



S.A. No.1075 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 24.07.2023

CORAM

THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

S.A.No.1075 of 2015
and
C.M.P.No.15999 of 2021

N.Ramasamy

... Appellant

Vs

1.Selvaraj
2.K.Subramani

... Respondents

PRAYER : Second Appeal filed Under Section 100 of the Civil Procedure Code, against the Judgment and decree passed in A.S.No.55 of 2011 dated 30.01.2015 on the file of the II Additional Sub-Court, Tiruppur, in partly setting aside the Judgment and Decree made in O.S.No.320 of 2005 dated 12.04.2010 on the file of the District Munsif Court, Avinashi, Tiruppur District.



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For Appellant : Mr.MA.P.Thangavel

For Respondents : Mr.N.Umapathy

JUDGMENT

The appellant has preferred this Second Appeal against the Judgment and decree passed in A.S.No.55 of 2011 dated 30.01.2015 by the learned II Additional Sub-Court, Tiruppur, in partly setting aside the Judgment and Decree made in O.S.No.320 of 2005 dated 12.04.2010 on the file of the District Munsif Court, Avinashi, Tiruppur District.

2. When the matter is taken up for hearing, the learned counsel for the appellant submitted that he wants to produce additional document with regard to the Natham land in SF.No.672 /7, which is the disputed property, in which the plaintiff claiming patta, that was issued long back on 27.01.1993. According to him, the original patta was destroyed due to the fire accident, and now only he is able to trace out the xerox-copy of the patta and produce the same as additional document.



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3. However, the learned counsel for the respondents /defendants submitted that the original document has not been produced before the trial Court, and without proper evidence, the xerox copy cannot be filled in the appeal proceedings.

4. However, before the trial Court, the plaintiff has produced Ex.A3 - Adangal, in which the extent of the property is only 0.039 hectare, in which the plaintiff claims right in the suit. The original extent of the S.No.672/7 is 4.5 cents which the plaintiff has not specifically mentioned in the suit schedule, as rightly pointed out by the defendant's counsel.

5. But the claim of the plaintiff is that S.No.672/2, is adjacent to the house property in S.No.672/6 in Natham survey of the said village. It is an admitted fact that there is a tiled house in S.No.672/6 but the defendant is not claiming any right in the property. However, he is claiming the right only in S.No.672/7. But the plaintiff submits that as per the revenue records, they are in a possession of the said property. Before the trial Court they have not produced evidence nor have they taken any steps to show the



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physical features, as well as the measurement of the property through Advocate Commissioner.

6. With regard to S.No.672/7 both the parties are claiming right without proper evidence. Therefore, this Court is inclined to remand the matter to the trial Court for fresh consideration. The plaintiff is directed to take steps to appoint an Advocate Commissioner to measure the property and also liberty is granted to him to examine further evidence of the revenue officials, to prove the nature of the property as it stands in his name as on date, by producing relevant revenue records. He claims right over the property, but according to him the patta was destroyed in fire. Hence, to prove his claim, the matter is remanded to the trial Court and the learned trial Judge is directed to disposed of the case by giving an opportunity to both the parties to adduce further evidence and framing proper issues a fresh. Time to dispose the case is three months from the date of receipt of a copy of this order.



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7. Accordingly, the Second Appeal is disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

24.07.2023

Index : Yes/No

Neutral Citation : Yes/No

Speaking/Non Speaking order

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To

1. The II Additional Sub-Court, Tiruppur.
2. The District Munsif Court, Avinashi, Tiruppur.
3. The Section Officer, VR Section, High Court of Madras.



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T.V.THAMILSELVI, J.

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