



S.A.(MD) No.486 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Judgment Reserved On
28.02.2023

Judgment Delivered On
03.03.2023

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.(MD)No.486 of 2013

and

M.P(MD)No.2 of 2013

1.G.Ganesan

2.Sankar

3.Meera (Died)

4.D.C.Mohan

5.D.D.C.Nadarajan (Died)

6.D.C.Rajan

7.D.C.Gunasekaran

8.Kanchanamala

9.Lakshmi

10.Amuthu

11.Vanisri

... Appellants 1 to 11/Respondents

1-7, 9-10, 12-13/Defendants

1-2,4-8,10-11,13-14

12.K.R.Balasubramanian

13.Rajarajan

14.Arunmuralidharan

.. .Appellant No.12 to 14

(Appellants 12 to 14 are brought on record as LR's of the deceased third appellant vide Court order dated 06.06.2022)



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***made in C.M.P(MD)No.1307 & 1309 of 2019 in
S.A(MD)No.486 of 2013 by NSSJ)***

***(Memo dated 10.02.2023 presented before the Court is recorded as 5th
appellant died and the appellants 12 to 14, who are already on record,
are recorded as representatives-in-interest of the deceased 5th
appellant vide Court order dated 16.02.2023 made in CMP(MD)Nos.
200 to 202/2023 in S.A(MD)No.486 of 2013)***

-VS-

1.Selvarajan ...1st Respondent/Appellant/Plaintiff

2.The Dindigul Electricity Employees Association
represented by its Secretary
William Inbaraj,
Dindigul.

3.Nirmala ...2nd & 3rd Respondents/ Respondents
8 & 11/Defendants 9& 12

***(Name of the Secretary of the second respondent Association is
amended vide Court order dated 02.02.2023 made in CMP(MD)No.
1036 of 2023 in S.A(MD)No.486/2023)***

Prayer: Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 23.07.2012 in A.S.No.111 of 2010 on the file of Principal Sub Judge, Dindigul, reversing the judgment and decree, dated 03.09.2010 in O.S.No.555 of 2004 on the file of the Principal District Munsif Court, Dindigul.

For Appellant :Mr.H.Lakshmi Shankar

For R1 :Mr.Kanimozhi Mathi

For R2 :No Appearance



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JUDGMENT

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The defendants 1, 2, 4 to 8, 10, 11, 13 and 14 are the appellants. The first respondent herein filed a suit for declaration of title and injunction. The suit was dismissed by the trial Court. On appeal filed by the first respondent, the finding of the trial Court was reversed and the appeal was allowed. Aggrieved by the same, the above said defendants are before this Court.

2. According to the first respondent/plaintiff, the total extent of land in suit S.No.477/1 is 3 acres 75 cents. The entire extent originally belonged to one Nagalammal. On 10.11.1994, the said Nagalammal sold 2.50 acres on the eastern side of the survey number in favour of one Badmavathiammal under Ex.A1, dated 10.11.1944. Subsequently, on 22.11.1944, the said Nagalammal sold the remaining land on western side with an extent of 1.25 acres to Muthukrishnaier, Nagaier and Subbier. It was also pleaded that subsequently, there was a partition among the three vendees, whereunder western $4\frac{1}{2}$ cents, whereunder southern $4\frac{1}{2}$ cents of property was allotted to the share of Muthukrishnan Iyer, eastern $4\frac{1}{2}$ cents was allotted to the share of Subbier and western $4\frac{1}{2}$ cents was allotted to the



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share of Nagaier. Thus, after partition, Nagaier was in possession of western 41 2/3 cents. After his death, his two sons, namely, Munisamy Iyer and Venkatachalapathy Iyer divided their 41 2/3 cents 20 years back, in which, the middle portion was allotted to the share of Munisamy Iyer and the portions on the east and west were allotted to the share of Venkatachalapathy Iyer. The property on the middle portion was allotted to the share of Munisamy Iyer with an extent of 20 3/4 cents in the suit property. Finally, the daughters of Munisamy Iyer sold the suit properties to the first respondent for sale consideration of Rs.90,470/- on 19.04.2000 under Ex.A4. Since the boundary description in Ex.A4 was not correct, subsequently, the vendors of first respondent executed the rectification deed, dated 17.11.2000 giving correct description of the suit property. Thus, the first respondent claimed title over the suit property. It was further averred that the appellants, who purchased the property nearby without properly identifying the property purchased by them tried to interfere with the peaceful possession and enjoyment of the first respondent over the suit property, which compelled him to file a suit for declaration and injunction.

3. The appellants herein filed a written statement denying the



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partition pleaded by the first respondent between Muthukrishnaier, Subbier and Nagaier. It was also averred by the appellant that on 03.03.1951, under Ex.B5, Muthukrishnaier sold his undivided 41 2/3 cents to one Kuppusamy Iyer. The said Kuppusamy Iyer sold a portion of property purchased by him to one Kittammal, under Ex.B6, dated 13.05.1962. It was further contended by the respondent that after death of Kuppusamy Iyer, the legal representatives sold the remaining properties of Kuppusamy Iyer in the suit survey number to several persons including defendants under various documents. It was the specific contention of the appellant that S.No.477/1 was plotted out into 54 housing plots and the plots were sold to various persons including the appellants.

4. The trial Court, on consideration of oral and documentary evidence available on record, came to the conclusion that the first respondent failed to prove his title over the suit property and consequently, dismissed the suit. Aggrieved by the same, the first respondent filed an appeal in A.S.No.111 of 2010 on the file of Principal Sub Court, Dindigul. The First Appellate Court reversed the findings of the trial Court and held that the first appellant proved his title possession over the suit property and granted a decree for



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declaration and injunction as prayed for. Aggrieved by the same, the appellant are before this Court.

5. The learned counsel for the appellant contended that the first respondent miserably failed to prove the partition among Muthukrishnaier, Subbier and Nagaier as pleaded by him. The learned counsel by taking this Court to Ex.B5 - Registered Sale Deed, executed by Muthukrishnaier in favour of Kuppusamy Iyer, submitted that as per the recitals found in Ex.B5, Muthukrishnaier sold only his undivided share of 41 2/3 cents in western 1 acre and 25 cents in favour of Kuppusamy Iyer and therefore, the partition pleaded by the first respondent got falsified. The learned counsel assailed the findings of the First Appellate Court that there was a partition among Muthukrishnaier, Subbier and Nagaier by taking this Court to the boundary description mentioned in Ex.X1, Ex.A21 and Ex.A22, wherein, the property dealt with under those documents were described as east of Nagaier and Subbier Vagaiyara. The learned counsel further contended that rectification deed Ex.A5 completely changed the property sold by the vendors of first respondent under Ex.A1 and therefore, the same cannot be taken into consideration.



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6. The learned counsel for the respondent tried to support the judgment passed by the First Appellate Court by taking this Court to the recitals of Ex.B6, whereunder purchaser from Muthukrishnaier, namely Kuppusamy Iyer sold the portion of the property to Kittammal by describing the property as the one, he got it under partition. It is the submission of the learned counsel for the respondent that recital found in Ex.B6 as if, there was a partition between Kuppusamy Iyer on one hand and Subbier and Nagaier on other hand, would advance the case of the first respondent. The learned counsel also by taking this Court to the recitals in Ex.A4, submitted that there was a partition between Nagaier and Subbier after sale by Muthukrishnaier. Therefore, the first respondent succeeded in proving both the partitions pleaded by him in reply. The learned counsel further submitted that all the documents filed by the appellants only relating to 2.50 acres on the eastern side of the suit survey number, which was sold by the original owner Nagalammal in favour of Badmavathy under Ex.A1 and southern portion of western 1.25 acres, which was sold to Kuppusamy Iyer by Muthukrishnaier. Therefore, it is the contention of the learned counsel for the appellant that the properties purchased by the respondents are no



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way connected with the suit properties, which lie on the northern portion of western 1.25 acres, which was retained by Nagalammal and sold to Muthukrishnaier and two others.

7. After hearing the arguments of the learned counsel for the appellants, this Court formulated the following substantial question of law, which arises for consideration:

" Whether the first respondent/plaintiff, in a suit for title, is entitled to succeed without proving the partition among his predecessor in interest as pleaded by him?"

8. After framing the substantial question of law, heard the arguments of the learned counsel for the respondent on substantial question of law framed today.

9. Heard the arguments of the learned counsel for the appellants and the learned counsel for the respondents and perused the typed set of papers and other records.



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10. The first respondent herein filed a suit for declaration of title on specific plea that there was a partition between Muthukrishnaier, Subbier and Nagaier in respect western 1.25 cents in suit S.No.477/1. It is the specific case of the first respondent that original owner Nagalammal retained 1 acre 25 cents on the western side of the suit survey number and the remaining 2 acres 50 cents on the east of the suit survey number to one Badmavathy. He further pleaded that Muthukrishnaier, Subbier and Nagaier, who purchased western 1.25 acres from Nagalammal partitioned the same among them and western $41 \frac{2}{3}$ cents was allotted to the share of Nagaier. After death of Nagaier, again there was a partition between two sons of Nagaier, namely, Munisamy Iyer and Venkatachalapathy Iyer and out of western $41 \frac{2}{3}$ cents, middle portion was allotted to Munisamy Iyer. The property on immediate west and east of share allotted to Munisamy Iyer was allotted to his brother Venkatachalapathy Iyer. Therefore, it is incumbent on first respondent to prove those two partitions pleaded by him. The First Appellate Court based on the recitals found in Ex.A15, Ex.A21 and Ex.A22 came to the conclusion that the first respondent proved two partitions pleaded by him.



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11. The first respondent sought for declaration of his exclusive title over the suit property. Unless he is able to prove the partitions pleaded by him, he is not entitled to declaration of exclusion of title over the suit property. Ex.B5 is a sale deed, executed by Muthukrishnaier in favour of Kuppusamy Iyer, whereunder, he sold his undivided 41 2/3 cents in favour of Krishnanier. Had there been a partition between Muthukrishnaier, Subbier and Nagaier as pleaded by the first respondent, the above said Muthukrishnaier would not have sold his undivided 41 2/3 cents to Kuppusamy Iyer under Ex.B5. Therefore, the recital found in Ex.B5, dated 03.03.1951 falsified the case of the first respondent that there was a partition among three person as pleaded by him. The first respondent also as PW1 admitted that Nagaier died in the year 1947. Therefore, till the death of Nagaier and also till the execution of Ex.B5, there was no partition among three members mentioned above. The learned counsel for the respondents by relying on recitals in Ex.A15, which is equivalent to Ex.B6, submitted that purchaser from Muthukrishnaier namely Kuppusamy Iyer, while selling his 42 cents, under Ex.A15, described it as the property purchased from Muthukrishnaier and also by partition. Therefore, the learned counsel submitted that recitals in Ex.B6 proved partition. However,



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the first respondent did not raise any plea, as if, there was a partition between Kuppusamy Iyer on one hand and Subbier and Nagaier on the other hand. The specific plea raised by the first respondent that there was a partition among Muthukrishnaier, Subbier and Nagaier and the same has been falsified by the recitals found in Ex.B5.

12. The learned counsel for the respondents also tried to convince the Court by relying on the recitals found in Ex.A4, to show that there was a partition between Nagaier and Subbier after sale by Muthukrishnaier. As mentioned earlier, Nagaier as per the admission made by the first respondent, died in the year 1947. Therefore, after sale by Muthukrishnaier in the year 1951, under Ex.B5, there could not be any partition between Nagaier and Subbier as recited in Ex.A4. Therefore, the partition between Nagaier and Subbier was also not proved. In fact, there was no plea raised by the first respondent with regard to partition between Nagaier and Subbier. The first respondent raised only partition among three persons, namely, Muthukrishnaier, Nagaier and Subbier. The said plea is not at all proved and in fact and the same was falsified by the recitals found in Ex.B5. When there is no convincing evidence available on record to show that 1.25



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acres on the western side of the suit property was divided among three persons as pleaded by the first respondent, there was no occasion for the sons of Nagaier to divide it between them. Hence, the findings rendered by the First Appellate Court, as if, the first respondent proved partition pleaded by him is not based on any acceptable evidence. In fact, in Ex.A15, Ex.A21 and Ex.A22 relied on by the First Appellate Court, while describing the property dealt with under those documents, the western boundary of the property was mentioned as property of Nagaier and Subbier Vagaiyara. It means that there was no partition between Nagaier and Subbier. The First Appellate Court committed misreading of those documents and assumed, as if, in the boundary description, western boundary was mentioned as property of Nagaier alone. Therefore, the finding of the First Appellate Court, as if there was a partition among Muthukrishnaier, Nagaier and Subbier is the result of misreading of evidence available on record.

13. In a suit for declaration of title, the plaintiff shall win or lose based on his own strength. It would be appropriate to refer to the observation of the Hon'ble Apex Court in the case of ***Union of India (UOI) and Ors. Vs. Vasavi Co-op. Housing Society Ltd. and Ors.*** reported in ***AIR***



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2014 SCC 937, wherein, the Hon'ble Apex Court observed as follows:

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"12. It is trite law that, in a suit for declaration of title, burden always lies on the plaintiff to make out and establish a clear case for granting such a declaration and the weakness, if any, of the case set up by the defendants would not be a ground to grant relief to the plaintiff".

14. In the light of the above settled law and in the absence of any convincing evidence to show that there was a partition between Muthukrishnaier, Nagaier and Subbier, the first respondent is not entitled to maintain a suit for declaration of his exclusive title over 20 ³/₄ cents of suit properties. If at all, it is open to the first respondent to file the suit for partition seeking partition of 20 ³/₄ cents purchased by him by impleading all the legal heirs of the above said persons.

15. In view of the discussions made earlier, the substantial question of law framed in this Second Appeal is answered in favour of the appellant and against the respondents. Consequently, the Second Appeal is allowed by setting aside the judgment passed by the first Appellate Court and the judgment and decree passed by the trial Court stands restored.



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16. In nutshell,

a) this Second Appeal is allowed by setting aside the judgment and decree, dated 23.07.2012 in A.S.No.111 of 2010 on the file of Principal Sub Judge, Dindigul;

b) the judgment and decree passed by the trial Court stands restored; and

c) in the facts and circumstances of the case, there would be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

03.03.2023

NCC : Yes / No

Index : Yes / No

VSD

To

1.The Principal Sub Judge,
Dindigul.

2.The Principal District Munsif Court,
Dindigul.

3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SOUNTHAR, J.

VSD

Pre-delivery Judgment made in
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