



S.A.No.538 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20..04..2023

Coram

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

Second Appeal No.538 of 2009

and

M.P.No.1 of 2009

1. Sulochana

2. Sakthivel

3. Thangavel

..... Appellants

-Versus-

Munusamy

..... Respondents

Appeal filed under Section 100 of C.P.C. against the judgment and decree dated against the judgement and decree dated 25.09.2008 made in A.S.No.34 of 2007 by the learned Subordinate Judge, Panruti, confirming the judgement and decree dated 13.07.2007 made in O.S.No.123 of 1998 by the learned District Munsif, Panruti.

For Appellants : Mr.N.Thiagarajan

For Respondents : Mrs.Nilaphar



S.A.No.538 of 2009

JUDGEMENT

WEB COPY

This is a simple case where the 2nd plaintiff has got 7.50 cents by way of settlement from his grandfather. He has obtained an additional 1.0 cent by virtue of succeeding to the estate of his father – Elumalai. He filed the suit for declaration of title to the suit 'C' Schedule property and for permanent injunction, which was decreed partly declaring the title of the plaintiffs to an extent of 461 square meters in S.No.201/3 at Veerasingankuppam village and for permanent injunction.

2. Aggrieved by the partial dismissal of the suit, the plaintiffs preferred an appeal in A.S.No.34 of 2007 before Subordinate Judge, Panruti, which was dismissed on 25.09.2008.

3. Further aggrieved by the dismissal of the appeal suit, the plaintiffs are before this court with this second appeal.

4. At the time of admission, this court has formulated the following substantial questions of law for consideration:-

1. Whether the courts below have committed an error in law in holding that the evidence adduced on the side of the plaintiffs were not sufficient to shift the burden of proof on the defendant to prove that



WEB COPY



S.A.No.538 of 2009

Arumugam, the grandfather of the defendant was one of the sons of Muthiah Padayachi?

2. Whether the findings of the courts below that Arumugam, the grandfather of the defendant was a son of Muthiah Padayachi is perverse?

5. Insofar as the 2nd question of law that has been framed by this court - whether Arumugham is the father of Muthiah Padayachi is concerned, such a question of law does not at all arise in this case. It is absolutely irrelevant whether the defendant is the son of Arumugam Padayachi. The simple reason being the grandfather of the plaintiff he had settled the property to an extent of 15 cents in favour of Sakthivel and Subramani. Each got 7.5 cents in the property.

6. The aforesaid Sakthivel thereafter purchased an extent of 1.5 cents from his uncle Thandavarayan from his father's share succeeding to the estate of his paternal grandfather Rangasamy. Therefore, he got an additional 0.5 cents together with 3rd plaintiff. In all, he is entitled to 10 cents.

7. The trial court has granted decree for 461 square meters on the basis of patta which corresponds to 11.38 cents. In fact, the trial court has been very charitable and had granted an additional extent of 1.38 cents to the plaintiffs.



S.A.No.538 of 2009

The said decree has been confirmed by the first appellate court.

WEB COPY

8. I have tallied the purchases made by the appellants and their predecessors in title and find no error in the judgement and decree of the trial court other than the fact that it has given him more than what he actually deserves to get. No question of law, much less, substantial question of law has been pointed out by appellants/plaintiffs to assail the judgements of the courts below. The questions of law sought to be projected by the appellants/plaintiffs are nothing but red herring ones. In view of the discussions made above, the substantial questions of law 1 & 2 are answered against the appellants and second appeal is liable to be dismissed with costs.

In the result, this second appeal is dismissed with costs. The judgement and decree of both the courts below are confirmed. Consequently, connected MP is closed.

20..04..2023

Index : yes / no
Neutral Citation : yes / no
Speaking / Non Speaking Order
kmk

To

- 1.The Subordinate Judge, Panruti, Cuddalore District.
- 2.The District Munsif, Panruti, Cuddalore District.



WEB COPY



S.A.No.538 of 2009

V.LAKSHMINARAYANAN, J.

kmk

S.A.No.538 of 2009

20..04..2023