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S.A. No.188 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.02.2024

DELIVERED ON : 01.03.2024

CORAM:

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

S.A. No.188 of 2017
and CMP No.3997 of 2017

1. A. Kannan @ Navaneethan
2. A.Siva
3. Jeyanthi
4. Rajeswari
5. Santhi
6. Uma Maheswari
7. Suganthi

.... Appellants

Versus

- 1.Govindasamy (died)
 - 2.Marudayee
 - 3.Kamatchi
 - 4.Papathi
 - 5.Chitra
 - 6.Poongothai
- (R.6 brought on record as legal heir of the deceased 1st respondent vide court order dated 0411.2022 made in C.M.P Nos.12968 and 12969 of 2022 in S.A No.188 of 2017)

... Respondents



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Second Appeal filed under Section 100 of the Civil Procedure code, against the decree and judgment passed in A.S. No.5 of 2016 dated 15.12.2016 on the file of Additional District Court, Fast Tract Mahila Court, Ariyalur, reversing the judgment and decree dated 09.03.1993 in O.S.No.211 of 1991 on the file of District Munsif Court, Ariyalur.

For Appellants : Mr.Uma Shankar

For Respondents : Mr.T.Murugamanickam
Senior Counsel for
Mrs.R.Poornima

JUDGMENT

This Second Appeal is filed challenging the judgment and decree passed in A.S. No.5 of 2016 dated 15.12.2016 on the file of Additional District Court, Fast Tract Mahila Court, Ariyalur, reversing the judgment and decree dated 09.03.1993 in O.S.No.211 of 1991 on the file of District Munsif Court, Ariyalur.

2. The unsuccessful plaintiffs in a suit for declaration and injunction are the appellants herein. Originally, the suit was filed seeking the relief of



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declaration of right and title of the plaintiffs over the suit property and for a consequential relief of permanent injunction to restrain the defendants from interfering with the plaintiffs' peaceful possession and enjoyment of the suit property. The parties are described as per their litigative status in the suit.

3. The description of the suit property, as provided in the plaint was “0.89.0 Ares comprised in S.F.No.149/4, Patta No.421, Eruthukkaranpatti Village”. However, subsequently, in and by an interlocutory application, the plaint was sought to be amended and the trial Court also granted permission, pursuant to which, the plaintiffs amended the description of property as “0.89.0 Ares, Patta No.42, Eruthukkaranpatti Village, bounded on the south of the plaintiffs' other portions of land, north of defendants' land, west of vaari and east of Dhanam and Subramani Padayachi's land, included in Old Adangal 152, 153, out of Ac.1.65 cents, wrongly classified as S.F.No.149/5. 0.35 cents cultivable land and 0.12 cents varri totalling all 0.47 cents being the disputed land”.



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4. The case of the plaintiffs is that they purchased the suit property and other properties with stated boundaries and also obtained patta and have been in absolute possession and enjoyment of the same for over 30 years, without any interruption, adversely by any person and thereby, prescribed title by adverse possession. According to the plaintiff, the defendants are the owners of the property lying to the south of the suit property, measuring 99 cents and since the defendants attempted to encroach the plaintiff's property on 07.08.1991, the plaintiff has filed the suit to declare his right and also for a consequential relief of permanent injunction.

5. The first defendant has filed a written statement denying the plaintiff's claim of absolute ownership under the sale deed dated 30.06.1960 and also alleged enjoyment of the suit property for 30 years and more. According to the first defendant, he was enjoying his property and there was no attempt of any encroachment or interference with the plaintiff's possession as alleged. According to the first defendant, the plaintiff purchased only Acre 1.65 cents in S.F.No.149/4 which he is in possession of and the defendants have purchased 99 cents adjoining the plaintiff's property



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in and by sale deed dated 1.07.1955 and the defendants have been in enjoyment of the lands so purchased along with the adjacent Tharisu lands totalling in all Ac.1.73 cents comprised in S.F.No.149/5 and therefore, the defendants pray for dismissal of the second appeal.

6. The parties went to trial and the trial Court decreed the suit, finding that the plaintiff was entitled to the suit property and granted the relief of declaration as well as injunction as prayed for.

7. Aggrieved by the judgment and decree of the trial court, the defendants preferred an appeal in A.S.No.94 of 1993 before the Subordinate Court, Ariyalur. The first appellate Court reversed the findings of the trial Court and proceeded to dismiss the suit. It is not out of place to mention that initially, the said appeal A.S.No.94 of 1993 was remanded to the trial Court on 19.12.2006 and the plaintiffs (legal heirs of the original plaintiff) preferred C.M.A.No.2865 of 2007 before this Court. This Court, in and by judgment dated 23.03.2011, set aside the remand order and directed the first appellate Court to decide the matter afresh and in accordance with law,



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within a period of six months. Thereafter, the first appellate Court has allowed the appeal and set aside the judgment and decree in O.S.No.211 of 1991 on the file of District Munisf Court, Ariyalur.

8. Aggrieved by the reversal findings rendered by the first appellate Court, the plaintiffs have come up with the present Second Appeal. On 06.03.2017, the Second Appeal was admitted on the following substantial questions of law:-

i) Whether the First Appellate Court right in placing reliance on the Surveyor's Report and Advocate Commissioner's Report as against the title documents of the Plaintiff/Appellants in Exhibits A.1 to A.8?

ii) Whether the learned First Appellate Judge is right in relying upon the Exhibit C.4 over Exhibit A.1?

9. I have heard Mr.C.Uma Shankar, learned counsel for the appellants and Mr.T.Murugamanickam, learned Senior Counsel appearing for



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Mrs.R.Poornima, counsel for the respondents. I have gone through the pleadings, oral and documentary evidence adduced by the parties before the trial Court and also the judgment of the trial Court as well as the judgment of the first appellate Court.

10. Mr.C.Uma Shankar, learned counsel for the appellants would contend that by production of Exs.A.1 to A.8, the plaintiffs had established their title to the suit property and even though the sale deeds were for a lesser extent, admittedly not only the plaintiffs, but also the defendants were enjoying excess lands belonging to the Government and adjoining their respective properties which were having the character of vaari poramboke lands. According to the learned counsel for the plaintiffs, Exs.A.10 to A.14 are all registered documents with specific boundaries, specifying the lands of other owners. He would further state that the disputed lands are only 47 cents in extent, out of which, 35 cents was covered by title documents and 12 cents being vaari lands. He has also taken me through the pleadings, the plaint, the written statement and the findings rendered by the trial Court and would attack the judgment of the first appellate Court on the ground that the



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defendants cannot claim title over 47 cents in the absence of any evidence adduced in order to substantiate their right over 47 cents. He also states that UDR patta would not give any title to the defendants as it was defective. Learned counsel would also state that the 1st appellate Court has erroneously relied on Ex.C.4 – the Commissioner's Report and proceeded to accept the findings of the Advocate Commissioner to dethrone the plaintiffs' title which had been clearly established by production of registered documents. He would therefore pray for the Second Appeal being allowed and the substantial questions of law, being answered in favour of the appellants.

11. Per contra, Mr.T.Murgamanickam, learned Senior Counsel would first and foremost invite my attention to the inconsistent pleadings projected by the plaintiffs even in the plaint. Firstly, he would highlight the averments in Paragraph No.5 of the plaint, where the plaintiff has taken a plea of prescription of title by adverse possession, by open and uninterrupted enjoyment of 30 years. Secondly, he would state that even though the plaintiff sought to amend the schedule by providing better description of the disputed property, the plaintiff never chose to amend the body of the plaint,



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which did not reflect the amendment carried out to the schedule. These apart, the learned Senior Counsel would also refer to the Report of the Advocate Commissioner and the Surveyor's Sketch and pray for dismissal of the Second Appeal.

12. It is seen from the rough plan filed along with the plaint that the plaintiffs' property has been shown as A B C D. However, in the plan, annexed to Ex.C.4 - Commissioner's Report, the plaintiffs lands are seen to be separated by vaari lands as well as waste lands shown in Blue colour and orange colour. The Advocate Commissioner has taken the Taluk Surveyor along with him at the time of inspection and the Taluk Surveyor has prepared the plan. In the rough sketch, filed by the plaintiff along with the plaint, it is seen that S.No.149/5 lies to the south of S.No.149/4 and S.No.149/4 comprises of 2.20 acres. It is the boundary line C D which appears to be mischief factor. The Surveyor has shown the disputed property as A B C D and highlighted the same in Green colour box pattern. The total extent available in S.No.149/4 is only 2.20 acres and the total extent available in S.No 149/5 is 1 acre and 71 cents and this is confirmed by Ex.C.4 –



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Surveyor's Plan as well. Before amendment of the plaint, the case of the plaintiff is that he was entitled to 2 acres 20 cents in S.F.No.149/4, however, after the Surveyor's Plan came to be filed in to the Court along with the Commissioner's Report, the plaintiff has consciously chosen to amend the plaint to earmark 47 cents comprised in S.F.No.149/5, as if, it is alone the disputed property, out of which, 35 cents is cultivable lands and remaining 12 cents are vaari lands.

13. The case of the plaintiffs is that while issuing UDR patta to the defendants, the department has wrongly surveyed the disputed suit property of 47 cents without notice to the plaintiffs and incorrectly added it to S.F.No.149/5. In short, the case of the plaintiffs is that the defendants taking advantage of wrong issuance of patta, by including their 47 cents, are claiming right over an excess land of 47 cents, which actually belongs to the plaintiffs. It is relevant to note that the total extent of 2.2 acres includes 57 cents of vaari land and viewing from this angle, Ex.C.4 clearly shows the entire 2.20 Acres comprised in S.F.No.149/4, including 53 cents of vaari land. If the case of the plaintiffs is to be accepted, then, they would become



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entitled to an additional 47 cents, which, they are not entitled, otherwise even as per his own pleadings and evidence.

14. The defendants also filed Exhibits to show that the total extent available in S.No.149/5 is 1 acre and 71 cents, which includes the 47 cents, claimed by the plaintiff. It is also relevant to note that the plaintiff never filed any objections to the Commissioner's Report and thereby accepted the Report of the Advocate Commissioner.

15. Learned counsel for the appellants would refer to Ex.C.4 sketch and try to impress upon me that there is a clear demarcating line even in the Commissioner's Report which would clearly evidence the fact that the lands lying above the demarcated line would only belong to the plaintiff and therefore, the first appellate Court clearly fell in error in reversing the well considered findings of the trial Court.

16. In this regard, I have perused the original records, especially Ex.C.4 as well as Plan filed by the Surveyor. The said Ex.C.4 plan, to which,



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no objection has been filed, clearly demarcates various portions by giving alphabets A B C D, A1, B1, B2, C1, D1, D2, D3, D4 etc., From the said Surveyor's Report, it is seen that the total extent shown to be the plaintiffs' property in Green colour totals to 1.14 acres + 34 cents, which is 1.48 acres. 53 cents of vaari land is also shown in Blue colour which belongs to the plaintiffs. The property, immediately lying to the south of the plaintiffs' property, has been shown as suit property, which is measuring $35 + 12 = 47$ cents. To the south of the suit property, the defendants' property is shown, comprising in S.F.No.149/5 to an extent of 1.24 acres. Only if the suit property is included in the defendants' extent, it would tally with the total extent available in S.F.No.149/5. However, if the said suit property comprising of 49 cents is added to the plaintiffs' portion, then the extent available in S.F.No.149/4 would exceed the total available extent of 2.2 acres. Thus, the suit property is only forming part of the defendants' property and not the plaintiffs' property and the demarcating line which is harped upon by the learned counsel for the appellants is actually an impression caused by folding of the plan. This is evident from the original plan Ex.C.4, which is available in the Court records and also which tallies with the Plan



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produced by way of a coloured photocopy by the learned counsel for the respondents by way of typed set of papers. Therefore, I am unable to countenance the submissions of the learned counsel for the appellants.

17. The appellants have not established their entitlement to an excess of 47 cents, lying to the south of their property. The first appellate Court has rightly factored all these relevant circumstances and proceeded to reverse the judgment and decree of the trial Court. I do not see any illegality or perversity in the findings rendered by the first appellate Court, warranting interference under Section 100 of the Civil Procedure Code.

18. For the above reasons, the Second Appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

01.03.2024

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



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To

1. The District Munsif Court, Ariyalur
2. The Additional District Court, Fast Tract Mahila Court, Ariyalur,
3. The V.R.Section, High Court, Chennai.



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P.B.BALAJI,J.

sr

Pre-Delivery Judgment
in S.A.No.188 of 2017

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