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S.A.No.650 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.11.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No.650 of 2017
and C.M.P.Nos.16193 & 16194 of 2017

T.Varadharajan

...Appellant

Vs.

1.Subramani. M

2.Karunanithi

3.Kuppu Pillai

4.Lakshmana Pillai @ Mannu Pillai

...Respondents

PRAYER : Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree of the learned Subordinate Judge, Arakkonam made in A.S.No.145 of 2014 dated 09.02.2015 reversing decree and judgment passed in O.S.No.18 of 2001 on the file of the District Munsif Judge, Arakkonam dated 26.03.2014.

For Appellant : Mr.S.Hemanand

For Respondents : Mr.T.P.Prabakaran



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J U D G M E N T

The plaintiff in the suit for declaration and injunction is the appellant. The suit was decreed by the Trial Court and the first appeal filed by the respondents/defendants was allowed. Aggrieved by the said reversing findings, the plaintiff has come by way of this second appeal.

2. According to the appellant/plaintiff, the suit schedule properties originally belong to deceased Viswanatha Mudaliar and his wife Dhanabagiyammal under registered Sale Deeds dated 27.12.1944, 27.7.1947 and 06.10.1944. The said Viswanatha Mudaliar died in the year 1962, leaving behind his wife Dhanabagiyammal as only legal heir to succeed to the suit properties. The said Dhanabagiyammal sold the suit properties to the appellant under Sale Deed dated 02.1.1987 and also bequeathed the portion of the suit properties in favour of the appellant under the registered Will dated 10.02.1987. Subsequently, the said Dhanabagiyammal died in the year 1990 and therefore, the plaintiff has been in possession and enjoyment of the suit properties as owner. The defendants without having right and title over the suit



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properties attempted to interfere with the peaceful possession and enjoyment of the suit properties by the appellant/plaintiff. Hence, the appellant constrained to file the suit for above said relief.

3. The respondents/defendants filed the written statement denying exclusive title and possession of the appellant over the suit properties. The respondents in the written statement specifically averred that the appellant/plaintiff failed to give correct extent of the suit properties and describe the same by four boundaries. It was the case of the respondents that the first respondent's father Durasamy Pillai purchased an extent of 0.57 cents in Suit S.No.120/1 under the registered Sale Deed dated 2.11.1955. They also claimed that their grand mother purchased 0.82 cents in suit S.No.133/1 and also claimed 1/8 share in the Well along with channel right under the registered Sale Deed dated 21.01.1944. It was claimed by the respondents that as per the family partition that had taken place in the year 1960, the properties in Suit S.Nos.120/1, 133/1 were allotted to the share of Durasamy Pillai along with other properties. Thus, it was case of the respondents that Durasamy Pillai had been in possession and enjoyment of the portion of the suit properties to the knowledge of the appellant/plaintiff. On these pleadings, the



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respondents sought for dismissal of the suit.

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4. The Trial Court, on appreciation of oral and documentary evidence available on record came to the conclusion that the appellant/plaintiff succeeded in proving his right and possession over the suit properties and consequently, granted a decree as prayed for. Aggrieved by the same, the respondents preferred an appeal in A.S.No.145 of 2014 on the file of Subordinate Court, Arakkonam. The First Appellate Court on appreciation of title documents produced by the appellant namely Ex.A1 to Ex. A4, Sale Deeds and Ex.A5-Will came to the conclusion that the appellant purchased only the portion of the properties available in Suit S.Nos.120/1B, 133/1A and 133/1B.

5. It was also observed by the First Appellate Court that in the Sale Deed executed in favour of the appellant's vendor Viswanatha Mudaliar and his wife Dhanabagiyammal and also in the Sale Deed executed by the Dhanabagiyammal in favour of the appellant, four boundaries of the properties purchased by the appellant were clearly mentioned. When the appellant purchased only portion of the properties available in suit survey numbers, he



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has to describe the suit properties by giving four boundaries. On perusal of the title documents produced by the appellant, the First Appellate Court came to the factual conclusion that the appellant has not purchased entire extent of suit survey numbers and he purchased only portion of the properties available in suit survey numbers. In such circumstances, when the portion of the properties purchased by the appellant is not described by giving four boundaries, the First Appellate Court rightly reversed the findings of the Trial Court and dismissed the suit.

6. As per the plaint averment the appellant claimed title to the suit properties under the Sale Deed executed by Dhanabagiyammal and Will executed by her. It is not clearly stated that what are all the properties covered by the Sale Deed and what are all the properties covered by Will executed by Dhanabagiyammal. As observed by the First Appellate Court though the Will allegedly executed by Dhanabagiyammal was marked as Ex.A5, the appellant failed to prove the same by examining the attester to the document. In such circumstances, he is not entitled to claim declaration based on the Will relied on by him.



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7. The First Appellate Court reversed the findings of the Trial Court and dismissed the suit filed by the appellant on the sound reasoning and this Court while exercising its power under Section 100 of Civil Procedure Code does not see any substantial question of law arising for consideration to interfere with the findings rendered by the First Appellate Court.

8. Accordingly, the second appeal stands dismissed

a) by affirming the judgment and decree of the learned Subordinate Judge, Arakkonam made in A.S.No.145 of 2014 dated 09.02.2015, reversing the decree and judgment passed in O.S.No.18 of 2001 on the file of the District Munsif, Arakkonam dated 26.03.2014.

b) In the above facts and circumstances of the case, there will be no order as to costs. Consequently, connected miscellaneous petitions are closed.



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To

1. The Subordinate Judge, Arakkonam.
2. The District Munsif, Arakkonam



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S.SOUNTHAR, J.

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