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S.A.Nos.159, 160 & 161 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2024

CORAM

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

S.A.Nos.159, 160 & 161 of 2013

and

M.P.Nos.1 & 1 of 2013

S.A.No.159 of 2013:

Ramaboyan

... Appellant

Vs.

1.Kuppusamy

2.Palanisamy

3.Chinnasamy

... Respondents

Prayer : Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and decree dated 20.09.2012 made in A.S.No.36 of 2012 on the file of the First Additional Sub Court, Erode confirming the judgment and decree dated 22.12.2011 made in O.S.No.85 of 2003 on the file of the Principal District Munsif Court, Erode.

For Appellant

: Mr.N.Manokaran

For Respondents 1 to 3

:Ms.S.Yogalakshmi for
Mr.M.Guruprasad.



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S.A.No.160 of 2013:

Ramaboyan

Vs.

... Appellant

- 1.Kuppusamy
- 2.Palanisamy
- 3.Chinnasamy
- 4.The State of Tamil Nadu,
Rep. by the District Collector,
Erode District,
Erode-11.
- 5.The Revenue Divisional Officer,
Erode District,
Brough Road,
Erode.
- 6.The Zonal Assistant Tahsildhar,
Taluk Office Compound,
Erode Town.
- 7.The Village Administrative Officer,
Kumilanparappu,
Chithode Village,
Erode Taluk.
- 8.The Executive Officer,
Suriyampalayam,
Kumilanparappu Panchayat,
Suriyampalayam,
Erode Taluk.
- 9.The Superintending Engineer,
Tamil nadu Electricity Board,
Erode Electricity Distribution Circle,



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Mettur Road, Erode-9.
10.The Assistant Engineer,
Operation and Maintenance,
West Electricity Distribution Circle,
Tamil Nadu Electricity Board,
Chithode,
Erode Taluk.

... Respondents

Prayer : Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and decree dated 20.09.2012 made in A.S.No.38 of 2012 on the file of the First Additional Sub Court, Erode confirming the judgment and decree dated 22.12.2011 made in O.S.No.402 of 2007 on the file of the Principal District Munsif Court, Erode.

For Appellant	: Mr.N.Manokaran
For Respondents 1 to 3	: Ms.S.Yogalakshmi for Mr.M.Guruprasad.
For Respondents 4 to 7	: Dr.Suriya Additional Government Pleader
For Respondent 8	: Mr.Rajamathivanan
For Respondents 9 & 10	: Ms.J.Hemalatha Gajapathy Standing Counsel for TNEB

S.A.No.159 of 2013:

Ramaboyan

... Appellant

Vs.

1.Kuppusamy

2.The Superintending Engineer, TNEB
Tamilnadu Electricity Distribution Circle,
Having office at Mettur Road,



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Erode-9.

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3.The Executive Officer,
Suriyampalayam,
Kumilanparappu Panchayat,
Having office at Suriyampalayam,
Erode Taluk.

4.Junior Engineer,
Operation and Maintenance (West),
Tamilnadu Electricity Board,
Chithode,
Erode District.

... Respondents

Prayer : Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and decree dated 20.09.2012 made in A.S.No.40 of 2012 on the file of the First Additional Sub Court, Erode confirming the judgment and decree dated 22.12.2011 made in O.S.No.338 of 2010 on the file of the Principal District Munsif Court, Erode.

For Appellant	: Mr.N.Manokaran
For Respondent 1	:Ms.S.Yogalakshmi for Mr.M.Guruprasad.
For Respondents 2 & 4	: Ms.J.Hemalatha Gajapathy
For Respondent 3	: Mr.Rajamathivanan

COMMON JUDGMENT

These 3 appeals arise out of the common judgment rendered in A.S.Nos.36, 38 & 40 of 2012 dated 20.09.2012 in confirming the judgment and decree in O.S.Nos.85 of 2003, 402 of 2007 and 338 of



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2010 on the file of the Principal District Munsif Court at Erode, dated 22.12.2011. The parties have been litigating before the Court for over 3 decades. This is clear from the fact that prior to the present suit, a suit had been presented for permanent injunction in O.S.Nos.1213 & 1245 of 1990 on the file of the District Munsif Court, Erode.

2. O.S.Nos.1213 of 1990 had been filed by one Rama Boyan against three brothers, i.e.,Kupusamy, Palanisamy and Chinnasamy for permanent injunction not to interfere with his peaceful possession and enjoyment of the property. O.S.No.1245 of 1990 had been filed in turn by Kuppusamy, Palanisamy and Chinnasamy against Rama Boyan. The relief sought for being one for permanent injunction. In both the suits, an Advocate Commissioner had been appointed who submitted a report on 19.12.1990 and 30.09.1992.

3. Taking into consideration the plea of the plaintiff and the defendants, both the suits for permanent injunction were decreed by the learned District Munsif at Erode by a common judgment, on 30.11.1992. He had come to a clear and categorical conclusion that the properties for which the parties were litigating are two different properties and



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therefore, decreed both the suits.

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4. On the strength of the decree, Rama Boyan i.e.,the plaintiff in O.S.No.1213 of 1990 applied for mutation of patta in his name. The patta was also mutated on 05.09.1995 under Ex.B4. A few years later, he presented O.S.No.85 of 2003 for the relief of permanent injunction restraining Kuppusamy, Palanisamy and Chinnasamy (i.e.defendants in O.S.No.1213 and the plaintiffs in O.S.No.1245 of 1990) not to interfere with his possession.

5. Pending the suit, he alleged that the defendants had encroached upon the property and therefore moved an application for amendment which came to be dismissed by the Trial Court and that was challenged by way of a Civil Revision Petition before this Court in C.R.P.No.164 of 2004. By an order dated 22.06.2004, the Civil Revision Petition was allowed permitting the plaintiff – Rama Boyan to amend his prayer from the relief of permanent injunction to delivery of possession of the suit property. Initially, this suit was not a suit for declaration of title but a relief of permanent injunction alone.



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6. On coming to know that patta has been granted under Ex.B4

to Rama Boyan, Kuppusamy, Palanisamy and Chinnasamy initiated O.S.No.402 of 2007. This suit was for declaration of their title and permanent injunction and consequent relief of mandatory injunction against the defendants.

7. The insatiable appetite for litigation of the parties not having been satisfied, yet another suit was filed in O.S.No.338 of 2010. This suit was filed for the relief of not to disconnect the electricity connection in Service No.015-007-1393.

8. I have to narrate one further circumstance which constrained Kuppusamy, Palanisamy and Chinnasamy to file O.S.No.402 of 2007. Aggrieved by the order of the Tahsildhar, dated 05.09.1995, Kuppusamy preferred an appeal before the Revenue Divisional Officer for cancellation of the order granting patta in favour of Rama Boyan. The Revenue Divisional Officer passed an order on 02.08.2005. The appeal had been kept pending by the Revenue Divisional Officer from 11.11.2003 to 02.08.2005. As the appeal was dismissed by the Revenue Divisional Officer, Kuppusamy, Palanisamy and Chinnasamy preferred the suit in



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O.S.No.402 of 2007.

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9. Since the parties and issues that were sought to be answered were common. All the suits were taken up for a trial and evidence was recorded.

10. The learned Trial Judge decreed the suit in O.S.No.402 of 2007 and consequently, decreed the suit in O.S.No.330 of 2010 and dismissed O.S.No.85 of 2003. Feeling aggrieved over the decrees granted to the brothers Kuppusamy, Palanisamy and Chinnasamy, Rama Boyan preferred Appeal suits in A.S.Nos.36, 38 and 40 of 2012.

11. As narrated above, by a common judgment, these 3 appeals came to be dismissed, against which the present second appeals have been preferred.

12. The three brothers Kuppusamy, Palanisamy and Chinnasamy trace their title through their father, who was also called as Rama Boyan, son of Kuppu Boyan. Their father Rama Boyan had purchased the property by way of a registered sale deed on 25.02.1960.



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The property was assigned in Door Nos.54 and 55. On the death of Rama Boyan, his sons succeeded to the estate along with their mother and sister. Pending the suit, the female heirs of Rama Boyan, son of Kuppa Boyan had relinquished their right albeit by way of an un-registered document in favour of the plaintiffs. Therefore, the case of the plaintiffs in O.S.No.402 of 2007 is on the basis of the purchase that was made by Rama Boyan on 25.02.1960.

13. Insofar as the title of the appellants/Rama Boyan, son of Kuppa Boyan is concerned, it is traced to one Lakshmayee. Lakshmayee is said to have sold the property by way of a registered sale deed, in favour of one Guruswamy Boyan on 06.08.1971. The extent of sale was 72 cents. Out of 72 cents, the said Guruswamy Boyan had settled an extent of 6 cents in favour of the appellant/Rama Boyan on 19.01.1977. Rama Boyan took possession of 6 cents and was in enjoyment of the same. Out of the 6 cents, he alienated 3 cents in favour of one Ammasai Boyan on 07.03.1978. Hence, the claim of the appellant/Rama Boyan is that, he is entitled to 3 cents of the suit schedule mentioned property in O.S.No.85 of 2003.



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14. These second appeals have been presented before this Court on 21.01.2013. When the appeals came up for admission, this Court had not admitted the appeals, but had issued a notice regarding admission, on 15.03.2013. After having been pending for a decade, it came up before me for admission.

15. Mr.N.Manokaran, the learned counsel appearing for the appellant primarily argued two points for admissions namely,

(i) His client, having filed the suit in O.S.No.85 of 2003, as early as in March 2003, the suit for title, filed in O.S.No.402 of 2007 is barred by limitation.

(ii) The proceedings had been pending before the Revenue authorities would not give a right to the plaintiff to present the suit, after a lapse of 3 years from the date of denial of their title in O.S.No.85 of 2003.

iii) The issue that he would agitate is that, father Rama Boyan had left behind his wife, 3 sons and one daughter and therefore, all of them should have jointly filed the suit for declaration of title and the suit filed, only by the sons, is not maintainable.

(iv) Finally, he would urge that the judgment in O.S.No.1213 of



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1990 and O.S.No.1245 of 1990, dated 30.11.1992, would operate as *res judicata* to the present suits.

16. Ms.S.Yogalakshmi, the learned counsel appearing for the respondents 1 to 3 would say that

(i) These second appeals arise against the concurrent findings of facts and therefore, this Court should not interfere with the same.

(ii) She would urge that the suit is not barred by time, on account of the fact, that it had been presented within 3 years from the date of rejection of the appeal by the Revenue District Officer in the year 2005. In order to substantiate this submission, she would rely upon the proviso to Section 14 of the Tamil Nadu Patta Pass Book Act (Tamil Nadu Act 4 of 1986) and would plead, since the Section empowers the presentation of a suit for declaration of title after the proceedings are over before the Revenue authorities, the suit is in time.

(iii) She would also bring to my notice, the judgment of the *Supreme Court* in the case of *P.Sarathy Vs. State Bank of India* reported in *AIR 2000 SC page 2023* and would plead that pendency of proceedings before the Revenue Court can be excluded under Section 14 of the Limitation Act.



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(iv) She would also invite my attention to the written statement filed by the appellant/Rama Boyan in O.S.No.402 of 2007 and would plead that the plea of non-impleading of necessary parties had not been raised in the written statement, it cannot be raised for the first time in a Second Appeal. On the basis of these contentions, she would strenuously urge that the second appeal do not deserve any admission and ought to be dismissed.

17. Dr.S.Suriya, the learned Additional Government Pleader appearing for the respondents 4 to 7, Ms.J.Hemalatha Gajapathy, the learned counsel appearing for the Tamil Nadu Electricity Board and Mr.Rajamathimavan, the learned counsel appearing for the respondent 8, reiterated the contentions that had been raised before the trial Court and the lower appellate Court.

18. I have heard the parties and have carefully gone through the records.

19. Insofar as the plea on limitations is concerned, it is a very tantalizing argument but does not appeal to me. As stated above, the



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arguments of Mr.N.Manokaran is that, since he presented a suit for permanent injunction in March 2003, a suit for title, filed in October 2007, is barred by limitation. This plea is based on the fact that he had denied the title of the three brothers in O.S.No.85 of 2003.

20. It is necessary to refer to the Tamil Nadu Patta Pass Book Act, for the purpose of deciding this issue. Under Section 12 of the Tamil Nadu Patta Pass Book Act, any person who is aggrieved by a mutation in patta is entitled to file an appeal, before the Revenue Divisional Officer. In this case, it is admitted that under Ex.B4, on 05.09.1995, patta had been granted in favour of the appellant/Rama Boyan. On coming to know of the same, by virtue of the presentation of the plaint in O.S.No.85 of 2003, the three brothers preferred an appeal, before the Revenue Divisional Officer. The Revenue Divisional Officer rejected the appeal on 02.08.2005. It is thereafter, that in exercise of the right vested under Section 14 of the Tamil Nadu Patta Pass Book Act, the present suit has been filed.

21. A perusal of Section 14 would show that any person who is aggrieved as to any right of which he is in possession, by an entry made



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in the patta pass book Act is entitled to file a suit for declaration of his rights under Chapter VI of the Specific Relief Act, 1963. Therefore, the cause of action to file the suit arose on the refusal of the Revenue Divisional Officer, by an order dated 02.08.2005, in not setting aside the patta granted in favour of the appellant/Rama Boyan, on 05.09.1995. Therefore, the suit having been filed within 3 years from the date of the order passed by the Revenue Divisional Office, I have to conclude the suit is in time.

22. Apart from that, the argument of Mr.N.Manokaran is that, Section 14 of the Limitation Act, will apply only in case where the Court to which the parties approached is a Civil court and not before the Revenue authorities. This need not detain me for long. The scope of Section 14 has been settled by the judgment of the Supreme Court referred to by Ms.S.Yogalakshmi in *AIR 2000 Supreme Court 2023*. The Supreme Court speaking through Justice Saghir Ahmed held, as follows:

“It will be noticed that Section 14 of the Limitation Act does not speak of a “civil Court” but speaks only of a “Court”. It is not necessary that the court spoken of in Section 14 should be a “civil Court”. Any authority or Tribunal having the trappings of a court would be a



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“court” within the meaning of this Article”

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23. In the light of the clear and categorical view taken by the Supreme Court, in addition to the right granted to present the suit under Section 14 of the Tamil Nadu Patta Pass Book Act (Tamil Nadu Act 4 of 1986) by virtue of the proceedings pending before the Revenue authorities read with Section 14 of the Limitation Act, I have to necessarily conclude that the suit is not barred by time.

24. This takes me to the next issue of non impleading of necessary parties. Both the courts below have taken note of the fact that the wife and daughters of Rama Boyan have relinquished their rights as early as 1985. The family arrangement has been filed as Ex.A35. According to Mr.Manoharan said document not having been registered, the same is inadmissible. However, Ms.Yogalakshmi would argue that the document by itself does not create any right, title or interest in present, but only records a past transaction.

25.Perusal of Ex.A35 shows that it is a document dated 28.08.2008 which records the family arrangement entered into between



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the parties in the year 1985. This is but a recording of the past transaction and therefore does not fall within the teeth of the Registration Act.

26. Apart from that, the plaintiffs have examined P.W2, Tmt.Vasantha, the daughter of Rama Boyan and the sister of the plaintiffs. She has clearly and categorically stated that the family arrangement had been entered into between the parties. Therefore, the plea of Mr.Manoharan of non-impleading of necessary parties deserves rejection. Apart from that, the Courts have rightly appreciated the evidence of P.W2 and Ex.A35. Therefore, does not require any interference in the second appeal.

27. Apart from all these above aspects, one crucial aspect that has to be taken note of, is the fact, that he appellant/Rama Boyan himself had entered the witness box and deposed that he has no objection in O.S.No.402 of 2007, being decreed as prayed for. This is clear from the following sentence:

“அ.வ.எண்.402/2007 வழக்கில் கண்ட சொத்தில்
செக்குபந்தி படி வாதிக்கு தீர்ப்பு செய்ய எனக்கு
ஆட்சேபனை இல்லை”



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28. A perusal of the judgment under Ex.A1 also shows that the trial Court in and by way of its judgment dated 30.11.1992, did not probe into the question of title and therefore, the judgment under Ex.A1 will not operate as *res judicata* for the present suits.

29. It is pertinent to point out that for the first time, the parties have approached the civil Court for declaration of title in O.S.No.402 of 2007. The previous judgment dated 30.11.1992 under Ex.A1 (Judgment in O.S.Nos. 1213 & 1245 of 1990) were both suits for injunction, similarly in O.S.No.85 of 2003 was also a suit for injunction. The suits having been decreed in favour of respective plaintiff namely appellant/Rama Boyan and the three brothers, there was no possibility for the persons to prefer an appeal from the said decree. Therefore, the plea of *res judicata* also does not apply. In suit for injunction, a Court is merely concerned as to whether the plaintiff is in lawful possession of the property or not and does not probe in depth into matters of title.

30. In the light of the discussions above and since the appellant himself has conceded that the suit may be decreed as prayed for, in



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favour of the three brothers, I am not inclined to interfere with the judgment of the Courts below.

31. The judgment and decree in A.S.Nos.36, 38 and 40 of 2012, on the file of the First Additional Sub Court, Erode, dated 20.09.2012 in confirming the judgment and decree in O.S.No.85 of 2003, O.S.No.402 of 2007 and O.S.No.338 of 2010, dated 22.12.2011, stands confirmed. In fine, I am not admitting these second appeals. Accordingly, these second appeals are dismissed.

32. As the parties have been agitating before the civil Court from 1990 onwards, I am not inclined to impose any cost on the appellant.

05.01.2024

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No
dpa

To:

1.The First Additional Sub Court,
Erode.

2.The Principal District Munsif Court,
Erode.



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- 3.The Section Officer,
Vernacular Section,
High Court of Madras.
- 4.The District Collector,
The State of Tamil Nadu,
Erode District,
Erode-11.
- 5.The Revenue Divisional Officer,
Erode District,
Brough Road, Erode.
- 6.The Zonal Assistant Tahsildhar,
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Erode Taluk.
- 9.The Superintending Engineer,
Tamil nadu Electricity Board,
Erode Electricity Distribution Circle,
Mettur Road, Erode-9.
- 10.The Assistant Engineer,
Operation and Maintenance,
West Electricity Distribution Circle,
Tamil Nadu Electricity Board,
Chithode, Erode Taluk.



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11.Junior Engineer,
Operation and Maintenance (West),
Tamilnadu Electricity Board,
Chithode, Erode District.

V.LAKSHMINARAYANAN, J.

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