



S.A. No.706 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :14.10.2024

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THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

S.A.No.706 of 2024

Alexander

... Appellant

Vs

A.Mariaselvam

... Respondent

PRAYER: Second Appeal filed Under Section 100 of the Civil Procedure Code, against the Judgment and decree dated 30.06.2022 passed in A.S.No.63 of 2017 on the file of the Subordinate Court, Palacode reversing the Judgment and Decree dated 26.07.2017 in O.S.No.78 of 2011 on the file of the District Munsiff Court, Palacode.

For Appellant : Mr.S.Subramanian

For Respondent : Mr.R.Selvakumar

JUDGMENT

The appellant has filed the Second Appeal against the Judgment and decree dated 30.06.2022 passed in A.S.No.63 of 2017 on the file of the Subordinate Court, Palacode, reversing the Judgment and Decree dated



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26.07.2017 in O.S.No.78 of 2011 on the file of the District Munsiff Court,
Palacode.

2. For the sake of convenience, the parties herein are referred to as they were ranked in the suit.

3. The appellant herein is the defendant in O.S.No.78 of 2011, filed before the learned District Munsiff, Palacode, by the respondent/plaintiff. The suit was filed for the relief of a declaration to declare the plaintiff as the absolute owner of the A-Schedule property, for delivery of possession, and for the removal of encroachment made on the B-Schedule property.

4. The plaintiff contends that the suit properties were purchased by his father, Arokiyam, through a sale deed dated 05.08.1957. Subsequently, a partition took place among the family members, through which the plaintiff became the owner of the property. The defendant/appellant, who is a third party, attempted to interfere with the suit property, leading to the filing of the suit. The defendant denied the plaintiff's claim and did not accept the purchase made by the plaintiff's father in 1957. According to the defendant, a family partition took place between his grandfather, Arokiyasamy, and his



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grandmother, Madhalammal, through a partition deed dated 06.10.1983, by which the suit property was allotted. After his grandfather's death in 1999, the defendant's father, Madhalaimuthu, executed a sale deed in his favour on 03.03.2004. Since then, the defendant has claimed absolute ownership of the properties

5. Before the trial Court, both parties adduced oral and documentary evidence, and issues were framed. After considering all the evidence, the learned trial judge dismissed the suit, noting that S.No.11 had already been subdivided but was not properly explained by the plaintiff. The plaintiff also failed to produce evidence of the alleged partition between his father and his father's brother in 1974. The learned trial judge relied on the partition deed within the defendant's family, as well as the settlement deed in the defendant's name, to conclude that the property was in the defendant's possession. Furthermore, the construction on the B-Schedule property was not sufficiently described. Therefore, the suit was dismissed.

6. Challenging this decision, the plaintiff filed an appeal in A.S.No.63 of 2017. The First Appellate Judge independently analyzed the evidence,



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framed issues, and found that during cross-examination, DW1 (the defendant) admitted that there was a sale deed dated 05.08.1957 in the name of the plaintiff's father and his father's brother. The property originally belonged to DW1's grandfather, Arokiyasamy.

7. Considering the evidence from DW1, the First Appellate Judge concluded that the defendant was aware of the sale made by his grandfather, Arokiyasamy. Therefore, after 1957, the defendant's grandfather had no right to the suit property. The partition deed of 1983 (Ex.B3) and the sale deed of 2004 (Ex.B4) did not confer any right to the defendant in respect of the suit properties, as it had already been sold to the plaintiff's family. Moreover, the earlier suit in O.S.No.27 of 2011, filed by the defendant, did not mention the extent of the house property, which weakened the defendant's objections regarding the boundaries of the properties.

8. The First Appellate Judge further observed that, according to Ex.P2 (the Encumbrance Certificate from 01.01.1987 to 31.12.1986), the suit properties were in the possession and enjoyment of the plaintiff's family. A



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family partition in 1973 had also been recorded, affirming the plaintiff's absolute ownership of the properties. The trial Court's failure to properly appreciate these facts led to its incorrect dismissal of the suit.

9. Thus, the findings of the trial court were set aside, and the suit was decreed in favour of the plaintiff. The defendant then filed the present second Appeal challenging the reversal of the trial Court's judgement.

10. The learned counsel for the appellant submitted that the First Appellate Judge failed to recognize any substantial questions of law and had erroneously appreciated the evidence in favour of the plaintiff, neglecting the partition deed in the defendant's family. The counsel therefore prayed for the appeal to be admitted.

11. However, after reviewing the findings of Courts below, it is evident that during cross-examination, DW1 admitted that the plaintiff's father and his father's brother, Selvanathan, had purchased the property from the defendant's grandfather, Arokiyasamy, in 1957. The plaintiff had



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been enjoying the property since the 1973 family partition. The defendant's claim of ownership based on the partition deed dated 06.10.1983 (Ex.P3) is invalid because, by that time, the suit properties no longer belonged to the defendant's family, having already been sold to the plaintiff's father on 05.08.1957. Consequently, the documents executed after 1957 did not confer any right to the defendant over the suit properties, as rightly observed by the First Appellate Judge, despite the trial court's failure to appreciate this fact.

12. Furthermore, the Encumbrance certificate relied upon by the plaintiff, marked as Ex.P5, clearly shows that from the date of purchase in 1957 until 1986, the properties were enjoyed by them as absolute owners. During all these years, the defendant did not challenge the sale deed standing in the plaintiffs name. Notably, the suit was filed by the respondent / plaintiff in 2011, as the defendant caused interference. Till date, the sale deed dated 05.08.1957, in the name of the plaintiff's father, remains in force, and no substantial question of law is involved.

13. Thus, the findings of the First Appellate Court are confirmed, and



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there is no need for interference by this Court. Accordingly, the Second Appeal is dismissed. There shall be no order as to costs.

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Index : Yes/No
Neutral Citation : Yes/No
Speaking/Non Speaking order

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To

- 1.The Subordinate Court, Palacode.
- 2.The District Munsiff Court, Palacode.
- 3.The Section Officer, VR Section, High Court of Madras.

T.V.THAMILSELVI, J.

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