



S.A.No.766 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.10.2023

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.766 of 2023

and

C.M.P.No.24140 of 2023

1. A.Vishwanathan
 2. A.Periyasamy
 3. T.Arunachalam
- Appellants

...

Vs.

Arumugam

... Respondent

PRAYER: Second Appeal filed under Section 100 of C.P.C. to set aside the judgment and decree dated 09.02.2023 in A.S.No.69 of 2017 passed by the Learned II Additional Subordinate Judge, confirming the judgment and decree dated 14.03.2017 in O.S.No.251 of 2012 passed by the Learned Principal District Munsif, Thirukovilur.

For appellants : Mr.C.Samivel

For respondent : No appearance



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JUDGMENT

The unsuccessful plaintiffs before the Courts below have filed the above second appeal.

2. The facts of the case are briefly set out hereinbelow and the parties are being referred to in the same litigative status as before the learned Principal District Munsif, Thirukovilur in O.S.No.251 of 2012.

FACTS OF THE CASE:

3. The plaintiffs had filed the suit for injunction in respect of the property described as 'C', 'D', 'E' schedule in the suit schedule property.

3.1. The plaintiffs would submit that the 'A' schedule property belonged to one Annamalai. The third plaintiff, Arunachalam had purchased the 'A' schedule property to an extent of 0.27 cents from



Annamalai, under the sale deed dated 29.09.1989. Though the third plaintiff had purchased the entire 'A' schedule property, disputes arose between the third plaintiff and the defendant stating that the third plaintiff was only entitled to the western portion of 'A' schedule property comprised in Survey No.48/4A measuring 0.14 cents and not the eastern portion. In the panchayat, it was held that the third plaintiff was entitled to the western portion which is described as 'B' schedule property.

3.2. Thereafter, the third plaintiff had executed a settlement deed in favour of the first plaintiff in respect of the northern portion of 'B' schedule property measuring 0.03.5 ares (0.09 cent) along with other properties. In the settlement deed, it has been stated that the 'C' schedule property measuring 0.09 cents has been assigned to the first plaintiff by the third plaintiff's father. Similarly, the third plaintiff had executed a settlement deed on 01.08.2012, in favour of the second plaintiff with reference to the southern portion of 'B' schedule property



measuring 0.05 cents (this property described as 'D' Schedule property). Both the properties had been handed over to the respective settlees and they had accepted the settlement and acted upon the same.

3.3. The 'E' schedule property belongs to the third plaintiff and his sons, *viz.*, first and second plaintiffs. The third plaintiff had not executed any settlement deed in respect of this item of the property i.e 'E' schedule property.

3.4. Though the settlement had been effected, the revenue records had not been mutated in the name of the first and second plaintiff.

3.5. While so, the defendant, on 7.12.2012, had attempted to interfere with the first and second plaintiff's enjoyment of 'C' and 'D' schedule property and the third plaintiff's enjoyment of 'E' schedule property. The plaintiffs would submit that they have been in possession and enjoyment of the property for over 60 years. Therefore,



they come forward with the suit in question.

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3.6. The defendant had filed a written statement *inter alia* denying the allegations contained in the plaint and contending that the total extent of land available in Survey No.48/4 of 'A' schedule property is only an extent of 0.47 cents. This belongs, jointly to the father of the third plaintiff viz., Thadiyan and his brother Thonnaiyan. Therefore, each of them was entitled to an undivided 0.23 ½ cents in the suit property. The share of Thonnaiyan was enjoyed by his legal heirs viz., Annamalai and Anbazhagan.

3.7. The defendant would further submit that there was a partition between the third plaintiff and his brothers viz., Veerasami and Subramanian. It was said that the third plaintiff, along with his brothers, had sold 0.13 ½ cents in the 'A' schedule property on 03.10.1983 to the defendant. The third plaintiff and another of his brother's viz., Govindhasami, had sold out 0.04 ½ cents in the 'A'



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schedule property in favour of the defendant on 15.03.1995. The defendant would submit that he has been in enjoyment of 0.18 cents out of 0.23½ cents belonging to Thadiyan.

3.8. The defendant would further submit that Annamalai and Anbazhagan had sold 0.11 cents each to the defendant under the sale deeds dated 15.10.1985 and 24.04.1990. In all, therefore, the defendant was in enjoyment of 40 cents in 'A' schedule property. Therefore, by virtue of these sales, the plaintiffs had no right and title over the 'E' schedule property. After having sold the property to the defendant, Annamalai and his brother had only an extent of 0.01½ cents and the sale of 0.27 cents of land to the third plaintiff is without any basis when the vendors have no ownership to the said land.

TRIAL COURT:

4. The Trial Court had framed the following issues:



- (i) *Whether the first plaintiff is entitled for the relief of Declaration and Permanent injunction with regard to suit 'C' schedule property as prayed for ?*
- (ii) *Whether the second plaintiff is entitled for the relief of Declaration and Permanent injunction with regard to suit 'D' schedule property as prayed for ?*
- (iii) *Whether the plaintiffs were jointly entitled for the relief of Declaration and Permanent injunction with regard to suit 'E' schedule property as prayed for ?*
- (iv) *To what other relief the parties are entitled for ?*

5. Before the Trial Court, the third plaintiff had examined himself as P.W.1 and one Sivaji and Munusamy as P.W.2 and P.W.3 and marked Exs.A1 to A14. On the side of the defendant, the



defendant had examined himself as D.W.1 and examined three witnesses as D.W.2 to D.W.4 and marked Exs.B1 to B8.

6. The learned Trial Judge dismissed the suit, aggrieved by which, the appellant had filed an appeal in A.S.No 69 of 2017 on the file of the Learned II Additional Subordinate Court, Villupuram. The Appellate Court also proceeded to dismiss the appeal, aggrieved by which, the plaintiff had filed the above second appeal.

7. Heard the learned counsel for the appellants and perused the materials on record.

DISCUSSION:

8. It is the admitted case that it only an extent of 0.47 cents that is available in Survey No.48/4 which has been described as 'A' schedule property. It is admitted that 0.47 cents belonged to both the third plaintiff's father, Thadiyan and his brother, Thonnaiyan.



Thadiyan had four children, of which, apart from third plaintiff, the other sons are viz., Govindhasami, Veerasami and Subramanian. The children of his brother Thonnaiyan are Annamalai and Anbazhagan. Therefore, the four sons of Thadiyan were entitled to $0.23\frac{1}{2}$ cents and likewise, Annamalai and Anbazhagan, put together, were entitled to $0.23\frac{1}{2}$ cents.

9. The third plaintiff had entered into a partition deed with his brothers. The third plaintiff, along with his brothers Veerasami and Subramanian, thereafter, had sold an extent of $0.13\frac{1}{2}$ cents in favour of the defendant on 03.10.1983. The other brother of the third plaintiff had sold $0.04\frac{1}{2}$ cents to the defendant on 15.03.1995. Therefore, the defendant has been in enjoyment of an extent of 0.18 cents which fell to the share of Thadiyan. The sons of Thadiyan were therefore, left with only $5\frac{1}{2}$ cents.

10. The defendant had also purchased 0.22 cents out of $0.23\frac{1}{2}$



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cents which fell to the share of Annamalai and Anbazhagan. By reason of this purchase, Annamalai and Anbazhagan could alienate only 0.01½ cents and the third plaintiff and his brothers were entitled to extent of 0.05½ cents, thereby a total of 7 cents alone was available. Therefore, the case of the plaintiff that he had purchased 0.27 cents from Annamalai, under Ex.A1 dated 29.09.1989, cannot be countenanced, particularly, when Exs.B1 and B2 under which the defendant had purchased the property are prior to Ex.A1. The plaintiffs had failed to prove their title to the suit schedule property. Both the Courts below, on considering the evidences, both oral and documentary, had dismissed the suit. I see no reason to interfere with the concurrent findings of the Courts below as the plaintiffs had not made out any substantial question of law.

Accordingly, this second appeal is dismissed. Consequently, connected C.M.P. stands closed. No costs.



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Index : Yes/No
Speaking order/non-speaking order
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To

1. The Principal District Munsif,
Thirukovilur.
2. The II Additional Subordinate Judge,
Villupuram.
3. The Section Officer, V.R. Section, High Court, Madras.

P.T.ASHA, J.,

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