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S.A(MD)No.233 of 20

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **21.10.2024**

CORAM

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

S.A(MD)No.233 of 2006

1.Sivarajakani (Died)

2.Perumal Nadar (Died)

3.Kothandaram

(Memo dated 12.08.2024 filed on 20.08.2024
in USR No.29869 is recorded as
2nd appellant died and third appellant,
who is already on record is recorded as LR
of the deceased 2nd appellant, vide Court
order dated 23.08.2024 made in
S.A(MD)No.233 of 2006)

(Memo dated 12.08.2024 filed on 20.08.2024
in USR No.29986 is recorded as R1 died
and RR2, 5 to 8, who are already on record
are recorded as LRs of the deceased R1,
vide Court order dated 23.08.2024 made
in S.A(MD)No.233 of 2006) ... Defendants/Appellants/
Appellants

Vs.

1.Kasiammal (Died)

2.Rajagopal

3.Duraiaraj (Died)

4.Jeyaseeli

5.Alagu Ratha

(3rd appellant impleaded as the
legal representative of the
deceased first appellant as per
order dated 21.07.2015 made
in M.P.No.2012 in S.A.No.233/2006)

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6.Pattu Kumar

... Plaintiffs/Respondents/
Respondents

7.Suyambukani

8.Minor.Raman @ Lakshmanaraj
(Minor R8 represented through his
mother/guardian R7 herein)

(Respondents 7 and 8 are brought
on records as LR's of the deceased
3rd respondent vide Court order
dated 05.07.2023 made in
C.M.P(MD)Nos.10503 to 10505/2016)

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree passed in A.S.No.80 of 2005, on the file of the Sub-Court, Tuticorin dated 28.07.2005 confirming the judgment and decree passed in O.S.No.2 of 2002 on the file of the Additional District Munsif Court, Tuticorin dated 29.07.2003.

For Appellants	: Mr.M.P.Senthil
For R2	: Mr.D.Venkadesh
For R4, R7 & R8	: Mrs.P.Jessi Jeeva Priya

JUDGMENT

The appellants, who are the defendants in the suit, filed the present appeal against the judgment and decree, dated 28.07.2005 made in A.S.No.80 of 2005, on the file of the Sub-Court, Tuticorin confirming the judgment and decree, dated 29.07.2003 made in O.S.No.2 of 2002, on the file of the Additional District Munsif Court, Tuticorin.

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2. For the sake of convenience, the appellants and the respondents shall be referred to as per their ranks in the plaint, as the defendants and plaintiffs respectively.

3. The plaintiffs, who are the respondents in the present appeal, filed a suit in O.S.No.2 of 2002 before the Additional District Munsif Court, Tuticorin, for declaration that the plaintiffs are the present owner of the suit property and consequential permanent injunction restraining the defendants from interfering into the plaintiffs peaceful possession and enjoyment of the suit property and for costs of the suit.

4. On analyzing documentary and oral evidence, the learned Additional District Munsif, Tuticorin has allowed the suit by granting declaration and permanent injunction. Aggrieved by the judgment and decree of the trial Court, the defendants filed an appeal before the Sub-Court, Tuticorin which is taken on file in A.S.No.80 of 2005. Considering the pleadings evidences, judgment and decree of the trial Court, the learned Sub-Judge, Tuticorin has dismissed the appeal by confirming the judgment and decree of the trial Court. Aggrieved over the same, the defendants have filed the present appeal.



5. The case set-up by the plaintiffs in the plaint is as under:-

The schedule mentioned property and some other properties were originally belonged to Mayandi Nadar, who sold the suit property and the adjacent property on 13.06.1927 through a registered sale deed in favour of Perumal Nadar. From the date of the said sale deed, the Perumal Nadar was in possession and enjoyment of the suit property and the adjoining properties and Perumal nadar died 40 years back as Hindu intestate leaving 4 sons and one daughter viz., Raja Nadar, Sudalaimani Nadar, Mookandi Nadar, Maharaja Nadar and Sundaram Nadar as his legal heir. Perumal Nadar wife also died 35 years back leaving the above said persons as her legal heirs. After the death of the Perumal Nadar and his wife, nearly 30 years back there was an oral partition, the suit property was allotted to the share of Raja Nadar. The said Raja Nadar constructed a house on the southern side of the suit property, kept vacant the northern side and used the same as a backyard for the house for the past 30 years. The said Raja Nadar died in the month of December 1989 leaving the plaintiffs as his legal heirs. For the past 30 years, the plaintiffs are residing in the suit property as an absolute owner without disturbance or hindrance from anybody else. The defendants have no right or title interest over the suit property. On 24.12.2001 the defendants tried to interfere into the northern side of the suit property and the same was



prevented by the plaintiffs with the help of the elders. The plaintiffs are in open and notorious possession with the knowledge of the defendants for more than 30 years, in the suit properties. Hence, the plaintiffs are enjoying the suit property by way of adverse possession also. The defendants are very powerful person and very rich man in the locality and they are having money power and man power on their hands. Hence, this suit is filed for declaration, permanent injunction and for costs.

6. The defence set-up by the defendants in the written statement is as under:-

The defendants denied the allegations made by the plaintiffs in the plaint. On the northern side of the plaintiff's house there is a vacant plot. On the southern side of the plaintiff's house there is a house. The above vacant site and the house belongs to the first defendant father Rama Nadar which is an ancestral property. After the demise of Rama Nadar, the only son of the said Rama Nadar, the first defendant herein is having right in the house as well as in the vacant land. The northern side of the schedule mentioned property there is a tiled roof building which was used by the first defendant father as a godown to store Jaggery, and now the same was with the possession of the first defendant. The land situated on the northern



side of the plaintiff's does not belongs to plaintiffs, Raja Nadar or his father Perumal Nadar. They have no enjoyment in the above property.

The East-West and northern side of the plaintiffs house, land to an extent of 0.02.75 hectare which was sub divided as 224/3 and patta also issued in favour of the first defendant and the first defendant alone is in enjoyment of the said property. Hence, they seek for dismissal of the suit.

7. Before the trial Court, on behalf of the plaintiff, the 6th plaintiff was examined as P.W.1 and Exs.P1 to P5 were marked. On the side of the defendants, two witnesses were examined as D.W.1 and D.W.2 and Ex.D1 to Ex.D7 were marked. Court documents Ex.C1 and Ex.C2 were marked.

8. On the basis of the rival pleadings made on either side, the trial Court, after framing necessary issues and after evaluating both oral and documentary evidence, had allowed the suit by granting declaration and permanent injunction in favour of the plaintiffs.

9. Aggrieved by the judgment and decree of the trial Court, the defendants filed an appeal before the Sub-Court, Tuticorin which is taken on file in A.S.No.80 of 2005.



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10. The first appellate Court, after hearing both sides and upon re-appreciating the evidence available on record, had dismissed the appeal by confriming the judgment and decree of the trial Court.

11. Challenging the said concurrent judgment and decree passed by the first appellate Court, the defendants have filed the present appeal.

12. At the time of admitting the present second appeal, this Court had formulated the following substantial questions of law for consideration:

"1) Whether the Courts below erred in law in holding the title over the property in favour of the plaintiffs merely on Ex.A1 sale deed of the year 1927, which does not bear any survey number to identify the suit property?

2) Whether the Courts below erred in law in over looking the failure on the part of plaintiffs in describing the suit property sufficiently as provided under Order 7 Rule 3 of the Civil Procedure Code?

3) Whether the Courts below erred in law in not considering the settlement patta and other revenue records produced by the defendants in proof of their claim over the title and possession?



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13. The learned counsel appearing for the appellants would submit that the Courts below erred in law in holding that the schedule property belong to the plaintiffs on the basis of Ex.A1, when it is not proved by him that it includes the suit schedule property. The Courts below erred in law on relying upon the Ex.A1 when neither in Ex.A1 nor the schedule to the plaint describes the suit property by survey number. The Courts below erred in law in overlooking the patta and other revenue records produced by the defendants being documents Ex.B1 to B7 corroborating the evidence of D.W.1 and D.W.2. The Courts below failed to consider that the suit property was originally a Poramboke land and by long possession of the Defendants and their predecessor in title, patta was issued under settlement proceedings.

14. He further submitted that the Courts below erred in law in holding that the patta does not restore the title upon the defendants especially when the plaintiffs does not prove a better title by any positive or acceptable evidence. The courts below erred in law in assuming that the boundary as shown in the documents could be identifiable especially when said document was executed 70 years above. The Courts below erred in law in overlooking that the miserably failed to prove that the suit property was allotted to them in



a partition deed and no piece of paper was produced to prove that the alleged partition took place and the property was allotted to plaintiffs share. The Courts below overlooked that even assuming that the Ex.A1 includes the suit property same shall not create any right in respect of suit property when executor himself had no right over the suit property. The Courts below overlooked that the plaintiffs have not established by documents or otherwise that they enjoyed the suit property at any point of time since 1927. Hence prayed for allowing the appeal.

15. The learned counsel appearing for the respondents would submit that the trial Court and the first appellate Court after hearing both sides and upon re-appreciating the evidence available on record, had rightly decreed the suit and also the appeal suit and there is no interference is required in the judgment and decree of the trial Court and the first appellate Court. Hence, he prayed for dismissing the appeal.

16. I have heard the learned counsel for the appellants and the respondents and also perused the materials on record carefully.



17. On perusal of Ex.A1 document, dated 13.06.1927 which is executed by one Mayandi Nadar in favour of Perumal Nadar, the description of the property found as follows:-

"பாளையங்கோட்டை டிஸ்ட்ரிக்ட், திருச்செந்தூர் சப்டி, காலங்குடியிருப்பு கிராமம் பெருமாள்புரத்தில் மனை வீட்டுக்கு எல்கை கிழமேல் பாதைக்கும் தெற்கு, முத்தையா நாடாரிடம் கிரையம் வாங்கிய யோவான் வீட்டுக்கும் மேற்கு ராமநாதார் வீட்டுக்கும் பொது பாதைக்கும் வடக்கு என் கையிருப்பு வீட்டுக்கும் கிழக்கு இதிலுள்ள மனை தச்சமுழம் கிழமேல் 30 தென்வடல் 40 அதில் கட்டியிருக்கிற கல்கட்டு ஓலை கூரை வீடும் மேல்புறம் கூடமும், கீழ்புறம் கூடமும் நடை முற்றம் கொல்லையும் கொல்லையில் இருக்கிற சகல விஷயங்களும் பொதுவில் 3 ஆக என் பங்கு 1 உள்ளதும் விபரம் சரி."

Even though, the document does not reveals the survey number but the 4 boundaries would reveal the suit property and adjacent properties. It is very ancient document that is in the year of 1927. Therefore, on the northern side of the Ramanadar house, there is a common pathway and further on the northern side is the plaintiffs property as per Ex.A1. According to Ex.A1, plaintiff are having 1/3rd share in that property. It was taken into account the plaintiffs having East-West 10 Thatchi Mulam North East 40 Thatchu Mulam which is equal to 25 feet + 100 feet. Therefore, the plaintiff proved their title by way of Ex.A1. The defendants claiming the right only through Ramanadar. The defendant has not submitted any registered document to prove that he is having property in the schedule



mentioned property. The sole reliance of the defendants are that the patta issued in favour of the first defendant that too during 1900. The learned District Munsif rightly come to a conclusion that patta would not confer title to the defendant. On the basis of evidence and documents, the plaintiffs prove that they are in possession of the schedule mentioned property. But the defendants claim their right that they are having vacant land on the western side and the northern side of the plaintiffs house. During the examination of D.W.1 stated that the property belongs to Rama Nadar and he acquired the same by way of inheritance. So it is an ancestral property of Rama Nadar. No document shows that Rama Nadar had owned that property. On the other hand Ex.A1 document would reveal that the said Rama Nadar is having only house on the southern side of the plaintiffs property.

18. Regarding the first question of law, it is to be seen that the property vested with the plaintiffs based on the Ex.A1 sale deed, which was executed by one Mayandi Nadar in favour of Perumal Nadar on 13.06.1927. In the said document there was a clear schedule has been mentioned through which the property could be identifiable as the plaintiffs and defendants did not deny such existence of the boundaries are not there on the ground. Hence, the Court has correctly held that the title over the property in favour of the plaintiffs in Ex.A1 is valid.



19. Regarding the second question of law, it has been clearly stated that property in question is bounded by south of East-West pathway west of house of one Yovan purchased from one Muthaiya Nadar, North of Rama Nadar's house and public pathway and East of plaintiff's house. Even though, the document does not reveals the survey number, but the 4 boundaries would reveal the suit property and adjacent properties. Therefore, as per Order 7 Rule 3 of the Civil Procedure code, the plaintiffs have clearly described the suit property sufficiently.

20. Regarding the third question of law, the defendant has not submitted any registered document to prove that he is having landed property in the schedule mentioned property. The sole reliance of the defendants are that the patta issued in favour of the first defendant that too during 1900, the patta would not confer title to the defendants. On the basis of the evidence and documents the plaintiffs proved that they are in possession of the schedule mentioned property. The sketch also proves the claim made by the plaintiffs as the land in dispute is surrounded by plaintiffs family members and the defendants land is situated far away from the disputed property. In view of the above, the substantial questions of law are answered in favour of the respondents as against the appellants.



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21. In the result, the Second Appeal is dismissed by confirming the judgment and decree, dated 28.07.2005 made in A.S.No.80 of 2024, on the file of the Sub-Court, Tuticorin and dated 29.07.2003 made in O.S.No.2 of 2002, on the file of the Additional District Munsif Court, Tuticorin. However, there shall be no order as to costs.

21.10.2024

Index : Yes/No
Internet : Yes/No
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To

- 1.The Sub-Court,
Tuticorin.
- 2.The Additional District Munsif Court,
Tuticorin.
- 3.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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V.BHAVANI SUBBAROYAN, J.

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