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S.A.No.157 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.07.2024

CORAM:

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

S.A.No.157 of 2020 &

C.M.P.No.3367 of 2020

1.Kumar

2.Manickam

3.Tamilarasi

4.Tamilselvi

... Appellants

Vs.

1.Thangarasu

2.Iyyappan

... Respondents

PRAYER: Second Appeal filed under Section 100 of Code of Civil Procedure against the judgement and decree dated 30.01.2019 in A.S.No.52 of 2018 on the file of the Subordinate Judge, Ulundurpet confirming the judgment and decree dated 04.10.2016 in O.S.No.78 of 2010 before the II Additional District Munsif's Court, Ulundhurpet.



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For Appellants : Ms.Nilopher for
Ms.R.Meenal
For Respondent 1 : Mr.R.Rajarajan for
Mr.T.Gandhi

R2 – Given up

JUDGMENT

The present second appeal arises out of the judgment and decree of the court of learned Subordinate Judge at Ulundurpet in A.S.No.52 of 2018 dated 30.01.2019 in confirming the judgment and decree of the court of II Additional District Munsif at Ulundurpet in O.S.No.78 of 2010 dated 04.10.2016.

2. For the sake of convenience, the parties will be referred to as per their ranks in the suit.

3. The appellants before me are the defendants 1, 3 to 5 in the suit.



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The sole plaintiff who is the first respondent herein filed a suit for declaration of title and permanent injunction or in the alternative, in case, the court comes to the conclusion that the plaintiff is not in possession of the property, for the relief of recovery of possession.

4. There were totally ten items of suit property. Out of the 10 items, insofar as items 3, 5, 6, 7 are concerned, the defendants did not dispute that the plaintiff has title to the same. They, however, disputed that the plaintiff's claim of title insofar as other items are concerned.

5. Insofar as item 10 is concerned, the concurrent finding is that the land belonged to one Palaniammal, the mother of the third defendant and therefore, the suit was dismissed, as against the claim of suit item 10. Since no appeal having been presented against the dismissal of the decree, the same had attained finality. With respect to items 3, 5, 6 and 7, as the defendants did not dispute the title of the plaintiff, the trial court as well as the lower



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appellate court have granted the decree and that also, does not require any

interference. The present appeal is confined to items 1, 2, 4, 8 and 9.

6. The case of the plaintiff is that all the suit items once belonged to three persons namely Muthu Naicker, Narayana Naicker and Manicka Naicker. As Muthu Naicker died without any issues, the properties were enjoyed in equal share by Narayana Naicker and Manicka Naicker. By virtue of partition between Narayana Naicker and Manicka Naicker, the suit properties were allotted to the share of the Narayana Naicker.

7. Narayana Naicker married one Poongavanam. From the wedlock, they begot two sons namely Chokkalingam and Rajendiran. In the division between Chokkalinam and Rajendiran, Chokkalingam was allotted 68 cents in item Nos.1 to 8. The said Chokkalingam along with Poongavanam sold the property to the plaintiff/Thangarasu.



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8. Insofar as items 9 and 10 are concerned, the plaintiff would plead that the property belonged to one Muthammal and her son Kaliyaperumal. They sold the property on 05.01.1967 in favour of Narayana Naicker and after Narayana Naicker passed on, Poongavanam and Chokkalingam sold the said items of the property in favour of the plaintiff on 29.05.2009. On the strength of these two sale deeds, the plaintiff pleaded that he had mutated the revenue records and obtained patta for the properties.

9. The plaintiff would plead that the second defendant, Iyyappan had purchased 68 cents allotted to Rajendiran, the younger brother of Chokkalingam. He in collusion with the first defendant, Kumar, the son of Manickam, attempted to dispossess the plaintiff from the property. Immediately on coming to know of this fact, the plaintiff issued a suit notice on 20.09.2009. The first defendant did not issue any reply and therefore, fearing that he might encroach upon the properties, the plaintiff came forward with the suit.



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10. On service of summons, the first defendant filed a written statement which was adopted by the defendants 3 to 5.

11. It is the case of the defendants that the properties do not belong to Narayana Naicker. They would plead that Chokkalingam, the son of Narayana Naicker does not have right, title or interest over the properties and therefore, he could not have alienated the same. They would plead that items 1, 2, 8 and 9 of the suit properties had four sharers. One share was with Muthammal, the wife of Vaiyapuri and she sold her 1/4th share in favour of Narayana Naicker, the son of Uthandi Naicker on 05.01.1967 and the legal heirs of the said Narayana Naicker sold item 9 of the property to the plaintiff on 29.05.2009.

12. The defendants would specifically allege that though Narayana Naicker had purchased only 1/4th share in the items 1, 2, 8 and 9 of the suit



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properties, his legal heirs had unlawfully alienated more than what he had purchased. They would claim that the first defendant, Kumar is in possession of item 4 and 1/4th share in items 1, 2, 8 & 9. They would state that the other 1/4th share belonged to one Veerasamy, who had orally transferred the same in favour of the third defendant/Manickam. They would further state that the remaining 1/4th share in items 1, 2, 8 & 9 belonged to one Marimuthu Naicker who died issueless and hence, the said share went to his sisters Kannammal and Pitchammal who in turn sold the same to one Palaniyammal, the mother of the first defendant.

13. Insofar as item 10 is concerned, they would state that it was a Government Poromboke Land and the Government in its wisdom had decided to assign the properties in favour of the defendants 3 to 5 and in favour of Palaniammal, the mother of the first defendant in and by way of a proceedings dated 03.06.2002. As such they would plead that the plaintiff is not entitled to a decree as prayed for and therefore, sought for dismissal of the suit.



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14. On these pleadings, the learned Trial Court framed the following issues:

"1. Whether the plaintiff has absolute right over suit 1, 2, 8, 9 and 10th item of the suit properties?

2. Whether the plaintiff is entitled for Declaration as prayed for?

3. Whether the Plaintiff is entitled for Injunction as prayed for?

4. Whether the suit is bad for non joinder of necessary parties?

5. To what other relief?"

15. On the side of the plaintiff, he examined himself as PW1 and marked Ex.A1 to Ex.A10. On the side of the defendants, the first defendant alone examined himself as DW1 and marked Ex.B1 to Ex.B11.

16. The learned Trial Judge came to the conclusion that the plaintiff



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has proved his title insofar as items 1 to 9 are concerned and partly decreed the suit as prayed for. He would place the burden on the defendants and would hold that as the first defendant had not proved that he is in possession of the remaining $3/4^{\text{th}}$ share with respect to items 1, 2 and 8 and had not proved valid title over the said items, the plaintiff is entitled to a decree. As pointed out above, insofar as item 10 is concerned, the court came to the conclusion that being a poromboke land, it is only Palaniammal, the beneficiary of an assignment, who is entitled to make a claim and not the vendors of the plaintiff namely Poongavanam and Chockalingam. Therefore, the Trial Court decreed the suit, insofar as items 1 to 9 are concerned and dismissed the suit insofar as item 10 is concerned.

17. Aggrieved by the said judgment and decree, the defendants 1, 3 to 5 alone preferred a regular appeal.

18. The learned Appellate Judge concurred with the findings of the



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learned II Additional District Munsif and came to a conclusion that as the plaintiff had proved his title to items 1 to 9, he is entitled to a decree as prayed for and dismissed the appeal.

19. Aggrieved by the same, the present second appeal has been filed.

20. This court admitted the appeal on 26.08.2020 on the following substantial questions of law:

"i. Whether in law the Courts below are right in granting a decree for declaration when admittedly the first respondent had purchased only an undivided share under Ex.A1?

ii. Whether in law the Courts below did not grievously err in coming to a perverse conclusion on misinterpretation of the oral and the documentary evidence, inviting interference under Section 100 of CPC?

iii. Whether the Courts below were right in not advertng to the fact that the plaintiffs' vendor has



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purchased only a lesser extent of land under Ex.A1 then what was conveyed by them to the plaintiffs under Ex.A3?"

21. On service of summons, Mr.R.Rajarajan entered appearance for the first respondent.

22. I heard Ms.Nilaphar for the appellants and Mr.R.Rajarajan for the first respondent.

23. Ms.Nilaphar would draw my attention to Ex.A1, Ex.A2 and Ex.A3 in order to push home the point that in items 1, 2, 8 and 9 corresponding to S.Nos.141/10, 141/11, 141/18 and 251/7 what was conveyed to the Narayana Naicker, the father of the plaintiff's vendor, was 8 cents, 3 cents, 6 ½ cents and 12 cents respectively. Though he had purchased only 1/4th share, by virtue of Ex.A1 and Ex.A3, the vendors had sold more



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than what they had possessed. In fine, the plea of Nilaphar is that the plaintiff could not have acquired better title than his predecessor and when his predecessor had only $1/4^{\text{th}}$ share, the issue of that $1/4^{\text{th}}$ share blooming into $1/2$ share does not arise.

24. Mr.R.Rajarajan would point out that what was purchased under Ex.A1 and Ex.A3 are not only the shares which had been purchased under Ex.A2, but also included the existing holdings of Muthu Naicker, Narayana Naicker and Manickam. He would add that though the defendants had pleaded that the original owner of the property was Kulla Naicker, no evidence worth its name has been put forward by the defendants in order to disprove the case of the plaintiff. He would state that by virtue of preponderance of probabilities as the plaintiff has been able to substantiate the title of Narayana Naicker. The fact that Narayana Naicker's family possessed certain properties having been shown, the decree of the courts below need not be interfered with.



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25. The issue that I have to answer in this case is whether the plaintiff has proved his title with respect to suit items 1, 2, 4, 8 and 9. Insofar as item 9 is concerned, under Ex.A2 what has been purchased by Narayana Naicker was 12 cents on 05.01.1967. The extent of 12 cents purchased by Narayana Naicker had been alienated by his son, Chokkalingam in favour of the plaintiff/Thangarasu. Therefore the argument of Ms.A.Nilaphar with respect to item 9 does not appeal to me. The decree of the courts below with respect to item 9 is confirmed. This is clear from a bare perusal of Ex.A3

26. Insofar as the declaration of title with respect to items 2, 4, and 8 are concerned, a perusal of Ex.A2, the parent document of the plaintiff makes it clear that Narayana Naicker had purchased an extent of 8 cents in item 1, 6 ½ cents in item 8 and this corresponds to 1/4th right in the Survey numbers mentioned in the suit. When Narayana Naicker himself has only 1/4th right, unless and until the plaintiff is able to prove that Chokkalingam



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and Poongavanam had come across some more extent than what had been purchased by Narayana Naicker, they could not have alienated more than what had been purchased by Narayana Naicker. This is by virtue of a settled position of law that a vendor cannot convey to a purchaser something more than what he possessed. Therefore, I would agree with Nilaphar that with respect to items 1, 2, 4 and 8, as Narayana Naicker had only 1/4th share in the property, his legal heirs could have conveyed only that share in favour of the plaintiff and decree of the courts below, insofar as those items are concerned, should have to be modified.

27. Accordingly, the declaratory relief granted to the plaintiff is modified to an extent that he is entitled to 1/4th share in items 1, 2, 4 and 8 and he is entitled for a decree of declaration with respect to items 3, 5, 6, 7 and 9.

28. Having approved the decree of declaration insofar as 1/4th share



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is concerned, I have to now look whether the plaintiff has proved his possession over the extent that he has sought for. In order to substantiate his possession, the plaintiff has filed computerised patta in Patta Nos.194 and 195 dated 21.12.2009 and patta Nos.75 and 595 dated 04.03.2010 under Ex.A4 and A5 respectively. The patta would show that the plaintiff along with one Rajendiran is in possession of the following extent:

Sl. No.	Survey No.	Item No.	Extent (in ares)
1	141/10	1	13
2	141/11	2	5
3	141/12	3	5.5
4	141/18	8	10.5
5	251/7A	9	3.5

29. The aforesaid documents clinchingly proved that the plaintiff/



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Thangarasu had been in possession of the property on the date of presentation of the plaint. The defendants, not having shown any right over the extent that has been sought for by the plaintiff, would necessarily have to suffer an order of injunction because I am of the view that on the basis of the records, the plaintiff was in possession of the aforesaid extent as is clear from Ex.A4 and Ex.A5.

30. In light of the above discussion, the questions of law 1 and 3 which alone matter for the appeal are answered in favour of the appellant and against the first respondent. Second appeal is partly allowed. The suit shall stand decreed with respect to items 1, 2, 4, 8 to an extent of 1/4th share in favour of the plaintiff and insofar as the item 9 is concerned, the second appeal is dismissed. The plaintiff having proved the possession, he is entitled for a decree of injunction. The parties being neighbours, I am not inclined to impose costs.



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Index : Yes/No

Speaking order/Non-speaking order

Neutral Citation : Yes/No

To

1.The Subordinate Judge, Ulundurpet

2.The II Additional District Munsif's Court, Ulundhurpet.



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V.LAKSHMINARAYANAN, J.

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