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SA.Nos.1960 and 1961 of 2004

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.04.2024

PRONOUNCED ON : 22.05.2024

CORAM

THE HON'BLE Mr.JUSTICE C.KUMARAPPAN

S.A.Nos.1960 and 1961 of 2004

S.A.No.1960 of 2004

M/s.Seshasayee Paper and Boards Ltd.,
Pallipalayam, Salem District
rep. by its Manager (Accounts),
presently re-designated as
Vice President (Finance) and Secretary

... Appellant

- Vs -

1. The State of Tamil Nadu,
rep. by the District Collector,
Perambalur.
2. The District Revenue Officer,
Perambalur.
3. The Revenue Divisional Officer,
Ariyalur.
4. The Tahsildar,
Kunnam.
5. Vijayalakshmi
6. Geetha
7. Lilly
8. Anu
9. Vasanthi

... Respondents



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Second Appeal is filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 19.04.2004 made in A.S.No.8 of 2004 passed by the Hon'ble District Court, Perambalur confirming the judgment and decree dated 19.09.2003 made in O.S.No.244 of 2001 passed by the District Munsif Court, Perambalur.

For Appellant : Mr.T.P.Rajagopalan
Senior Counsel
for Mr.V.Kalyanaraman
for M/s.Aiyar and Dolia

For Respondents : Dr.A.Thiyagarajan
Senior Counsel
for Mr.Hari Babu for R5 to R9
Mr.M.Muthusamy
Government Advocate for R1 to R4

S.A.No.1961 of 2004

M/s.Seshasayee Paper and Boards Ltd.,
Pallipalayam, Salem District
rep. by its Manager (Accounts),
presently re-designated as
Vice President (Finance) and Secretary

... Appellant

- Vs -

1. Vijayalakshmi
2. Geetha
3. Lilly
4. Anusuya
5. Vasanthi

... Respondents

Second Appeal is filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 19.04.2004 made in A.S.No.9 of 2004 passed by the Hon'ble District Court, Perambalur confirming the judgment and decree dated 19.09.2003 made in O.S.No.54 of 1994 passed by the



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District Munsif Court, Perambalur.

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For Appellant : Mr.T.P.Rajagopalan
Senior Counsel
for Mr.V.Kalyanaraman
for M/s.Aiyar and Dolia

For Respondents : Dr.A.Thiyagarajan
Senior Counsel
for Mr.Hari Babu for R1 to R5

COMMON JUDGMENT

The appellant in both the Second Appeals is the plaintiff before the Trial Court and respondents 1 to 4 in SA.No.1960 of 2004 are the defendants 1 to 4. In SA.No.1960 of 2004, the respondents 5 to 9 are the respondents 1 to 5 in S.A.No.1961 of 2004 and the defendants 1 to 5 before the Trial Court.

2. For the sake of convenience, the parties will be referred to according to their litigative status before the Trial Court in O.S.No.54 of 1994.

3. The brief facts which give rise to the instant second appeals is that, the plaintiff originally filed a suit on 11.12.1991 in O.S.No.200 of 1991 for the relief of declaration and for consequential permanent injunction in respect of 3 items of suit property. The above said suit was subsequently



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renumbered as O.S.No.54 of 1994. According to the plaintiff, the suit property is the absolute property of the plaintiff by virtue of the Sale Deeds dated 15.10.1981 and 17.12.1981. It is the further submission of the plaintiff that, ever since the date of purchase, they have been in actual, physical possession and enjoyment of the suit property. It is the further contention of the plaintiff that the Revenue Authorities have sub-divided the suit properties according to their possession as S.F.Nos.483/4B, and 4C and 483/9 and demarcated on ground. It is the further contention of the plaintiff that the defendants are the recent purchasers of some portion in S.F.No.483/4. But they claim right over the portion of the land in possession and enjoyment of the plaintiff. According to the plaintiff, the sub division had taken place during 1980 and for the last 10 years, the plaintiff has not raised any issue in respect of such sub division. Therefore, pleaded that, the defendants cannot object such sub division, which is mentioned in the plaintiff's Sale Deeds. It is the contention of the plaintiff that there cannot be any dispute about the identity of the property. Hence, the plaintiff has come forward with the suit for the relief of declaration and injunction in respect of the suit property.

4. The said suit was resisted by the 2nd defendant by contending that they have no knowledge about the alleged sub division and that such sub



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division is wrong and will not bind upon this defendant. This defendant further submits that under the guise of sub division, the plaintiff cannot get any title over the suit property. It is their case that, the plaintiff's predecessor-in-title viz., one Arumugam purchased the western portion of the property, from Dharmalinga Udayar by way of registered Sale Deed dated 13.03.1978. This defendant further submits that the plaintiff has purchased the property from one Arumugam, who has no title over the suit property and that he has sold what he has not purchased from his vendor. It is the further submission of the 2nd defendant that he has purchased land situate east of the land sold to Arumugam. This defendant submits that he has no objection to grant decree in respect of the item 3 viz., S.F.No.483/9. Hence, this defendant prayed to dismiss the suit.

5. During the pendency of the above suit, the plaintiff has filed another suit in O.S.No.244 of 2001 with similar pleadings with an additional prayer. Wherein, he sought for the direction against the official respondents, who are the defendants 1 to 4 in O.S.No.244 of 2001 for the relief of annulling or correcting the Revenue records as found in the order of the Ariyalur Revenue Divisional Officer dated 12.08.1993.



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6. This suit (O.S.No.244 of 2001) was also resisted by the defendant by reiterating the pleading as found in the written statement in O.S.No.54 of 1994. Hence, this Court does not want to reproduce the gist of the written statement once again.

7. Before the Trial Court, the plaintiff marked as many as 27 documents as Exs.A1 to A27 and examined one witness as PW1. On behalf of the defendants, 2 witnesses were examined as DW1 & DW2 and marked 6 documents as Exs.B1 to B6.

8. The Trial Court, after having considered the oral and documentary evidence, though dismissed the suit, granted a declaratory relief in respect of the different property referred to in S.F.No.228/4A.

9. Not satisfying with the judgment of the Trial Court, when the plaintiff preferred the First Appeal, the First Appellate Court has dismissed the appeal and the decree was also modified that the appellant is not entitled for declaration even for S.F.No.228/4A. In short, the First Appellate Court has simply dismissed both the suits.



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10. Not satisfying with the judgment of the First Appellate Court, the plaintiff has preferred these second appeals.

11. At the time of admission of the S.A.No.1960 of 2004 on 01.10.2004, this Court has formulated the following substantial question of law:-

“(1) Whether the Courts below are correct in rendering judgments after bypassing the mandatory provisions of the Tamil Nadu Surveys and Boundaries Act?

(2) Whether the procedure followed by the Trial Court and First Appellate Court in entertaining litigation through proxy is correct, when the defendants concerned with the case and the reliefs, having appeared through Counsel and choosing to remain as non-participants?

(3) Whether the Courts below are correct in rendering a collateral finding on title in a litigation not properly dressed up and appropriate to the context and circumstances which should have been the ground to operate?

(4) Whether the appreciation of the oral and documentary evidence are according to accepted legal norms?

(5) Whether the action of the fourth respondent in passing the impugned order in changing the sub-division numbers, in supersession of the orders of the Revenue Divisional Officer, Ariyalur and without notice to the appellant



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is legally correct and sustainable?”

12. Similarly, at the time of admission of the S.A.No.1961 of 2004 on 01.10.2004, this Court has also formulated the following substantial question of law:-

“(1) Whether the appreciation of the oral and documentary evidence by the Trial Court and the First Appellate Court is correct and according to accepted legal norms?

(2) Whether the Courts below are correct in brushing aside the gazetted revenue records under the Tamil Nadu Surveys and Boundaries Act without the respondents choosing to set aside the same and/or such remedy having been lost to the respondents by lapse of time and limitation is correct?

(3) Whether the Courts below are correct in applying the rule of reconciliation between boundaries and survey numbers where the appellant have purchased the property with localisation and with identity to the survey number?

(4) Whether the Courts below are correct in not taking into consideration the Government records regarding their contract with the appellant in appreciation and direct consideration of their title to the property and such consideration being anterior in point of time as contrasted to the non-consideration of the documents of title of the respondents?”



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13. The learned Senior Counsel appearing on behalf of the appellant, apart from contending other aspects, has placed much reliance upon the order of this Court passed on 15.02.2005 made in CMP.Nos.16034 & 16035 of 2004 and would contend that, when this Court felt that a report from the Revenue Divisional Officer is essential to resolve the issue, and that when such report is available before this Court, this Court ought to remit back the matter before the Trial Court for fresh adjudication, as the report filed must be construed as the document required under Order 41 Rule 27 of CPC to give substantial justice. The learned Senior Counsel would further contend that when there was a sub division during 1980, and when such factum was subsequently notified through the Government gazette, the conduct of the defendants not objecting such sub division would disentitle them to challenge the Sale Deed stands in the name of the plaintiff. The learned Senior Counsel would also further contend that, when the Revenue Authorities having special skill to survey and to fix the boundary, the Trial Court as well as the First Appellate Court ought to have simply relied upon these expert driven documents and ought to have decreed the suit. It is the further contention of the learned Senior Counsel that in the place of sub division of the property purchased by the plaintiff, not granting relief of



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declaration is nothing but a finding, contrary to the evidence available in record. Therefore, the learned Senior Counsel would contend that the finding of both the Courts below are perverse and liable to be interfered with. Hence, prayed to allow the Second Appeal.

14. Per contra, the learned Senior Counsel appearing on behalf of the respondents would contend that, the issue is not in respect of the sub division of the property, but only in respect of the title over the suit property. The learned Senior Counsel would further contend that, when both the Courts below have concurrently found that the plaintiff has not established its title over the suit property, which findings are nothing but a factual findings. Therefore, unless such findings are found to be perverse or contrary to the evidence, the same cannot be reversed. The learned Senior Counsel would further contend that the RDO report given in furtherance of the order of this Court dated 15.02.2005 cannot be construed as the additional document, unless a separate application being filed by the parties to treat such document as the additional document. Therefore, the learned Senior Counsel appearing on behalf of the respondents would contend that RDO report cannot be ground to remit back the matter before the Trial Court, when there is a concurrent, factual finding that the plaintiff is not the owner of the suit



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property. The learned Senior Counsel would further contend that RDO cannot give finding contrary to the finding of the Civil Court, where the Civil Court concurrently found that the plaintiff has not established its right over the suit property. It is the further contention of the learned Senior Counsel that the RDO has not duly complied with the order of this Court. Therefore, RDO report dated 22.08.2005 cannot be a ground at any rate for remitting the matter. Hence, prayed to confirm the order of both the Courts below by dismissing the Second Appeals.

15. I have given my anxious consideration to either side submissions.

16. The entire gamut of argument of both the learned Senior Counsels revolves around the sub division, which had taken place about 10 years back, prior to filing of the suit. According to the learned Senior Counsel appearing on behalf of the appellant/plaintiff, when there was a sub division exist for a quite long time, unless such sub division is objected and challenged in a manner known to law, the defendants cannot adjudicate their challenge towards sub division in a Civil Suit that too filed by the plaintiff for a declaration. No doubt, there are no semblance of documents available before



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the Trial Court as to the challenge raised against the sub division of properties. In such a background, it is incumbent upon this Court that whether such sub division relied by the plaintiff will bind upon the parties.

17. It is pertinent to mention here that, according to Section 13 of “Tamil Nadu Survey and Boundaries Act, 1923” [hereinafter shall be referred to as “said Act”], the surveys and boundaries determined by the Survey Department shall be conclusive by proof. For ready reference, this Court deems it appropriate to extract Section 13 of the said Act:-

“13. Completion of demarcation to be notified.-When the survey of any land or boundary which has been notified under Section 5 has been completed in accordance with the orders passed under Sections 9,10,11, 12-A or 12-B, the survey officers shall notify the fact in the District Gazette and a copy of such notification shall be pasted in the village chavadi, if any, of the village to which the survey relates; unless the survey so notified is modified by a decree of Civil Court under the provisions of Section 14, the record of the survey shall be conclusive proof that the boundaries determined and recorded therein have been correctly determined and recorded.”

(Emphasis supplied by this Court)

18. While closely reading the above provision, when the survey of any land or boundary, which has been notified on due compliance of the



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provisions of Sections 5, 9, 10, 11, 12-A or 12-B of the said Act, unless the survey so notified is modified by a decree of Civil Court under the provisions of Section 14 of the said Act, such determination of boundary would become conclusive proof as to such boundary. Therefore, what emerges from the harmonious and meaningful reading of the above provision is that, the boundary determined by the Survey Authority through sub division, would become conclusive proof for the boundary so determined by the Authority. But, in the case on hand, the plaintiff has come forward with a suit for declaration of title in respect of the suit property and not for seeking relief to declare the boundary of the suit property. Therefore, the presumption stipulated under Section 13 of the said Act will not be useful to decide a suit for declaration in respect of the title of the property.

19. This issue must also be dealt in a different angle. Here, though the sub division had taken place during 1980, there are no proof about notice to the affected parties. It is settled principle of law that the mere sub division without informing to the affected party will in no way bind upon the aggrieved party. The learned Senior Counsel would vehemently contend that, if the defendant has any grievance over sub division, he ought to have



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filed suit within three years from the date of knowledge as per Section 14 of the said Act. Here, admittedly there are no proof to establish any notice given to the Dharmalinga Udayar, who was the original owner of the suit property or to establish his knowledge about the sub division.

20. This Court has carefully perused all the documents. Though the official respondents were impleaded in another suit, they also did not opt to file any document so as to prove the notice given to the aggrieved party qua the defendants' predecessor-in-title. Therefore, when no notice was given to the aggrieved person, the limitation of 3 years will not be a bar to the defendants herein to question the sub division, and apart from that, as discussed herein above, such sub division cannot be put against the defendants.

21. At this juncture, this Court would like to recollect some important precedents relevant to this issue. In ***Lingappa Gounder Vs. Palanisamy Gounder and others*** reported in (2006) 1 MLJ 423, the Hon'ble Single Judge of this Court by following the judgment of the Hon'ble Division Bench, has held that any order passed under the Tamil Nadu Survey and Boundaries Act, 1923, without issuance of notice regarding survey, will not bind the party on whom no notice was served.



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22. In another judgment of this Court in ***Manickam (died) and others Vs. Devadoss (died) and others*** reported in ***(2014) 3 MLJ 41***, this Court has held that merely because the parties have not objected the boundaries determined under the said Act will not preclude objecting the title of the parties.

23. It is also relevant to refer the judgment of this Court in ***Sellakumarasamy Vs. P.Swaminathan and others*** reported in ***(2009) 4 MLJ 433***, wherein this Court has held that once the Civil Court decides the property right, then the Revenue Authorities are bound by such Civil Court decree.

24.As it is required, this Court would also like to mention the object of the said Act. The object of the said Act is to make a decision of the survey officer as to boundary conclusive unless it was challenged in a Civil Court. Therefore, the right of the party to challenge the title of the another party has not been precluded by mere determining of boundary by the Authorities under the said Act. From the above propositions, it become lucid that unless there is a notice to the aggrieved party, the sub division will have no impact



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upon them. Therefore, even otherwise, the boundaries and survey determined under Section 13 will not bind upon the defendants.

25. In this regard, it is appropriate to refer that, the predecessor in title of this defendant, from whom the plaintiff's predecessor-in-title Mr. Arumugam purchased, was examined as PW2. He has categorically deposed that in the entire extent of 7.28 acres, he sold only the western extremity of the land. The First Appellate Court has elaborately dealt in this regard and has found the discrepancy between Ex.A3, which is the parental deed, to the plaintiff's Sale Deed viz., Ex.A2. According to Ex.A3, viz., the Sale Deed stands in the name of Arumugam, who is none other than the predecessor in title of the property, only the western portion of the entire extent was sold. Whereas in the plaintiff's Sale Deed (Ex.A2), various survey numbers were given. After elaborate discussion, the First Appellate Court as well as the Trial Court have found that the vendor of Arumugam viz., Dharmalinga Udayar has not reserved any portion on the northern side, but he reserved a portion of property only on the eastern side. It is pertinent to mention here that PW2 has also spoken about the area, which he has sold to Arumugam.



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26. Therefore, taking into consideration of all the above aspects, the Trial Court as well as the First Appellate Court has found that the plaintiff is not the owner of the suit property. Such factual finding is immune from challenge before the High Court under Section 100 CPC. Though the learned Senior Counsel relies upon the RDO's report, which has been filed in furtherance to the order of this Court dated 15.02.2005, the specific direction to the RDO was to identify the property according to the plaintiff as well as the defendants' sale deeds. For ready reference, the order of this Court dated 15.02.2005 is extracted hereunder:-

“2. To see that an early settlement is arrived at in this case, I am of the opinion that the lie of the properties purchased by the plaintiff and the defendants in O.S.No.54/94 can be easily fixed with reference to the revenue records available with R-3 and R-4. Accordingly, the following interim order is passed:

The Revenue Divisional Officer, Ariyalur (the third defendant in O.S.No.244/2001) is directed to cause inspection of the entire extent of property available in Old S.No.4833/4-B & C corresponding to new S.No.228/4-B & C forming the subject matter of the suit in O.S.No.54/94, after giving advance notice to the respective parties on record namely, the plaintiff and the defendants in



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O.S.No.54/94; identify the property purchased by the plaintiff as per their sale deeds, and also the property purchased by the defendants as per their sale deed; correlate the extent purchased and survey number with reference to the revenue records available, either in his office or in the office of the Tahsildar, Kunnam Taluk, Perambalur District. In so identifying, the Revenue Divisional Officer shall have due regard to the resurvey done earlier in S.No.483/4 corresponding to S.No.228/4; the report shall reach this Court, on or before 10.3.2005; the respective parties in O.S.No.54/94 shall furnish all the documents of title and other records in their favour in support of their respective claims to the Revenue Divisional Officer, on receiving the notice of inspection from him. Until further orders, neither the plaintiff in O.S.No.54/94 nor the defendants therein shall carry on any quarrying activity in the properties forming the subject matter of both the second appeals.

(Emphasis supplied by this Court)

27. While perusing the above order, this Court had found that if the RDO files report, the same would become useful for an early settlement of this issue. Only with that object, this Court has directed the RDO to measure and identify the property according to the respective parties sale deeds.

Whereas, the RDO did not comply the directions of this Court and has only



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measured the property according to the plaintiff's sale deed, but omitted to identify the property as per the defendants' sale deed. Therefore, the submissions made by the learned Senior Counsel that the RDO report must be construed as additional document, with due respect, cannot be accepted at all.

28.It is well settled principle of law that unless there is a perversity in the finding, merely because an alternative view is possible cannot be a ground to interfere with the order of both the Courts below. Here, both the Courts below have concurrently found that the plaintiff has not established its title over the suit property.

29. From the submissions made by either side, this Court could not find any perversity from the findings recorded by both the Courts below. Thus, in view of the above detailed discussions, all the substantial questions of law are answered in favour of the respondents.

30. In the result, both the Second Appeals are dismissed. There shall be no order as to costs.

22.05.2024

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Index : Yes

Speaking Order : Yes

NCC : Yes



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C.KUMARAPPAN, J

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To

1. The District Munsif Court,
Perambalur.
2. The District Court,
Perambalur.

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22.05.2024