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S.A(MD)No.451 of 20



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.10.2024

CORAM

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

S.A(MD)No.451 of 2006

Saravana Perumal ... Appellant/Appellant/Plaintiff

Vs.

1.Kuppusamy
2.Ponnuthurai ... Respondents/Respondents/Defendants

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree, dated 26.09.2005 passed in A.S.No.21 of 2001 on the file of the Sub Court, Ambasamuthiram, confirming the judgment and decree dated 27.02.2001 passed in O.S.No.67 of 1993 on the file of the District Munsif Court, Ambasamuthiram.

For Appellant : Mr.M.Ramachandran
for Mr.M.Siddharthan

For Respondents : Ms.V.Janaki Devi



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JUDGMENT

The Judgments and decrees passed in O.S.No.67 of 1993 on the file of the District Munsif Court, Ambasamuthiram and in A.S.No. 21 of 2001 on the file of the Sub Court, Ambasamuthiram, are being challenged in the present Second Appeal.

2.The appellant herein as plaintiff instituted a suit in O.S.No.67 of 1993 on the file of the trial Court against the defendants seeking for the relief of declaration, mandatory injunction and demolition and claiming title in respect of the suit second schedule property.

3.For the sake of convenience, the parties are referred to as, as described before the trial Court.

4.According to the plaintiff, originally the suit first schedule property belonged to one Subbaiya Nadar, son of Kuppaiyandi Nadar. On 29.07.1925, the said Subbaiya Nadar sold the suit first schedule



property to Velu Nadar, S/o.Mada Nadar, and Ramaiya @ Rama Nadar, S/o.Aathi Nadar by way of a registered sale deed. The plaintiff's grandfather-Aathi Nadar had four sons, namely Rama Nadar @ Ramaiya Nadar, Vaikunda Nadar, Arumuga Nadar and Aathiyappa Nadar. The plaintiff's father is Vaikunda Nadar. Rama Nadar @ Ramaiya Nadar, Arumuga Nadar and Aathiyappa Nadar had no male issues. According to the plaintiff, he was the only male legal heir to inherit the property. With regard to the suit first schedule property, the said Velu Nadar and Rama Nadar @ Ramaiya Nadar have divided the property into two portions and the said Velu Nadar was enjoying the property at the bottom portion and the said Rama Nadar @ Ramaiya Nadar was enjoying the property on the upper portion. According to the plaintiff, he has filed a sketch in which the upper portion was marked as 'AEFD', which was the suit second schedule property of the first item and the bottom portion was marked as 'EBCF', which was the suit second schedule property of the second item. After the demise of the ancestors, the plaintiff was in possession and enjoyment of the suit second schedule property of the first item. The suit second schedule property of items 1 & 2 is part of the suit first schedule property. Velu Nadar was the great-grandfather of the first defendant and grandfather of the second defendant. The defendants 1 and 2 are in possession and



enjoyment of the suit second schedule property of the second item.

While so, in the year 1991, the defendants 1 and 2 started slowly encroaching the suit second schedule property of the first item and the plaintiff tried to prevent them from constructing the compound wall. While so, in the year 1992, the defendants constructed a building in land belonging to the plaintiff by encroaching upon the suit schedule property. Though the plaintiff has made efforts to prevent the defendants from constructing, they also constructed a compound wall in the year 1993. Hence, the plaintiff has filed the said suit for the abovestated relief.

5.The defendants had filed a written statement stating that the plaintiff's grandfather-Aathi Nadar had four sons was not accepted and stated that he had five sons. Further, the plaintiff's grandfather had daughters. The said Arumuga Nadar had four daughters and the four daughters had male heirs. The submission of the plaintiff that he was the only male legal heir was not proved. The plaintiff's father-Vaikunda Nadar had two wives and the plaintiff was the son of the second wife. The father of the plaintiff's first wife had children and they are alive. The plaintiff alone was in possession and enjoyment of the suit property was not accepted. All the legal heirs of Aathi Nadar are



entitled for their shares. The plaintiff has no right to file the suit exclusively. The plaintiff has not impleaded the necessary parties and the suit is bad for non-joinder of necessary parties. It was an admitted fact that the suit first schedule property was purchased by way of a registered sale deed by Velu Nadar and Ramiaya Nadar and they were in joint possession and enjoyment of the same and thereafter, the said Velu Nadar and Aathi Nadar's elder son, namely Ramiaya Nadar divided the suit properties into two portions and enjoying the same. According to the defendants, in the plaintiff's sketch, the portion which was marked as 'AEFD' portion was not belong to Aathi Nadar's son Ramiaya Nadar. 'AEFD' portion was the suit first schedule property of the bottom portion. The remaining part of the suit first schedule property was situated in the top portion of 'AEFD'. In the plaintiff's sketch, the portion which was marked as 'EBCF' portion was the separate ancestral property of the defendants grandfather. The said portion was not purchased through the sale deed, dated 29.07.1925. The portion which was marked as 'EF' on the side of the western side East 7 Thachumulam portion was not purchased by the plaintiff as per the sale deed, dated 29.07.1925. In view of the above, the plaintiff was not in a position to state where the property purchased is situated as per the sale deed, dated 29.07.1925. 'AE' is the portion, which are



belonging to the defendants' ancestors who have purchased the property from the said document. In 'AE' portion, the first defendant's grandfather and the second defendant's father had constructed a house in the year 1942 itself and they are in possession and enjoyment of the same. Further, the allegation made by the plaintiff that the defendants have tried to encroach upon the property of the plaintiff from the year 1992 are false and the defendants had constructed a house worth about a sum of Rs.70,000/- and pleaded that the plaintiff has to pay a sum of Rs.10,000/- as compensatory cost and prayed for dismissal of the suit.

6.Before the trial Court, on the side of the plaintiff, he himself was examined as P.W.1 and P.W.2 & P.W.3 were examined and Exs.A1 & A2 were marked. On the side of the defendants, the first defendant was examined as D.W.1 and Exs.B.1 to B.3 were marked.

7.On the basis of the rival pleadings made on either side, the trial Court, after framing necessary issues and after evaluating both the oral and documentary evidence, has dismissed the suit.



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8. Aggrieved by the Judgment and decree passed by the trial Court, the plaintiff herein as appellant, had filed an Appeal Suit in A.S.No.21 of 2001 on the file of the first Appellate Court.

9. The first Appellate Court, after hearing both sides and upon reappraising the evidence available on record, has dismissed the appeal and confirmed the Judgment and decree passed by the trial Court.

10. Challenging the said Judgments and decrees passed by the Courts below, the present Second Appeal has been preferred at the instance of the plaintiff as appellant.

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

'1) Whether the Courts below are right in dismissing the suit when there is no contra evidence from the defendants to claim title to the suit property?



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2. *Whether the learned Sub Judge has got jurisdiction to go beyond the scope of the pleadings of the plaintiff and give his own findings in his judgment?*

3. *Whether the judgment and decree of the Courts below are sustainable in law when the Courts below have not taken into consideration the plea of adverse possession claimed by the defendants?*

4. *Whether the Courts have considered about the objection raised by the plaintiff with regard to the Advocate Commissioner's report?*

5. *Whether the Courts below are justified in dismissing the suit when the defendants have admitted the relationship, execution of Ex.A.1, partition between the brothers, in the absence of contra evidence to prove the defendant's title and possession?'*

12.The learned counsel appearing for the appellant/plaintiff would submit that the Courts below had not considered and violated the Transfer of Property Act, 1882 under Section 6(a), wherein the appellant as the legal heir of the suit property and they had not taken into account the provision of Transfer of Property Act under Section 19 vested interest and Section 20 of the contingent interest. The Courts



below have admitted the fact that the legal heirs of Arumuga Nadar had sold some property to a third person, but that deed does not throw light of any lineage of Aathi Nadar, hence, those legal heirs are not admitted as a Aathi Nadar lineage and to be registered. Rama Nadar and the first defendant's grandfather had jointly purchased the suit property was admitted by the defendants. Hence, the Courts below had failed to note that the appellant had been in possession and enjoyment of the suit property which was encroached on by the defendants. When there is a dispute between the members of the plaintiff's family with regard to the suit property, the Courts below without any valid findings had held that the plaintiff had not come with clean hands, as he failed to prove that he was the only male legal heir. The Advocate Commissioner's report is not a final one to decide in favour the defendants. The learned counsel appearing for the appellant would further submit that the second appeal should be allowed on the grounds of appeal and the questions of law framed.

13.The learned counsel appearing for the respondents/defendants would submit that the suit filed for declaration, mandatory injunction and for demolishing the suit property of the defendants has been rightly considered by both the Courts below



and dismissed them. In the written statement, even though the defendants admitted the relationship between inter parties, but denied title and encroachment in the suit second schedule. Issues were framed, Exs.A1 & A.2 were marked on the side of the plaintiff and Exs.B.1 and B.2 were marked on the side of the defendants and Exs.C.1 to C.3 have been considered by the Courts below elaborately, the trial Court dismissed the suit without costs and in the appeal suit, the Appellate Court dismissed the appeal with costs. It is found that regarding the common ancestor, one Mada Nada had son Velu Nadar and his son Thangasamy Nadar, whose children are Kuppiaha and Kuppusamy. Kuppusamy is the first defendant and the said Kuppiaha's son is Ponnudurai is the second defendant. Regarding common ancestor Aathi Nadar, his sons are Rama Nadar, Vaikunda Nadar, Arumuga Nadar, Aathiyappa Nadar and another son name not known and Vaikunda Nadar's son is Saravana Perumal, who is the plaintiff herein and according to the defendants, the plaintiff is the second wife's son of Vaikunda Nagar. The said Arumuga Nadar and his wife Piramu had four daughters, namely Vadivammal, Thangammal, Ramalakshmi and Annathai and the genealogy tree would prove that the plaintiff is not the sole legal heir in his branch and the case has to be dismissed on the ground of non-joinder of other legal heirs, who are



necessary parties which is fatal to the case and also he cannot claim absolute right over the entire property which was purchased by two persons having half share each.

14.The learned counsel appearing for the respondents/defendants would further submit that there are other legal heirs and the plaintiff has not impleaded them, the suit is bad for non-joinder of necessary parties. The plaintiff himself has admitted that the suit property was purchased by two persons, namely Velu Nadar and Ramiya Nadar. He cannot claim exclusive title over the property without impleading all the legal heirs of Ramaiya Nadar. As already stated the suit is bad for not only the non-joinder of necessary parties but also the exclusive prayer for declaration cannot be granted to the plaintiff, because he had not pleaded or proved his exclusive title to the suit property by way of partition, release deed or settlement. The Commissioner's report would prove that no encroachment has been made by the defendants and the house of the defendants has been constructed at an earlier point of time and there is no cause of action arising for the suit. As the plaintiff has not proved his exclusive title to the suit property, the suit for declaration is not maintainable and liable to be dismissed and prayed for dismissal of the second appeal.



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15.Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents and perused the materials available on record.

16.According to the plaintiff, originally the suit first schedule property belonged to one Subbaiya Nadar, son of Kuppaiyandi Nadar. On 29.07.1925, the said Subbaiya Nadar sold the suit first schedule property to Velu Nadar, S/o.Mada Nadar, and Ramaiya @ Rama Nadar, S/o.Aathi Nadar by way of a registered sale deed. The plaintiff's grandfather-Aathi Nadar had four sons, namely Rama Nadar @ Ramaiya Nadar, Vaikunda Nadar, Arumuga Nadar and Aathiyappa Nadar. The plaintiff's father is Vaikunda Nadar. Rama Nadar @ Ramaiya Nadar, Arumuga Nadar and Aathiyappa Nadar had no male issues. According to the plaintiff, he was the only male legal heir to inherit the property. With regard to the suit first schedule property, the said Velu Nadar and Rama Nadar @ Ramaiya Nadar have divided the property into two portions and the said Velu Nadar was enjoying the property at the bottom portion and the said Rama Nadar @ Ramaiya Nadar was enjoying the property on the upper portion. According to the plaintiff,



he has filed a sketch in which the upper portion was marked as 'AEFD', which was the suit second schedule property of the first item and the bottom portion was marked as 'EBCF', which was the suit second schedule property of the second item. After the demise of the ancestors, the plaintiff was in possession and enjoyment of the suit second schedule property of the first item. The suit second schedule property of items 1 & 2 is part of the suit first schedule property. Velu Nadar was the great-grandfather of the first defendant and grandfather of the second defendant. The defendants 1 and 2 are in possession and enjoyment of the suit second schedule property of the second item. While so, in the year 1991, the defendants 1 and 2 started slowly encroached on the suit second schedule property of the first item and the plaintiff tried to prevent them from constructing the compound wall. While so, in the year 1992, the defendants constructed a building in land belonging to the plaintiff by encroaching upon the suit schedule property. Though the plaintiff has made efforts to prevent the defendants from constructing, they also constructed a compound wall in the year 1993.



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17.The defendants stated that the plaintiff's grandfather-Aathi Nadar had four sons was not accepted and that he had five sons. Further, the plaintiff's grandfather had daughters. The said Arumuga Nadar had four daughters and the four daughters had male heirs. The submission of the plaintiff that he was the only male legal heir was not accepted. The plaintiff's father-Vaikunda Nadar had two wives and the plaintiff being the son of the second wife. The father of the plaintiff's first wife had children and they are alive. The plaintiff alone was in possession and enjoyment of the suit property was not proved. All the legal heirs of Aathi Nadar are entitled for their equal shares. The plaintiff has no right to file the suit exclusively. The plaintiff has not impleaded the necessary parties and the suit is bad for non-joinder of necessary parties. It was an admitted fact that the suit first schedule property was purchased by way of a registered sale deed by Velu Nadar and Ramaiya Nadar and they were in joint possession and enjoyment of the same and thereafter, the said Velu Nadar and Aathi Nadar's elder son, namely Ramiya Nadar divided the suit properties into two portions and enjoying the same. According to the defendants, in the plaintiff's sketch, the portion which was marked as 'AEFD' portion was not belong to Aathi Nadar's son Ramiya Nadar. 'AEFD' portion was the suit first schedule property of the bottom portion. The remaining



part of the suit first schedule property was situated in the top portion of 'AEFD'. In the plaintiff's sketch, the portion which was marked as 'EBCF' portion was the separate ancestral property of the defendants' grandfather. The said portion was not purchased through the sale deed, dated 29.07.1925. The portion which was marked as 'EF' on the side of the western side East 7 Thachumulam portion was not purchased by the plaintiff as per the sale deed, dated 29.07.1925. In view of the above, the plaintiff was not in a position to state where the property purchased is situated as per the sale deed, dated 29.07.1925. 'AE' is the portion, which are belonging to the defendants' ancestors who have purchased the property from the said document. In 'AE' portion, the first defendant's grandfather and the second defendant's father had constructed a house in the year 1942 itself and they are in possession and enjoyment of the same. Further, the allegation made by the plaintiff that the defendants have tried to encroach upon the property of the plaintiff from the year 1992 are false and the defendants had constructed a house worth about a sum of Rs.70,000/- long ago.

18.On a perusal of the materials available on record, it is seen that the evidence has been produced by the defendants to show that they are descendants of Velu Nadar and in the absence of any



contradictory evidence produced by the plaintiff, the Courts below have rightly concluded that the defendants are the legal heirs and they are claiming title over the suit property. The plaintiff cannot claim right and he can only plead and win or lose on his own pleadings or in his evidence cannot rely upon any evidence being rendered by the defendants. It is to be seen that the Appellate Court was of the view that the plaintiff has not proved his lineage with the said Ramaiya Nadar, when the defendants have produced the documents to show that one of the brothers of Ramaiya Nadar one Arumuga Nadar and his wife Piramu had four daughters and they are also entitled for share in the property and in the absence of any evidence being produced by the plaintiff that he is the sole legal heir, the trial Court has come to the conclusion that the plaintiff is not entitled for granting the prayer unless and until he has proved the clear title to the said property. When it is found from the Advocate Commissioner's report that there is no such encroachment made by the defendants, the question of plea taken by the defendants of adverse possession of the property also does not arise, as the defendants have title over the property and proved that they built their house within the boundaries of their property. The Court appoint Commissioner to inspect and report only to prove the case of the parties and to assist the Court and accordingly, it



is seen that the title and adverse possession cannot go hand in hand together has been considered by the trial Court as well as the Appellate Court and held against the plaintiff. It is only a factual aspect and it does not raise any substantial question of law and it is seen that the plaintiff has not raised any objection to show that the Commissioner has acted in bias and false. The plaintiff cannot claim right over the property by mere pleading and it should be on the basis of documentary evidence or any oral evidence being let in by third parties or any other person, who is reliable for the Court to come to a conclusion that the said person is the legal heir of the said Arumuga Nadar through whom he is claiming right over. The plaintiff has not produced any piece of evidence to show that he is the only person to inherit the property of Ramiaya Nadar absolutely. It is also seen that the plaintiff has not proved his case beyond doubt and both the Courts below, after taking into consideration both the documentary as well as oral evidence, held that the plaintiff has not proved the encroachment made by the defendants and the prayer sought for cannot be granted. The plaintiff has not pin pointed the error committed by the Appellate Judge in his findings that is beyond the pleadings. When the defendants agreed with the execution of Ex.A.1, the property in question being purchased by Ramiaya Nadar and Velu Nadar, there is



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absolutely no contra evidence. It is made clear that the said Velu Nadar fairly is entitled to 50% and Ramiaya Nadar is entitled to 50%. The plaintiff's claim that the defendants have encroached upon the land of Ramaiya Nadar has been negated by the Courts below based on the evidence and the plaintiff's claim fails.

19.From the above, this Court is of the view that the Judgments and Decrees of the Courts below are accompanied with sufficient reasons, in which, this Court does not want to make any interference. Accordingly, the substantial questions of law framed are ordered as against the plaintiff and in favour of the defendants.

20.In the result, the Second Appeal stands dismissed. No costs.

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Internet : Yes/No
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To

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- 1.The Sub Court,
Ambasamuthiram.
- 2.The District Munsif Court,
Ambasamuthiram.
- 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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Judgment made in
S.A(MD)No.451 of 2006

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