



S.A.No.417 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 12.02.2024

CORAM

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

S.A.No.417 of 2013

Boorasamy (Died)

1.Annapattu

2.Pannerselvam

3.Thirusangu

4.Jothivel

5.Valamathi

.. Appellants

Vs.

1.Nagarathinam

2.K.Ravi

3.Neelamegam

.. Respondents

Prayer : This Second Appeal is filed under Section 100 of Civil Procedure Code, to set aside the decree and judgment, dated 08.11.2011 in A.S.No.137 of 2008 on the file of the learned Additional District Judge, Fast Track Court, Ariyalur reversing the decree and judgment, dated 24.08.2004 in O.S.No.50 of 1999 on the file of the Additional District Munsif, Ariyalur.



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For Appellants : Mr.R.Rajarajan

For Respondents : Mr.S.Parthasarathy
Standing Counsel
for Mr.P.Dineshkumar

JUDGMENT

The present appeal arises against the judgment and decree of the Court of the learned Additional District Judge, Fast Track Court at Ariyalur in A.S.No.137 of 2008, dated 08.11.2011 in reversing the judgment and decree of the Court of the Additional District Munsif at Ariyalur in O.S.No.50 of 1999, dated 24.08.2004.

2. O.S.No.50 of 1999 is a suit filed for declaration of title and for permanent injunction. According to the plaintiff, the properties absolutely belong to him and the defendants do not have any right, title or interest over the same. The plaintiff/Boorasamy died pending the litigation on 28.03.2008 and his legal heirs were impleaded as respondents 2 to 6 and they are the appellants before me.

3. According to the plaintiff, originally the properties belonged to one Iyyakkannu Padayachi, who is the father of the sole plaintiff and the



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grandfather of the defendants. They were living together as a joint family and there was an oral partition that had been reduced into writing on 05.06.1970 and as per the said oral partition, the suit properties fell to the share of Boorasamy. Hence, according to them, Boorasamy became the owner of the property.

4. It is the further case of the plaintiff that challenging the partition, O.S.No.1549 of 1980 was presented by Iyyakkannu Padayachi. In the said proceeding, the oral partition was upheld and consequently, the suit filed by Iyyakkannu Padayachi came to be dismissed. The plaintiffs further pleaded that the predecessor in title of the defendants namely Kadhirvel Padayatchi admitted to the oral partition in the said proceeding. Since the defendants, having accepted the oral partition, attempted to encroach upon the plaintiff's share, he filed the present suit for declaration and for recovery of possession and mesne profits.

5. The defendants entered appearance and filed a written statement denying the right of the plaintiff. They admitted the relationship between the parties and also the factum that there was an oral partition. According to



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them, the suit items 1, 2, 7 to 10, 12, 13 and 15 were already in possession of the plaintiff. Insofar as the properties in suit items 4 and 5 are concerned, according to them, the description of the property is not proper. Their specific case is that the suit items 3 to 6, 11, 14, 16 and 17 do not belong to the plaintiff but the properties allotted to the defendant's father. Hence, they prayed for dismissal of the suit.

6. On the basis of these pleadings, the learned Trial Judge framed the following issues :

“ 1. Whether the suit properties belonged to the Plaintiff ? Or not ?

2. Whether it is true that the suit 14th and 16 item of properties belongs to the Defendants ?

3. Whether the defendants have any interest in item Nos.11 & 17 of the suit properties ?

4. To say what the stage of other properties mentioned in the suit ?

5. To what reliefs the Plaintiff is entitled ? ”

7. On the side of the plaintiff, the plaintiff examined himself as P.W.1 and marked Ex.A1 to Ex.A17. On the side of the defendants, the 1st defendant examined himself as D.W.1 and marked Ex.B1 to Ex.B17.



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8. The learned Trial Judge on the basis of the oral and documentary evidence decreed the suit with respect to suit items 3 to 5, 11, 14, 16 and 17.

Insofar as the suit item No.17 is concerned, he decreed it only for 0.12 cents.

Aggrieved by the same, the defendants preferred an Appeal in A.S.No.137 of 2008. The learned Appellate Judge held that the plaintiff had not given any proof that they have a right over the suit items 3 to 5, 11, 14, 16 and 17.

In fact, he specifically found that the Koorchit, which is the admitted document by both sides, neither contained the suit items nor did it mention any survey number. Since it was a division amongst the co-owners, only the four boundaries had been given and the Court concluded that this is not sufficient for the purpose of coming to a conclusion that the plaintiffs have right over the property.

9. On this basis, the Court below came to the conclusion that the plaintiffs are not entitled to a decree as granted by the Trial Court and consequently, allowed the appeal in and by way of a judgment, dated 08.11.2011.



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10. This Second Appeal came up for admission before this Court on 11.11.2013. After perusing the records, this Court admitted the Second Appeal on the following substantial questions of law :

“ 1. Whether the first appellate court is correct in reversing the decree and judgment of the trial court by disbelieving Ex.A1 and projected his case by explaining Ex.A1 ?

2. Is not the first appellate court is wrong in dismissing the suit stating the suit properties are not comprised in Ex.A1 without any pleading to that effect ? ”

11. Heard Mr.R.Rajarajan, learned counsel appearing for the appellants and Mr.S.Parthasarathy, Standing counsel representing Mr.P.Dineshkumar, learned counsel appearing for the respondents.

12. Mr.R.Rajarajan would argue that the learned Appellate Judge erred in allowing the appeal as it should have seen that the properties had been properly identified under the Koorchit, dated 05.06.1970. He further pleaded on account of the fact, that these properties were allotted to Boorasamy, the plaintiffs are entitled to succeed to the suit in full.



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13. Mr.S.Parthasarathy would point out from the Ex.A1 that, none of the suits had been identified nor survey numbers were given, it is merely stated as to the allotment by giving the four directions in which the properties are situated. Therefore, he prayed for dismissal of this appeal.

14. It is pertinent to point out that as per Order VII Rule 3 of Code of Civil Procedure, it is the duty of the plaintiff to give a correct description of the property so as to be able to identify it. In case, if the property consists of survey numbers, the plaintiff should specify the boundaries and their numbers thereon. On perusal of Ex.A1, dated 05.06.1970, I have to come to the conclusion that it neither has the survey numbers nor the necessary details for granting a decree for title. By the mere fact, Ex.A1 is an admitted document, I cannot come to the conclusion that the description given therein is the plaintiff description. It is the duty of the plaintiff to show that Ex.A1 granted him the title to the properties which are the subject matter of this suit and that he continues to be in possession of the same.



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15. Insofar as the suit item Nos.1, 2, 7 to 10, 12, 13 and 15 are concerned, it is an admitted fact that these properties were allotted to the plaintiff. The Trial Court has not granted a decree insofar as these suit items. Mr.S.Parthasarathy does not dispute this position. The plaintiffs were allotted the properties comprised in the aforesaid suit items and therefore, non-inclusion of these survey numbers in the decree does not mean that the suit had been dismissed. The Trial Court ought to have granted the decree with respect to the aforesaid items. Insofar as the remaining items are concerned, as no proof has been given that these properties were allotted to the plaintiff under Ex.A1, I am constrained to confirm the judgment and decree passed by the learned Additional District Judge, Fast Track Court at Ariyalur in A.S.No.137 of 2008, dated 08.11.2011.

16. Consequently, in exercise of the powers conferred on this Court under Order 41 Rule 33 of Code of Civil Procedure, I grant the decree for the plaintiff insofar as the Item Nos.1, 2, 7 to 10, 12, 13 and 15. With respect to the remaining portions, this Second Appeal shall stand dismissed. As the litigation is between the uncle and nephews, I am not awarding any costs in this appeal.



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WEB COPY 17. Accordingly, this Second Appeal is partly allowed. No costs.

12.02.2024
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Index:Yes/No
Speaking Order :Yes/No
Neutral Citation:Yes/No
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To

- 1.The Additional District Court, Fast Track Court,
Ariyalur
- 2.The Additional District Munsif,
Ariyalur



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V. LAKSHMINARAYANAN, J.

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