



S.A.No.790 of 2004

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.11.2023

CORAM

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

S.A.No.790 of 2004 &
C.M.P.(MD)No.11604 of 2023

1.Easwara Pillai (died)
2.Padmakumar
3.Leena ...Appellants

(Appellants 2 and 3 are brought on record as LRs
of deceased sole appellant, vide Court order dated
17.04.2017 in C.M.P.(MD)No.1018 & 1019 of 2017
in S.A.No.790 of 2004)

vs.

1.P.Mahadevan Pillai
2.Velu Pillai (died)
3.Rajendradhas
4.Vamadevan
5.Kasthuri Bai
6.Jala Prabha
7.Sathya Priya
8.Srinivasan ... Respondents

(Respondents 5 to 8 are brought on record as LRs
of the deceased 2nd respondent vide Court order
dated 07.02.2023 in C.M.P.(MD)Nos.697, 699 &
701 of 2023 in S.A.No.790 of 2004)



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Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 07.11.2003 in A.S.No.50 of 1998 on the file of the Subordinate Judge, Padmanabhapuram confirming the Judgment and Decree dated 04.11.1997 in O.S.No.1139 of 1995 on the file of the District Munsif cum Judicial Magistrate, Eraniel.

For Appellants : Mrs.Ananta C.Rajesh
for Mr.Thirugnanasambandham

For Respondents : Mr.S.Arunnithy
for R1, R3 to R8
R2 - Died

JUDGMENT

Against the concurrent findings of the Trial Court as well as the first Appellate Court, the defendant has preferred this Second Appeal (against Judgment and Decree passed in O.S.No.1139 of 1995 on the file of the District Munsif cum Judicial Magistrate, Eraniel and Judgment and Decree passed in A.S.No.50 of 1998 on the file of the Sub Court, Padmanabapuram).

2. For the sake of convenience, the parties are referred to hereunder according to their litigative status before the Trial Court.



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3. According to the plaintiffs, the suit property, namely, 33 1/2 cents situate at Eraniel Village of Kalkulam Taluk, Kanyakumari District, old S.No.1932/1, Re.S.Nos.683/9 & 683/14 pt with the boundaries, (i) North - Property of defendant and 4th plaintiff, (ii) South & East - Defendant's property and (iii) West - Pathway, originally belong to one Mathavan Pillai, who got the property through partition. Mathavan Pillai had two sons Parameswaran Pillai and Padmanabha Pillai. The plaintiffs are the sons of Parameswaran Pillai. Sole defendant Easwara Pillai is the son of Padmanabha Pillai. Respective fathers of both sides entered into a registered partition of their properties on 17.01.1114 Malayalam Era (1938 AD). As per the partition deed, plaintiffs' father Parameswaran Pillai was allotted 63 cents in the middle of old S.No. 1932 (Eraniel Village). The said Survey Number was subsequently sub divided as Re-S.Nos.683/10, 683/9 and 683/14 pt. Parameswaran Pillai executed a Gift deed in favour of his daughter Sivakala in respect of 30 cents of land in Re.S.No.683/10 in the year 1984. She, in turn, sold it to the 4th plaintiff P.Vamadevan herein. Parameswaran Pillai planted tree saplings in the remaining portion in Re.S.Nos.683/9 and 683/14 pt. On 16.06.1995, the plaintiffs' partitioned the suit property and have been in enjoyment of their respective portions. The defendant is the owner of



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the adjacent eastern properties of the suit property. On 01.11.1995, the defendant made an attempt to remove the fencing plants and demarcating stones with a view to annex some portion of the suit property with his property. Hence, a suit for permanent injunction was filed.

4. Per contra, the defendant claims that he is the absolute owner of the property in Re.S.Nos.683/9 and 683/14 pt as per the partition made during the lifetime of his father. He does not have any knowledge about the Gift deed as alleged in the plaint. The defendant also stoutly refused the allegation that Parameswaran Pillai planted tree saplings in Re.S.Nos.683/9 and 683/14 pt. The defendant also denies the fact that the plaintiffs' father enjoyed the properties in Re.S.Nos.683/9 and 683/14 pt.

5. Based on the rival submissions, the Trial Court framed the relevant issues.

6. At trial, the second plaintiff, Velu Pillai has examined himself as PW1. Exs.A1 to A18 were marked. Partition deed dated 17.01.1114



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(ME) and partition deed dated 16.06.1995 are Exs.A1 and A8. Patta Pass Book is Ex.A9. On the defendant's side, sole defendant Easwara Pillai has examined himself as DW1 and Exs.B1 to B5 were marked. Patta Book is Ex.B5. The Advocate Commissioner's Report, Plan and Interim Report are Exs.C1 to C3.

7. After evaluating the oral and documentary evidence of both sides, the Trial Court concluded that as per the Advocate Commissioner report Ex.C1, there is a clear well defined boundary available on all sides and there is a live fence with plants of 15 years age around it and the objections filed by the defendant were found to be not acceptable and it was held that based on the documents, the plaintiffs are entitled to 33 1/2 cents out of 89 cents in Re.S.Nos.683/9 and Re.S.No.683/14. It was further held that the same was allotted to the share of the father of the plaintiffs under partition deed Ex.A1. Permanent injunction was granted in favour of the plaintiffs.

8. The Judgment of the Trial Court was sought to be challenged by the defendant in A.S.No.50 of 1998 on the file of the Sub Court , Padmanabapuram and after evaluating the evidence, the first Appellate



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Court, primarily relying upon Exs.A9 to A11 and considering other documents, besides the report of the Advocate Commissioner, concluded that the suit property namely 33 1/2 cents is in the possession and enjoyment of the plaintiffs and thereby, the Judgment of the Trial Court was confirmed by dismissing the first Appeal.

9. Aggrieved by the said Judgment, the defendant has preferred this Second Appeal.

10. The learned counsel appearing for the appellants would vehemently contend that infact, the defendant is the absolute owner of the property in Re.S.Nos.683/9 and 683/14 of Eraniel Village and he was in possession and enjoyment of the same, in view of the partition taken place during the life time of his father.

11. The learned counsel for the respondents would strongly argue that the suit property originally belong to Mathavan Pillai and out of larger extent, the present suit property fell to the share of Parameswaran Pillai as per Ex.A1 partition deed. It is his further argument that subsequent to the execution of Gift deed by



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Parameswaran Pillai in favour of his daughter Sivakala, the remaining property is in the possession of the plaintiffs, as borne out by Exs.A1, A8 and A9, which cannot be disputed by the defendant. He would also contend that the suit property is the property of Mathavan Pillai and the defendant is the paternal grandson and he cannot deny the fact that the property originally belong to Mathavan Pillai.

12. The following substantial questions of law arise for consideration.

"1. Is not the conclusion of the Court below erroneous in decreeing the suit as the plaintiffs failed to prove their claim by oral and documentary evidence?

2. Is not the conclusion of the Court below erroneous in decreeing the suit without considering the documentary evidence adduced by the appellant / defendant?



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3. Is not the conclusion of Courts below erroneous in decreeing the suit as the plaintiff have not come to the Court with clean hands but had suppressed the materials facts?"

13. The two branches of Mathavan Pillai had legal tussle in respect of 33 1/2 cents in Re.S.Nos.683/9 and 683/14 pt situated at Eraniel Village of Kalkulam Taluk, Kanyakumari District. The relationship between the parties is not in dispute. The original owner Mathavan Pillai had two sons Parameswaran Pillai and Padmanabha Pillai. The plaintiffs are the sons of Parameswaran Pillai. The defendant is the son of Padmanabha Pillai. Both sides have partitioned their father's property. From a close perusal of Ex.A1, partition deed, it is seen that the middle portion was allotted to the plaintiffs' father Parameswaran Pillai. 63 cents to the East of the said property and 40 cents to the west of the above said property are allotted to Padmanabha Pillai is not in dispute. A close perusal of the evidence of PW1 and the written statement reveal the fact that the plaint details are not seriously disputed. As per Ex.A11, the respective shares of the plaintiffs are as follows.



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Plaintiffs	R.S.No.683/9	R.S.No.683/14	Total
Plaintiff No.1	7 cents	-	7 cents
Plaintiff No.2	3 cents	-	3 cents
Plaintiff No.3	7 cents	3/4 cents	7 3/4 cents
Plaintiff No.4	10 1/4 cents	5 1/2 cents	15 3/4 cents
	27 1/4 cents	6 1/4 cents	33 1/2 cents

These details are borne out by the revenue records. As mentioned above, based on the partition deed Ex.A1 and A8 coupled with the revenue records, both the Courts have concurrently given a finding that the plaintiffs have been in possession and enjoyment of the suit property and chosen to favour the plaintiffs.

14. Based on the aforesaid discussions, I do not find any infirmity in the Judgments of the Trial Court as well as the first Appellate Court and hence, the substantial questions of law are answered against the appellant.

15. In view of the above, the Second Appeal has to be dismissed and stands dismissed. The Judgment and Decree passed by the Trial Court in O.S.No.1139 of 1995 and the Appellate Court in A.S.No.50 of 1998 are hereby confirmed. Considering the relationship between the



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parties, there is no order as to costs. Commissioner Report, Ex.C1 forms part of the decree for proper identification of the suit property. Connected C.M.P. stands closed.

17.11.2023

NCC:Yes/No
Index:Yes/No
Speaking/Non-speaking order

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To

- 1.The Subordinate Judge, Padmanabhapuram.
- 2.The District Munsif cum Judicial Magistrate, Eraniel
- 3.The Section Officer,
Vernacular Records Section,
Madurai Bench of Madras High Court,
Madurai.



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R.KALAIMATHI, J.

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