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A(MD)No.415 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserved	31/07/2024
Date of Pronounced	30/10/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGO VAN**

SA(MD)No.415 of 2021

and

CMP (MD) Nos.5541 of 2021 and 3706 of 2024

SP.Rajagopalan (Died)

1.SP.Madhavan

2.SP.Senthilnathan

3.R.Chithra Devi

4.R.Vigneshwaran

5.Sivapriya

6.Ramkumar

Appellants 4 and 6 are
represented through their
Power Agent 5th Appellant
R.Vigneshwaran

: Appellants 1 to 6/
Appellants/Plaintiffs

7.SP.Sivaraman

: 7th Appellant/
8th Appellant/
3rd Defendant

Vs.

1.AR.Chidambaram

2.Logambal

: Respondents/Respondents/
Defendants

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code, to call for the records relating to the judgment and decree, dated 21/12/2020 in AS No.50 of 2018 on the file of the Subordinate Judge, Devakottai, confirming the judgment and decree, dated 18/07/2018 in OS No.49 of 2012 on the file of the District Munsif, Devakottai and set aside the same.



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For Appellants : Mr.M.Vallinayagam
Senior Counsel
for Mr.J.Anandkumar
For Respondents : Mr.V.R.Shanmuganathan

J U D G M E N T

This second appeal is filed against the judgment and decree, dated 21/12/2020 passed in AS No.50 of 2018 by the Subordinate Judge, Devakottai, confirming the judgment and decree, dated 18/07/2018 passed in OS No.49 of 2012 by the District Munsif, Devakottai.

2.The plaint averments in brief:-

The suit property is situated in Survey No.20/1 measuring about 60 cents in Ward No.2B, Block No.I, Devakottai Town. The plaintiffs 1 to 3 and the 3rd defendant are brothers. The suit property belongs to them absolutely. On the date of the plaint, the plaintiffs were in abroad. So, they employed the 3rd defendant. Originally, the Survey No.20 came to be sub-divided into survey No.20/1 and 20/2. In respect of survey No.20/1 to an extent of 60 cents, patta was issued in favour of the plaintiffs 1 to 3 and 3rd defendant jointly. In respect of the property in survey No.20/2 measuring about 29 cents, patta was issued in the name of Manoranjitham. Total extent comprised in the original survey No.20 measuring 89 cents originally belonged to Murugappan. Murugappan



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had two childrens by name Kalimuthu and Murugappan. On behalf of the minor sons, Murugappan executed a sale deed on 19/10/1927 in favour of the plaintiffs and the 3rd defendant's father by name Kalimuthu Servai. They are in put in possession of the property. Later the legal heirs of Kalimuthu Servai entered into a partition on 08/02/1985. In the partition, survey No.20/1 was allotted to one Subbaiah measuring about 60 cents and 29 cents in another survey number in favour of Balakrishnan. Balakrishnan sold the property allotted to one Manoranjitham on 25/08/2003. Later, patta was issued. Now Manoranjitham was enjoying the property in respect of Survey No.20/2 measuring about 29 cents. The plaintiffs are enjoying the suit property, by planting coconut trees etc. On the western side of the suit property, Manoranjitham formed fruits Farm as well as fish farming. In the meantime, the defendants have no right over the property or proclaiming in the suit property. Patta was issued in their name by the Sub Collector, Devakottai. But as per the order of the Sub Collector, Devakottai, dated 23/10/2008, the parties were referred to file a civil suit for deciding the title. Against which, the defendants 1 and 2 filed appeal before the DRO, Devakottai. The matter was remanded back to the RDO, Devakottai. Now it is pending before him for proper



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consideration. So, the suit is laid for declaration that the suit property belonged to the plaintiffs 1 to 3 and the 3rd defendant restraining the defendants 1 and 2 and for costs.

3.The written statement filed by the defendants 1 and 2:-

The tile over the property claimed by the plaintiffs is denied and disputed. The sale deed relied upon by the plaintiffs in favour of Kalimuthu Servai on 19/10/1927 is not related to the suit property. It is also denied that the plaintiffs 1 to 3 and the 3rd defendant are put in possession of the property and are enjoying the same. Further the partition deed, dated 08/02/1985 also denied as a fabricated document and the subsequent averments made in the plaint are denied specifically. According to him, one Arunachalam Chettiar, who is the father of the 1st defendant and the husband of the 2nd defendant purchased the property on 07/01/1970 from one Kalimuthu Servai and Samiyappa Servai. Patta was issued in favour of Arunachalam Chettiar and he was enjoying the property. In 1980, Arunachalam Chettiar died leaving the defendants 1 and 2 as his legal heirs. At that time, the 1st defendant was a minor. They fenced the property and enjoying the same. Patta was also issued in their name.



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But on resurvey, patta was issued in favour the plaintiffs and the 3rd defendant. So, the defendants 1 and 2 approached the Sub Collector, Devakottai, in 2008. Without proper enquiry, it was kept pending. So, the defendants 1 and 2 filed appeal before the DRO, Devakottai. DRO, Devakottai remitted the matter back to the RDO. After due enquiry, patta was transferred in the name of the 1st defendant. During the pendency of the suit, the plaintiffs filed appeal before the DRO, Devakottai. Again DRO, Devakottai, restored the patta. It was issued in favour of the plaintiffs and the 3rd defendant. Against which, the defendants 1 and 2 filed W.P.No.8558 of 2013 and an interim order was also granted. As mentioned above, the sale deed relied upon by the plaintiffs is not related to the suit property. As per the native measurement that was prevailing in Sivagangai Jamin, one narrow (குறுக்கம்) and 56 cents. On the basis of the equivalence, the plaintiffs are claiming right over the suit property.

4.The statement of the 3rd defendant supported the plaint pleadings. He has stated that he was not available in India. Against the defendants 1 and 2, he prayed for decreeing the suit.



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5.The trial court has formulated the following issues:-

"(1)Whether the plaintiffs and the third defendant are entitled to the suit property as legal heirs?

(2)Whether the plaintiffs and the third defendant are entitled to the relief of declaration?

(3)Whether the plaintiffs and the third defendant are entitled to the relief of permanent injunction?

(4)To what other reliefs, the plaintiffs are entitled to?"

6.During trial, on the side of the plaintiffs, 2 witnesses were examined and 16 documents marked. On the side of the defendants, one witness was examined and 19 documents were marked.

7.At the conclusion of the trial process, the trial court dismissed the suit. Against which, AS No.50 of 2018 was preferred before the Sub Court, Devakottai. By judgment and decree, dated 27/12/2020, it dismissed the appeal, confirming the judgment and decree passed by the trial court.



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8. Against which, this second appeal is preferred by the plaintiffs.

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9. At the time of admission, the following substantial questions of law were framed:-

(1) Whether the First Appellate Court is right in dismissing the application for reception of additional evidence on mere surmises which is against the mandate of Order 41 Rule 27?

(2) Whether the Courts below are right in dismissing the suit of the appellant without taking necessary steps to find out the identification of the property?

(3) Whether the First Appellate Court is right in declining to receive additional evidence by adopting hyper technical approach?

10. Heard both sides.

11. The substantial questions of law framed above deals about the identification of the properties.



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12.The plaintiffs are the appellants herein. They failed both before the trial court as well as the first appellate court. It is seen that no proper steps were taken by the appellants herein to identify the property with reference to four boundaries now available. The revenue records are with reference to the earlier documents concerning the suit property as well as the adjacent properties.

13.In the written argument, number of sketches have been drawn with referring to the title document as well as the adjacent properties. Now this court cannot compare all those documents. The plaintiffs ought to have taken proper steps not only before the trial court, but also the appellate court. Even before this court, no steps have been taken by the appellants. Without taking steps, now the appellants have drawn some sketches in the written argument, which is not the basic evidence.

14.Fixing the property with reference to the title document, four boundaries cannot be undertaken by this court sitting in the second appellate stage. Regarding the possession, the matter may be remitted back to the trial court to identify the property by appointment of Commissioner. We can express only anguish of this court over such sort of request.



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15.The suit is of the year 2012. Now we are in 2024. 12 years lapsed. When the identification of the property is involved, as mentioned above, the plaintiffs who are the appellants herein ought to have taken proper steps at the appropriate time. But they failed twice. Now this request has been made.

16.For that purpose, the learned Senior Counsel appearing for the appellants would submit that the valuable right of the parties are involved, the length of time may not be taken as laches and lapses on the part of the plaintiffs. Even this sort of argument cannot be taken into consideration. But this will deal to find out whether any necessity arises for remanding the matter.

17.A new plea and argument was taken up by the appellants at the time of arguments.

18.It is contended by the appellants that by virtue of Ex.A1 on 19/10/1927, the property was purchased by the great grand-father of the plaintiffs from one Kalimuthu Servai and his brother namely Murugappan, who was aged about 11 at the time of execution of Ex.A1. The very same property, now it is stated by the defendants 1 and 2 that under Ex.B9 dated 07/01/1970 Arunachalam Servai alleged



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to have purchased the property from Kalimuthu Servai, Ponniah Servai and Samiaiah Servai. Kalimuthu Servai, Samiaiah Servai and Murugappan are the descendents of Kalimuthu, who sold the property under Ex.A1 to the plaintiff's great grand-father. So, this is the new plea, which has been taken without any pleadings, without any evidence and without any circumstances.

19.This has been objected by the respondents herein in the written argument stating that this new plea should not be taken into account.

20.Reading of the oral evidence of the parties does not indicate the explanation with regard to the origin of title through the predecessors-in-title. Whether the vendor under Ex.A1 Kalimuthu Cherai, Samiyaiah Cherai and Murugappan Servai are the ancestors of the vendor under Ex.B9 is a matter to be seriously looked into.

21.As mentioned above, there is no plea. But when this new fact is raised by the appellants herein for the first time before this court, it may not be proper on the part of this court to reject that plea, more specifically when request for remand is requested.



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22. So, for the purpose of finding out of the truth as to the origin of title, I am of the considered view that the parties may be permitted to file additional pleadings before the trial court in the event of remand.

23. The next contention on the part of the appellants is that the defendants 1 and 2 in the written statement admitted that the plaintiffs are having property on the north-south of the suit property. Now, they have to establish the boundaries of east and west and for that purpose, produced number of documents, as mentioned in the judgment of the trial court and the first appellate court. But the basic principle underlining the boundary recitals in a document in which the parties are not involved, then the executor or the witnesses to the document must be examined for proving the recitals, more particularly the boundary recitals, suppose the documents are not inter parties documents. If the documents are inter parties, then the documents must be proved through the executor. We need not concentrate much upon the boundary recitals for the simple reason that when the origin of the title of both parties are decided with reference to the relationship between the vendor under Ex.A1 and Ex.B9, it will not assume any importance at all.



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24. Another contention raised by the defendants 1 and 2 is that Ex.A1 is not related to the suit property and for that purpose only, the appellants wanted the boundary recitals to be proved to show that Ex.A1 is related only to the disputed property. So, it is for the trial court to decide as to whether the documents produced by the appellants to show the boundary recitals are properly established as per law. I leave that point to be decided by the trial court. Since, if any discussion or observation is made by this court, it may cause prejudice after remand. So, I am not entering into that point also.

25. On the sole ground, I am of the considered view that the matter must be remanded back to the trial court, granting permission to the parties to lead evidence and file further pleadings and if additional evidence also.

26. In view of the above, this second appeal is **allowed**. The judgment and decree passed by the courts below are set aside. The matter is remitted back to the trial court. The plaintiffs are directed to take steps for appointment of commissioner before the trial Court. The Commissioner may be directed by the trial court to identify the property in dispute with reference to the title documents, revenue records and adjacent documents



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to show the four boundaries. The commissioner fee may be fixed at its discretion by the trial court. Since laborious work is involved, the plaintiffs are directed to pay **Rs.10,000/-** as costs to the respondents 1 and 2 herein for the delay committed in filing the commission petition. The cost may be paid within a period of one month from the date of receipt of a copy of this order. Only on payment of costs, the trial court may restore the suit to its file and proceed to dispose of the same by appointing a Commissioner as noted above. The parties are permitted to lead oral and documentary evidence additionally. Accordingly, CMP(MD)No.3706 of 2024 is disposed of. Even though the first appellate court has dismissed the application filed in **IA No.1 of 2020** by the appellants herein, it stands allowed. Consequently, connected Miscellaneous Petition is closed.

30/10/2024

Index:Yes/No
Internet:Yes/No
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Note to Registry:-

The Registry is directed to return the documents filed in CMP(MD)No.3706 of 2024 in SA(MD)No.415 of 2021 after retaining the copy of the same.



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To,

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- 1.The District Munsif Court,
Devakottai,
Sivagangai District.
- 2.The Sub Court,
Devakottai,
Sivagangai District.
- 3.The Section Officer,
VR/ER Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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