



S.A.No.1512 of 2003

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 10.08.2023

CORAM

THE HON'BLE MR.JUSTICE KRISHNAN RAMASAMY

S.A.No.1512 of 2003

and

C.M.P(MD)No.13774 of 2003

Iyyakkutty

... Appellant

-VS-

The State of Tamil Nadu
rep. by the District Collector,
Kanyakumari District,
Nagercoil

... Respondent

PRAYER: Second Appeal filed under Section 100 Code of Civil Procedure against the Judgment and Decree dated 08.10.2001 made in A.S.No.16 of 1995 on the file of the Subordinate Judge, Padmanabhapuram confirming the Judgment and Decree dated 18.08.1994 made in O.S.No.591 of 1985 on the file of the file of the Principal District Munsif, Padmanabhapuram.

For Appellant

... Mrs.J.Anandavalli

For Respondent

... Mr.A.Baskaran
Addl. Govt. Pleader



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JUDGMENT

The appellant, as the plaintiff, has filed the suit in O.S.No.591 of 1985 on the file of the Principal District Munsif, Padmanabhapuram, seeking declaration of title, permanent injunction and recovery of fine amount under B.M Case No.2950/1392. After full-fledged trial, the trial Court dismissed the suit. Challenging the said Judgment and Decree, the appellant/plaintiff filed the appeal in A.S.No.16 of 1995 on the file of the Sub Judge, Padmanabhapuram. After hearing, the first appellate Court dismissed the appeal and confirmed the Judgment and Decree passed by the trial Court. Aggrieved over the same, the appellant/plaintiff has filed the present second appeal before this Court

2. The case of the appellant/plaintiff is that old survey number 517A of present Thumbode (Old Thirpparappu) village is included in patta No.432 of Thirpparappu village and the same belonged to Parameswaran Pillai alias Narayana Pillai Ananthiravan of Narayana Pillai of Puliyarathala Veedu, Tarward. In the Tarward partition, Parameswaran Pillai alias Narayanan Pillai got 20 cents of plot north of



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the Tank. Accordingly, he was in possession and enjoyment of the same by paying tax to the Government and effecting improvements. While so, he sold the same to Krishna Pillai, son of Iyappan Pillai of Kanjiramkuzhi Veedu in Thirunandikkara Desom by document Nos. 1950/1958 and 4671/1958 of Thiruvattar Sub Registry Office. Accordingly, the vendor got possession and he was in enjoyment as absolute owner. Subsequently, there was a partition suit as O.S.No.115 of 1963 on the file of the District Munsif Court, Kuzhithurai, regarding the entire old S.No.517A. As per the final decree in that partition suit, Plot No.E1 was allotted to I.Krishna Pillai. About one cent in the western portion in old S.No.514/2 (R.S.No.367/14 part) was also in the possession of the above stated I.Krishna Pillai. He constructed granite compound walls on four sides of his property about 20 years back and he was in possession of the entire area within the granite walls as absolute owner by paying tax. The area that comes within the granite compound walls is 11 cents and the same is the schedule property.

2(i) On 05.10.1982, the appellant/plaintiff purchased the schedule property from the said I.Krishna Pillai and got title and possession. In the sale deed, the resurvey number for the schedule property is mistakenly



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stated as 368/1, but the correct correlation for the plaint schedule property is R.S.No.367/10 part, 367/11 part, 14 part. On the basis of the sale deed, the appellant/plaintiff paid tax on 13.04.1983. Subsequently, the appellant/plaintiff got a correction deed on 19.10.1984 regarding the correct resurvey correlation for the schedule property. On 11.04.1984, the appellant/plaintiff went to pay tax and on that date, Rs.158.35 ps was collected by the Village Officer stating that B.M. Case No.2950 of 1392 was booked against him on the basis of the resurvey correlation. No notice of booking of B.M case was served on the appellant/plaintiff. In fact, there was no poramboke in the schedule property. The suit schedule property is the patta land. The resurvey authorities and the Government has no right to classify the patta land into poramboke. After 11.04.1984, the appellant/plaintiff perused the records and found out that the plaint schedule property is wrongly classified as Theervayarapatta Tharisu (Purambokke). The resurvey classification is wrong and against the right, title and possession. The wrong classification of schedule property into poramboke and booking of B.M case and recovery of Rs.158.35 ps as fine, cast a cloud upon the title and possession of the appellant/plaintiff over the schedule property. Hence, on 29.04.1985, the appellant/plaintiff issued a notice to the respondent/defendant under Section 80 of the Code



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of Civil Procedure and the same was received by the respondent/defendant on 30.04.1985. Pursuant to the notice, the appellant/plaintiff received a notice from the District Survey Office stating there will be an enquiry on 29.08.1985. The appellant/plaintiff appeared for the enquiry, but no useful purpose is served. Hence, the appellant/plaintiff has filed the suit for the above mentioned relief.

3. The case of the respondent/defendant is that the said Krishnapillai has encroached to an extent of 0.01.5 ares of land in R.S.No.367/14 (O.S.514/A) of Thumbacode village by planting coconut trees and other trees. B.M case has also been booked against him. R.S.No.368/1 is correlated to O.S.No.517/A of Thirparappu village. There is no mistake as alleged by the appellant/plaintiff. R.S.No.367/14 is correlated to old S.No.514/A of the same village which is a Government poramboke as per old records also. Neither the appellant/plaintiff nor his vendor has got any right to execute any document over a Government poramboke land in favour of any individual. The alleged sale deed and the correction deed would not bind the respondent/defendant. Over the land in R.S.No.367/14 which is a Government poramboke, none other than the respondent/defendant has



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no any manner of right. The appellant/plaintiff has no right to correct the sale deed to the effect to include the poramboke land. The appellant/plaintiff has paid the alleged amount in favour of his vendor without any objection. The appellant/plaintiff having purchased the property in 1982, i.e., long after the resurvey settlement, has no right to question about the correctness of the resurvey operation. The resurvey has been finalized in 1976 after giving necessary notification. The appellant/plaintiff's vendor being on encroacher admitted the resurvey and re-settlement entries and he did not question the B.M case booked against him and as such, the appellant/plaintiff, who is a subsequent purchaser, has no right at all to question it. The plaint schedule properties in R.S.Nos.367/14 and 367/1 of Thumbacode village are assessed waste dry and kalvai poramboke respectively as per old as well as new settlement. No portion of the patta land is classified as poramboke land as alleged by the appellant/plaintiff. There is no mistake in the resurvey. The resurvey operations have been done correctly as per the state on ground and also as per old records in force then. Moreover, the appellant/plaintiff has remitted the alleged amount on 11.04.1984, whereas the correction deed is executed only on 19.10.1984, which is six months after the payment. The correction deed has been executed with a



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motive behind to include the poramboke land also within the patta land.

The classification as well as the enquiry done by the subordinate of this document are legal and correct and as such, the act of the respondent/defendant never cast any cloud upon the title and possession of the appellant/plaintiff over his patta land. The appellant/plaintiff has filed the suit without any *bonafide* to put the respondent/defendant in hardship by prolonging the payment of the amount due to the Government on the B.M. Case booked for the unauthorised occupation of the plaint schedule property.

4. The trial Court, considering the pleadings, framed the issues. During trial, on the side of the appellant/plaintiff, he examined himself as P.W.1 and 19 documents were marked as Exs.A1 to A19. On the side of the respondent/defendant, no one was examined, however, 5 documents were marked as Exs.B1 to B5. Apart from that, two Court documents were marked as Exs.C1 and C2.

5. Considering the above pleadings, oral and documentary evidence, the trial Court dismissed the suit. Therefore, the appellant/plaintiff filed the appeal before the first appellate Court. The



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first appellant Court also dismissed appeal. Hence, the appellant/plaintiff has filed the present second appeal.

6. At the time of admission, this Court, considering the facts and circumstances of the case, has formulated the following substantial questions of law:

“(a) Having found that the plaintiff had established title to 8.400 cents of land as conveyed to him under Ex.A7 though he had asked for a declaration of title in respect of a larger extent, namely, 11 cents, cannot the civil Court mould the relief and grant by restricting it to 8.400 cents of land as found by it?

(b) Is not judgment of the Courts below vitiated by not taking into account Section 8 of the Transfer of Property Act?

(c) When the re-survey proceedings conducted in the absence of any notice to a party, who is affected by such re-survey proceedings, can the said re-survey proceedings be held to be binding against the parties so affected?”



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7. After arguing the matter at length, when this Court has decided to dispose of the matter, the learned counsel for the appellant/plaintiff would submit that the appellant/plaintiff has restricted his claim to the extent of 8.400 cents of land in R.S.No.368/1, since he has purchased the said extent of the land by virtue of Ex.A5 sale deed from one I.Krishnapillai on 05.10.1982. The learned Counsel would further submit that the appellant/plaintiff is not at all claiming any right on the poramboke land and he is in possession of 8.400 cents in R.S.No.368/1 which was purchased by him as per Ex.A5.

8. The learned Additional Government Pleader appearing for the respondent herein has also admitted the said fact that the land to an extent of 8.400 cents in R.S.No.368/1 was purchased by the appellant/plaintiff from the said I.Krishana Pillai, by virtue of the sale deed Ex.A5 dated 05.10.1982. Further, the learned Additional Government Pleader categorically stated that the respondent/defendant is claiming right over the Government poramboke land measuring to an extent of 3.705 cents situated in R.S.No.367/14.



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9. The respondent/defendant herein in their written statement categorically admitted that they will not have any interest over the land to an extent of 8.400 cents situated in R.S.No.368/1 which was purchased by the appellant/plaintiff by virtue of the sale deed (Ex.A5) dated 05.10.1982. The said R.S.No.368/1 is not belonging to the respondent/defendant/Government. The appellant/plaintiff is not entitled to any land situated in R.S.No.367/14. The vendor of the appellant/plaintiff obtained decree for the land to an extent of 8.400 cents in O.S.No.115/1963 on the file of the Principal District Munsif, Kuzhithurai. Though the trial Court as well as the first appellate Court having found that the appellant/plaintiff had established title to 8.400 cents of land as conveyed to him under Ex.A7, though he had asked for a declaration of title in respect of a larger extent, namely, 11 cents, the trial Court ought to have mould the relief and granted the decree restricting it to 8.400 cents of land. However, the trial Court has rejected the claim of the appellant/plaintiff and dismissed the suit. The first appellate Court has also confirmed the Judgment and Decree of the trial Court.

10. This Court, by considering the submissions of both the learned counsel appearing for the appellant/plaintiff as well as the



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respondent/defendant, feels that it would be appropriate to grant the relief on the basis of the admission made by the appellant/plaintiff and the respondent/defendant and on the basis of the finding arrived at by the trial Court as well as the first appellate Court. Therefore, this Court hold that the appellant/plaintiff is entitled to the land admeasuring to an extent of 8.400 cents in R.S.No.368/1 and he is not entitled to any land situated in R.S.No.367/14. Accordingly, the substantial questions of law (a) is answered in favour of the appellant/plaintiff. Since both the parties have restricted their claim, this Court feels that there is no necessity to answer the substantial questions of law (b) and (c).

11. In the result, this Second Appeal is partly allowed. The Judgment and Decree passed by the trial Court as well as the first appellate Court are modified to the extent indicated above. No costs. Consequently, connected miscellaneous petition is closed.

10.08.2023

NCC : Yes/No
Index : Yes/No
Internet: Yes
skn



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- 1.The Subordinate Judge, Padmanabhapuram.
- 2.The Principal District Munsif, Padmanabhapuram.
- 3.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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KRISHNAN RAMASAMY, J.

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