



A.S(MD)No.148 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 11.07.2024

CORAM

**JUSTICE N. SESHASAYEE
and
JUSTICE P.VADAMALAI**

A.S(MD)No.148 of 2015

Chelladhurai ... Appellant/Plaintiff

Vs.

1.Sree Ranjini

2.Natarajan ... Respondents/Defendants

Prayer: Appeal filed under Section 96 r/w Order 41 Rule 1 C.P.C., to set aside the judgment and decree passed by the District Court, Kanyakumari at Nagercoil in O.S.No.2 of 2010 dated 28.02.2015.

For Appellant :Mr.K.P.Narayanakumar

For R-1 :Mr.V.M.Balamohan Thambi

For R-2 :Mr.J.John Jeyakumar



JUDGMENT

(Judgment of the Court was delivered by N.Seshasayee, J.)

1.1.The plaintiff having lost his suit for partition of a specific plot measuring 4.42 acres out of a total extent of 14.42 acres in Re-Survey No.292/2 of Churulakode Village, Kalkulam Taluk, with an alternate prayer for demarcation of boundaries of his plot of land, approached this Court by way of this appeal. The parties would be referred to by their rank before the trial Court.

1.2. This appeal takes a different course and there is hardly any dispute which the plaintiff has against the first defendant and this is explained in the paragraphs below:

2. The minimum facts may be stated as below:

- Certain Anandha Pillai owned 14.42 acres in Re-Survey No.292/2. She did not have any children. Therefore, on 09.02.1962, under Ext.A1, she parcelled out her entire 14.42 acres into three specific plots and settled the same in favour of three individuals. The details are: (i) the northern most 5 acres in favour of her brother



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Gopalakrishnan Nair (“A” Schedule in Ext.A.1); (ii) the southern most 5 acres in favour of her nephew Narayanan Nair (“B” Schedule in Ext.A1); and (iii) the middle 4.42 acres in favour of another nephew Ramachandran Nair.

- The plaintiff had purchased the middle 4.42 acres from Ramachandran Nair *vide* Ext.A.2-sale deed, dated 10.07.2006. The first defendant herein is the daughter of Gopalakrishnan Nair, the allottee of the northern most 5 acres under Ext.A.1. The second defendant is the purchaser of the southern most 5 acres, which is described in “B” Schedule under Ext.A.1.
- While so, the first defendant along with her husband had earlier laid O.S.No.216 of 2007 before the District Munsif Court, Padmanabhapuram for declaration of their title as well as for recovery of 70 cents, which according to the plaintiffs in that suit was encroached by the present plaintiff as well as the second defendant. That suit came to be partially decreed and the trial Court had found that the present plaintiff was in possession of about 62.72 cents that belonged to Gopalakrishnan Nair. The plaintiff herein had futilely challenged this decree till up to the Hon'ble Supreme Court and has eventually lost his contest. The



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decree holders in O.S.No.216 of 2007 laid an execution petition for effecting delivery of 62.72 cents from the plaintiff herein, but the plaintiff instead of delaying the inevitable, chose to purchase peace and indeed purchased the disputed 62.72 cents from the decree holders in O.S.No.216 of 2007. This document was not produced before the trial Court, but now it is sought to be produced before this Court vide C.M.P.(MD) No.11027 of 2022 filed under Order 41 Rule 27 of Code of Civil Procedure and since this document is executed by the first respondent herself, the learned counsel for the first respondent did not offer any objection to the same and accordingly, this document is received in evidence as Ext.A.14.

3. Now the plaintiff/appellant has some dispute in fixing the boundary with the second defendant. However, it is brought to the notice of this Court that portion of the property of the appellant is now being enjoyed by the second defendant. Indeed it is informed that there had been a revenue sub-division of the entire survey fields and the northernmost block which belongs to the first defendant now comes under Survey No. 292/2A. The middle block which belongs to the plaintiff comes under



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Survey No.292/2B. Southernmost block which was purchased by the second defendant comes under Survey No.292/2C.

4. In *Rukkaiah Natchiar vs. P.M.S.Mohamed Aamina Beevi and others*[2020 (6) CTC 390], one of us [N.SESHASAYEE, J.] had held that the survey boundary as determined by the Survey Officials will attain finality only as regards the survey fields and cannot affect the title of the parties. In other words, if the boundary line as fixed by the Survey Officials falls within the piece of land that belongs to a single owner, then it cannot affect the title of the property. In such circumstances, the owner of the property can always claim his title to the property within the survey boundaries and also can establish that such portion of the property that falls on the other side of the boundary line belongs to him.

5. This exactly appears to be a scenario here. If by survey operation, some portion of the property belonging to the plaintiff and which ought to be part of his survey sub-division, is included in the southern block of land belonging to the second defendant, then the plaintiff can always, subject to all other relevant provisions of law is entitled to seek recovery of the same from the second defendant. It is hence demarcation which



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as prayed for by the plaintiff against the second defendant cannot be considered unless this issue is determined by a competent civil Court.

6. This appeal is accordingly disposed of and it is upto the plaintiff/appellant herein to work out his remedies against the second defendant in an independent proceedings. No Costs.

(N.S.S., J.) (P.V.M., J.)
11.07.2024

NCC : Yes/No
Index : Yes/No
PM

To

1.The District Judge,
District Court, Kanyakumari at Nagercoil

2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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