



S.A.No.371 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.02.2023

CORAM

THE HONOURABLE MR. **JUSTICE G.K.ILANTHIRAIYAN**

S.A.No.371 of 2021

and

C.M.P.No.6944 of 2021

1. T.Anthonysamy (died)

2. A.Adaikalrani

3. A.Cirilsamsan

4. A.Jashwa Sherlin

[first appellant died and appellants 2 to 4 brought on record as legal heirs of the deceased A1 vide Court order dated 05.04.2020 made in CMP.No.12591 of 2021 in S.A.No.371 of 2021]

...Appellants

Vs.

1. A.T.Francis Inico

2. A.Marialawrence

...Respondents

Prayer : This Second Appeal is filed under Section 100 of Civil Procedure Code, to set aside the judgment and decree dated 13.10.2020 in A.S.No.20 of 2014 on the file of the Sub Judge, Nagapattinam, confirming the decree and judgment dated 07.04.2014 passed in O.S.No.25 of 2010 on the file of the District Munsif Court, Nagapattinam.



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For Appellants : Ms.S.V.Devasanthi

For Respondents : No appearance (for R1)

JUDGMENT

This second appeal is directed as against the judgment and decree dated 13.10.2020 made in A.S.No.20 of 2014 passed by the learned Sub Judge, Nagapattinam, confirming the judgment and decree dated 07.04.2014 passed in O.S.No.25 of 2010 on the file of the District Munsif Court, Nagapattinam, thereby decreed the suit.

2. The learned counsel for the appellants submitted that the first appellant/first defendant, viz., T.Anthonysamy died and the legal heirs of the deceased/first appellant have been substituted in the said appeal and they have filed this Second Appeal.

3. The first appellant (since deceased) is the first defendant in the suit filed by the first respondent for recovery of possession and for future mesne profits. The case of the first respondent/plaintiff is that the suit property was purchased from the second respondent herein by the registered sale deed



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dated 15.07.2009. The total extent of the property ad-measuring an extent of 2.05 ares, viz., 0.51 cents comprised in S.No.238/12. From the date of purchase, the first respondent is in possession and enjoyment of the suit property. The first appellant was running a grocery shop for the monthly rent of Rs.5,000/- per month. Due to the family circumstances, the second respondent had entered into a sale agreement with the first respondent and after receipt of the entire sale consideration, the second respondent herein executed sale deed in his favour. The first appellant also agreed to vacate the suit property. However, after purchasing the suit property by the first respondent herein, the first appellant refused to vacate the suit property. Hence, the first respondent issued legal notice and filed a suit.

4. Resisting the above contentions of the plaintiff, the first appellant filed written statement and stated that the first respondent purchased only 51 cents. The total extent of the property comprised in S.No.238/12 as per the village records and plan is 53 cents. Admittedly, the first respondent had purchased only 51 cents out of 53 cents. Therefore, the first appellant is in legal possession of 2 cents in the Northern side, adjoining the Poramboke land. He is in possession and enjoyment of the said property for the past 3 years and he had obtained electricity service connection also in his name.



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The first respondent had purchased the property from the second respondent and he derived title by the Will executed by his grand father. As per the same, his grandfather had bequeathed only 51 cents comprised in S.No.238/12. In fact, the first respondent failed to produce the Will in order to prove that the suit property is only ad-measuring an extent of 51 cents. He further stated that the first appellant never paid any rent and there is no agreement between the first appellant and the second respondent herein. Therefore, he prayed for dismissing the suit.

5. On the basis of the pleadings, the trial Court had framed the following issues:-

- (i) Whether the plaintiff is entitled for the relief of recovery of possession as prayed for?
- (ii) Whether the plaintiff is entitled to get future mesne profit as prayed for? Abd
- (iii) To what other reliefs and order as to costs.

6. On the side of the first respondent, PW1 and PW2 were examined and documents were marked as Ex.A1 to Ex.A7. On the side of the first appellant, he had examined DW1 and no documents were marked. While pending the suit, an Advocate Commissioner was appointed and the learned



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Advocate Commissioner's report/plan was marked as Ex.C1 and the Surveyor's plan was marked as Ex.C2. On a perusal of the oral and documentary evidence, the trial Court decreed the suit and aggrieved by the same, the first appellant herein filed a Appeal suit and the first Appellate Court has dismissed the Appeal Suit and confirmed the judgement and decree passed by the trial Court. Hence, the present Second Appeal is filed by the defendants.

7. This Second Appeal is filed on the following substantial question of law:-

(i) Whether the sale deed dated 15.07.2009 under Exhibit A1 alleged to have been executed by the second respondent/2nd defendant in favour of the first respondent/plaintiff by virtue of the alleged “Will” which has not been produced in this case and which is the parent document of Exhibit A1, sale deed is valid and sustainable in law;

(ii) Whether the suit filed by the first respondent/plaintiff by virtue of Exhibit A1, sale deed executed by the second respondent/second respondent by virtue of the alleged



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“Will” is sustainable in law without production of the alleged “Will” which is the parent document for Exhibit A1, sale deed and also without examination of the beneficiary of the alleged “Will”, namely second respondent/second defendant and also without examination of any one of the attestors of the alleged “Will” as a witness to prove that the alleged “Will” and Exhibit-A, Sale Deed are sustainable in law.

8. The learned counsel for the appellants submitted that though the first respondent purchased the suit property from the second respondent of an extent of 51 cents comprised in S.No.238/12, the first respondent failed to produce the Will which is the parent document. He further submitted that the first respondent purchased the property from the second respondent and he had derived right over the property through the Will executed by the grandfather without even seeing the Will. The total extent of the property cannot be arrived. As per the Will, the second respondent had bequeathed only ad-measuring an extent of 51 cents and the total extent of the property comprised in S.No.238/12 is 53 cents. Therefore, the first appellant's possession is lawful and he had right over the property. The first respondent being the plaintiff has to produce all the documents and prove his case.



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Without considering the above facts and circumstances, the Court below decreed the suit and the First Appellate Court confirmed the decree passed by the trial Court. Hence, the present Second Appeal is filed.

9. Heard the submissions Ms.S.V.Devasanthi, learned counsel for the appellants and perused the materials available on record.

10. On a perusal of the records, it reveals that the first respondent had purchased the suit property comprised in S.No.238/12 ad-measuring an extent of 51 cents from the second respondent by registered sale deed dated 15.07.2009, which was marked as Ex.A1. In pursuant to the sale deed, he was issued with Patta and the same was marked as Ex.A2 and Adangal was also marked as Ex.A3 in respect of his possession and enjoyment of the suit property. Even at the time of purchase of the suit property, the first appellant is in possession of 2 cents of the property, which was let out by the second respondent. Though the first appellant had taken specific stand that the total extent of the property ad-measuring an extent of 53 cents comprised in S.No.238/12, the first appellant did not prove the same by producing any document to that effect. The Will being the parent document and on the strength of the Will, the second respondent sold out the property



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in favour of the first respondent herein. Therefore, the first respondent's failure in producing the Will before the trial Court, is not the case of the first respondent. Since he had proved his title over the property and all the Revenue Records stand in his name to prove his possession and enjoyment of the property. As per the sale deed, the property comprised in S.No.238/12 ad-measures an extent of 51 cents. While pending the suit, a learned Advocate Commissioner was appointed, who had inspected the suit property and submitted his report and plan which were marked as Ex.C1 and Ex.C2. As per his report, the portion which is occupied by the first appellant is inclusive of the total extent of 51 cents comprised in S.No.238/12. Further, though the first appellant had taken a stand that the suit property is a Government Poramboke land and he is in possession and enjoyment based on "B" memo, however, he failed to produce any document to show that the suit property is a Government Poramboke land and he is in possession and enjoyment of the same "B" memo.

11. As such, the Courts below have analyzed the evidence, both documentary and oral in detail, adduced by the parties and by giving cogent reasons rightly concluded and decreed the suit. Hence, this Court finds no substantial question of law involved the present appeal and this Second



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Appeal is dismissed without being admitted. No costs. Consequently, the connected Miscellaneous Petition is closed. There shall be no order as to costs.

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Index : Yes/No
Speaking order/Non-speaking order
Neutral Citation: Yes/no

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To

1. The Sub Judge, Nagapattinam.
2. The District Munsif Court, Nagapattinam.
3. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.



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G.K.ILANTHIRAIYAN, J.

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