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S.A.No. 77 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.01.2024

PRONOUNCED ON : 04.04.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No. 77 of 2021

&

C.M.P.No. 1705 of 2021

1.Varadharajan

2.V.Senthilkumaran

3.N.Sarumathi

...Appellants

Vs.

1.Krishnan

2.The village Administrative Officer,
Saminaichanpatty Village,
Saminaickanpatty Post,
Omalur Taluk, Salem District.

3.The Tahsildar,
Taluk Office,
Omalur Post,
Omalur Taluk, Salem District.

4.The Revenue Divisional Officer,
Mettur Dam,
Mettur Taluk,
Salem District.



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5. The District Collector,
The Collectorate,
Salem District.

...Respondents

PRAYER: Second Appeal filed under Section 100 of CPC against Judgement and Decree dated 27.08.2019 passed in A.S.No.18 of 2019 by the Subordinate Judge, Omalur, Salem District which partly confirmed the Judgement and Decree dated 22.02.2019 passed in O.S.No.287 of 2014 by the District Munsif, Omalur, Salem District.

For Appellants : Mr. A.Vijayakannan
For M/s.Golden Law Associates

For Respondent 1 : Mr. T.Sai Krishnan

For Respondents : Dr. S.Suriya,
2 to 5 Additional Government Pleader.

JUDGEMENT

The defendants 1 to 3 are the appellants before this Court.

The suit which is the subject matter of the Second Appeal is one filed for declaring the registered settlement deed dated 16.11.1981



executed by the late Pachamuthu Gounder in favour of the 1st defendant and a registered sale deed dated 29.05.2009 executed by defendants 1 and 2 in favour of the 3rd defendant as null and void and not binding upon the plaintiffs, to declare the plaintiff's title to the suit property and consequentially injunct defendants 1 to 3, their men, agents and any one on their behalf from interfering with the plaintiff's peaceful possession and enjoyment of the suit property and for mandatory injunction directing the defendants 4 to 7 their men, subordinates to correct the patta bearing No.114 and 191 of Saminaickenpatty Village, Omalur Taluk in respect of S.Nos.48/3C, 48/3A, 48/3D and to issue corrected patta to the plaintiff in respect of an extent of 46 1/2 cents.

2. The property which is the subject matter of the suit O.S.No.287 of 2014 on the file of the District Munsif, Omalur, as follows:

“சேலம் ரி.டி ஓமலூர் சப்ரி.டி ஓமலூர்
வட்டம், சாமிநாயக்கன்பட்டி கிராமத்தில்,
க.ரீ.சர்வே நெ.48/3 புஞ்சை ஏக்கர் 3.96 க்கு



தீர்வை ரூ.8.15.0 இதற்கு புது சர்வே நெ.48/3பி,
இதில் தென்மேற்கில் 0.45 செண்டு நிலமும்
தென்மேற்றுபுரம் 1-1/2 செண்டும் ஆக 46 1/2
செண்டு நிலத்தில் வாதி பல நபர்களுக்கு
கிரயம் செய்தது போக மீதியுள்ள 7 1/2
செண்டு நிலமும், மேற்படி சர்வே நெம்பரில்
மேற்குபுரம் உள்ள கிணற்றில் பாதி பாத்தியமும்
மற்றும் மேற்படி சொத்திற்கு உண்டான சகல
மாழில் தடநட வண்டி வாகனவழிப்
பாத்தியங்களும், ஈஸ்ட்மெண்டரி பாத்தியங்களும்,
இதர பாத்தியங்களும் சம்மந்தப்பட்டது.

3. The facts which has led to the filing of this Second Appeal is narrated herein below and the parties are referred to in the same litigative status as before the Trial Court.

4. It is the case of the plaintiff that under a registered sale deed dated 17.02.1955, the plaintiff's father Chinnamuthu and his brother Karuppannan had purchased an extent of 2.10 acres in S.No.47/4 and 93 cents out of 3.96 acres along with thatched house and half



right in the well situated in S.No.48/3 of Saminaickenpatty village, Omalur Taluk, from one Pazhanisami and Subramaniam. It is the case of the plaintiff that dispute relates only to the land comprised in S.No.48/3.

5. It is the further case of the plaintiff that under a registered sale deed dated 30.01.1960, Karuppannan one of the joint purchaser, for himself and on behalf of his minor son Ayyamuthu sold half share in S.No.47/4 i.e., 1.05 acres and 45 cents in the Northwestern portion out of 93 cents in S.No.48/3 together with 3 angana thatched house build in 1 1/2 cents in S.No.48/3 together with 1/4 right in well to one Pachamuthu, the father of the 1st defendant. Pachamuthu is none else than other brother of the plaintiff's father i.e., the paternal uncle of the plaintiff.

6. Under a settlement deed dated 29.04.2002, the plaintiff's father had settled the remaining 1.05 acres in S.No.47/4 and 41 cents in S.No.48/3 now S.No.48/3B on the plaintiff. The plaintiff in turn had sold 39 cents out of the 41 cents in S.No.48/3 to various persons



retaining an extent of 2 cents in S.No.48/3B. Likewise, the plaintiff's father had retained 5 1/2 cents in S.No.48/3B after settling an extent of 41 cents upon the plaintiff. Therefore, it is the case of the plaintiff that he and his father were entitled to an extent of 7 1/2 cents in S.No.48/3B and the patta now stands in the name of his father and the property has been subdivided as S.No.48/3B1A.

7. The plaintiff would submit that on 21.08.2010, when the plaintiff had decided to put up fencing in the land in S.No.48/3 and for which purpose he started cleaning the property, the same was objected to by the defendants who said that the property belonged to them on the basis of the sale by Karuppannan in favour of the 1st defendant's father and the settlement deed by Pachamuthu in favour of the 1st defendant.

8. The plaintiff would submit that Pachamuthu had settled 55 cents in S.No.48/3 to the 1st defendant which was in excess of 8 1/2 cents. The thatched house in S.No.48/3 was in turn settled in favour of the other son Natarajan. Thereafter, on 29.05.2009 on the basis



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of this settlement, the 1st defendant and his son, the 2nd defendant had sold 6 cents to the 3rd defendant. The plaintiff would submit that documents were being fraudulently created and these documents do not bind on the plaintiff. On 22.08.2014, the plaintiff had come into knowledge about these documents and has immediately come forward to file this suit.

9. The plaintiff would further submit that S.No.48/3 had been subdivided as S.No.48/3A, 3B, 3C and 3D. The plaintiff's land is situate in S.No.48/3B. However, the 1st defendant had been issued patta in respect of an extent of 55 1/2 cents in S.No.48/3A, 48/3D and 48/3C. Hence the suit.

10. The 5th defendant had filed a written statement which was adopted by defendants 4, 6 and 7. The defendants had admitted to the fact that the said Karuppannan had only sold 46 1/2 cents to the 1st defendant's father. They had submitted that Chinnamuthu had gifted 41 cents out of 46 1/2 cents to the plaintiff and that the plaintiff had a right to 5 1/2 cents in the said survey number.



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11. The 1st defendant had filed a written statement inter alia denying the contentions in the plaint. The purchase by Chinnamuthu and Karuppannan in the year 1955 has been admitted and the sale by Karuppannan to the 1st defendant's father in the year 1960 is also admitted. However, the 1st defendant would submit that based on the possession and enjoyment, under UDR scheme, patta was granted in the year 1984 and S.No.47/4 had been subdivided into S.No.47/4A, 4B, 4C, 4D and 4E of which an extent of 1.05 acres was allotted to the 1st defendant's father. In S.No.47/4C, 4D, 4E, 96 cents which is short of 9 cents was allotted to the 1st defendant and his father. S.No.48/3 was subdivided into S.No.48/3A to 48/3F. S.No.48/3A and 48/3D was allotted to the 1st defendant. S.No.48/3B was allotted to the plaintiff's father and S.No.48/3C was allotted to the said Natarajan. 41 cents which was settled by plaintiff's father is comprised in S.No.48/3B.



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12. The case of the 1st defendant is that the plaintiff's father has no right to lands in S.No.48/3 as he has been already compensated. The 1st defendant also contend that the plaintiff has not impleaded all the legal representatives of his father as the plaintiff has two sisters, namely, Sivagami and Ramya. Therefore, the suit has to be dismissed.

13. The Trial Court had framed the following issues:

“1. Whether the settlement deed dated 16.11.1981 stands in the name of 1st defendant is void or binding on the plaintiff?

2. Whether the sale deed dated 29.05.2009 in favour of the 3rd defendant is void or binding on the plaintiff?

3. Whether the relief of declaration and permanent injunction can be granted as prayed for?

4. Whether the suit is barred by limitation?

5. Whether the suit is bad for non-joinder of



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necessary parties?

6.What other reliefs?

14. The plaintiff had examined himself as P.W.1 and one Sivasubramani as P.W.2 and marked Ex.A.1 to Ex.A.8. The 1st defendant had examined himself as D.W.1 and marked Ex.B.1 to Ex.B.3.

15. The learned District Munsif, Omalur, on perusing the records held that Karuppannan had only sold 46 1/2 cents in S.No.48/3 to the defendant's father, Pachamuthu. However, the said Pachamuthu when he settled this property on the 1st defendant has settled land in excess of what he has purchased and over which he has no right.

16. The Trial Court also observed that reliance cannot be placed on the UDR pattas, as these pattas are granted without proper enquiry where all the stake holders are called in for the enquiry and thereafter the patta is granted. The Trial Court placed reliance on



the Judgment of this Court reported in **2014 (1) TLNJ 1 (Civil) – Rengasamy and others Vs. The Family Manager Rengaraj and others**. Ultimately, the Trial Court proceeded to decree the suit as prayed for.

17. Challenging the same, the defendants 1 to 3 has filed A.S.No.18 of 2019 on the file of the Sub Court, Omalur.

18. The Lower Appellate Court partly allowed the appeal by reducing the plaintiff's right to an extent of 5 1/2 cents by contending that the plaintiff has not proved the sale of 39 cents in S.No.48/3 and his retention of the 2 cents. It is this Judgement that has been challenged by the defendants 1 to 3 and the plaintiff has not challenged the disallowed portion against him.

19. The Second Appeal has not been admitted and only notice has been ordered.



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20. The main plank of the appellants' counsel's argument was that the plaintiff despite coming to learn that patta had been granted in favour of the defendants for a larger area has not cared to challenge the same immediately and after all these years, the plaintiff has now come forward to file the suit in question.

21. The learned counsel for the plaintiff on the other hand would submit that under a sale deed, Ex.A.2 dated 30.01.1960 what was conveyed to Pachamuthu, was only an extent of 46 1/2 cents, out of the total extent of 93 cents that was purchased jointly by Chinnamuthu and Karuppannan under a registered deed dated 17.02.1955.

22. Despite purchasing only an extent of 46 1/2 cents, Pachamuthu has proceeded to settle 55 cents of land on his son, the 1st defendant, nearly 8 1/2 cents over and above what he has purchased. The plaintiff's case is that he was not aware about the 1st defendant being granted patta for a larger extent and it was only on



22.08.2014 when he had applied for the patta that he came to know about the excess area standing in the name of the defendants and immediately the suit has been filed without any further delay.

23. Heard both the learned counsels and perused the records.

24. The plaintiff has clearly stated that there is no quarrel in respect of the extent of 2.10 acres in S.No.47/4. It is only the property comprised in S.No.48/3 which originally measured an extent of 93 cents that is now the subject matter of dispute. Under the sale deed dated 17.02.1955, Ex.A.1, Chinnamuthu and his brother, Karuppannan had together purchased 93 cents in S.No.48/3. Therefore, each of them were entitled to an extent of 46 1/2 cents. Karuppannan sold his 46 1/2 cents to his other brother Pachamuthu, who is none else than the father of the 1st defendant. Chinnamuthu, the father of the plaintiff bequeathed 41 cents in favour of the plaintiff, retaining 5 1/2 cents to himself. Thereafter, it appears that under Ex.A.4, Pachamuthu had settled 55 cents in favour of the 1st defendant which is 8 1/2 cents over and above what



he had purchased. On the basis of this settlement deed, Ex.A.4, the 1st defendant and his son, the 2nd defendant had sold 6 cents to the 3rd defendant under Ex.A.6, sale deed dated 29.05.2009. The said Pachamuthu had also settled the thatched house in S.No.48/3B in favour of his other son Natarajan.

25. The defendants are now trying to validate the above transfer by stating that patta had been granted on the basis of their possession for ever so long and therefore the plaintiff has lost his right to the excess land measuring 8 1/2 cents. The 1st defendant's father Pachamuthu who has purchased only 46 1/2 cents has settled lands over and excess of what he has purchased and over which he had no right.

26. On the basis of the settlement deed, Ex.B.1 the 1st defendant had managed to obtain patta which does not take into account the fact that the prior owner was only entitled to an extent of 46 1/2 cents. The patta has been granted without enquiry.

Therefore, the defendants 1 to 3 cannot claim a right to the excess



land on the basis of this patta which has been granted without following procedure.

27. The Courts below have correctly held that the father of the 1st defendant has settled the excess land upon the 1st defendant over which he had no right and the Lower Appellate Court has rightly reduced the declaration to an extent of 5 1/2 cents to the plaintiff.

28. The defendants 1 to 3 have not made out any substantial error in the Judgement of the Lower Appellate Court, which gives rise to a substantial question of law. Therefore, the above Second Appeal is dismissed and the Judgement of the Lower Appellate Court is confirmed. Consequently, the connected Civil Miscellaneous Petition is closed. No costs.

04.04.2024

Index : Yes/No
Internet : Yes/No
Speaking Order / Non Speaking Order
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To

1.The Subordinate Judge,
Omalur,
Salem District.

2.The District Munsif,
Omalur,
Salem District.



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P.T. ASHA, J,

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Pre-Delivery Judgment in
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04.04.2024