



S.A.(MD).No.353 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.07.2024

CORAM

THE HON'BLE MR.JUSTICE G.ILANGO VAN

S.A.(MD).No.353 of 2021
and C.M.P.(MD).No.4659 of 2021

Anthoney @ Arockiyam (died)

1.Ulaganathan

2.Arockiyameri

... Appellants/Respondents/Plaintiffs

Vs.

Suwakin Udaiyar (Died)

1.Arokiyaraj

2.Sebasthiyammal Chinnarani

3.Sagayamery

4.Jenittamery

5.Clara

6.Arokiyamery

7.Sosana Nirmala

... Respondents/Appellants/

Defendants

PRAYER : Second Appeal filed under Section 100 of the Civil Procedure Code, to set aside the Judgment and Decree dated 28.02.2020 made in A.S.No.20 of 2019 on the file of the learned Subordinate Judge, Pattukkottai, reversing the Judgment and decree dated 12.03.2019 made



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in O.S.No.80 of 2009 on the file of the District Munsif, Pattukkottai.

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For Appellant : Mr.S.Deenadhayalan

For Respondents : Mr.N.Balakrishnan for R1 to R7

JUDGMENT

This second appeal has been preferred to set aside the Judgment and Decree dated 28.02.2020 made in A.S.No.20 of 2019 on the file of the learned Subordinate Judge, Pattukkottai, reversing the Judgment and decree dated 12.03.2019 made in O.S.No.80 of 2009 on the file of the District Munsif, Pattukkottai.

2.Suit in O.S.No.80 of 2009 was filed by the appellant herein with following averments:

The suit property originally belongs to the first plaintiff's father by name Sokkara @ Arockiyam. He died in the year 1956. After that the property devolved upon the first plaintiff along with some properties. He was issued with patta and enjoying the property by paying the kist. Standing coconut trees are available in the suit property. The defendant have properties on west and south. The first defendant requested the first plaintiff to sell the property. But, he refused. In the year 2009, the first



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respondent removed the fencing on the south and west. A police complaint was given. But, that was closed stating that it is a civil issue between the parties. On 10.04.2009, the first defendant along with his men tried to interfere into the peaceful possession of the plaintiff. Hence, the suit.

3.The first defendant died pending suit and the first plaintiff namely Anthoney @ Arokiyam died. His legal heirs were brought on record. Statement was filed by the deceased first defendant with the following averments:

The title over the property is disputed. The plaintiff and the defendant entered into exchange deed dated 18.06.1989 in respect of the suit property and other properties. By virtue of the above said exchange deeds, the suit property was given to the defendant in exchange of the property situated in S.No.17/1D measuring about 0.20.5 hectares. The plaintiff became the owner of the property, in pursuance of the above said exchange deed. The subject property and other properties in S.Nos. 24/1, 24/3 are contiguously situated.



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4. An extent of 0.02 ares in S.No.24/2 and 0.01.5 ares situated in S.No.24/3 were gifted to a Church for conducting festivals. On 27.04.2001 the defendant purchased 0.19.0 ares situated in S.No.17/1D1 from the plaintiff to avoid unnecessary complications. It was also acknowledged, subsequently by written document. Apart from that it is also stated that the defendant by continuous open possession prescribed title by adverse possession.

5. Reply statement was filed by the plaintiff disputing the unregistered exchange deed, dated 18.06.1989. According to the plaintiff it is a created document by the defendant. The oral sale dated 27.04.2001 also disputed.

6. To that the defendant also filed additional written statement.

7. The trial Court on the basis of the pleadings of the parties framed 7 issues.

1. Whether the plaintiff is having right, title and interest over the suit property?



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2. Whether the plaintiff was in possession and enjoyment of the suit property on the date of suit?
3. Whether the Exchange Deed dated 18.06.1989 is true, valid and acted upon?
4. Whether the defendant prescribed title over the suit property by adverse possession?
5. Whether the suit is barred by Limitation?
6. Whether the plaintiff is entitled to get relief of declaration of title and permanent injunction over the suit property?
7. To what other reliefs, the plaintiff is entitled to?

8. On the side of the plaintiffs PW1 to PW4 were examined and Ex.A1 to Ex.A9 were marked. On the side of the defendants, DW1 to DW3 were examined and Ex.B1 to Ex.B8 were marked. Further Ex.X1 to X4 and Ex.C1 and C2 also marked.

9. At the conclusion of the trial process suit was decreed as prayed for with costs. Against which, appeal was preferred by the defendants before the first appellate Court in A.S.No.20 of 2019. The appellate



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Court allowed the appeal reversing the judgment and decree of the trial Court.

10.Heard both sides.

11.Reading of the pleadings, judgment of the trial Court and appellate Court shows that a plea has been raised by the defendants herein, who are the respondents in the second appeal that by unregistered exchange the suit property was exchanged between the parties and they are in possession. Ex.B1 and Ex.B3 are unregistered. But before the appellate Court I.A.No.92 of 2019 was filed by the respondent herein under Order 41 rule 27 of CPC to admit two documents, dated 17.12.1959 and 29.12.2012. That came to be dismissed by the appellate Court stating that no proper reason is assigned for the delay. Apart from that picking up some sorts of defects in the document, it dismissed it. Against which no revision was preferred by the defendants, since the suit was ultimately dismissed by the appellate court. Appeal is preferred only by the plaintiffs. But, however when in a suit for declaration, due opportunity must be given to both sides to put forth their title documents



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simply because the document, dated 17.12.1959 and 29.11.2012 is not pleaded in the written statement, the appellate court ought not to have rejected those documents, ought to have received the same, permitted the parties to lead evidence on that aspect and ought to have remanded the matter back to the trial Court. But without resorting the same, it has straight away dismissed the petition by pointing out certain defects.

12.The defects ought not to have been picked up by the appellate Court without taking the documents on evidence and permitted the parties to lead evidence. So due opportunity was not given to the respondent herein to clarify the doubts raised by the appellate Court. Moreover, it is not necessary that documents must be pleaded in the written statement.

13.Parties can be expected to plead only material facts and not the evidence, through which, facts are going to be proved. The learned counsel for the appellant has also no objection to remand the matter back to the trial Court by permitting the respondent herein to mark the additional documents and lead evidence in this regard.



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14. Another disturbing feature is that the defendants have not disputed the title of the appellant in the properties. As mentioned in the preamble portion of the judgment, it is specific case of the defendants that the subject matter of the suit and some other properties were the matter of exchange between the parties through unregistered Exchange deed dated 18.06.1989. The trial Court recorded a finding that since it is unregistered document it would not confer any title upon the defendants.

15. In respect of S.No.17/1D1 it is the contention on the part of the defendant that on 27.04.2001, he purchased the property orally, even though it was the subject matter of the previous exchange deed. But the appellate court as mentioned above having held that the defendants have not established the exchange and oral sale, dismissed the suit without assigning any proper reasons, on the ground that the cause of action pleaded in the plaintiff is not true. But cause of action pleaded by the plaintiff appears to have reason. Because the defendants are now disputing the title of the plaintiff over the properties by virtue of Ex.B1 and Ex.B3 unregistered exchange deeds, it is not correct on the part of the court that there is no cause of action to the suit.



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16.The appellate court has also referring issue over the property lying adjacent, by picking up some mistakes or lapse, in the pleadings.

17.As mentioned above, having found that Ex.B1 and Ex.B3 does not confer title upon the respondent, the appellate court has thought right it fit to fix finding in non suiting the appellant herein. So I am of the considered view that in view of the additional documents proposed to be filed by the respondents herein, the matter is liable to be remanded back to the trial Court namely District Munsif Court, Pattukkottai.

18.Accordingly, this second appeal stands allowed. No costs. The Judgment and Decree passed by the trial Court as well as the appellate Court are hereby set aside. The matter is remanded back to the trial Court namely the District Munsif Court, Pattukkottai. There shall be a direction to the trial Court to admit the documents dated 17.12.1959 and 29.11.2012 either original or certified copies and to give opportunity to both sides to lead additional oral and documentary evidences, if any and conclude the trial within a period of **five** months from the date of receipt



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of a copy of this order. Consequently, connected miscellaneous petition is closed.

31.07.2024

Index : Yes / No
Internet : Yes / No
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To

- 1.The Subordinate Judge, Pattukkottai.
- 2.The District Munsif, Pattukkottai.
- 3.The Section Officer,
E.R.Section/V.R.Section,
Madurai Bench of Madras High Court, Madurai.



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G.ILANGO VAN,J.

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