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S.A.No.706 of 2006

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.02.2023

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.706 of 2006

&

M.P.No.1 of 2006

Elumalai

...Appellant

Vs.

1.Singaram

2.Ravi

3.Elumalai

...Respondents

Prayer: Second Appeal is filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 21.12.2005 in A.S.No.102 of 2004 on the file of the Additional Subordinate Court, Tindivanam, confirming the Judgement and Decree dated 18.06.2004 in O.S.No.128 of 2003 on the file of the Principal District Munsif Court, Tindivanam.



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For Appellant : Mr.D.Ravichander

For Respondents : No Appearance
1 & 2

For Respondents 3: Mr.R.Agilesh

JUDGMENT

The unsuccessful plaintiff before the Courts below is the appellant before this Court. The facts of the case is herein below set out and for the ease of understanding the parties are referred to in the same rank as before the Trial Court.

2. The plaintiff had filed the suit O.S.No.128 of 2003 on the file of the Principal District Munsif Court, Tindivanam for a declaration that the suit property belonged to the plaintiff's family and for consequential injunction.



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3. It is the case of the plaintiff that the suit schedule property belongs to himself and his brother Munusamy under a sale deed dated 27.12.1984. The suit property has been described as an extent of 15 cents in S.No.323/13 of Kidangal Village, Tindivanam. This property originally belonged to one Govindasamy Chettiyar from whom they have purchased the property. The plaintiff was enjoying the suit property along with his brother as a joint family property.

4. The plaintiff would further submit that the defendants who had no manner of right or interest in the suit schedule property had started interfering with their peaceful possession and enjoyment of the same. Therefore, the plaintiff has come forward with the suit.

5. The 3rd defendant had filed a written statement which is adopted by the defendants 1 and 2. In the said written statement, the defendants would submit that the suit property belonged to one Muthusamy Gounder. The said Muthusamy Gounder had two sons Poyadhappan and Narayanasamy @ Narayanasamy Gounder. On the



demise of the said Muthusamy Gounder, the suit property devolved on his two sons, Poyadhappan and Narayanasamy, each being entitled to 7 ½ cents.

6. The defendants would submit that the brothers had also partitioned the property amongst themselves and had been enjoying their respective shares. The said Poyadhappan was entitled to 7 ½ cents on the western side and Narayanasamy was entitled to 7 ½ cents on the eastern side. Whiles, the said Poyadhappan had sold his of 7 ½ cents share to one Latchumana Nadar. Thereafter, the said property was purchased by the father of Govindasamy Chettiyar, from whom the plaintiff has purchased an extent of 7 ½ cents. The defendants would submit that the plaintiff's brother had purchased 3 ¾ cents from the branch of Narayanasamy, the brother of Poyadhappan.

7. The defendants would submit that the plaintiff is not entitled to an entire extent of 15 cents but only to an extent of 11 ¼th cents. Therefore, they sought to have the suit dismissed. The Trial Court,

namely, Principal District Munsif, Tindivanam had framed the following issues:

“1.Whether the plaintiff is entitled 0.15 cents extent as stated in the plaint Suit property?

2.Whether the plaintiff's vendor is entitled to an extent of 0.15 cents and whether plaintiff's vendor is entitled to sell an extent of 0.15 cents?

3.Whether the plaintiff is in possession and enjoyment of the whole extent of 0.15 cents?

4.Whether the defendant were entitled to 0.3 3/4 cents in the total extent of 0.15 cents?

5.Whether the defendants were in possession and enjoyment of that above said 0.3 3 4 cent?

6.To what relief the plaintiff is entitled?”

8. The Trial Court has clearly given a finding that the plaintiff is not entitled to 15 cents but was entitled to only 11 1/4 cents since the remaining 3 3/4 cents belonging to the branch of Narayanasamy has

been purchased by the defendant. However, the learned Principal District Munsif, Tindivanam proceeded to dismiss the suit in toto.

9. Aggrieved over which the plaintiff has filed A.S.No.102 of 2004 on the file of the Additional Subordinate Court, Tindivanam. The learned Additional Subordinate Judge, Tindivanam had also concurred with the finding of the Trial Court and dismissed the appeal, against which the plaintiff is the appellant before this Court.

10. After hearing the arguments of both parties, it is evident that the substantial question of law no.3 alone arises for consideration in the above Second Appeal and the same is extracted herein below:

“When the defendant does not dispute the plaintiff's title with regard to 11 $\frac{3}{4}$ cents of the suit property, is the learned Subordinate Judge right in dismissing the appeal in entirety?”



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11. In the written statement filed by the 3rd defendant which is adopted by defendants 1 and 2, they have stated as follows:

“தாவா சர்வே சொத்தின் மனுதாரரின் சகோதரரான ஏழுமலை என்பருக்கு 11 1/4 சென்ட் மட்டுமே பாத்தியமானதாகும். மேற்படி விஸ்தீரணத்திற்கு மேலாக உரிமையும், அனுபவத்தையும் கோரி தாக்கல் செய்துள்ள இம்மனு 3 3/4 சென்டை பொறுத்து நிலை நிறுத்தக்கதல்ல. எனவே மேற்படி 3 3/4 சென்டை குறித்து இம்மனு தள்ளுபடிக்கு லாயக்கானதாகும்.

12. The above contention is not disputed by the appellant / plaintiff. However, the plaintiff has claimed that they have purchased the entire suit property from the branch of Poyadhappan, though he is entitled to only an extent of 7 ½ cents. The remaining 7 ½ cents fell to the share of Narayanasamy and the plaintiff's brother has purchased 3 ¾ cents from the branch of Narayanasamy. Therefore, the plaintiff is entitled to the relief only with reference to 11 ¼ cents and not to the



entire extent of 15 cents since the defendants have purchased the remaining extent of 3 $\frac{3}{4}$ cents from the branch of Narayanasamy.

13. The Courts below have overlooked this admission of the defendants in their written statement and has erroneously dismissed the suit in its entirety.

14. In the result, the substantial question of law no.3 is answered in favour of the plaintiff and the Second Appeal is partly allowed granting a decree to the plaintiff with reference to 11 $\frac{1}{4}$ cents excluding the property purchased by the defendants in the suit schedule property in S.No.323/13 of Kidangal Village, Tindivanam. Consequently, connected Miscellaneous Petition is closed. No costs.

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Index : Yes/No
Internet : Yes/No
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To

- 1.The Additional Subordinate Court,
Tindivanam.
- 2.The Principal District Munsif Court,
Tindivanam.



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P.T. ASHA, J,

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