



S.A.No.452 of 1998

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 20.01.2023

PRONOUNCED ON : 15.03.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No.452 of 1998

Nagarajan

... Appellant

Vs

- 1.Rajanga Thevar (Died)
- 2.Chinnakannu Servai Nayakathammal
- 3.Ganesan
- 4.Nagamalai
- 5.Chittammal
- 6.R.Theda Selvam
- 7.R.Vijayanarayanamoorthy
- 8.R.Selvam



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9. R.Meenambiga

10.R.Parameswari

11.R.Kannamma

12.R.Kasirajan

... Respondents

[Respondents 5 to 12 are brought on record as LR's of the deceased 1st Respondent vide Court order dated 05.12.2017 made in M.P.(MD)Nos.1 to 3/2011 in S.A.No.452/1998 by MKKSJ]

Prayer:- Second Appeal is filed under Section 100 of Civil Procedure Code, praying to set aside the judgement and decree dated 30.06.1997 made in A.S.No.64 of 1994 on the file of the Principal Subordinate Judge, Madurai, reversing the judgement and decree dated 01.06.1994 made in O.S.No.160 of 1991 on the file of the District Munsif Court, Madurai Taluk, Madurai.

For Appellant : Mr.P.Thiagarajan

For R7 and R12 : Mr.PT.S.Narendravasan

For R11 : Mr.R.G.Shankar Ganesh

For R3, R4, R6
R8, R9 and R10 : No Appearance



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JUDGMENT

The plaintiff in the suit is the appellant. He filed a suit for declaration of title, permanent injunction and for mandatory injunction directing the defendants to remove pillars and fencing materials in the suit property. The suit was decreed by the Trial Court. On appeal filed by the defendants, the findings of the Trial Court were reversed by the First Appellate Court. Aggrieved by the same, the appellant is before this Court.

2. According to the plaintiff, the Old Survey Number of the suit property was 103A and the corresponding Resurvey Number is 34/1. The total extent in the suit survey number is 6 acres 15 cents. It was further averred in the plaint that out of 6 acres 15 cents in the suit survey number eastern half of 3 acres 7 cents belonged to Chinna Veedu. Out of 3 acres 7 cents on the eastern side 1 acre 85 cents on southern side was allotted to one Muthu Servai in the family partition. The other co-sharer Nagamalai Servai was allotted an extent of 1 acre 25 cents on the northern side of eastern half.



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It was further averred that the said Muthu Servai died leaving behind two daughters Petchiammal and Chinnammal and said legal heir continued to enjoy the property of Muthu Servai. They sold the said property to M.S.Karuppaiah Servai under Sale Deed dated 11.07.1960 marked as Ex.A1. The plaintiff being a only son of M.S.Karuppaiah Servai continued to possess and enjoy the suit property. It was also averred that the respondents/defendants colluding with each other fraudulently created a Sale Deed dated 07.04.1983 as if, respondents 2 to 4 sold 1 acre 23 cents on the southern side of eastern half to the 1st respondent. The respondents 2 to 4 claim to have derived title from other co-sharer of Muthu Servai viz., Nagamalai Servai. It was also alleged that Nagamalai Servai was entitled to only 1 acre 25 cents on the northern side of eastern half and he had no property on the southern side. It was also averred in the plaint that 1st respondent after aforesaid fraudulent sale deed, obtained patta for the suit property in his name and the same was cancelled and a joint patta was issued in the name of appellant and 1st respondent for the suit property. The respondent issued a reply notice to the legal notice of the appellant as if,



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Nagamalai Servai had 2 acres and 46 cents in suit S.No.34/1 and obtained a decree therefor in O.S.No.28 of 1991 on the file of Sub Court, Madurai. It was also averred that the 1st respondent attempt to trespass into the suit property and erect pillars and fence with barbed wires and hence, the suit was laid for above said reliefs.

3. The 1st respondent herein filed a written statement and resisted the suit by denying the title and possession of the appellant over the suit property. According to the 1st defendant Muthu Servai executed a Will bequeathing his share in the suit survey number in favour of 2nd respondent/Nayakathammal. In the said Will, he also mentioned reasons for not giving the property to Petchiammal and Chinnammal under whom appellant claim the right. It was also alleged that a suit was filed by sons of Athimoolam Servai viz., brothers of Nagamalai Servai for partition in O.S.No.25 of 1951 whereunder the southern 1 acre 23 cents in eastern half was allotted to 2nd respondent and the northern 1 acre 23 cents was allotted to the plaintiff therein. It was also averred in the written statement that



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appellant being a heir of Periya Veedu, he was only entitled to share in the western half of 3 acres 7 cents belonged to Periya Veedu. The 1st respondent raised a specific plea that he got 2 acres 46 cents on the southern side of eastern half from respondents 2 to 4. It was also averred that as per the final decree in O.S.No.25 of 1951, the 2nd respondent got 2 acres 46 cents on the eastern side of suit survey number. It was also averred that Petchiammal and Chinnammal had no right to convey the suit property to the appellant's father and the same was hit by doctrine of *lis pendens*. On these pleadings, the respondents sought for dismissal of the suit.

4. The Trial Court on appreciation of oral and documentary evidence available on record, came to the conclusion that the appellant proved his case and granted a decree as prayed for. Aggrieved by the same, the respondents 1 to 4/defendants filed an appeal in A.S.No.64 of 1994 on the file of Principal Sub Court, Madurai. The First Appellant Court reversed the findings of the Trial Court and dismissed the suit. Aggrieved by the same, the appellant is before this Court.



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5. The learned counsel for the appellant submitted that under Ex.A23 partition deed, Nagamalai Servai got only 1 acre 25 cents and Muthu Servai got 1 acre 86 cents. He executed a Will under Ex.A24 bequeathing his properties to his daughters Petchiammal and Chinnammal. The father of the appellant purchased it under Ex.A1 from Petchiammal and Chinnammal and thus, the appellant proved his title over the suit property. The learned counsel further submitted that under Ex.A23 partition deed Nagamalai Servai was allotted with only 1 acre 25 cents. Therefore, it is the submission of the learned counsel for the appellant that the allotment of 2 acres 46 cents in favour of Nayakathammal under Ex.B5 may not represent the correct extent.

6. The learned counsel for the respondents on the other hand submitted that under Ex.B22 Will dated 20.01.1953, Muthu Servai bequeathed 2 acres and 46 cents in suit survey number to 2nd respondent and the same was purchased by the 1st respondent under Ex.B4. The learned counsel further submitted that the 1st respondent purchased 1 acre 23 cents



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in the southern side of eastern half under Ex.B1 to B3 from the other respondents. Therefore, it is the submission of the learned counsel for the 1st respondent that 1st respondent proved his title over the suit property under Ex.B1 to B4 and Ex.B22. The learned counsel also by referring to the final decree passed in O.S.No.25 of 1951 submitted that under the said final decree which was marked as Ex.B5, 2 acres 46 cents on the eastern side of suit survey number was allotted to the share of 2nd respondent. Therefore, the claim made by the appellant shall be rejected.

7. This Court at the time admitting the second appeal formulated the following substantial question of law:-

“(a) When the parties to the suit do not dispute the partition deed Ex. A-23 which is the parent document in favour of the parties still is the learned Principal Subordinate Judge right in holding that the plaintiff has not established his title?”



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8. The appellant herein seeking declaration of title and other consequential relief of permanent injunction and mandatory injunction based on Ex.A1, Ex.A24 and Ex.A23. According to the case of the appellant, the total extent of land in suit survey number is 6 acres 15 cents. The western half of 3 acres 7 cents belong to Periya Veedu and eastern half of 3 acres 7 cents belong to Chinna Veedu. The appellant claims right over the suit property viz., 1 acre 82 cents on the southern side of eastern half in suit Survey No.34/1 under Ex.A1. The appellant's father viz., Karuppaiah Servai said to have purchased 1 acre 85 cents from Petchiammal and Chinnammal under Ex.A1. The said Petchiammal and Chinnammal got 1 acre 63 cents in suit survey number under a Will executed by one Muthu Servai. The said Will was marked on the side of the appellant as Ex.A24. The said Muthu Servai inturn got 1 acre 86 cents in the suit survey number under Ex.A23 partition deed. Therefore, the vendors of the appellant's father viz., Petchiammal and Chinnammal got only 1 acre 63 cents in suit survey number under Ex.A24 Will. However, they sold 1 acre 82 cents under Ex.A1. There is no explanation on the part of the appellant to show how



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Petchiammal and Chinnammal sold a larger extent to the appellant's father than the one they got under Will of Muthu Servai. Very same person Muthu Servai bequeathed 1 acre 63 cents in Suit Survey No.34/1 in favour of 2nd respondent Nayakathammal under Ex.B22, a subsequent Will executed by him. It is settled law, in a suit for declaration of title the plaintiff must win or lose on his own strength and he cannot rely on the weakness on the defendants. In the case on hand, though Petchiammal and Chinnammal sold 1 acre 82 cents to appellant's father under Ex.A1. There is no explanation how they got title to 1 acre and 82 cents when they got only 1 acre 63 cents under Ex.A24 Will of Muthu Servai.

9. As rightly pointed out by the First Appellate Court the plaintiff in his plaint failed to refer to the Ex.A24 Will. Further, there is no evidence available on record to show that the vendors of the appellant's father viz., Petchiammal and Chinnammal had enjoyed the property conveyed by them subsequent to the alleged Will executed by Muthu Servai.



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10. It is also pertinent to mention that under Ex.B5 final decree passed in O.S.No.25 of 1951 the aforesaid Muthu Servai was a party and on his death as per his Will which was marked as Ex.B22 before the First Appellate Court, 2nd respondent was brought on record as his legal representative. The property covered under Ex.B2 Will was allotted to the share of 2nd respondent, who sold the same to the 1st respondent.

11. In these circumstances, in the absence of any explanation by the appellant/plaintiff how his father's vendors Petchiammal and Chinnammal got title over 1 acre 82 cents in the suit survey number. They are not entitled to declaration of title and other consequential reliefs as prayed for. If at all the appellant can only claim 1 acre and 63 cents covered by Ex.A24 Will executed by Muthu Servai. The property covered by Ex.A24 Will has to be identified with reference to the four boundaries. The findings arrived at by the First Appellate Court that appellant is not entitled to declaration of title and other consequential reliefs requires no interference by this Court.



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12. In view of the discussions made earlier, the question of law framed at the time of admission was answered against the appellant and in favour of the respondents.

In Nutshell:

- (a) The Second Appeal is dismissed by confirming the judgement and decree passed by the First Appellate Court.
- (b) In the facts and circumstances of the case, there shall be no order as to costs.

15.03.2023

NCC: Yes/No
Index: Yes/No

dm



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To
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- 1.The Principal Subordinate Judge,
Madurai.
- 2.The District Munsif Court,
Madurai Taluk, Madurai.
- 3.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SOUNTHAR, J.

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