



S.A.No.24 of 2001

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.01.2023

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.24 of 2001

1.Muthusamy (Died)

2.S.Arunraj

...Appellants

Vs.

1.Pachamuthu Ammal (Died)

2.Rathinasamy

3.Venkatachalam (Died)

4.Jeevanesan

...Respondents

(R4 brought on record as LR of the deceased R1 vide order dated 02.01.2020 made in C.M.P.No.19293 of 2005 in S.A.No.24 of 2001)

(R3 died given up vide order dated 12.02.2020 made in S.A.No.24 of 2001)

(A1 died, A2 b/r as LR of the deceased A1 vide order dated 22.09.2022 made in C.M.P.Nos.14088, 14089 & 14091 / 2022 in S.A.No.24 of 2001)



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Prayer: Second Appeal is filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree of the Additional Subordinate Court, Nagapattinam passed in A.S.No.44 of 1999 dated 22.06.1999 reversing the Judgement and Decree of the District Munsif, Nagapattinam passed in O.S.No.205 of 1994 dated 26.06.1997.

For Appellants : Mr.M.Devandran

For Respondent 4 : Mr.T.Girish

For Respondents
1 to 3 : Died.

JUDGMENT

The 1st plaintiff is the appellant before this Court challenging the Judgement and Decree passed by the Additional Sub Judge, Nagapattinam in A.S.No.44 of 1999 in and by which the learned Judge has reversed the Judgement and Decree passed by the learned District Munsif, Nagapattinam in O.S.No.205 of 1994. The brief facts which



are necessary for considering the above Second Appeal is herein below set out and the parties are referred to in the same rank as before the Trial Court.

2. The plaintiffs had filed the suit O.S.No.205 of 1994 for a declaration of their title to the suit property and for a consequential injunction restraining the defendants, their agents or servants from disturbing the peaceful possession and enjoyment of the 1st plaintiff in any manner. The suit property has been described as follows:

“In Nagapattinam Quaid Mill the Dist., do-Regn. Dist; Nagapsttinam Joint Registry in Nagapattinam Taluk, In South Poigainallur vattam and village the cultivable Punja land covered by R-S-No.03/211, the extent of 8-1/3 cents situate in the southern most portion of the Survey Number east of the road south of the land of the 2nd plaintiff, North of the other lands of the first plaintiff, west of the land of 2nd plaintiff (the above extent includes the subject matter of land in O.S.No.237/90 on the file of this

Hon'ble court and included the portion marked ABHI in on extent of 900 sq.ft said to be situate in R.S.No.83/2, now covered by [R.s.No.](#) 83/34 with boundaries, east of the road north of the land of the 1st plaintiff; south of the land of the 2nd plaintiff, and west of the lands of the defendants).

3. It is the case of the plaintiffs that the 2nd plaintiff had purchased 83 cents of land from one Mohammed Abubakkar under a sale deed dated 28.01.1974. The 2nd plaintiff was already in occupation of the property as a tenant. The property after the updating survey was re-numbered as R.S.No.83/2A1 and was found to measure 72 cents. To the south of this property, the 1st plaintiff owned the property and the 1st plaintiff on coming to know that the 2nd plaintiff was willing to sell a portion of his property had negotiated with the 2nd plaintiff and fixed the price and obtained 8 1/3 cents in the southern most portion in R.S.No.83/2A1 for due consideration under a sale deed dated 25.08.1988. The defendants attempted to take possession of this 8 1/3 cents on the basis of a decree in O.S.No.287 of 1990. However,



the 1st plaintiff's property was not covered under the said decree. Since the defendants are not trying to take possession of the suit property, which is the extent of 8 1/3 cents purchased by the 1st plaintiff this suit has been filed for declaration and injunction.

4. The 1st defendant and the 2nd defendant are siblings. It is their contention that one Sakkarai Gounder their maternal grandfather owned 85 cents in R.S.No.83/2 which consisted of the suit property and its adjoining extent. His only daughter, Thangachi Ammal, inherited that extent and thereafter her children, the defendants became entitled to this extent. Further, the 1st defendant's husband Maanikadevar had acquired 2 cents of land and therefore the total extent under their possession was 87 cents. The defendants had filed O.S.No.287 of 1975 against the 2nd plaintiff stating that he had trespassed into 11 cents in R.S.No.83/2. The suit was decreed and the defendants had taken possession based on the decree. The plaintiffs thereafter encroached the suit property and the defendants had also filed a suit O.S.No.237 of 1990 for recovery of possession and had obtained a decree on



22.03.1994. Before they could execute the decree the plaintiffs have filed the instant suit.

5. It is the case of the defendants that they have been accessing their property through property marked as A B H I in the plaint plan to reach their properties situate in R.S.No.83/2. It is their case that this property was being used by their predecessor in title as a pathway. It is their contention that the allegation made by the plaintiff that the property, subject matter of suit O.S.No.287 of 1975 and the instant suit is totally unconnected is without any basis. The whole survey number 83/2 has been subdivided as 83/2A1, 83/2A2 and it is only now that the defendants had come to know about this subdivision. The 2nd plaintiff was in possession of the suit property from 24.10.1975 to 28.03.1977. On 14.05.1979, the two plaintiffs had trespassed into the properties and occupied the same. The defendants would ultimately contend that the plaintiffs had no right to the suit property and therefore the same has to be necessarily dismissed.



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6. The learned District Munsif, Nagapattinam had framed the following issues:

1. Whether the plaintiff is entitled to the suit for recovery of possession and injunction?

2. To what other relief the plaintiff is entitled to?

7. The plaintiffs had examined 3 witnesses and marked 12 documents and the defendants had also examined 3 witnesses and marked 12 documents.

8. Ultimately, the learned District Munsif, Nagapattinam by his Judgement dated 26.06.1997 was pleased to decree the suit as prayed for. Aggrieved by the same, the defendants had filed A.S.No.44 of 1999 on the file of the Additional Sub Court, Nagapattinam. The learned Additional Sub Judge, Nagapattinam by his Judgement and Decree dated 22.06.1999 was pleased to allow the appeal and set aside the Judgement and Decree of the Trial Court. Aggrieved by this



Judgement and Decree, the plaintiffs are before this Court.

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9. The above Second Appeal has been admitted on the following Substantial Questions of Law:

“1. Whether the lower Appellate Court was correct in dismissing the suit filed by the appellant when admittedly the appellant was in possession of suit property and has proved his title as per Exs.A4 to A12?

2. When Exs.B3 to B6 do not relate to the suit property, was it correct for the lower appellate Court to uphold the title of defendants to suit property?”

10. Heard the learned counsels on the either side.

11. The 2nd plaintiff had purchased 83 cents of land from one Mohammed Abubakkar under a duly registered sale deed dated 28.01.1974 and in the updating scheme this property had been subdivided as 83/2A1 and the measurement was shown as 72 cents. The balance 11 cents is comprised in R.S.No.83/2A2 and this fall to the



share of Ponnusamy. The 1st plaintiff had purchased 8 1/3 cents in R.S.No.83/2A1. The property in R.S.No.83/2A and 83/2A1 are different. Therefore, it is their contention that the defendants are attempting to encroach into this extent and consequently the suit.

12. The defendants on the other hand would contend that the extent of 85 cents belonged to their grandfather Sakkarai Gounder from whom their mother Thangachi Ammal had inherited the property and on Thangachi Ammal's demise, the defendants have inherited the said extent. The defendants had put forward Ex.B.3, which is a sale deed in favour of Thangachi Ammal. A perusal of Ex.B.3 dated 10.05.1926 would show that the purchase of lands in R.S.No.83/2 by the said Thangachi Ammal was only an extent of 2 cents, whereas in the pleadings they would contend that 85 cents had been purchased in the suit survey number. A perusal of Ex.B.3 would show that an extent of 55 cents was purchased in S.No.175/5. 28 cents in R.S.No.83/3 and 2 cents in R.S.No.83/2. Therefore, the contention that the 85 cents had been purchased by Thangachi Ammal under sale deed Ex.B.3 is totally



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false.

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13. The learned counsel for the appellant would also draw the attention of the Court to Ex.A.6 and Ex.A.7 both of which also do not show that the said Thangachi Ammal had a right to the suit property. Therefore, from the documents produced on the side of the plaintiffs and defendants, it is clear that the defendants can claim right only to 2 cents in R.S.No.83/2 and not 85 cents as set out by them.

14. The plaintiffs on the other hand has filed Ex.A.4 to show that the suit property was purchased by the 1st plaintiff from the 2nd plaintiff as early as on 25.08.1988 and they are in possession of the same. The Trial Court has simply proceeded to decree the suit on the basis of Ex.A.4 and on the basis of alleged possession. However, from the documents produced, it is clearly evident that the defendants are only entitled to an extent of 2 cents in R.S.No.83/2 and 85 cents in entirety. The Appellate Court has rightly considered the evidence and pleadings to allow the appeal.



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15. The appellants have not been able to prove their title to the entire extent of the suit property. However, taking into account the fact that the defendants have had a suit for recovery of possession earlier in a suit O.S.No.237 of 1990 decreed, against which no appeal have been preferred, the plaintiff is entitled to decree only with reference to 6 1/3 cents in the suit property.

16. Therefore, the substantial questions of law are answered against the defendants. Ex.B.3 to Ex.B.6 do not relate to the suit property but however since the defendants are entitled to an extent of 2 cents by virtue of the decree in O.S.No.237 of 1990. The Second Appeal is partly allowed and the suit is decreed only in respect of 6 1/3 cents, the extent of 2 cents which is a subject matter of O.S.No.237 of 1990 and the extent of 900 sq.ft found in R.S.No.83/2 and 83/4 is excluded.



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17. In the result, the Second Appeal is partly allowed. There shall be no order as to costs.

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Index : Yes/No
Internet : Yes/No
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To

1.The Additional Subordinate Court,
Nagapattinam.

2.The District Munsif,
Nagapattinam



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