



S.A(MD)No.277 of 2009

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **19.06.2024**

CORAM

THE HON'BLE MR.JUSTICE S.SOUNTHAR

S.A(MD)No.277 of 2009

Murugiah

... Appellant/Appellant
1st Plaintiff

Vs.

1.Samuthiram

2.Subbukutti

3.Kalimuthu @ Veeran

... Respondents 1 to 3/
Respondents 1 to 3/
Defendants 1 to 3

4.Arumugam

5.Kalisamy

6.Nallamuthu

7.Murugan

8.Shanmugiah

... Respondents 4 to 6/
Respondents 4 to 6/
Plaintiffs 2 to 6

PRAYER : Second Appeal filed under Section 100 of the Civil Procedure Code, against the decree and judgment, dated 10.09.2008



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passed in A.S.No.78 of 2006 by the Principal Sub Court, Tenkasi confirming the decree and judgment passed in O.S.No.1000 of 2004 passed by the Principal District Munsif Court, Tenkasi, dated 13.12.2005.

For Appellant : Mr.S.Ramesh Alias Ramiah

For Respondents : No appearance

JUDGMENT

The first plaintiff is the appellant herein.

2. The suit was filed for declaration of plaintiffs' title over the suit property and for consequential injunction. The suit filed by the plaintiff was dismissed. Aggrieved by the same, the first plaintiff alone filed an appeal before the First Appellate Court. The appeal was also dismissed. Aggrieved by the concurrent findings, the first plaintiff has come by way of second appeal.

3. According to the plaintiffs, suit property originally belonged to fore-fathers of the plaintiffs Nallamuthu Servai. The names of the plaintiffs' fore-fathers found place in the survey register and Village



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revenue documents. The defendants without having any right over the suit properties, attempted to alienate the suit properties to third parties, violating the exclusive right of the plaintiffs. Hence, the plaintiffs were constrained to file a suit for the above said relief.

4. The defendants filed the written statement and contended that the total extent of land available in suit survey No.277 was 17 acres and 20 cents. Out of the total extent, the northern 8.60 acres of land belonged to defendants' fore-fathers, Nallamuthu Servai, Subbiah Servai and Shanmugam Servai and their names were also included in the patta for the suit survey number. The remaining extent of 4 acres 40 cents on the Southern side belonged to fore-fathers of the plaintiffs, Nallamuthu Servai and Muthaiya Servai. Thus defendants claimed that averment made in the plaint as if the entire suit property belonged to plaintiff was specifically denied. The defendants also filed the genealogical tree disputing the genealogical tree relied on by the plaintiffs.

5. The first plaintiff was examined as P.W.1 and yet another witness was examined as P.W.2. Six documents were marked on the side of the plaintiff as Exhibits A.1 to A.6. The second defendant was



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examined as D.W.1 and two Documents were marked on the side of the defendants as Exhibits B.1 and B.2. The Village survey settlement register for suit survey No.277 was marked as Exhibit X.1.

6. The Trial Court on appreciation of oral and documentary evidence available on record came to the conclusion that suit property originally belonged to one Nallamuthu Servai. The plaintiffs and defendants were the descendants of said Nallamuthu Servai. The Trial Court also found that some of the descendants of Nallamuthu Servai were not impleaded in the present suit and hence, the declaration sought for by the plaintiffs could not be granted in the absence of other descendants of the original owner. As a necessary consequence, the suit was dismissed. Aggrieved by the same, the first plaintiff alone preferred an appeal in A.S.No.78 of 2006 on the file of the Principal Sub Court, Tenkasi.

7. The First Appellate Court also based on the admissions of P.W.1, came to the conclusion that some of the descendants of the original owner were not impleaded in the suit and therefore, suit was bad for non joinder of necessary parties. The First Appellate Court also



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confirmed the findings of the Trial Court that both plaintiffs and defendants were entitled to the suit property in their capacity as descendants of common ancestor. On these findings, the First Appellate Court dismissed the appeal. Aggrieved by the concurrent findings, the first plaintiff is before this Court.

8. The learned Counsel appearing for the appellant is unable to assail the findings of the Courts below that plaintiff and defendants are descendants of common ancestor and therefore, both the plaintiff and the defendants were entitled to the suit property. It is seen from Exhibit A.2 that, suit property was purchased by Nallamuthu Servai and Subbiah Servai, the common ancestors of their plaintiff as well as defendants. Therefore, based on the evidence available on record and also the revenue documents marked as Exhibit X.1, the Courts below came to the conclusion that suit property originally belonged to fore-fathers of the plaintiff and defendants and all of them were entitled to share in the suit property. Based on the admission of P.W.1, the Courts below also came to a conclusion that some of the female heirs of Subbiah Servai were not impleaded in the suit. When the plaintiff claims declaration of title, it is incumbent on them to implead all the descendants of the original owners



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of the suit property. In the absence of all the descendants, the plaintiffs are not entitled to maintain a suit for declaration. Further, factually both the Courts below found that both plaintiff and defendants were entitled to the suit property. In such circumstances, the plaintiffs are not entitled to maintain a suit for declaration of exclusive title over the suit property. The proper remedy of the plaintiff is to file a suit for partition by impleading all the necessary parties, namely, the sharers. Therefore, I do not find any substantial question of law to interfere with the findings of the Courts below and accordingly, the Second Appeal fails. However, the plaintiff is given liberty to file a suit for partition by impleading all the shares.

9. In the result, this Second Appeal stands dismissed. There shall be no order as to costs.

19.06.2024

NCC	:	Yes / No
Index	:	Yes / No
Internet	:	Yes
BTR		



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To

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



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S.SOUNTHAR, J.

BTR

Judgment made in
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