



S.A(MD)No.116 of 2023

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.10.2023

CORAM

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

S.A(MD)No.116 of 2023

and

C.M.P(MD)Nos.2628 and 5035 of 2023

R.Rajapaul

... Appellant/Appellant/2nd Defendant

Vs.

1.Jessy Let.,
2.T.Justin Jerald
3.T.Simion
4.T.Blessy
5.S.Arasu
6.Raja Ravi

... Respondents/Respondents/
Plaintiffs & Defendants 1 and 3

PRAYER:- Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree in A.S.No.23 of 2017 on the file of the Subordinate Judge, Padmanabhapuram, dated 04.11.2019 confirming the order made in O.S.No.147 of 2014 on the file of the Principal District Munsif Court, Padmanabhapuram, dated 03.02.2016.

For Appellant :Mr.T.Selvakumaran

For R-1 to R-4 :Mr.M.P.Senthil



S.A(MD)No.116 of 2023

WEB COPY

JUDGMENT

This second appeal is filed against the judgment and decree of the learned Subordinate Judge, Padmanabhapuram, dated 04.11.2019 made in A.S.No.23 of 2017 confirming the judgement and decree, dated 03.02.2016 made in O.S.No.147 of 2014 on the file of the Principal District Munsif Court, Padmanabhapuram.

2. The respondents 1 to 3, as plaintiffs filed a suit in O.S.No.147 of 2014, seeking a relief of decree of permanent injunction restraining the defendants from constructing any compound wall over the suit property and not to interfere with the peaceful possession and enjoyment of the suit property by the plaintiffs.

3. The case of the plaintiffs/respondents 1 to 4, is that the suit properties and other properties originally belonged to (1)Rusalayan, (2) Thomas @ Thomson and (3) Johnson. They entered into a partition, through a registered partition deed No.757/1996, dated 30.12.1966. As per this partition deed, the suit property was allotted to Thomas @ Thomson as 'B' schedule Item No.7 along with other properties. Thomas @ Thomson, took possession of the property and planted coconut trees and was enjoying. After the death of Thomas @ Thomson



S.A(MD)No.116 of 2023

on 02.05.2007, the property devolved on his wife and children. Thomas @ Thomson during his lifetime, executed a sale deed in respect of portion of the property in favour of one Dharmaraj for seven cents on 03.07.1991. Dharmaraj executed a settlement deed in favour of the first plaintiff on 28.03.2012. The suit property is lying as a single plot. The defendants have no title, possession and enjoyment over the suit property. On 24.05.2014, the defendants and their men trespassed into the suit property and tried to dig a fountain for construction of a compound wall. In the said circumstances, the suit was filed.

4. The appellant/2nd defendant filed a written statement denying the plaint averments. It is claimed that as per partition deed dated 30.12.1966, the father of the defendants 1 and 2 Rusalayan was allotted 31 cents in A-schedule Item No.5. It is correlated to re-survey No.45/3. On the northern side of this property, the northern owner Chellam and his wife encroached a portion and put up a construction. Rusalayan filed O.S.No.34 of 2001 on the file of the District Munsif Curt, Padmanabhapuram and got interim injunction. Later, the said suit was compromised. A compromise decree was passed. From the decree passed in the suit, it is proved that the suit property is the absolute property of Rusalayan. On 17.06.2013, the wife and children of Rusalayan effected a registered partition deed in respect of the suit



S.A(MD)No.116 of 2023

property and other properties. In the said partition, A-schedule property was allotted to the second defendant Raja Paul. A-schedule Item-1 is southern portion ie., 11.017 cents. As per this partition deed, B-schedule properties were allotted to first defendant Raja Ravi. Northern 11.0.17 cents out of extent 22.034 cent in R.S.No.453 was allotted to him. In the said partition, C-schedule property was allotted jointly to parties 1,2, 4 and 5 in the partition deed. As per this partition deed, the defendants 1 and 2 have absolute title, possession and enjoyment of the properties ie., A-Schedule Item No.1 and B-Schedule Item No.1. The sale deed executed in favour of Dharmaraj by Thomas @ Thomson has no validity. The settlement deed said to have been executed by Dharmaraj in favour of his wife is also not a valid document. After the partition on 17.06.2013, the defendants have put up granite compound wall on the eastern side, but the plaintiffs have demolished some portion of the compound wall. Thus, it is claimed that the plaintiffs/respondents have no right to claim relief of injunction as prayed for.

5. On the basis of the aforesaid pleadings, the trial Court framed the following issues:

“(i)Whether the plaintiffs are entitled to get a decree for permanent injunction as prayed for?; and



S.A(MD)No.116 of 2023

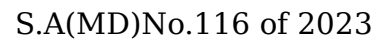
WEB COPY

(ii) To what other reliefs if the plaintiffs are entitled to?"

6. During the course of trial, P.W.1 was examined on the side of the plaintiffs and Exs.A1 to A9 were marked and Exs.C1 and C2 were marked. On the side of the defendants, no oral or documentary evidence produced.

7. On considering the oral and documentary evidence, the trial Judge found, from the description of property given in Ex.A1, the suit schedule of property and commissioner's report, that the suit property matches with Item-7 of B-schedule property in Ex.A1 and it is not item No.5 of A-schedule property. In that view of the matter and also taking into consideration other documentary evidence produced on the side of the plaintiffs/respondents 1 to 4, the trial Court decreed the suit.

8. The first appellate Court has also taken a similar view and dismissed the appeal filed in A.S.No.23 of 2017 on the file of the Subordinate Judge, Padmanabhapuram.



10. As per the facts adverted to above and the findings recorded by the Courts below on the basis of evidence produced, the main dispute appears to be the identification of the suit property ie., whether the suit property is Item No.5 of A-schedule property or Item No.7 of B – schedule property in Ex.A1-partition deed. The execution of Ex.A1-partition deed is not disputed by both the parties, rather it is admitted by both the parties. Only on the basis of Ex.A1-partition deed, they set out their right to the suit property. Though there are pleadings with regard to execution of partition deed among the defendants 1 and 2 on 17.06.2013 and filing of suit in O.S.No.34 of 2001, in the written statement, the defendants have not chosen to produce either the partition deed, or the records relating to the filing of the suit to show that the partition deed and the suit in O.S.No.34 of 2001, have some connection with the suit property.

11. It is curious to note that the defendants have not chosen to examine anyone as witnesses and produced any document in



S.A(MD)No.116 of 2023

support of their written statement. Thus, from the available evidence, both the Courts below concurrently recorded a finding on the basis of description of property given in the plaint, in the partition deed and from the Commissioner's report that the suit property relates to Item-7 of B-schedule property and it is not item No.5 of A-schedule property in Ex.A1-Partition deed and it was allotted to the plaintiff's husband in the partition. This Court finds no reason to take a different view of the matter on the issue which was concurrently decided by the Courts below on the basis of the evidence available.

12. As per the judgments of the Courts below, the plaintiff/respondents are entitled for the relief of injunction as prayed for and decreed accordingly. This Court finds no ground available for interfering with the judgment of the Courts below.

13. In Sir **Chunilal V. Mehta and Sons v. The Century Spinning Co. Ltd., 1962** reported in **AIR 1962 SC 1314**, the Hon'ble Supreme Court formulated what amounts to a substantial question of law, as follows:

1. Whether it is of general public importance (or)
2. Whether it directly and substantially affects the rights of parties **and if so,**



S.A(MD)No.116 of 2023

WEB COPY

3. Whether it is **either** an open question (in the sense not finally settled by this Court or Privy Council or Federal Court) **(or)**

4. The question is not free from difficulty and calls for discussion of alternative views.

14. In the case before hand, the appellant has not made out any of the aforesaid grounds to formulate substantial question of law. There is no substantial question of law arises for consideration in this second appeal.

15. In this view of the matter, judgment and decree of the learned Subordinate Judge, Padmanabhapuram made in A.S.No.142 of 2019, dated 04.11.2019, are confirmed and this Second Appeal is dismissed. No Costs. Consequently, connected miscalculations petition is closed.

10.10.2023

pm

Index:Yes/No

NCC:Yes/No



S.A(MD)No.116 of 2023

To,

- 1.The Additional Subordinate Court,
Tenkasi.
- 2.The Principal District Munsif Court,
Tenkasi.
- 3.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



S.A(MD)No.116 of 2023

G.CHANDRASEKHARAN, J.

pm

S.A(MD)No.116 of 2023

10.10.2023