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SA(MD)No.380 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

|                    |            |
|--------------------|------------|
| Date of Reserved   | 24/07/2024 |
| Date of Pronounced | 09/09/2024 |

**CORAM**

The Hon'ble Mr.Justice **G.ILANGOVAR**

**SA(MD)No.380 of 2021**  
**and**  
**CMP(MD)No.4967 of 2021**

R.Thiravium : Appellant/Respondent/  
Plaintiff  
Vs.

1.Pauldurai  
2.Late Elangavathi (Died) : Respondents/Appellants/  
Defendants

**PRAYER:-** Second Appeal is filed under section 100 of the Civil Procedure Code, to set aside the judgment and decree, dated 02/02/2021 passed in AS No.6 of 2020 on the file of the Principal Sub Court, Tenkasi, reversing the judgment and decree, dated 30/06/2019 passed in OS No.368 of 2014 on the file of the Principal District Munsif, Tenkasi.

For Appellant : Mr.A.Sankararamasubramanian  
For Respondents : No appearance



SA(MD)No.380 of 2021

**J U D G M E N T**

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This second appeal is filed against the judgment and decree, dated 02/02/2021 passed in AS No.6 of 2020 by the Principal Sub Court, Tenkasi, reversing the judgment and decree, dated 30/06/2019 passed in OS No.368 of 2014 by the Principal District Munsif, Tenkasi.

**2.The plaint averments:-**

The suit property originally belonged to the plaintiff's father by name Ramasamy Nadar and his brother ancestrally. There was an oral partition between them by which the suit 1<sup>st</sup> schedule was allotted to the share of Ramasamy Nadar. Ever-since he is in possession and enjoyment. The suit 2<sup>nd</sup> and 3<sup>rd</sup> schedules are part and parcel of the 1<sup>st</sup> schedule. A rough sketch is annexured along with the plaint in which the 1<sup>st</sup> schedule is mentioned as **ABCDEF** and the 2<sup>nd</sup> schedule is mentioned as **BCDE**. 3<sup>rd</sup> schedule is mentioned as **ABEF**. Prayer is asked in respect of 3<sup>rd</sup> schedule only. The 2<sup>nd</sup> schedule was settled in favour of the plaintiff by his father on 15/10/2010. He accepted the settlement, came into the possession. At that that, the 2<sup>nd</sup> schedule was a vacant site. 3<sup>rd</sup> schedule lies on the west of the 2<sup>nd</sup> schedule. Even at the time of settlement, that property was also handed over to the plaintiff. Even in the settlement



SA(MD)No.380 of 2021

deed, the western portion is mentioned as the property belongs to the plaintiff. More-over, the extent was mentioned approximately. After getting proper permission from the Local Authority, the plaintiff put up a house assessing the House Tax No.8/19. On the southern side of the property mentioned as 1<sup>st</sup> schedule, the defendants are living. On the west of the 2<sup>nd</sup> schedule, a lane measuring about 4 feet breadth and 15-1/2 feet length belongs to the plaintiff. That portion was used or utilized by the plaintiff for maintaining the 2<sup>nd</sup> schedule wall. The southern wall mentioned as **ED** in the sketch is common to the plaintiff and the defendants. In the 3<sup>rd</sup> schedule, the defendants have no right or possession. On 05/07/2014, the defendants tried to fix th window and plaster. That was prevented by the plaintiff. On the southern portion of the common wall, the defendants put up a grill gate measuring about 16 x 4 feet. The suit is laid for declaration that the plaint 3<sup>rd</sup> schedule absolutely belongs to the plaintiff; permanent injunction directing the defendants from putting up any window and plaster of **BE** wall; for permanent injunction restraining the defendants herein to drain water right and for other reliefs and costs.



WEB COPY



SA(MD)No.380 of 2021

3.The defendants filed written statement namely the first defendant stating that 2<sup>nd</sup> defendant was a formal party. Pending trial process, the 2<sup>nd</sup> defendant was reported to be dead. It is denied that the 3<sup>rd</sup> schedule or the 3<sup>rd</sup> item of the property absolutely belongs to the plaintiff. There is a lane belongs absolutely to the defendants. Survey No.207/3 was sub-divided as 3A to I. The property situated in Survey No.207/3 H absolutely belongs to the defendants. On the west of the Survey No.207/3 H, 3<sup>rd</sup> item of the schedule is situated. For that purpose, the defendants grand-father by name Paulvanna Nadar was granted with patta. He was paying kists. Paulvanna Nadar is the grand-father of the 1<sup>st</sup> defendant. The 1<sup>st</sup> defendant father's name is Arunachala Nadar. The 2<sup>nd</sup> defendant is the wife of Arunachala Nadar. The 1<sup>st</sup> defendant is the only son of Arunachala Nadar.

4.The plaintiff tried to put a window on the 3<sup>rd</sup> schedule wall. That was prevented by the defendants. Rough sketch annexed along with the plaint was prepared to his own convenience.

5.On the basis of the pleadings, the trial court framed the following the issues:-



WEB COPY



SA(MD)No.380 of 2021

*(1)Whether the plaintiff is entitled for declaration in respect of third schedule property?*

*(2)To what other relief, the plaintiff is entitled to?*

6.At the conclusion of the trial process, the trial court came to the conclusion that the title of the 3<sup>rd</sup> schedule was established by the plaintiff. The suit was decreed as prayed without any costs.

7.Against which, AS No.6 of 2020 was filed by the 1<sup>st</sup> defendant before the Sub Court, Tenkasi. The appellate court thought it fit otherwise by re-appreciating the evidence on record, reversed the findings of the trial court, allowed the appeal, dismissed the suit filed by the plaintiff.

8.Against which, this second appeal is preferred by the plaintiff as appellant.

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



WEB COPY



SA(MD)No.380 of 2021

*(1)Is the First Appellate Court correct in accepting the fact that the 'c' schedule of property situated in the sy.No.207/3H even the defendants not produced any title document to prove their claim as per their plea?*

*(2)Whether First Appellate Court rightly believed the Advocate Commissioner's report when the evidence of DW2 (Advocate Commissioner) proved the fact that the 'c' schedule of property situated in Sy.No.207/3I?*

10.It is a case of reversal finding, appreciation of evidence is very much required.

11.As mentioned in the preamble portion of the judgment, plaint 'C' schedule or 3<sup>rd</sup> schedule is the disputed property. It is a lane situated in between the plaintiff and the defendants house measuring about 4 x 15-1/2 feet.



SA(MD)No.380 of 2021

WEB COPY

12.As mentioned above, it is the specific case of the plaintiff that the suit property absolutely belongs to him. Rival claim is made by the defendants that it belongs to them. Since the suit is filed by the plaintiff seeking declaration and injunction, it is his duty to establish the right, title and possession.

13.Now we will go to the evidence available on record. Before that, we will go to the findings recorded by the trial court.

14.The disputed 3<sup>rd</sup> item is situated now in Survey **No.207/3 I**. In that property, the defendants have no right. A portion of the property situated in Survey **No.207/3 I** is covered in Survey **No.207/6 C**. So, the right and title over the disputed property is established by the plaintiff, though there was some mis-description of the extent in the title document of the plaintiff. But the four boundaries clearly encompass the disputed property.

15.The first appellate court says that the finding of the trial court is not correct that the disputed property is situated in survey **No.207/3 I**. But actually, it is situated in Survey **No.207/3 H**. The trial court has



SA(MD)No.380 of 2021

rendered a finding based upon the Commissioner report, which is not proper. Further finding by the first appellate court is that the plaintiff was conferred with title by Ex.A1 settlement deed measuring about 20 feet. The property situated on the west measuring about 4 feet width was not settled in his favour. Even in the plan approval, he has mentioned only 20 feet. The western portion is mentioned as pathway. So, the plaintiff has not established his right.

16.In the light of the above contradictory finding, now we will go to the evidence available on record.

17.The disputed property according to the plaintiff averment is situated in Survey No.**207/3 I**. It is the case of the plaintiff that when his father executed Ex.A1 settlement deed, he conferred right since the 3<sup>rd</sup> schedule also in his favour. Absolutely, there is no evidence on record to show the same.

18.As mentioned above, the property of the respondents herein worth about more than Rs.100/- can be conferred with the title only by a registered document. When there is no registered document conferring title in the 3<sup>rd</sup> schedule to the plaintiff, he cannot set up the



WEB COPY



SA(MD)No.380 of 2021

title. If at all, he can set up the title by adverse possession. There is no plea. More-over, title and adverse possession will not go hand in hand. In the absence of clear evidence on the side of the plaintiff that the 3<sup>rd</sup> schedule was also given to him by his father, the finding recorded by the trial court is not proper.

19. Now we will see the oral evidence of the plaintiff on this aspect. He would say that on the next day of Ex.A1 registration, his father gave him the 3<sup>rd</sup> schedule. If it is so, for the 3<sup>rd</sup> schedule, his father would have executed a separate settlement deed or a corrected settlement deed. He even disown the knowledge as to the lie of the 3<sup>rd</sup> schedule. He says that he is unaware whether it is situated in survey No. **207/3 I**. He admits that in respect of the 3<sup>rd</sup> schedule, no record is found in his name. In the absence of any direct document to show the tile of the plaintiff in the 3<sup>rd</sup> schedule, now we will see on what ground he is making the claim. He relies upon the circumstantial evidence. In Ex.A1, his father has stated that on the west of the property settled, one Madakannu property is situated. So, according to the plaintiff, this itself does not indicate that the extent is not mentioned in the settlement deed. So, boundary will prevail over the extent.



SA(MD)No.380 of 2021

WEB COPY

20. Whether it is acceptable is now the point to be considered. If really, 3<sup>rd</sup> schedule also belongs to the father, he would have clearly mentioned that fact in Ex.A1 settlement deed itself. But the father has mentioned that on the western side of the property, one Madakannu property is situated. Merely because, since the lane is not mentioned in the settlement deed, it does not confer any title upon the father himself. If only the plaintiff was able to prove that his father was the title-holder in respect of the 3<sup>rd</sup> schedule of the property also.

21. The plea now raised that the boundary still prevails over the extent is not at all available to him.

22. To show the title of the father and his brother, no document was produced, except the settlement deed. On his side, the western owner namely Madakannu was examined as PW2. He stated that the entire 3<sup>rd</sup> schedule orally given to the plaintiff father's possession at the time of settling the 2<sup>nd</sup> schedule. He gave the 3<sup>rd</sup> schedule orally to the plaintiff. In Ex.A6 he has mentioned that the eastern property belongs to the plaintiff's father.



WEB COPY



SA(MD)No.380 of 2021

23. So, whether his oral evidence can be accepted is the next point for consideration. Simply because, he has mentioned in the document under Ex.A6 that the eastern property belongs to the plaintiff's father, it does not take away the right of the defendants. So, his evidence is not helpful to the plaintiff, more so, when there is no direct evidence to show that the entire property belongs to his father and his brother. There is no evidence on record to show that oral partition took place between the plaintiff's father and his brother in which the entire 1<sup>st</sup> schedule was allotted to the father. In the absence of any evidence in this regard, the first contention that the four boundaries still prevails over the extent is not at all available.

24. The next plea that his father gifted or orally handed over the 3<sup>rd</sup> schedule to the plaintiff is also not established. Not only that, even it is so, it will not confer any title upon the plaintiff without any valid registered document. So, the claim made by the plaintiff over the 3<sup>rd</sup> schedule fails.

25. Now we will see the user, whether there is possibility or probability of this property to be used by the plaintiff and his father as their own separate lane.



SA(MD)No.380 of 2021

WEB COPY

26.It is admitted by the plaintiff himself that on the southern side of the 3<sup>rd</sup> schedule, grill gate was put up by the defendants, through that grill gate they are entering into the 3<sup>rd</sup> schedule and then to their own property. If really, the plaintiff owns the 3<sup>rd</sup> schedule, he would not have permitted the defendants to put up a grill gate on the southern side. So, this physical feature available on ground indicates that the plaintiff only used the 3<sup>rd</sup> schedule as his separate lane. But in the plaint, it has been stated that the defendants put up a grill gate illegally. When it was put up, whether any objection was made by the plaintiff is not clear on record. So, this lapse and latches on his part indicates that the property was never owned by him or used by him. Since the basic principle that in case of declaration of title, it is the duty of the plaintiff to establish the same regardless of any title document on the side of the opposite party. Here, the defendants claim right over the property by virtue of revenue records under Ex.B1. Revenue records need not be given any importance.

27.Now we will go to the commissioner report, which is heavily relied by the trial court, but upset by the first appellate court.



SA(MD)No.380 of 2021

28.Measurement was undertaken on the ground that he mentioned the 1<sup>st</sup> schedule as **ABCD**. It measures 24 feet east-west and 4.4 meters on the west and 4.6 meters on the east. The 3<sup>rd</sup> schedule is mentioned as **AA'D'D** and the plaintiff's house is situated in Survey No. **3 I** namely **207/3 I**. But a portion of the property lies in Survey No. **207/6 C** also. That portion measures 3 feet on the north-south, 15.6 feet on the east and 4.4 meter on the west. There is no proper explanation on the side of the plaintiff as to how his property is situated in Survey No.207/6 C also. Commissioner has further mentioned that in the 3<sup>rd</sup> schedule, the defendants grey water is draining. The grill gate is available in the southern portion, electric line also passes through the 3<sup>rd</sup> schedule to the house of the defendants. So, all the above features also available on ground also indicates that the plaintiff's title and the use of the property has not properly established. So, the contention on the part of the appellant that the defendants have no right over the property, except the patta, there was no objection by the defendants over the Commissioner report are all things, which does not confer or improve the case of the plaintiff.



SA(MD)No.380 of 2021

WEB COPY

29.The plaintiff would rely upon the judgment in ***P.Subramania Chetty Vs. P.N.Narayana and others [(2015)1 MLJ 797]*** for the purpose of argument that since the defendants have not established the title over the property except the patta, his right must be recognized. This sort of contention cannot be accepted. For the reasons stated above, this judgment will not helpful to the case of the appellant.

30.For all these reasons, that I find that for valid reasons the first appellate court upset the findings recorded by the trial court. So, the first substantial question of law is answered that the plaintiff has not established the right over the title of the property regardless in the absence of the title document on the side of the defendants.

31.The 2<sup>nd</sup> substantial question of law is answered that even though the disputed property is situated in Survey No.**207/3 I** as per the Commissioner report, it does not improve the case of the plaintiff namely the appellant herein. Accordingly, all the substantial questions of law are answered against the plaintiff that the plaintiff has not established the title over the property.



SA(MD)No.380 of 2021

WEB COPY

32.In the result, this second appeal fails and the same is **dismissed**, confirming the judgment and decree passed by the first appellate court, of course without any costs. Consequently, connected Miscellaneous Petition is closed.

09/09/2024

Index:Yes/No  
Internet:Yes/No.  
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To,

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



WEB COPY



SA(MD)No.380 of 2021

G.ILANGOVAN, J

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SA(MD)No.380 of 2021

09/09/2024