



*S.A.(MD).No.1247 of 2008*

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **21.08.2024**

CORAM:

THE HONOURABLE **MRS.JUSTICE S.SRIMATHY**

S.A.(MD).No.1247 of 2008

1.Seeni Vasan

... Appellant

/Vs./

1.Kannan

2.Govindaraj

3.Narayanan

...Respondents

**PRAYER:** Second Appeal filed under Section 100 of the Civil Procedure Code against the Judgment and Decree in A.S.No.19 of 2007 on the file of the Sub Court, Aruppukottai, dated 01.10.2007, confirming the Decree and Judgment in O.S.No.135 of 2001, on the file of the District Munsif Court, Aruppukottai, dated 23.01.2007.

For Appellant : Mr.S.Natarajan  
Senior Advocate  
M/s.Vijayakumari Nararajan

For R1 and R2 : No appearance

R3 : Dismissed, vide Court order,  
dated 15.12.2023

\*\*\*\*\*



*S.A.(MD).No.1247 of 2008*

## **JUDGMENT**

WEB COPY

The suit is preferred by the plaintiff who is the appellant herein for injunction restraining the defendants from interfering in the possession of the plaintiff's suit property and to pay cost for demolishing the PVC pipe and pillar which was erected by the plaintiff.

2. The contention of the plaintiff is that the larger extent of suit property belongs to the family. Originally the property belongs to one Nammalvar and after the demise of the said Nammalvar, the properties were divided among the family members and finally it was allotted to the family members namely Kothaiammal, Nammalvar, Govindarajanm Navaneethakrishnan and to the plaintiff. Subsequently, the plaintiff had purchased the portion allotted to Nammalvar and Govindarajan. Also had purchased the portion allotted to Kothaiammal and Navaneethakrishnan. Now, the entire property to the extent of 15\*42 square feet belongs to the plaintiff.

3. On the eastern side, there is a panchayat road. Adjacent to the plaintiff's property there is a drainage canal. There is a portion of land / straight strip of land which belongs to the plaintiff but the same is situated in between the drainage and



*S.A.(MD).No.1247 of 2008*

the panchayat road. In the said portion the plaintiff has erected three pillars. The defendants are the residents of the said area and had objected for erecting the pillars and also for putting up drainage through plaintiff's property for connecting the same to the common drainage. There were wordy quarrels, then the defendants forcefully removed the said pillars. Initially, the plaintiff had preferred a police complaint, subsequently had preferred a suit with the above stated prayer.

4. The contention of the defendants is that the larger extent of land belongs to their family and the defendants have denied the right of the plaintiff on the entire suit property. After hearing the contentions of the parties, the Trial Court has dismissed the suit of the plaintiff. Aggrieved over the same, the first appeal was preferred by the plaintiff and the defendants have also preferred a cross appeal. Both the first appeal and cross appeal were dismissed. Aggrieved over the same, plaintiff has preferred the present second appeal before this Court.

5. The plaintiff / appellant had raised various substantial question of law, but the second appeal is admitted for the following substantial questions of law alone:

- a. When the plaintiff documents Ex.A2 and A3 along with A3,A4 and A5 clearly establish title as well as the*



WEB COPY



S.A.(MD).No.1247 of 2008

*possession by the plaintiff, are the courts below right in rejecting the prayer holding that only permanent injunction has been sought for and hence suit cannot be decreed?*

- b. *Whether the courts below are right in taking an adverse inference against the plaintiff from the fact that Ex.A2 and Ex.A3 are 9 years after Ex.A4 and A5?*

6. The plaintiff submitted that he as a family member of the said Nammalvar was allotted a portion of the property. Thereafter he had purchased three portions of the property which belonged to 1. Nammalvar and Govindarajan, 2. Kothaiammal and 3. Navaneethakrishnan through Ex.A2 and Ex.A3. After the said purchase the entire property belongs to the plaintiff. When the plaintiff had purchased the property through sale deeds Ex.A2 and Ex.A3, then the defendants are not having any right to deny title of the plaintiff. Infact the defendants had gone to the extent of denying the ownership of the entire land by stating that the property does not belong to Nammalvar itself, who is the original owner of the larger extent of the property. To substantiate their claim the defendants had not filed an iota of evidence to disprove the ownership of the plaintiff except Natham register. On the other hand the plaintiff had proved his title through the sale deeds marked as Ex.A2 and Ex.A3. The respondents being the residents of the said area



*S.A.(MD).No.1247 of 2008*

do not have any right to deny the ownership right of the plaintiff.

WEB COPY

7. The plaintiff has put up the drainage which runs from the west portion of the land to eastern portion of the land. In other words, the drainage goes through the plaintiff's another portion of the land and subsequently it connects with the common drainage. When the defendants do not have any right to deny the title, consequently do not have any right to object for laying drainage within the plaintiff's portion of the property, which portion the plaintiff had purchased from the Nammalvar and Govindarajan. Therefore, this Court is of the considered opinion the contention of the defendants that the said property does not belong to the plaintiff cannot be accepted because the plaintiff had purchased that portion of the property from the said Nammalvar and Govindarajan through Ex.A2 sale deed therefore, he has right over the property. Further the sale deed was not challenged by the defendants and the sale deeds are not set aside as of now as per law. As held supra the respondents being the residents of the area do not have any right to challenge the said sale deeds. Therefore the 1<sup>st</sup> substantial question of law is answered in favour of the plaintiff / appellant.

8. The next substantial question of law whether adverse inference can be drawn against the plaintiff from the fact that Ex.A2 and Ex.A3 are 9 years after



*S.A.(MD).No.1247 of 2008*

Ex.A4 and A5. It is seen that the patta stands in the name of plaintiff from 12.06.1992 onwards as per Ex.A4, A5 and A6. But the sale deed was executed in the year 2001 i.e. Ex.A2 dated 10.01.2001 and Ex.A3 dated 08.02.2001. Since the sale deed is subsequent to the patta, the Trial Court had taken adverse inference. It is seen that the larger extent of the land was belonging to the plaintiff's family and his ancestor Nammalvar was in possession of the property. Thereafter the descendants of the said Nammalvar had partition among themselves and the plaintiff was allotted a portion of the land. The plaintiff was already holding a portion of land and had obtained patta. Apart from the same the plaintiff had purchased the other portion of the properties allotted to the other family members, which is admittedly subsequent to the patta issued in his name. Both the Court had not stated whether the patta was issued for that portion of the land which the plaintiff was already possessing or whether the patta was issued for a larger extent. If it is issued for that portion of the land then the plaintiff is holding the same as a right since he was allotted that portion under partition. If the patta is issued for the larger extent of the property, then the plaintiff would have been holding it prior to partition, but in partition the plaintiff would have been allotted smaller extent in the partition. In either circumstance therefore there is no infirmity in getting patta prior to the sale. Further on the other hand the defendants who are resident of the area are not claiming title over the suit property. Therefore,



*S.A.(MD).No.1247 of 2008*

the both the courts have erred in taking adverse inference and the said substantial question of law is held in favour of the plaintiff and against the defendants.

9. However, it is seen that there is a pillar in the small portion of the land wherein it hinders the free flow of drainage and the common drainage runs in between the pillar portion and the plaintiff's land. Further it would hinders the free flow of drainage. Therefore, the plaintiff is restrained from putting up any pillar in future. However, the land to the extent to 14\*24 feet belongs to the plaintiff and the plaintiff is entitled to injunction to this extent. Hence, injunction is granted as stated supra. The judgment and decree granted by both the Courts are set aside to the extent as stated supra.

10. With the above said observations, the second appeal is allowed. No costs.

**21.08.2024**

Index : Yes / No

NCC : Yes / No

Tmg



*S.A.(MD).No.1247 of 2008*

**TO:**

1. Sub Court, Aruppukottai.
2. District Munsif Court, Aruppukottai.
3. The Section Officer,  
VR Section,  
Madurai Bench of Madras High Court,  
Madurai.



WEB COPY



*S.A.(MD).No.1247 of 2008*

**S.SRIMATHY, J.**

Tmg

Judgment made in  
**S.A.(MD)No.1247 of 2008**

Dated:  
**21.08.2024**