



S.A.(MD) Nos.160 and 161 of 2006

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.02.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.(MD) Nos.160 and 161 of 2006

S.A.(MD) No.160 of 2006:

- | | |
|------------------------------------|---------------------------------------|
| 1.Khalifa Syed Gulam Rasool (Died) | ... Appellant/Appellant/
Plaintiff |
| 2.Thagirunnisha | |
| 3.Syed Akbar Usain | |
| 4.Syed Mohamed Usain | |
| 5.Syed Nazurudeen | |
| 6.Syed Ahamedhen | |
| 7.Shahin Banu | |
| 8.Syed Amrudeen | |
| 9.Syed Ahmed Usain | ... Appellants 2 to 9 |

[Appellants 2 to 9 – brought on record as LRs of the deceased sole appellant vide order dated 10.09.2020 made in C.M.P.(MD) Nos.1625 to 1627 of 2020 in S.A.(MD) No.160 of 2006]

Vs



S.A.(MD) Nos.160 and 161 of 2006

- 1.Syed Fazrudeen
S/o.Syed Jaffer Sahib
- 2.Syed Mutharudeen (Died)
S/o.Syed Jaffer Sahib
- 3.Allarahi Bibi
W/o.Abdul Azees
- 4.N.Syed Nowsath
S/o.Syed Nazirudeen
- 5.N.Katheeja Bi
D/o.Syed Nazirudeen
- 6.N.Samsath
S/o.Syed Nazirudeen
- 7.N.Sahinsa
S/o.Syed Nazirudeen
- 8.N.Parsheeth
D/o.Syed Nazirudeen
- 9.B.Syed Zahir
S/o.Syed Nazirudeen
- 10.N.Syed Sathiq
S/o.Syed Nazirudeen
- 11.N.Basheera
S/o.Syed Nazirudeen



S.A.(MD) Nos.160 and 161 of 2006

12.Abdul Khader
S/o.Abdul Azeez

13.Mehboob Bi
W/o.Mohammed Hussain

14.Ziaudeen
S/o.Badrudeen

15.Zabir Basha
S/o.Chan Basha

16.Z.Ushmudeen
S/o.Ziaudeen

17.Z.Samsudeen
S/o.Ziaudeen

18.Z.Tajudeen
S/o.Ziaudeen

... Respondents/Respondents/
Defendants 2, 3 & 6 to 21

***[RR3, 7, 9 and 10 – amendment made vide
order dated 20.12.2022 made in M.P.(MD) Nos.
4 and 5 of 2013 in S.A.(MD) No.160 of 2006]***

19.M.Jamaludeen
S/o.Late.Syed Mutharudeen

20.M.Kurshid Begam
D/o.M.Kurshid Begum

... Respondents 19 & 20

***[RR19 and 20 – brought on record as LRs of
the deceased 2nd respondent vide order dated***



S.A.(MD) Nos.160 and 161 of 2006

WEB CC

24.01.2023 made in M.P.(MD) Nos.1 to 3 of 2013 in S.A.(MD) No.160 of 2006]

Prayer:- Appeal filed under Section 100 of Civil Procedure Code to set aside the judgment and decree dated 07.12.2004 made in A.S.No.121 of 2004 on the file of the Principal District Court, Trichy, confirming the judgment and decree dated 05.12.2003 made in O.S.No.1887 of 1996 on the file of the Principal District Munsif's Court, Trichy.

For Appellant : Ms.M.Parameshwari
for Mr.S.M.S.Johnny Basha

For RR1, 4 to 11,
19 & 20 : Mr.M.Saravanan

For RR12 to 17 : No appearance

S.A.(MD) No.161 of 2006:

1.Syed Gulam Rasool (Died)

... Appellant/Appellant/
2nd Defendant

2.Thagirunnisha

3.Syed Akbar Usain

4.Syed Mohamed Usain

5.Syed Nazurudeen

6.Syed Ahamedhen

7.Shahin Banu



S.A.(MD) Nos.160 and 161 of 2006

WEB COPY

8.Syed Amrudeen

9.Syed Ahmed Usain

... Appellants 2 to 9

***[Appellants 2 to 9 – brought on record as LR's of the deceased
sole appellant vide order dated 10.09.2020 made in C.M.P.(MD)
Nos.1347, 1349 & 1355 of 2020 in S.A.(MD) No.161 of 2006]***

Vs

1.Syed Fazrudeen

2.Syed Mutharudeen Saheb

3.Smt.Saran Bi

4.Syed Nowsath

5.Katheeja

6.Samath

7.Syed Sahinsa

8.N.Syed Sheikzeer

9.Fasheeth

10.Syed Sathiq

11.Basheera

12.Dhagir

... Respondents/Respondents/
Plaintiffs 2 to 12 & D1

Prayer:- Appeal filed under Section 100 of Civil Procedure Code to set aside the judgment and decree dated 07.12.2004 made in A.S.No.122 of 2004 on the file of the Principal District Court, Trichy, confirming the judgment and



S.A.(MD) Nos.160 and 161 of 2006

decree dated 05.12.2003 made in O.S.No.1394 of 1989 on the file of the Principal District Munsif's Court, Trichy.

For Appellant : Ms.M.Parameshwari
for Mr.S.M.S.Johnny Basha

For RR1 & 3 to 11: Mr.M.Saravanan

For R12 : No appearance

R2 : Dismissed vide order dated 01.09.2017

COMMON JUDGMENT

1.1. S.A.(MD) No.160 of 2006 is arising out of a suit for bare injunction filed by the first appellant in O.S.No.1887 of 1996. The trial Court dismissed the suit and the first appeal filed by the first appellant was also dismissed. Aggrieved by the concurrent findings, the first appellant preferred S.A.(MD) No.160 of 2006.

1.2. S.A.(MD) No.161 of 2006 is arising out of a suit for bare injunction filed by respondents 1 to 11 in O.S.No.1394 of 1989. The said suit was decreed by the trial Court and the appeal filed by the first



S.A.(MD) Nos.160 and 161 of 2006

appellant/second defendant was dismissed by the first appellate Court.

Hence, challenging the concurrent findings, the first appellant/second defendant in the suit has come up by way of S.A.(MD) No.161 of 2006.

1.3. When the second appeals were pending, the 1st appellant died and appellants 2 to 9 were brought on record as legal representatives of the 1st appellant.

1.4. Before the trial Court, both the suits were tried together and evidence was recorded in the suit filed by the first appellant in O.S.No.1887 of 1996. Therefore, in these second appeals, the first appellant means the plaintiff in O.S.No.1887 of 1996 and the second defendant in O.S.No.1394 of 1989. The respondents mean the defendants in O.S.No.1887 of 1996 and the plaintiffs in O.S.No.1394 of 1989.

1.5. According to the first appellant, the suit property in O.S.No.1887 of 1996 originally belonged to his maternal grandmother Amir Beebi. After



S.A.(MD) Nos.160 and 161 of 2006

death of Amir Beebi, the property was inherited by the first appellant's father Mohammed Hussain and paternal aunts Piahri Beebi, Kathoon Beebi and Allarha Beebi. After death of the first appellant's father in July, 1975, there was a partition in the family and the northern portion was allotted to the paternal aunts of the first appellant and the first appellant got the southern half of the property, which is shown as the suit property in O.S.No.1887 of 1996. It was averred by the first appellant that from 1975 onwards, he had been in possession and enjoyment of the suit property exclusively and prescribed title to the same. It was also stated that the respondents were strangers to the properties and they had no right over the suit property. It was further submitted that on 05.12.1987, the respondents tried to interfere with the possession of the first appellant and hence, he was constrained to file a suit for injunction against them.

1.6. The respondents filed a written statement denying the averment of the first appellant that the suit property belonged to Amir Beebi Ammal. It was the contention of the respondents that the suit property originally



S.A.(MD) Nos.160 and 161 of 2006

belonged to one Syed Gulam Nabi and he had only one daughter by name Kadher Bisha. The said Kadher Bisha had only one daughter Banch Bisha. Defendants 1 to 3 were the sons of the said Banch Bisha. It was further pleaded that the grandmother of defendants 1 to 3 Kadher Bisha executed a Will in the year 1908 giving the suit property in favour of the mother of defendants 1 to 3 viz., Banch Bisha. The mother of defendants 1 to 3 on her part executed a settlement deed on 01.06.1939 settling the suit property in favour of her sons viz., defendants 1 to 3. Therefore, defendants 1 to 3 claimed right over the suit property under the settlement deed of their mother dated 01.06.1939 marked as Ex.B.3 and sought for dismissal of the suit.

2.1. O.S.No.1394 of 1989 was filed by the respondents seeking bare injunction against the first appellant and another by claiming title under the settlement deed executed by Banch Bisha marked as Ex.B.3. In the said suit, it was averred by the respondents that the suit property was a vacant site and they had been in possession and enjoyment of the same. It was



S.A.(MD) Nos.160 and 161 of 2006

further averred that the first appellant tried to interfere with the possession of the respondents and hence, they were constrained to file a suit for bare injunction.

2.2. The said suit was resisted by the first appellant by denying the settlement under which the respondents claimed title to the suit property.

3. Before the trial Court, the first appellant was examined as P.W.1 and twelve documents were marked on his side as Ex.A.1 to Ex.A.12. The first respondent was examined as D.W.1 and three documents were marked on the side of the respondents as Ex.B.1 to Ex.B.3.

4. On appreciation of oral and documentary evidences available on record, the trial Court came to the conclusion that the suit property in both the suits are one and the same and the first appellant failed to prove his possession over the suit property, but however, the respondents' title and possession were admitted by the first appellant as P.W.1 and consequently,



S.A.(MD) Nos.160 and 161 of 2006

dismissed the suit filed by the first appellant and decreed the suit of the respondents. Aggrieved by the same, the first appellant filed first appeals in A.S.Nos.121 and 122 of 2004 on the file of the Principal District Court, Tiruchirappalli. The learned first appellate Judge concurred with the findings of the trial Court and dismissed both the appeals. Aggrieved by the concurrent findings, the first appellant has filed these second appeals.

5. The learned counsel for the appellants, by taking this Court to the boundary description found in the plaint of respective suits, forcefully submitted that the suit properties in both the suits are not same and hence, the finding of the Courts below as if the suit properties in both the suits are one and the same is not correct. The learned counsel further submitted that the respondents, who claimed right under a Will executed by Kadher Bisha, failed to prove the same by following the procedure contemplated under Section 68 of the Indian Evidence Act, 1872 and hence, the finding rendered by the Courts below as if the respondents proved their better title over the suit property is not correct.



S.A.(MD) Nos.160 and 161 of 2006

WEB COPY

6. As far as the identity of the suit property is concerned, both the trial Court as well as the first appellate Court compared the boundaries mentioned in the plaint of the respective suits and based on the other evidences available on record, came to the conclusion that both the suit properties are one and the same. The first appellate Court, in its judgment, discussed the description of boundary on each and every direction of the suit property and found that the boundary description given in O.S.No.1394 of 1989 correlates with the boundary description in O.S.No.1887 of 1996. The said finding of fact by the Courts below that the suit properties are one and the same is binding on this Court, when it is not vitiated by any perversity.

7. As far as the contention of the learned counsel for the appellants that the respondents failed to prove Ex.B.2 Will is concerned, the respondents claimed right over the suit property under the settlement executed by Banch Bisha under Ex.B.3. While tracing the title of Banch Bisha, the respondents relied on Ex.B.2 Will. The said Will was dated



S.A.(MD) Nos.160 and 161 of 2006

04.09.1908. The attestors to the said testamentary document was not examined by the respondents. However, the admission made by the first appellant as P.W.1 assumes significance in this case. The first appellant as P.W.1 clearly admitted Ex.B.3 settlement and deposed that the property covered under Ex.B.3 belonged to the respondents and he had no right over the same. The vernacular extract of P.W.1's admission is as follows:

□ஓ.எஸ்.1394/89ல் கண்ட சொத்தானது 1.6.39
தேதிய செட்டில்மெண்ட்டில் கண்ட சொத்தாகும்.
1394/89ல் கண்ட சொத்து 1 முதல் 3
பிரதிவாதிகளுக்கு தான் பாத்தியம். பிரதிவாதிகள்
தாக்கல் செய்த வழக்கில் கண்ட சொத்தில்
எங்களுக்கோ என்னை சார்ந்தவர்களுக்கோ எந்த
பாத்தியமும் இல்லை.□

8. A perusal of P.W.1's evidence would make it clear that there is a well pronounced admission by the first appellant that the property covered under Ex.B.3 settlement deed belonged to defendants 1 to 3 and he had no right over the same. In fact, P.W.1 admitted the same even in his chief examination proof affidavit. When title of the respondents under Ex.B.3 is



S.A.(MD) Nos.160 and 161 of 2006

admitted by the first appellant, it is not necessary for the respondents to prove the parent document viz., Ex.B.2. Therefore, the contention made by the learned counsel for the appellants in this regard is rejected.

9.1. In view of the admission made by the first appellant with regard to the right of the respondents over the suit property, the findings rendered by the Courts below that respondents 1 to 3 proved their better title over the suit property calls for no interference. Accordingly, S.A.(MD) No.161 of 2006 deserves to be dismissed.

9.2. As far as S.A.(MD) No.160 of 2006 is concerned, this second appeal is arising out of a suit for bare injunction filed by the first appellant. The Courts below had given a factual finding that the suit property in both the suits are one and the same. Based on the admission made by the first appellant, S.A.(MD) No.161 of 2006 was dismissed by confirming the findings of the Courts below. Therefore, S.A.(MD) No.160 of 2006 also deserves to be dismissed by confirming the judgments and decrees passed



S.A.(MD) Nos.160 and 161 of 2006

by the Courts below.

10. In fine,

(i) S.A.(MD) No.160 of 2006 is dismissed by confirming the judgments and decrees passed by the Courts below;

(ii) S.A.(MD) No.161 of 2006 is also dismissed by confirming the judgments and decrees passed by the Courts below; and

(iii) In the facts and circumstances of the case, there will be no order as to costs.

15.02.2023

NCC: Yes/No
Index: Yes/No
abr

To

1. The Principal District Judge,
Trichy.

2. The Principal District Munsif,
Trichy.

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



WEB COPY



S.A.(MD) Nos.160 and 161 of 2006

S.SOUNTHAR, J.

abr

S.A.(MD) Nos.160 and 161 of 2006

15.02.2023