



SA(MD)No.205 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 08.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

S.A.(MD)No.205 of 2020

and

C.M.P.(MD)No.2822 of 2020

1.M.Thiraviyam

2.M.K.Thiraviyam

3.M.R.Thiraviyam

4.D.Selvi

5.M.S.Archunan

... Appellants/Respondents 1 to 5/
Plaintiffs

Vs.

1.N.Subhash Chandra Bose,

2.S.S.S.Mohanlal

3.Sundhakar

4.V.Muthaiah

... Respondents 1 to 3/Appellants /
Defendants 1 to 3

... 4th Respondent /6th Respondent /
4th Defendant

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree, dated 18.12.2019, made in A.S.No.25 of 2016, on the file of the Additional Sub Court, Tenkasi, reversing the judgment and decree, dated 02.12.2015, made in O.S.No.194 of 2013, on the file of the Additional District Munsif, Tenkasi by allowing this Second Appeal.



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For Appellants : Mr.J.Senthil Kumaraiah

For Respondents : Mr.K.Navaneetha Raja for R1 to R3

JUDGMENT

The appellants herein are the plaintiffs and the respondents herein are the defendants before the trial Court.

2. For the sake of convenience, the parties are referred to as per their rank before the trial Court.

3. The brief facts, leading to the filing of this Second Appeal, are as follows:

The plaintiffs filed the suit for the relief of declaration and injunction. The same was decreed on 02.12.2015. Against which, the defendants preferred the first appeal in A.S.No.25 of 2016. In the first appeal, the decree of the trial Court was reversed, vide order dated 18.12.2019 and thereby, the suit was dismissed. Against the dismissal of the suit in the first appeal, the plaintiffs have come with the Second Appeal.



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4. According to the plaintiffs, by virtue of Ex.A1-Patta, an extent of 1.97 Hectres belongs to one Mayeleri Nadar. The first plaintiff is the Legal Heir of the said Mayeleri Nadar. While this being so, during the life time of Mayeleri Nadar, he executed a settlement deed in favour of the first plaintiff in respect of item No.4 and item No.5 of suit property and also sale deeds in the name of second and third plaintiffs in respect of item No.1 and item No.3 of suit property. After the demise of the said Mayeleri Nadar, the first plaintiff being the only son, has executed a sale deed in favour of the second, fourth and fifth plaintiffs in respect of item Nos.2, 6 and 7 of suit property. Thus, the plaintiffs became the absolute owners of the property. The plaintiff further submits that since the defendant was disputing their title, the plaintiffs filed the instant suit for declaration and injunction.

5. The said suit was contested by the defendants by filing written statement. In which, they pleaded that the suit property was originally belonged to the predecessors in title of the defendants, and some other persons, including the father of the first plaintiff, and that by virtue of Patta No.22, there was oral partitions during 1990. In the said oral partition, the



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northern portion was allotted to Mayeleri Nadar and another two persons.

They would further submit that the Southern portion was allotted to Muthuvel Pillai, who is the predecessor in title of the defendant. The said Muthuvel Pillai has executed the power of attorney deed to one Sudalai Muthu, on 03.01.1994. The said Sudalaimuthu Nadar has executed a sale deed in the name of the first defendant's father, namely, Nainar Nadar, on 25.01.2002. According to the defendant, in the total extent of 4.87 Acres, the southern portion of an extent of 2.44 Acres was allotted to Muthuvel Pillai.

6. It is the submission of the defendants that the plaintiffs' predecessors in title are entitled to only 1/3rd of the undivided share of the northern portion of S.F.No.520. Therefore, they would submit that the suit for declaration is not maintainable and is liable to be dismissed.

7. Based up on the above pleadings, the trial Court has framed the following two issues:

1) Whether the plaintiffs are entitled to get the relief of declaration and permanent injunction, as prayed for? and



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2) To what other reliefs, the plaintiffs are entitled to?

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8. Before the trial Court, on the side of the plaintiffs, the first plaintiff was examined as P.W.1 and Exs.A1 to A14 were marked. On the side of the defendants, one witness was examined as D.W.1 and Exs.B1 and B8 were marked.

9. Based on the evidence and materials on record, the trial Court had decreed the suit. The trial Court found that as per Ex.A1-Patta, the entire extent of 4.87 Acres in S.F.No.520 belonged to Mayeleri Nadar. Further, the non production of Adangal or Kist receipt by the defendant, would also be found in favour of the plaintiff. Further, the trial Court has also dis-believed the oral partition. It is also the finding of the trial Court that even in Patta No.22-Ex.B1, Mayeleri Nadar name is found place. Therefore, the trial Court has ultimately decreed the suit.

10. Aggrieved with the said findings of the trial Court, the defendants preferred an appeal before the First Appellate Court. In which, the first appellate Court had reversed the finding, on the ground that the



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plaintiffs have not proved their title and interest over the suit property independently and that the weakness of the defendant case will in no way improve the plaintiff's case and eventually dismissed the suit by allowing the First Appeal.

11. Aggrieved with the said finding of the first Appellate Court, the plaintiff filed this Second Appeal and the same is pending at the stage of admission.

12. It is pertinent to mention here that when the Second Appeal is pending, the petitioners / plaintiffs have also filed an application to receive additional documents, which was allowed by this Court. Through the said order in C.M.P.(MD)Nos.9021 & 9022 of 2021 the Identity card for small farmers issued by the Agriculture Development Officer, dated 08.03.1994, and the Death Certificate of A.Muthuvel Pillai, dated 26.02.1999 were taken on record and marked as Ex.A15 and A16 respectively, in this second appeal.



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13. The learned counsel for the appellants would submit that though Muthuvel pillai has executed a power of attorney deed on 03.01.1994 in favour of Sudalai Muthu Nadar, the sale deeds stands in the name of Nainar Nadar was executed by the power agent Mr.Sudalaimuthu Nadar, after the demise of the Principal qua Mr.Muthuvel Pillai. According to Ex.A16 – death certificate, the said Muthuvel Pillai died on 26.02.1999.. Hence, the plaintiffs contended that the sale deed Ex.P2 is null and void.

14. Therefore, the learned counsel for the appellants would submit that when the documents stands in the name of the defendant become null and void, then, naturally the suit has to be decreed in favour of the plaintiffs. Apart from that the learned counsel for the appellants would also contend that all the sale deeds which stand in the name of the plaintiffs, would prove their title. Therefore, the learned counsel for the appellants prayed to allow this appeal and thereby, prayed to restore the decree granted by the trial Court.

15. Per contra, the learned counsel for the respondents/defendants would vehemently submit that when the plaintiffs' case is for the relief of



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declaration and injunction, it is their primordial duty to prove this case independently by rebuttal evidence and that they have to prove his title independently by acceptable evidence and that they cannot take the weakness of the defendants case. He would further submit that, when the plaintiffs themselves accepted that their father has acquired title only by way of Ex.A1 - patta, the said assignment is only through Ex.B1-Patta stands in the name of Muthuvel Pillai.

16. The learned counsel for the respondents / defendants would further submit that, after the oral partition, the predecessors in title of the plaintiffs, be only entitled for 1/3 share of the northern portion of S.F.No. 520. However, the plaintiffs instituted a suit to the extent of 4.87 Acres, which cannot be maintained and hence, prayed to dismiss this Appeal. The learned counsel for the defendants /respondents has relied upon a judgment of the Hon'ble Supreme Court reported in ***1998-4-SCC-539 (Punjab Urban Planning & Development Authority V. Shiv Saraswathi Iron & Steel Re-Rolling Mills)***, ***2005-5-CTC-17 (P.Panneerselvan V. A.Baylis)*** and ***2014-2-SCC-269 (Union of India V. Vasavi Co-operative Housing Society)***.



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17. I have given my anxious consideration to the either side submissions and also perused the materials.

18. The short point to be decided in the Second Appeal is whether the plaintiffs have independently established their title over the suit property. According to the plaintiffs, originally the suit property stands in the name of Mayeleri Nadar under UDR patta, which was marked as Ex.A1. As per Ex.A1- patta, in S.F.No.520, an extent of 1.97 Hectare stand in the name of Mayeleri Nadar. It is the submission of the plaintiffs that by virtue of Ex.A1 - patta, the said Mayeleri Nadar's right and title was devolved upon the plaintiffs by way of a sale deeds and settlement deeds – Ex.A2 to Ex.A7. Contrarily, the defendants have also setting up title to the suit property through Ex.B1- Patta, which stands in the name of one Muthuvel Pillai and 14 other persons. In which, the plaintiffs predecessors in title, qua Mayeleri Nadar name is also one of the person.

19. At this juncture, the learned counsel for the respondents would invite the attention of this Court in respect of the admission of the plaintiffs during cross-examination. The relevant admission reads as



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follows:

□எனக்கு 40 வருடங்களுக்கு முன்பிருந்தே வழக்கு சொத்து பற்றி தெரியும். வழக்கு சொத்து கிழக்கு நோக்கி சாய்வாக இருக்கும் என்றால் சரிதான். வழக்கு சொத்துக்கள் விளங்காடு என்றால் சரிதான். வழக்கு சொத்தில் மரங்கள் கிடையாது. வழக்கு சொத்தில் சோளம், காணம் பயிர் செய்யப்படும். வழக்கு சொத்தை 2 வருடங்களுக்கு முன்பு கிரையம் வாங்கினேன். வழக்கு சொத்து பட்டா யார் பெயரில் இருந்தது என்பதை கிரையம் வாங்கும் போது பார்த்தேன். வழக்கு சொத்தின் பட்டாவில், என் தாத்தா பெயரும், பின்னர் மயிலேறி நாடார் பெயரும், நயினார் நாடார் 1-ம் பிரதிவாதியின் தகப்பனார் பெயரும் இருந்தது என்றால் சரிதான்.□

20. Therefore, it is an admitted case of the plaintiffs that ever prior to the transfer of properties to the plaintiffs, the suit properties stand in the names of predecessors' in title of defendant, Mayileri Nadar and the father of the first defendant, namely, Nainar Nadar. Therefore, the learned counsel for the defendants would submit before this Court, when the plaintiffs themselves accept joint ownership of one Muthuvel Pillai, Mayeleri Nadar and Nainar Nadar, and when the plaintiffs themselves admit in paragraph No.3 of the plaint, that the property derived upon the plaintiffs predecessors in title, only by virtue of Patta, stands in the name of



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Mayeleri Nadar, the very suit for declaration cannot be maintained. While reversing the trial Court decree, even the first Appellate Court relied upon the admission of P.W.1 to non-suit the plaintiffs.

21. It is pertinent to mention here that as per Ex.A1 and Ex.B1-patta, an extent of 4.87 Acres is found a place in respect of S.F.No.520. But, Ex.B1-Patta, stands in the name of various persons, including the defendants predecessor in title and the plaintiffs predecessor in title. It is the case of the defendants that in respect of the suit property, there were some oral partition and in which, the defendant's predecessor in title were allotted southern portion. But, absolutely, there is no evidence available before this Court, to prove such oral partition. However, from the admissions of the plaintiffs, what emerges is that the suit property belongs to both the plaintiffs' predecessors and the defendants predecessors. When the plaintiffs themselves accepted joint ownership, to put it differently admits the existence of right to the defendants in the suit property, the very case of the plaintiffs as if the suit property exclusively belongs to them, cannot be countenanced.



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22. At this juncture, the learned counsel for the plaintiffs would invite the attention of this Court about the sale deeds of the defendants, viz., Ex.B2, B4 and B5 which are dated 25.01.2002, 16.01.2009 and 17.09.2009 respectively. He would contend that these sale deeds were executed through the power agent of Muthuvelpillai, who is none other than Sudalimuthu Nadar, but, after the demise of the principal Muthuvel Pillai. Here, admittedly Muthuvelpillai died on 26.02.1999, as evidence through Ex.A16. Therefore, the learned counsel for plaintiff would strenuously contend that these sale deeds are not valid and binding.

23. At this juncture, it is useful to refer the judgment relied by the defendants. The learned counsel for the defendants / respondents has relied upon a judgment of the Hon'ble Supreme Court reported in ***1998-4-SCC-539 (Punjab Urban Planning & Development Authority V. Shiv Saraswathi Iron & Steel Re-Rolling Mills)*** and the relevant portion of the judgment is extracted as follows:

“It must be remembered that Ex. P1 is only an offer made by the appellant/plaintiff, which was preceded by



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*certain correspondence emanating from the respondent and it can reasonably be presumed that subsequent to Exh. P1 there must have been some response from the respondent to the offer of the appellant. All those documents were not placed before the Court to appreciate correctly and completely the transactions between the parties. Further, as rightly pointed out by the Trial Court and the First Appellate Court that Gurdial Singh PW1 was examined only to prove Exh. P1 and he was not in a position to explain the intricacies thereon, in particular, the relevant Condition No. 2, which relates to supply and return of material. The language used, namely, 'weight to weight', was not at all explained by P.W.1. The whole evidence of PW1 has also not been placed before us. We are of the view that the Lower Appellate Court was quite justified in observing that the appellant-Board, for reasons best known to it, had not placed all materials and no effort has been made to explain what according business terminology was meant by supply of the esteem weight to weight. We cannot take exception to the conclusion taken as above by the Lower Appellate Court. **The plaintiff/appellant must succeed or fail on his own case and cannot take advantage of weakness in the defendant/respondent's case to get a decree.**"*

(Emphasis supplied by this Court)



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24. The learned counsel for the defendants / respondents has also relied upon a judgment of this Court reported in **2005-5-CTC-17 (P.Panneerselvan V. A.Baylis)** and the relevant portion of the judgment extracted as follows:

13. We do not think such a contention can be countenanced, more particularly, in a suit for specific performance of a contract. Apart from the general principle of law that the plaintiff must succeed on the strength of his own case and not on the basis of the weakness in the case of the defendant, in a suit for specific performance of contract, the plaintiff is obviously required to prove that there is a definite contract which is capable of being specifically enforced.

(Emphasis supplied by this Court)

25. The learned counsel for the defendants / respondents has relied upon another judgment of the Hon'ble Supreme Court reported in **2014-2-SCC-269 (Union of India V. Vasavi Co-operative Housing Society)** and the relevant portion of the judgment is extracted as follows:

“19. The legal position, therefore, is clear that the plaintiff in a suit for declaration of title and possession



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could succeed only on the strength of its own title and that could be done only by adducing sufficient evidence to discharge the onus on it, irrespective of the question whether the defendants have proved their case or not. We are of the view that even if the title set up by the defendants is found against, in the absence of establishment of plaintiff's own title, plaintiff must be non-suited."

(Emphasis supplied by this Court)

26. While ratiocinating the above judgment, it is very much apparent that when the plaintiffs come forward with a case, it is the duty of the plaintiffs to prove his case on his own, and they can't take advantage of the weakness of the defendants case. More particularly, here, the plaintiffs and the defendants have projected two pattas –Ex.A1 and Ex.B1, as the basis of their title. Whereas, the plaintiffs themselves admit that the suit property belongs not only to their predecessor in title Mayeleri Nadar, but, also to Nainar Nadar and Muthuvelpillai. In view of the same, this Court is not in a position to accept the case of either side and their basis of title through Ex.A1 or Ex.B1 patta. In that context, no right would flow to the plaintiffs through the sale deeds and settlement deeds, namely, Ex.A2 to A7, from Ex.A1- Patta. Hence, the plaintiffs are not entitled to have any



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relief from this Court. This Court is of the firm view that the order passed by the First Appellate Court is a well reasoned order, and the appellant did not elicit any material to interfere with the said order.

27. Hence, the instant Second Appeal is **dismissed** as no substantial question of law arises. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

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NCC : Yes/No

Index : Yes/No

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To

1.The Additional Sub Court,
Tenkasi.

2. The Additional District Munsif,
Tenkasi.

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



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C.KUMARAPPAN.,J.

Ls

Judgment made in
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