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S.A.(MD).No.364 of 2021

THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **28.03.2024**

CORAM:

THE HONOURABLE **MRS.JUSTICE S.SRIMATHY**

S.A.(MD).No.364 of 2021

and

C.M.P.(MD)No.4761 of 2021

N.Alagesan

... Appellant

/Vs./

1. S.Murugesan

2. S.Palanichamy

... Respondents

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, to set aside against the Judgment and Decree, dated 18.12.2020, made in A.S.No.43 of 2018 on the file of II Additional Sub Judge, Madurai, by reversing the Judgment and Decree of the trial Court in O.S.No.1165 of 2011, dated 07.02.2018, on the file of Principal District Munsif Court, Madurai Town and to allow the Second Appeal.

For Appellant : Mr.M.Saravanan
For R-1 & R-2 : Mr.R.M.Suresh



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JUDGMENT

This second appeal is filed to set aside the Judgment and Decree, dated 18.12.2020, made in A.S.No.43 of 2018 on the file of II Additional Sub Judge, Madurai, reversing the Judgment and Decree in O.S.No.1165 of 2011, dated 07.02.2018, on the file of Principal District Munsif Court, Madurai.

2. The plaintiff is the appellant herein and the defendants are the respondents herein in the second appeal. For the sake of convenience, the parties shall be referred as Plaintiff and Defendants as per the ranking in the suit.

3. The plaintiff had filed the suit for permanent injunction restraining the defendants 2 and 3 and their men from in any way interfering with the plaintiff's possession and enjoyment of the suit property. The said suit was allowed. Aggrieved over the same, defendants / respondents had preferred appeal suit and the same was allowed. Aggrieved over the same, the plaintiff / appellant had preferred the present second appeal.



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4. The brief facts are that originally the suit property in S.No.446 belonged to one Subbaiah. The said Subbaiah had three sons, namely, S.Murugesan, S.Palanichamy and S.Jothimani. The said three sons had sold the property in S.No.446 by dividing the same as three items to three different persons. The first item was sold to one Prabakaran, then another item of the property was sold to one Ayyappan and Pitchaimani, then the third item was sold to the plaintiff's vendor. After selling the property for adequate sale consideration the said three sons were disturbing the possession of the plaintiff and hence the plaintiff had filed the suit for injunction restraining the said three sons who are shown as three defendants.

5. Pending the suit, the first defendant, namely, S.Jothimani died and he has no legal heirs. Hence, the First Appeal is filed by the other two defendants.

6. The plaintiff and the defendants are admitting the sale to the plaintiff. The only contention of the defendant is that the property was sold to the plaintiff but without the Kal Mandapam situated in the said property. But the contention of the plaintiff is that the defendants have sold the property along with the Kal Mandapam, which would be evident if four boundaries of the all the sale deeds



are perused. Specifically in Ex.B-7 sale deed, while showing four boundaries towards South, it is shown as Kal Mandabam and three feet pathway. Hence the specific contention of the plaintiff is that when the boundaries are clear, if there are any errors in the schedule of property, then the boundaries would prevail over the errors.

7. In fact the second appeal is admitted on the following substantial question of law,

Whether while construing Ex.A1, Sale Deed executed by the defendants in favour of the appellant's vendor, the Lower Appellate Court failed to note that the boundaries set out therein would prevail over any error in respect of the survey number?

8. In order to ascertain the boundaries and the extent of boundaries, this Court appointed the Learned Senior Counsel, M/s.Krishnaveni, as Advocate Commissioner to survey the property. The Advocate Commissioner had filed a report stating that there is no extra place as claimed by the defendants. The said Kal Mandabam is sold to the plaintiff / appellant and the claim of the defendants that they have not sold the Kal Mandabam is incorrect. Further, the Advocate Commissioner submitted a sketch which clearly shows that a three feet pathway is



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shown as boundary in Ex.A-1, which has also been shown in the Ex. B-7. The boundaries stated in the Advocate Commissioner's report coincided with the sale deeds. Therefore, based on the proposition that the boundary will prevail over the survey number, the substantial question of law is answered in favour of the plaintiff / appellant. Hence, the second appeal is allowed. The Judgment and Decree passed by the first Appellate Court is set aside and the Judgment and Decree of the Trial Court is confirmed.

9. In the view of the above, this Second Appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

28.03.2024

Index : Yes / No

NCC : Yes / No

jbr

TO:

1. II Additional Sub-Court, Madurai.
2. Principal District Munsif Court, Madurai



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3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

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Judgment made in
S.A.(MD)No.364 of 2021

Dated:
28.03.2024