



S.A.No.837 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **06.03.2024**

CORAM

THE HONOURABLE Ms. JUSTICE **P.T.ASHA**

S.A.No.837 of 2023
and
C.M.P.No.26635 of 2023

1. Periyamayagam
2. Thomas ... Appellants

-Vs-

1. Arulappan
2. Raji
3. Periyasamy
4. Devadoss
5. Benjamin
6. Chandrasekaran
7. Varapragasam ... Respondents

PRAYER: This Second Appeal is filed under Section 100 of Code of Civil Procedure Code, 1908, to set aside the judgement and decree dated 09.09.2021 made in A.S.No.71 of 2013 on the file of the Principal Sub Court, Tindivanam, by confirming the judgement and decree dated 06.11.2013 made in O.S.No.317 of 2008 on the file of the Additional District Munsif Court, Tindivanam.

For appellants : Mr.A.K.Sriram, Senior Counsel
for Mr.S.Rajendran



S.A.No.837 of 2023

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JUDGMENT

The plaintiffs who have unsuccessfully contested the suit for declaration and permanent injunction are the appellants before this Court.

2. The facts of the case are set out hereinbelow and the parties are referred to in the same ranking as before the Trial Court.

FACTS OF THE CASE:

2.1. The suit was one for declaration of the plaintiffs' title to the suit schedule properties and for permanent injunction restraining the defendants from interfering with the plaintiffs' peaceful possession and enjoyment of the suit schedule properties.

2.2. It is the case of the plaintiffs that the suit properties are their ancestral properties. The plaintiffs' father Thangavel had inherited the same from his father Muthan. Besides Thangavel,



S.A.No.837 of 2023

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Muthan had another son Chinnappan. Chinnappan died issueless as a bachelor and therefore, on the death of Muthan, Thangavel inherited the properties. The plaintiffs would submit that on the death of their father, they had inherited the suit properties and were in possession and enjoyment of the same. Exercising their rights as the owners, they had also sold 0.22 cents to one Elumalai. The defendants had forged some sale documents and are claiming rights on the suit properties. That apart, they were also interfering with the plaintiffs' peaceful possession and enjoyment of the suit properties. Therefore, the plaintiffs have come forward with the suit in question.

2.3. The defendants 1 to 3 had filed a written statement *inter alia* contending that the suit properties originally belonged to one Moorthy. Moorthy had three sons *viz.*, Muthan, Manickam and Sanjivi. Muthan had two sons *viz.*, Thangavel (father of the plaintiffs) and Chinnappan. Manickam had one son *viz.*,



S.A.No.837 of 2023

WEB COPY

Varaprakasam @ Padmini who is arrayed as the 7th defendant. Sanjivi had one son viz., Manankatti. 35 years ago, Thangavel, Varaprakasam @ Padmini and Manankatti had orally partitioned the ancestral properties and were in possession and enjoyment of the same.

2.4. The extent of 0.22 cents in S.No.110/3 old S.No.188/4 was allotted to the first defendant's father Elumalai who had constructed a house upon the said land. The first defendant had sold the land measuring 0.26 cents in S.No.110/3 under a sale deed dated 13.06.2005 and had sold 0.09 cents to the second defendant on 27.12.2006 and 0.05 cents to the third defendant on 13.06.2005. The aforesaid lands which were sold by the first defendant were purchased by his father Elumalai from the 7th defendant. His father had purchased a total extent of 0.79 cents. The defendants would plead non-joinder of necessary parties inasmuch as the plaintiffs had not chosen to implead Elumalai and Manankatti in the suit.



S.A.No.837 of 2023

WEB COPY

2.5. The fourth defendant had filed a written statement *inter alia* contending that the third item of the suit properties was ancestral properties. He would state that apart from Manankatti, Sanjivi had four sons viz., 4th defendant, 5th defendant, Thanuvel and Solomon. They have orally partitioned the ancestral properties, in which, the third item was allotted to the share of the 4th and 5th defendants. The patta stands in the name of Manankatti. The 4th and 5th defendants, in turn, sold the property to the 6th defendant. The 4th and 5th defendants would contend that the plaintiffs are totally strangers to the suit properties and therefore, sought for the dismissal of the suit.

TRIAL COURT:

3. The learned Judge had framed the issues and the plaintiffs had examined P.W.1 and marked Exs.A1 to A7. On the side of the defendants, the defendants had examined D.W.1 and marked Exs.D1 to D4 and the Advocate Commissioner's Report and



plan were marked as Exs.C1 and C2.

4. The Trial Court, on considering the evidences on record and the submissions made by the learned counsel on either side and the pleadings, ultimately, dismissed the suit and held that the plaintiffs have not proved their right to item nos.2 and 3 of the suit schedule properties except for producing a patta and the defendants had proved their right over the same.

5. With reference to the first item of the suit properties, the plaintiffs were seeking a declaration for the entirety, despite the fact that they had sold 0.22 cents in the first item of the suit to the first defendant's father Elumalai.

LOWER APPELLATE COURT:

6. Challenging the said judgment and decree, the plaintiffs had filed an appeal in A.S.No.71 of 2013 on the file of the Principal



S.A.No.837 of 2023

Subordinate Court, Tindivanam.

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7. The learned Judge confirmed the judgment and decree of the Trial Court and dismissed the appeal.

8. Challenging the same, the plaintiffs are before this Court.

9. Heard Mr.A.K.Sriram, learned Senior Counsel appearing for Mr.S.Rajendran, learned counsel for the appellants and perused the materials available on record.

DISCUSSION:

10. The suit properties consist of three items of properties. The first item of the suit properties is 0.79 cents in S.No.110/3. Out of this, it is an admitted fact that the plaintiffs had sold 0.22 cents to the first defendant's father. However, the plaintiffs seek declaration



S.A.No.837 of 2023

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in respect of the entire extent of 0.79 cents. Both the Courts below have concurrently held that with reference to item nos.2 and 3, the plaintiffs seek a declaration of their title only on the basis of a patta standing in the name of their father, Thangavel. However, the second plaintiff, as P.W.1, has admitted the sale deeds executed by the defendants in respect of the properties comprised in item nos.2 and 3, which were the properties that had been allotted to their share under the oral partition. They have also admitted that the first defendant's father had purchased the share of the 7th defendant who is the son of the plaintiff's paternal uncle Manickam. By these admissions, the plaintiff has tacitly admitted the oral partition pleaded by the defendants.

11. That apart, a perusal of the boundaries given in Ex.B1 would clearly prove the partition which has been pleaded by the defendants. The property described in the schedule to Ex.B1 indicates that the property is bound by the lands of the 7th defendant



S.A.No.837 of 2023

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and the 3rd defendant Periyasamy. This would go a long way to prove the case of the defendants that there was an oral partition. The 4th and 5th defendants are the sons of Sanjivi (the 3rd son of Moorthy) who admittedly is the original owner. Therefore, the Courts below have rightly rejected the plaintiffs' claim to declare their title to the suit properties. As regards the possession, both the Courts below have held that the plaintiffs have not proved their possession. I see no reason to interfere with these findings of the Courts below.

12. The defendants have raised a plea of non-joinder of necessary parties. Admittedly, Elumalai and Manickam who have purchased a portion of the suit properties from the plaintiffs and from the 7th defendant, have not been made a party to the proceedings though the plaintiffs have sought for a declaration in respect of the property sold to them as well. Likewise, the sons of Sanjivi and Manickam have not been made parties to the proceedings. Therefore, the findings of the Courts below that the



S.A.No.837 of 2023

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suit is bad for non-joinder of necessary parties have also got to be upheld. The suit has been rightly dismissed and I see no reason to interfere with the judgment and decree of the Courts below.

Accordingly, this second appeal stands dismissed as it does not make out any substantial question of law. Consequently, the connected C.M.P. stands closed. No costs.

06.03.2024

Internet : Yes
Index : Yes/No
Speaking order/Non-speaking order
ssa

To

- 1.The Principal Subordinate Judge, Tindivanam.
- 2.The Additional District Munsif, Tindivanam.
- 3.The Section Officer, V.R.Section, High Court, Madras.



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S.A.No.837 of 2023

P.T.ASHA, J.,

ssa

S.A.No.837 of 2023

06.03.2024



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S.A.No.837 of 2023