



S.A.Nos.180 of 2018, 402 and 403 of 2017

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.12.2024

CORAM

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

S.A.Nos.180 of 2018,
402 and 403 of 2017

S.A.Nos.180 of 2018

1. Radha @ K.Radhakrishnan (Died)
2. S.Anandan ... Appellant
Vs.

1. Govindarraaj
2. Pattathal
3. Selvi
4. Vasuki
5. Pachaiyammal ... Respondents

(First appellant died and the second appellant was impleaded vide court order dated 12.10.2023 in C.M.P.No.1556/2022 in S.A.No.180/2018)

S.A.No.402 of 2017

Narayana Padaiyachi (Died)
1. Pattathal
2. Govindaraju
3. Selvi
4. Vasuki
5. Pachaiyammal ... Appellants
Vs.



S.A.Nos.180 of 2018, 402 and 403 of 2017

1. Radhakrishnan (Died)
2. Govindaraju
3. S.Anandan

... Respondents

(First respondent died, third respondent was impleaded vide court order dated 29.11.2023 made in C.M.P.No.26630/2023 in S.A.No.402/2017)

S.A.No.403 of 2017

Narayana Padaiyachi (Died)

1. Pattathal
2. Govindaraju
3. Selvi
4. Vasuki
5. Pachaiyammal

... Appellants

Vs.

1. Radhakrishnan (Died)
2. S.Anandan

... Respondents

(First respondent died, second respondent was impleaded vide court order dated 29.11.2023 made in C.M.P.No.26633/2023 in S.A.No.403/2017)

Prayer in S.A.No.180/2018 : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 23.09.2016 passed in A.S. No.25 of 2016, on the file of the Additional District and Sessions Court, Ariyalur, partly modifying the decree and judgment dated 26.10.2005 passed in O.S.No.175 of 2003, on the file of the Principal District Munsif Court, Ariyalur.



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Prayer in S.A.No.402/2017 : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 23.09.2016 passed in A.S. No.24 of 2016, on the file of the Additional District and Sessions Court, Ariyalur, partly modifying the decree and judgment dated 26.10.2005 passed in O.S.No.175 of 2003, on the file of the Principal District Munsif Court, Ariyalur.

Prayer in S.A.No.403/2017 : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 23.09.2016 passed in A.S. No.25 of 2016, on the file of the Additional District and Sessions Court, Ariyalur, partly modifying the decree and judgment dated 26.10.2005 passed in O.S.No.175 of 2003, on the file of the Principal District Munsif Court, Ariyalur.

In S.A.No.180/2018 :

For Appellant : Mr.K.S.Gnanasambandan
for Mr.K.P.Ganasekaran
For Respondents : Mr.S.Vijayakumar

In S.A.No.402/2017 :

For Appellants : Mr.S.Vijayakumar
For R2 : No appearance
For R3 : Mr.K.S.Gnanasambandan
for Mr.K.P.Ganasekaran

In S.A.No.403/2017 :



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For Appellants : Mr.S.Vijayakumar
For R2 : Mr.K.S.Gnanasambandan
for Mr.K.P.Ganasekaran

COMMON JUDGMENT

The appellants in S.A.Nos.402 and 403/2017 are the plaintiffs in O.S.No.175 of 2003, on the file of the Principal District Munsif Court, Ariyalur. The first appellant in S.A.No.180/2018 is the defendant in the above suit.

2. The suit properties are described under two heads. The 'A' schedule property is described as a land in survey number 251/1 (natham survey number 432/4) of Sannasinallur Village, Senthurai Taluk measuring 0.02.13 sq.mt., while the 'B' schedule property is described as plot numbers 1, 2 and 4 in the same survey number within the boundaries stated in the plaint schedule.

3. The plaintiffs have filed the suit for declaration of their title



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to the 'A' schedule property and for a mandatory injunction directing the defendant to remove the construction put up in 'A' schedule property and handover the vacant possession of the same. They have also prayed for a permanent injunction restraining the defendant from interfering with their peaceful possession and enjoyment of the 'B' schedule property.

4. For the sake of convenience, the parties are referred to as per their ranking in the trial court and at appropriate places, their rank in the present appeal would also be indicated.

5. The case of the plaintiffs in a nutshell is as follows :

The plaintiffs purchased A and B schedule properties through two registered sale deeds dated 08.12.1978 (Ex.A2) and 04.08.1986 (Ex.A3) from one Duraisamy Kadanthaiyar, son of Alagappa Kadanthaiyar, and his minor sons and one Chinnapillai Padayachi. According to the first plaintiff, ever since the date of purchase he has been in possession and enjoyment of the suit properties and also obtained patta (Ex.A4) bearing number 1077. The defendant who is a total stranger



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is attempting to interfere with the suit 'B' schedule property and also put up a construction in 'A' schedule property, when the plaintiffs were away from the suit village. Hence the suit.

6. The suit was resisted by the defendant on the following grounds:

- i. All the allegations contained in the plaint are false.
- ii. Arulmigu Ananthayi Amman Temple exists in 'A' schedule property for the past 100 years.
- iii. The 'B' schedule property was not claimed by anyone.
- iv. The villagers were using 'B' schedule property for worshipping Ananthayi Amman.
- v. Since the worshippers have not been impleaded in the suit, the suit is bad for non-joinder of necessary parties.
- vi. The plaintiffs have purchased the suit properties from the persons who do not have any right or title over the same and also obtained patta with the connivance of the revenue officials.



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7. On the basis of the above pleadings, the trial Court framed the following issues :

- "i. Whether the plaint plan is correct ?*
- ii. Whether the sale deeds dated 08.12.1978 and 04.08.1986 are valid ?*
- iii. Whether the plaintiffs are entitled for a declaration of title to the suit properties through registered sale deeds dated 08.12.1978 and 04.08.1986 ?*
- iv. Whether the plaintiffs are entitled for the reliefs sought for by them ?*
- v. To what other relief, the plaintiffs are entitled ?"*

8. In the trial Court, the first plaintiff examined himself and marked Ex.A1 to Ex.A6. The defendant examined himself and one another witness on his side. However, no documentary evidence was adduced. An Advocate Commissioner was appointed by the trial court and he filed his report and plan, which were marked as Ex.C1 and Ex.C2 respectively.

9. The learned trial court judge on considering the evidence on



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record, partly decreed the suit vide his decree and judgment dated 26.10.2005. The learned trial court judge had held that since the plaintiffs have not proved their title over the 'A' schedule property they are not entitled to get a declaratory decree and a mandatory injunction in respect of the 'A' schedule property. However, the defendant was restrained from interfering with the 'B' schedule property.

10. Aggrieved over the decree and judgment passed by the trial court judge, the legal heirs of the deceased first plaintiff filed an appeal in A.S.No.24/2016 before the Additional District Sessions Court, Ariyalur, while the defendant filed an appeal in A.S.No.25/2016. The learned Additional District and Sessions Judge, Ariyalur, after analysing the evidence on record partly modified the decree and judgment passed by the trial court judge by observing that the plaintiffs should allot 3 feet of land in 'B' schedule property for the purpose of worshipping the temple which is in 'A' schedule property, vide her decree and judgment dated 23.09.2016. Aggrieved over the same, the plaintiffs have filed S.A.Nos.402 and 403/2017 and the defendant has filed S.A.No.180/2018.



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11. The substantial question of law framed in S.A.No.180/2018 is as follows :

“ Whether both the courts below are right in holding that the plaintiffs have got a right in respect of the 'B' schedule suit property, especially, when no acceptable documentary evidence was adduced on the side of the plaintiffs ?”

12. Heard Mr.K.S.Gnanasambandan, learned counsel appearing for the appellant in S.A.No.180/2018 and Mr.S.Vijayakumar, learned counsel appearing for the appellants in S.A.Nos.402 and 403/2017.

13. The plaintiffs have claimed title to 'A' and 'B' schedule properties through two registered sale deeds dated 08.12.1978 (Ex.A2) and 04.08.1986 (Ex.A3). One Duraisamy Kadanthaiyar, son of Alagappa Kadanthaiyar, had executed a registered sale deed (Ex.A2) in favour of Narayana Padayachi (first plaintiff) in respect of the land measuring 1750 sq.ft. in Natham Survey number 251/1 of Sannasinallur Village, Senthurai Taluk, Ariyalur District. In Ex.A2, Duraisamy Kadanthaiyar



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had stated that the property which he conveyed in favour of Narayana Padayachi belonged to him absolutely. However, it is not stated as to how Duraisamy Kadanthaiyar became entitled to survey number 251/1 measuring 1750 sq.ft. The parent document of Ex.A2 was not filed by the plaintiffs. In the schedule of Ex.A2, it is mentioned that a patta was issued in favour of Duraisamy Kadanthaiyar. However, the said patta was not filed. Similarly, in the sale deed dated 04.08.1986 (Ex.A3) the land in survey number 251/1 measuring 1250 sq.ft. was conveyed to the first plaintiff Narayana Padayachi by one Chinnapillai Padayachi. In the sale deed (Ex.A3) it is indicated that the vendor purchased the land in Natham survey number 251/1 measuring 1250 sq.ft. The plaintiffs have not adduced the parent documents of Ex.A3. The 'B' schedule property is indicated as plot numbers 1, 2 and 4 in S.No.251/1 (new survey number 432/4) measuring 0.02.13 square meters. The plaintiffs have not adduced any revenue records to show that survey number 251/1 was subsequently classified as 432/4. The plaintiffs also rely on the patta (Ex.A4) issued by the Head Quarters Tahsildar, Senthurai taluk, in respect of survey number 432/4 old survey number 251-2B/part. The suit properties are not in



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survey number 251-2B/part and it is altogether a different property. This has not been properly explained by the plaintiffs. There is absolutely no evidence to show that survey number 251/1 was subsequently subdivided as 251-2B/part.

14. Mr.S.Vijayakumar, learned counsel appearing for the appellants / plaintiffs in S.A.Nos.402 and 403/2017 contended that Narayana Padayachi purchased both A and B schedule properties through Ex.A2 and Ex.A3 and has been in possession and enjoyment of the same. It is his contention that the defendant has not proved his right or title over the suit properties. It is pertinent to point out that the plaintiffs who had filed the suit should prove their case to the hilt and they cannot pick holes in the case of the defendant and seek for a decree in their favour. As already observed, the plaintiffs have not proved their title in respect of A and B schedule properties. The plaintiffs have not also examined their vendors to prove their contentions.

15. Both the courts below have mainly relied on the sale deeds



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Ex.A2 and Ex.A3 for granting the reliefs in favour of the plaintiffs. The observations of both the courts below are totally perverse and therefore, the substantial question of law framed in S.A.No.180/2018 is answered in favour of the appellant. Consequently, the appeals in S.A.Nos.402 and 403/2017 are dismissed.

16. In the result,

- i. S.A.Nos.402 and 403 of 2017 are dismissed and S.A.No.180 of 2018 is allowed. No costs.
- ii. the decree and judgment dated 23.09.2016 passed in A.S. Nos.24 and 25 of 2016, on the file of the Additional District and Sessions Court, Ariyalur and the decree and judgment dated 26.10.2005 passed in O.S.No.175 of 2003, on the file of the Principal District Munsif Court, Ariyalur, are set aside.
- iii. the suit in O.S.No.175 of 2003, on the file of the Principal District Musnif Court, Ariyalur, is dismissed with costs.



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Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
mtl

To

1. The Additional District and Sessions Court, Ariyalur.
2. The Principal District Musnif Court, Ariyalur.
3. The Section Officer, VR Section, High Court, Madras.



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R. HEMALATHA, J.
mtl

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