



S.A. No.308 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.03.2024

DELIVERED ON :22.03.2024

CORAM:

**THE HON'BLE MR. JUSTICE P.B. BALAJI**

S.A. No.308 of 2018

1.Kalyani  
2.Sundar Rajan

.... Appellants

Versus

1.Paneerselvam  
2.Selvaraj  
3.Chinnapillai @ Rajendran  
4.Rajaraman  
5.Balasubramanian  
6.Pasupathi  
7.Kannan  
8.Anandhan

... Respondents

Second Appeal filed under Section 100 of the Civil Procedure code, against the decree and judgment passed in A.S. No.92 of 2012 dated 14.07.2017 on the file of Additional Subordinate Judge, Mayiladuthurai confirming the judgment and decree dated 31.08.2012 in O.S.No.150 of 2007 on the file of District Munsif, Sirkali.



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For Appellants

: Mrs.K.Nithyashree

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For Respondents

: Mrs.P.Srividhya

## **JUDGMENT**

The plaintiffs, having been unsuccessful, concurrently before the trial Court as well as the first appellate Court, are the appellants in the present Second Appeal. The parties are described as per their litigative status in the suit.

2. The brief facts of the case are as hereunder:-

The plaintiff approached the Court, seeking permanent injunction to restrain the defendants from interfering with the plaintiff's peaceful possession and enjoyment. The case of the plaintiffs is that suit property, measures a total extent of 61 cents. According to the plaintiff, he became entitled to an extent of 35½ cents under the compromise decree in O.S.No.131 of 1971 and in respect of the remaining 25½ cents, he had



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become entitled to the same under purchase viz., sale deed dated 14.01.1984. The plaintiff, claiming that he has been in possession and enjoyment of the said 61 cents, has approached the Court in view of the interference caused by the defendants.

3. The first defendant filed a written statement denying the plaintiff's entitlement to the suit property and also denied that the plaintiff has been in possession and enjoyment of the suit property.

4. The trial Court partly decreed the suit, holding that the plaintiff is entitled to relief only in respect of 35½ cents which he became entitled under the compromise decree and not in respect of the remaining 25½ cents. The first appellate court has confirmed the findings of the trial court and dismissed the appeal.

5. Aggrieved by the concurrent findings, the legal representatives of the deceased plaintiff have preferred the present second appeal.



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6. On 07.06.2018, the above Second Appeal was admitted on the following substantial questions of law: -

(a) Whether the judgment of Courts below are vitiated in its failure to consider the material evidence available on record namely Ex.A.7 coupled with Ex.A.1-A3?

(b) Whether the judgments of Courts below are liable to be set aside in its casting burden of proof on wrong person by stating that plaintiff should prove the negative namely Groups 2, 3 and 4 under Ex.A.1 final decree never took possession of portion allotted to them?

(c) Whether defendants are entitled to lay any claim over suit property when they were allotted properties situated in different survey numbers not connected with suit property under Ex.A.1?.





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O.S.No.131 of 1971 and under the compromise decree, the said extent was allotted to different persons. More over, the compromise decree was subsequent to the alleged purchase made by the plaintiff on 14.01.1984 and therefore, the learned counsel for the respondents would submit that having accepted the compromise decree in O.S.No.131 of 1971 in the year 1986, the plaintiff cannot stake a claim in respect of the property, which is alleged to have been purchased in 1984, prior to the said compromise decree in the year 1986. The learned counsel for the respondents would therefore pray for dismissal of the second appeal as there is no substantial question of law that arises for consideration.

10. In reply, learned counsel for the appellants would submit that only in respect of 6 cents out of 25 ½ cents, which was the subject matter of the compromise decree, various other owners were allotted different portions and therefore, the defendants cannot contend that the entire extent of 25½ cents is subject matter of the compromise decree in order to non-suit the plaintiff.

11. I have carefully considered the rival submissions advanced by the



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learned counsel for the appellants as well as the learned counsel for the respondents. I have also gone through the pleadings, oral and documentary evidence adduced by the parties and the judgments of the trial Court as well as the first appellate Court.

12. The specific case of the plaintiff is that he purchased 25 ½ cents, in and by sale deed dated 14.01.1984, which has been marked as Ex.A.3 and the plaintiff also admits that he became entitled to the remaining 35½ cents under the compromise decree in O.S.No.131 of 1971. Admittedly, the compromise decree was only after Ex.A.3 sale deed. Even according to the plaintiff, under the compromise decree, he was allotted only 35½ cents and even a portion of 25½ cents purchased by him was also allotted to various parties under the very same compromise decree in the year 1986.

13. Once the plaintiff chooses to take advantage of the compromise decree to establish his title in respect of 35½ cents, it is not open to him to disown the compromise decree, when it comes to the other 25½ cents. The plaintiff cannot approbate and reprobate.



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14. The Courts below have rightly considered the oral and documentary evidence adduced by the parties and come to the right conclusion that the plaintiff was not entitled to injunction in respect of 25½ cents and was entitled to the relief in respect of only 35½ cents.

15. I do not find any perversity or illegality of the findings rendered by the Courts below, warranting interference under Section 100 of the Civil Procedure Code.

16. For the above reasons, all the substantial questions of law are answered against the appellants and the Second Appeal stands dismissed. No costs.

.03.2024

Index: Yes/No  
Speaking Order/Non-Speaking Order

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To

1. The Additional Subordinate Judge, Mayiladuthurai
2. The District Munsif, Sirkali.
3. The V.R.Section, High Court, Chennai.



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**P.B.BALAJI,J.**

sr

Pre-Delivery Judgment  
in S.A.No.308 of 2018

22.03.2024