under Ext.A.7. This leaves a combined total extent of 1.52 acres with the other two sons of Karuppannan and the vendors under Ext.B.1 and Ext.B.2 are the two sons of Karuppannan. It would necessarily mean that the defendant would be entitled to 1.52 acres on the eastern 4.55 acres. Thus, the defendant would be free to demarcate on lie.

11. The defendant is now dead and his heirs are the appellants herein and they are now free to have their 1.52 acres in the eastern 4.55 acres in Survey No.248/2 in the manner that law knows and approves.

12. Effectively, as on date, only the plaintiff and the defendant have shares and the plaintiff has already had his title declared for the western 7.585 acres. This would necessarily imply that whatever that remains to the east of the western boundary of the plaintiff should be the appellants' property. The only thing is identifying the dividing line and if it is not properly identified, the defendant need not even approach the Court but only need to go for a

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survey to fix the boundaries.

13. In conclusion, this Court does not find any merit in the appeal and the same is dismissed. No costs.

25.11.2022

CM/ssb

To
1.The District Judge Court, Sivagangai.

2.The District Munsif Court, Manamadurai.

3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

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N.SESHASAYEE, J.

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