



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **08.07.2024**

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A(MD)No.1251 of 2008
and
M.P(MD)Nos.1 of 2008 and 1 of 2013

1.Karuppasamy @ Komathi Thevar(died)

2.Kutralingam

3.V.Thirumalaikumar

4.K.Sivasubramanian

5.K.Malliga

6.Minor Esakkimuthu

(sixth appellant, being minor, represented by his mother
and guardian, the fifth appellant herein K.Malliga)

(Appellants 2 to 6 are brought on record as legal representatives
of the deceased first appellant as per order of this Court made in
M.P(MD)No.1 of 2009 in S.A(MD)No.1251 of 2008, dated
21.1.2010)

(Death of first appellant is recorded by this Court as per the order
made in Memo filed by the appellants, dated 24.06.2024)

:Appellants/Appellants/Plaintiffs

.vs.

1.Velammal(died)

2.Muthupandian

3.Sivasamy



4.Kumaresan

5.Hariharan

(Memo dated 15.12.2022 filed on 2.1.2023 in U.S.R.No.36220 is recorded as R1 died and respondents 2 to 5 who are already on record as legal representatives of the deceased first respondent vide order of this Court made in S.A(MD)No.1251 of 2008, dated 14.06.2024)

:Respondents/Respondents/Defendants

PRAYER: Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree made in A.S.No.40 of 2008, dated 4.11.2008, on the file of Principal Subordinate Judge, Tenkasi confirming the judgment and decree passed in O.S.No.326 of 2005, dated 22.4.2008, on the file of Principal District Munsif Court, Tenkasi.

For Appellants	:Mr.M.P.Senthil
Respondent No.1	:Died
For Respondents 2 to 5	:Ms.V.T.Harshini for Mr.D.Nallathambi

JUDGMENT

This Second Appeal is directed against the judgment and decree made in A.S.No.40 of 2008, dated 4.11.2008, on the file of Principal Sub-ordinate Judge, Tenkasi confirming the judgment and decree passed in O.S.No.326 of 2005, dated 22.04.2008, on the file of Principal District Munsif Court, Tenkasi.



2.The plaintiff in the suit is the appellant. The suit was filed for declaration of title and injunction. The suit was dismissed by the trial Court. The findings of the trial Court was affirmed by the First Appellate Court. Aggrieved by the concurrent findings of the Courts below, the sole appellant is before this Court. Pending the Second Appeal, the sole appellant died and his legal representatives were brought on record. It is also seen that the first respondent died pending the Second Appeal and respondents 2 to 5 were already brought on record as legal representatives of the deceased first respondent.

3.According to the appellant/Plaintiff, he purchased the suit property from the father of the defendants namely, Arunachala Thevar, Son of Samiya Thevar under registered sale deed, dated 30.01.1980. It was further stated in the plaint that in the sale deed executed in favour of the plaintiff survey number of the subject-matter of the sale, was wrongly mentioned as S.No.104/2004 instead of S.No.109/16. Further, it is the case of the plaintiff that from the date of purchase, he was in possession of the properties with four boundaries and hence, perfected title over the suit property. It was further averred that taking advantage of wrong survey number mentioned in the title deed, the defendants attempted to interfere with his possession and hence, the plaintiff



has filed the suit for declaration and injunction.

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4.The defendants filed a written statement and denied the averments in the plaint as if the plaintiff purchased the property in S.No.109/16 and has been enjoying the same with four specific boundaries. The sale deed in favour of the plaintiff was denied as a fraudulent document. It was further claimed by the defendants that the suit property originally belonged to Ananchiapandia Thevar, the grand father of Arunachala Thevar and hence, the averments found in the plaint, as if the suit property absolutely belong to Arunachala Thevar was not correct. It was also averred in the written statement that Arunachala Thevar pre-deceased his father Samiya Thevar who died on 01.08.1983 and Samiya Thevar died on 15.11.1985. The defendants raised a specific plea that Arunachala Thevar had no right to convey the entire suit property in favour of the plaintiff. It was also claimed by the defendants that after the death of Arunachala Thevar, they were brought up by paternal grand-father Samiya Thevar and they had been in possession and enjoyment of the suit property. The continuous possession of the suit property from the date of sale as claimed by him was specifically denied.

5.The trial Court, on appreciation of oral and documentary



evidence available on record, came to the conclusion that Ex.A1 sale deed executed in favour of plaintiff was a valid document, however, there was no evidence available on record to suggest that the plaintiff purchased the property in suit Survey Number 109/16 and hence, the suit was dismissed. Aggrieved by the same, the plaintiff preferred an appeal before the First Appellate Court in A.S.No.40 of 2008. The First Appellate Court, on reappraisal of evidence, came to the conclusion that the plaintiff failed to prove that Arunachala Thevar executed a sale deed conveying the suit property in his favour. The First Appellate Court also concurred with the findings that the plaintiff failed to establish that he purchased the property in S.No.109/16. The First Appellate Court gave a factual finding that the plaintiff failed to establish his possession and consequently, dismissed the appeal. Aggrieved by the same, the plaintiff is before this Court by way of this Second Appeal.

6.The learned counsel for the appellants submitted that Ex.A1 sale deed executed by Arunachala Thevar in his favour was a registered document and the same is *prima facie* proof of its execution and the defendants, who challenged the document failed to lead any evidence to show that it was not a valid document and hence, the finding rendered by the First Appellate Court as if Ex.A1



was invalid, is not sustainable in law. The learned counsel for the appellants submitted that a perusal of the Advocate Commissioner's report along with his plan would establish that the property with four boundaries mentioned in Ex.A1-sale deed in favour of the plaintiff covers the portion of the property in S.No. 109/16 and the same has been over-looked by the Courts below. Therefore, it is the submission of the learned counsel for the appellants that the plaintiff proved his right over the suit property by virtue of four boundaries mentioned in his title documents and hence, the judgment and decree passed by the Courts below are liable to be dismissed.

7.The learned counsel for the respondents 2 to 5 submitted that the suit property is the ancestral property of Arunachala Thevar and he has no right to convey the entire property including the share of other co-parcenors. Therefore, even assuming that Ex.A1-sale deed is treated as a valid document, the same will not convey absolute title to the plainiff. The learned counsel further submitted that the plaintiff failed to establish that the property in suit survey number is his property.

8.A perusal of Ex.A1-sale deed in favour of the plainiff would suggest that the property was described as Arunachala Thevar's



ancestral property in the document. Therefore, the plea of the defendants that suit property was ancestral property of Arunachala Thevar stands proved by the recital found in the plaintiff's own document. The documents produced by the defendants namely, Death Certificates of Arunachala Thevar and his father Samiya Thevar under Ex.A2 and Ex.A3 would establish that Aruchala Thevar pre-deceased his father Samiya Thevar. Therefore, at the time of execution of Ex.A1, Arunachala Thevar was not the senior-most male member of the joint family and he could not act as a "Karthā" of the joint family. Though in Ex.A1 sale deed, it was mentioned that the property was sold for family necessity, as mentioned earlier, Arunachala Thevar was only the junior member of the family at that time and he could not have sold the property for the family necessity binding the shares of the other members. In such circumstances, Ex.A1-sale deed will not convey absolute right to the plaintiff and if at all, under Ex.A1 Arunachala Thevar could have only sold his share in the property to the plaintiff. The learned counsel for the appellant further submitted that as per the recital found in Ex.A1, there was a partition in the family of defendants and the present suit property was allotted to the share of Arunachala Thevar. However, there is no evidence to suggest that there was a partition in the family of defendants and the present suit property was allotted to the share of the Arunachala



Thevar. Therefore, the sale deed executed by Arunachala Thevar in favour of the plaintiff will not convey absolute title to him. In such circumstances, the suit for declaration of title can be filed in respect of Arunachala Thevar's share alone. The trial Court held that Ex.A1-sale deed executed in favour of plaintiff was a valid document. However, the First Appellate Court, on re-appreciation of evidence, came to the conclusion that due execution of Ex.A1 was not proved by examining the attestors or other competent witness. Sale deed is not a document which requires attestation and therefore, attestors of the document need not be examined in order to prove the execution. If registered sale deed is produced, that itself is a prima facie proof of execution. It is for the party who challenge the document to lead evidence to show that it was not validly executed. Therefore the findings of the First Appellate Court that Ex.A1 sale deed was not a valid document, is set aside.

9.The learned counsel for the appellant further submitted that the Courts below have given a finding that the plaintiff failed to establish that he purchased the property in suit survey number and the said finding is erroneous and contrary to the findings available on record. A perusal of Advocate Commissioner's report would suggest that he noted the four boundaries of suit Survey Number.109/16 as follows:



“North of Road, East of Mahalinga Thevar land, South of Ananchiapandia Thevar and Sankaralinga Thevar and west and west of Ananchia Thevar Pandia Thevar lands.”

10.He also mentioned that the four boundaries of the suit property on ground did not tally with the four boundaries given in the plaint schedule. It appears that the Advocate Commissioner has noted the four boundaries for the entire extent of suit survey No. 109/16. From Ex.A1, it is clear that the plaintiff purchased only six cents in S.No.106/19 and rest of the extent in S.No106/19 was retained by his vendor Arunachala Thevar. Therefore, the Advocate Commissioner has not noted the four boundaries for the property purchased by the plaintiff under Ex.A1-sale deed. Since, this Court has already held that Ex.A1 would not convey any title to the plaintiff in respect of the entire suit property and if at all, it is only valid in respect of Arunachala Thevar's share in the joint family property, it is open to the plaintiff to file a suit for partition, if so advised and to establish that he purchased a portion of the property in S.No.109/16.

11.With this liberty, the Second Appeal is dismissed confirming the judgments and decrees of the Courts below, as the



plaintiff failed to establish his exclusive title and possession over the suit property. No costs. Consequently, connected Miscellaneous Petitions are closed.

08.07.2024

Index:Yes

Internet:Yes

NCC:Yes

vsn

To

- 1.The Principal Sub-Judge,
Tenkasi
- 2.The Principal District Munsif,
Tenkasi.
- 3.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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11

S.SOUNTHAR, J.

vsn

JUDGMENT MADE IN
S.A(MD)No.1251 of 2008
and
M.P(MD)Nos.1 of 2008 and
1 of 2013

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