



S.A.No.1858 of 1999

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.02.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.(MD) No.1858 of 1999

1.Paulraj Nadar (Died)

2.Prasath

... Appellants/Appellants/
Defendants 4 and 5

3.Thangapazham

4.Pattukani

5.Velkani

6.Sumathi

... Appellants 3 to 6

*[Appellants 3 to 6 – brought on record as LR's of the
deceased 1st appellant vide order dated 03.11.2017 made
in M.P.(MD) No.1 of 2014 in S.A.No.1858 of 1999]*

Vs

1.R.Dhanushkodi (Died)

... 1st Respondent/
1st Respondent/Plaintiff

2.Selvaraj

3.Mohanraj

4.Rajaram

... Respondents 2 to 4/
Respondents 2 to 4/
Defendants 1 to 3



S.A.No.1858 of 1999

5.Boopathi Amma (Died)

6.Venkataraman

... Respondents 5 and 6

[Respondents 5 and 6 – brought on record as LR of the deceased 1st respondent vide order dated 03.12.2021 made in M.P.(MD) Nos.2 to 4 of 2014 in S.A.No.1858 of 1999]

[Memo dated 08.03.2021 in USR No.6559 is recorded as 5th respondent died and the 6th respondent who is already on record is recorded as LR of the deceased R5 vide order dated 20.01.2023 made in S.A.No.1858 of 1999]

Prayer:- Appeal filed under Section 100 of Civil Procedure Code to set aside the judgment and decree dated 17.09.1998 made in A.S.No.15 of 1996 on the file of the Sub Court, Tuticorin, confirming the judgment and decree dated 20.11.1995 made in O.S.No.265 of 1988 on the file of the Principal District Munsif's Court, Tuticorin.

For Appellants : Mr.P.Thiyagarajan

For R6 : Mr.J.Lawrance

R1 and R5 : Died

RR2 to 4 : Given up

J U D G M E N T

1.1. Defendants 4 and 5 are the appellants. The deceased first respondent filed a suit for declaration of title and injunction. The suit was decreed by the trial Court and the findings of the trial Court were confirmed



S.A.No.1858 of 1999

by the first appellate Court. Aggrieved by the same, unsuccessful defendants 4 and 5 are before this Court. Pending second appeal, the first appellant died and his legal representatives were brought on record as appellants 3 to 6. The first respondent/plaintiff also died pending second appeal and his legal representatives were brought on record as respondents 5 and 6. Subsequently, the fifth respondent died and the sixth respondent was recorded as her legal representative.

1.2. According to the deceased first respondent/plaintiff, the suit property with an extent of 3½ cents in north eastern portion of total extent of 27 cents in S.No.106/2 was purchased by him and his elder brother Thangapandi under Ex.A.1, dated 30.10.1947 from one Chinnadurai. The said Chinnadurai purchased it under Ex.A3, dated 24.09.1936. It was also pleaded by the first respondent that in the year 1972, there was a partition between him and his brother Thangapandi, whereunder the eastern half of northern 7 cents was allotted to the first respondent/plaintiff. Thereafter, he put up a building in the eastern 3½ cents to an extent of 1-3/4 cents. The said building was assigned with Door No.76A. The remaining portion



S.A.No.1858 of 1999

allotted to the first respondent was kept vacant. Respondents 2 to 4/defendants 1 to 3 are the children of the above said Thangapandi. Appellants 1 and 2 herein had no right over the suit property. Appellants 1 and 2 and respondents 2 to 4 colluding with each other tried to interfere with the peaceful possession and enjoyment of the first respondent and hence, he was constrained to file a suit for declaration of title and injunction.

2. Respondents 2 to 4/defendants 1 to 3 filed written statement and resisted the suit mainly on the ground that even before the purchase of suit property by the first respondent and his brother Thangapandi, portion of the suit property, viz., northern 3½ cents was purchased by A.G.Venkataramana Iyer under Ex.B.2 dated 21.11.1933 in a Court auction sale. Therefore, according to respondents 2 to 4, the first respondent and his brother Thangapandi had taken possession of the remaining extent on the southern side excluding 3½ cents covered by Ex.B.2. It was further averred by respondents 2 to 4 that Venkataraman Iyer sold 1-3/4 cents under Ex.B.1 dated 09.01.1956 to the first appellant and Gomathiammal, wife of



S.A.No.1858 of 1999

Venkatarama Iyer sold the entire 3½ cents covered under Ex.B.2 to Thangapandi under Ex.B.5 dated 28.10.1960. On these pleadings, respondents 2 to 4 denied the title of the first respondent and had averred that the first respondent put up a building on the eastern 1-3/4 cents and the remaining portion was not in possession of the first respondent.

3. Appellants 1 and 2 herein filed a written statement and resisted the suit on the ground that they had purchased 1-3/4 cents on the northern extremity in the suit survey number from the person who purchased it under Court auction sale earlier. They also claimed right over portion of the suit property by prescription.

4. The trial Court, on appreciation of oral and documentary evidences, came to the conclusion that the first respondent/plaintiff proved his right over the suit property and granted a decree for declaration of title and injunction. Aggrieved by the same, appellants 1 and 2/defendants 4 and 5 filed first appeal in A.S.No.15 of 1996 on the file of the Sub Court, Thoothukudi, and the learned first appellate Judge concurred with the



S.A.No.1858 of 1999

findings of the trial Court and dismissed the first appeal. Aggrieved by the same, appellants 1 and 2 have filed this second appeal.

5. At the time of admission, this Court formulated the following substantial question of law:

“Does Ex.B-2 has the effect of divesting the title of Thangavel Nadar to the extent of 3½ cents out of 7 cents owned by Ponnaiah Nadar and Thangavel Nadar and if so, whether the title of defendants 4 and 5 to that extent as conveyed under Ex.B-2 can be sustained in the eye of law?”

6. The learned counsel for the appellants, elaborating the substantial question of law, submitted that the Courts below while considering the rival contentions of the parties, shifted the entire burden on the defendants and held that the defendants failed to prove their title over the suit property. It is the contention of the learned counsel that being the plaintiff in a suit for declaration of title, the first respondent should independently prove his title over the suit property and then only, the burden will shift to the defendants to prove their case as pleaded in their written statement.



S.A.No.1858 of 1999

WEB COPY

7. The learned counsel, also by taking this Court to the judgment of the first appellate Court, submitted that the first appellate Court without appreciating the evidences available on record independently, simply affirmed the findings of the trial Court and hence, its judgment is vitiated.

8. Per contra, the learned counsel for the 6th respondent, legal representative of the deceased first respondent, submitted that the title of the deceased first respondent/plaintiff in the suit was proved by him by producing Ex.A.1 dated 30.10.1947 and the parent document Ex.A.3 dated 24.09.1936. The learned counsel, by taking this Court to the evidence of D.W.2, submitted that the partition pleaded by the first respondent was admitted by D.W.2 and hence, the exclusive title of the first respondent over the suit property was proved. The learned counsel further submitted that the core document relied on by appellants 1 and 2 to derive title to the suit property viz., Ex.B.2 is not relating to the suit property and hence, sought for dismissal of the second appeal by confirming the judgments and decrees passed by the Courts below.



S.A.No.1858 of 1999

WEB COPY

9. The first respondent/plaintiff in the plaint pleaded that the suit property was purchased by him along with his elder brother Thangapandi from one Chinnadurai under Ex.A.1 dated 30.10.1947. The said Chinnadurai, in turn, purchased the suit property under Ex.A.3 dated 24.09.1936. Therefore, by producing Ex.A.1 and Ex.A.3, the first respondent proved that he and his brother Thangapandi purchased the suit property in the year 1947. In order to claim exclusive title over the suit property, the first respondent pleaded partition in the year 1972 between him and his brother Thangapandi. As rightly contended by the learned counsel for the 6th respondent, the partition pleaded by the first respondent/plaintiff was not specifically denied in the written statement of appellants 1 and 2 or respondents 2 to 4. On the other hand, the second to fourth respondents' own witness D.W.2 in his evidence admitted partition between the plaintiff and his brother Thangapandi. Even in the pleadings, respondents 2 to 4 had averred that the first respondent put up a building on the eastern extremity of the suit property to an extent of 1-3/4 cents. The said admission of respondents 2 to 4 coupled with the evidence of D.W.2 proves the partition



S.A.No.1858 of 1999

pleaded by the first respondent. Therefore, the first respondent as a plaintiff discharged his burden in proving his title over the suit property.

10. As far as the case of the appellants is concerned, though appellants 1 and 2 claimed to have purchased portion of the suit property from the auction purchaser Venkatarama Iyer and his wife under Ex.B.1 and Ex.B.5, both the documents are subsequent to Ex.A.1 and Ex.A.3. Though the appellants produced Ex.B.2, which was anterior in time, a perusal of Ex.B.2 would make it clear that the survey number of the property dealt with under Ex.B.2 was not at all mentioned. Though four boundaries of the property were mentioned in Ex.B.2, in the absence of concrete evidence to connect the same with the suit property, we cannot come to a definite conclusion that Ex.B.2 sale certificate is relating to the suit property. Therefore, Ex.A.3 produced by the first respondent is the earliest document available and the earliest document will prevail over the later documents. Therefore, the appellants failed to prove their semblance of right over the suit property.



S.A.No.1858 of 1999

WEB COPY

11.1. The Courts below on the basis of the oral evidence available on record and also the tax receipts produced by the first respondent as Ex.A.6 to Ex.A.8, came to the conclusion that the first respondent/plaintiff proved his possession over the suit property and consequently, granted a decree for declaration of title and injunction. I do not find any perversity in the approach of the Courts below and hence, the factual findings rendered by the Courts below with regard to the possession are binding on this Court.

11.2. In view of the discussions made earlier, the substantial questions of law framed at the time of admission are answered against the appellants and in favour of the respondents.

12. In fine, (i) this second appeal is dismissed by confirming the judgments and decrees passed by the Courts below; and (ii) in the facts and circumstances of the case, there will be no order as to costs.

NCC: Yes/No
Index: Yes/No
abr

16.02.2023



S.A.No.1858 of 1999

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To

- 1.The Sub Judge,
Tuticorin.
- 2.The Principal District Munsif,
Tuticorin.
- 3.The Section Officer, VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.A.No.1858 of 1999

S.SOUNTHAR, J.

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S.A.No.1858 of 1999

16.02.2023