



S.A.(MD).No.391 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.11.2023

CORAM:

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

S.A.(MD).No.391 of 2017

and

C.M.P.(MD)No.8297 of 2017

Subbuthayammal (Died)

2.S.Nagalakshmi

3.N.S.Namburajan

4.Narayanan

5.Ayyappan

... Appellants

(Appellants 2 to 5 are brought on record as LRS of the deceased sole appellant vide Court Order dated 10.04.2023 made in CMP(MD)Nos. 2597, 2599 and 2600 of 2023 in S.A.(MD).No.391 of 2017)

/Vs./

1.The State of Tamil Nadu,
Through its representative of
District Collector,
Ramanathapuram.

2.The Tahsildar,
Rameshwaram,
Rameshwaram Town.



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3. The Executive Officer,
Rameshwaram Town.

...Respondents

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code against the Judgment and Decree passed in A.S.No.29 of 2015 on the file of the Subordinate Judge, Ramanathapuram dated 01.10.2015 reversing the Judgment and Decree passed in O.S.No.110 of 2000 on the file of the District Munsif Cum Judicial Magistrate, Rameshwaram dated 28.02.2001.

For Appellant : Mr.S.A.Ajmal Khan
For R-1 and R-2 : Mr.A.Kannan,
Additional Government Pleader.
For R-3 : Mr.M.Kannan

JUDGMENT

The suit is filed for declaration and injunction against the respondents.

2. The plaintiff(s) are the appellants herein and the defendants are the respondents herein. For the sake of convenience, the contesting parties shall be referred to as plaintiffs and defendants as per the ranking in the suit.



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3. The contention of the plaintiffs is that the suit property is their ancestral land. The suit property along with some other properties originally belong to the belongs to the plaintiff's grandfather Pitchai Pillai and his pangalis. Pitchai Pillai instituted suit in O.S.No.613 of 1890 on the file of District Munsif, Paramakudi for partition against his pangalis and the suit was allowed vide judgment and decree dated 13.11.1890. The said Pitchai Pillai was allotted the suit property for his share. Thereafter the Pitchai Pillai had filed a petition for final decree in 1992 and renumbered as O.S.No.255 / 1992 but the said application was dismissed for some procedural defects. Even though the application was dismissed one acre in the southern side of S.No.136/1 was allotted to Pitchai Pillai. Thereafter the son of Pitchai Pillai namely Subbiah Pillai had inherited the property and the said Subbiah Pillai orally gifted the suit property to the plaintiff. Since the property was vacant site, people starting dumping garbage in the land. When the plaintiff approached the defendants for payment of property tax, it was informed that property tax will not be collected to vacant site. Subsequently the defendants stored stones and on enquiry it was informed the land is classified as "Anatheenam". Hence the plaintiff issued notices dated 28.07.1998 and 09.06.1988 to rectify the mistake, since the same was rectified the plaintiff filed the suit. The plaintiff submitted that when the defendants



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claimed that the land is classified as Anatheenam, then only it came to their knowledge, thereafter only the suit was filed. The defendants did not file any written statement and remained ex-parte. Therefore, the lower Court proceeded further to passed an ex-parte decree. Aggrieved over the same, the defendants filed I.A.No.4 of 2009 in A.S.No.unnumbered of 2009. However, the same was dismissed on 07.08.2009. Aggrieved over the said dismissal, the Municipality had preferred C.R.P.(NPD)(MD)No.938 of 2015 before Hon'ble High Court. After considering the issue, this Hon'ble High Court vide order dated 15.07.2015 had set aside the order and remanded the case back to the Appellate Court for consideration.

4. The contention of the plaintiff is that the Appellate Court ought to have remanded back to the Trial Court for filing written statement by the defendants. Based on the same issues ought to have been framed and thereafter conducted trial. Without doing so, the Appellate Court has proceeded further to hearing the case without framing specific issues and without allowing to mark the documents.



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5. On perusal of the judgment it is seen that the Appellate Court after referring to the judgment of the Trial Court had held that the Trial Court is not supported by reasons. Of course, the Trial Court had passed exparte judgment based on the documents marked by the plaintiff. All exparte judgments would be passed by referring to the documents submitted by the plaintiff and by admitting the documents the judgments would have been passed. When the defendants remained exparte, then the Trial Court would have taken that the defendants had accepted the contention, hence the judgment would not contain reasons. In such circumstances, the Appellate Court ought to have directed the defendants to file written statement, then ought to have allowed to mark the documents submitted by both the plaintiffs and the defendants and then granted opportunity to both sides, thereafter ought to have passed judgments. Otherwise, the Appellate Court ought to have remitted back to the Trial Court to conduct Trial as stated above. But the Appellate Court had simply taken the version of the defendants that the land is classified as “Anatheenam” and had passed judgment. Even though the plaintiff’s claim of oral gift is not acceptable, but the plaintiff’s forefathers was having decree in their favour in O.S.No.613 of 1890 and also, they have patta. Absolutely there is no discussion about the same in the judgment. In short the Appellate Court without conducting trial by



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itself or without remitting to the Trial Court for conducting trial had dismissed by claim of the plaintiff is erroneous and perverse. The plaintiff ought to be granted one more opportunity to prove her case.

6. Therefore, this Court set aside the judgment rendered by the Appellate Court and the matter is remitted back to the Trial Court for re-trial. The plaintiffs are at liberty to amend the prayer with additional averments and documents. The defendants are at liberty to file written statement along with documents. Thereafter the Trial shall be conducted within a period of eight months from the date of receipt of the copy of this Judgment and Decree.

7. With the above direction, the Second Appeal is allowed as stated supra. No costs. Consequently, connected miscellaneous petition is closed.

02.11.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
Nsr



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TO:

- 1.The District Collector,
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- 2.The Tahsildar,
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- 3.The Executive Officer,
Rameshwaram Town.
- 4.The Subordinate Judge,
Ramanathapuram.
- 5.The District Munsif Cum Judicial Magistrate,
Rameshwaram .
- 6.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

Nsr

Judgment made in
S.A.(MD).No.391 of 2017

Dated:
02.11.2023