



S.A(MD)No.188 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 06.03.2024

Pronounced on : 23.09.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

S.A(MD)No.188 of 2018

Rengasamy

... Appellant/Appellant/Plaintiff

Vs.

Jeyabal

... Respondent/Respondent/
Defendant

PRAYER :-

This Second Appeal is filed under Section 100 of the Civil Procedure Code, to set aside the judgment and decree dated 18.09.2017 passed in A.S.No.50 of 2012 on the file of the Sub Court, Pattukottai by confirming the judgment and decree dated 06.08.2012 passed in O.S.No.241 of 2010 on the file of the District Munsif Court, Pattukottai and thus allow the appeal with costs.

For Appellant : Mr.D.R.Murugesan

For Respondent : Mr.V.Ramamurthy



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JUDGMENT

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This Second Appeal is filed against the judgment and decree, dated 18.09.2017 passed in A.S.No.50 of 2012 on the file of the Sub Court, Pattukottai, confirming the judgment and decree dated 06.08.2012 passed in O.S.No.241 of 2010 on the file of the District Munsif Court, Pattukottai.

2. The appellant is the plaintiff and the respondent is the defendant in O.S.No.241 of 2010 on the file of the District Munsif Court, Pattukottai. The appellant/plaintiff has filed the suit for declaration that the suit property belongs to the plaintiff and also for mandatory injunction directing the defendant to demolish the latrine and septic tank constructed in the suit property and hand over possession to the plaintiff.

3. For the sake of convenience, the parties referred as plaintiff and defendant as arrayed in O.S.No.241 of 2010 on the file of the District Munsif Court, Pattukottai.



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4. Case of the plaintiff:

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An extent of 1 ½ cents in S.No.711/52, new S.No.769/19 of Madhukoor village, Pattukottai originally belonged to one Ramasamy Vellalar son of Kuppusamy Vellalar. On 18.02.1960 another one Ramasamy Vellalar son of Duraisamy Vellalar purchased the said property through a registered sale deed and he had been enjoying the said 1 ½ cents along with his adjacent southern side land in S.No.316/4 as a single plot. The plaintiff purchased 1 ½ cents in suit survey number and adjacent land in S.No.316/4 from the said Ramasamy Vellalar, S/o.Duraisamy Vellalar and his brother Rengasamsy Vellalar by virtue of registered sale deed, dated 28.08.1978 and he has been in possession and enjoyment of the same from the date of purchase. In the sale deed, the plaintiff's vendor mistakenly mentioned as two cents of land instead of 1 ½ cents in suit survey number. The defendant has ancestral land on the western side of the suit property. There is no ridge between the property of the plaintiff and the defendant. The total extent of suit survey number is 5.1 kuzhi out of which the plaintiff is entitled to 4.5 kuzhi (1 ½ cent) and the defendant is entitled to 0.6 kuzhi. In the year 2005, the plaintiff attempted to measure and demarcate the boundary for his property with the help of surveyor. The surveyor was restrained by the defendant. The defendant constructed a



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latrine with septic tank in the suit property and put up a fence on the southern side. Hence, the suit.

5. Case of the Defendant:

The defendant had ancestral land on the western side of the suit survey number. The defendant's father purchased $\frac{1}{2}$ cent in suit survey number including the suit property in the year 1971 and he had been in possession and enjoyment of the same from 1971. It is falsely stated that the total extent of suit survey number is $1 \frac{1}{2}$ cents, but, the plaintiff's vendor mistakenly mentioned as 2 cents in the sale deed dated 28.08.1978. The defendant's father constructed a latrine in the said property nearly 40 years back. The total extent of old suit S.No.711/52 and present S.No.769/19 is 2 cents and out of which the defendant purchased $\frac{1}{2}$ cent. Joint Patta No.1752 stood in the name of the plaintiff and the defendant. The plaintiff has to prove the extent of suit property. The other averments are denied as false. There is no cause of action for the suit. Hence, the suit is liable to be dismissed.

6. During trial, on the plaintiff's side, the plaintiff was examined as P.W.1 and one Muthuraj was examined as P.W.2 and marked 9 exhibits as



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Ex.A.1 to Ex.A.9. On the defendant's side, the defendant was examined as D.W.1 and one Selvaraj was examined as D.W.2 and three exhibits were marked as Ex.B.1 to Ex.B.3. Commissioner's report and plan were marked as Ex.C.1 and Ex.C.2.

7. After hearing both sides, the learned District Munsif, Pattukottai concluded that the plaintiff failed to establish his title to the suit property and dismissed the suit by passing judgment dated 06.08.2012.

8. Aggrieved by the judgment and decree in O.S.No.241 of 2010, the plaintiff preferred the Civil Appeal in A.S.No.50 of 2012 before the Subordinate Court, Pattukottai. The first Appellate Court after hearing both and after perusing material records of the case dismissed the appeal in A.S.No.50 of 2012 by passing judgment dated 18.09.2017 and confirmed the judgment and decree passed in O.S.No.241 of 2010.

9. Challenging the judgment and decree of the First Appellate Court, the defendant has preferred this Second Appeal and the same has been



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admitted on 21.06.2018 by framing the following substantial questions of law:-

"a. Whether the judgment and decree of Courts below are sustainable in law since the title of the suit property has been admitted by pleadings namely written statement and as well as in evidence of D.W.1.

b. Whether the Courts below are right in holding that the appellant/plaintiff has failed to establish his title despite the fact that Exs.A1 and A. 2 are anterior in point of time than that of Ex.B.1?

c. Whether the findings of the Courts below in respect of advocate commissioner report namely Exs.C.1 and C.2 is sustainable in law since it discloses that only 5.1 kuzhis of land is available on ground?

d. Both the Courts below are correct in not holding that the plaintiffs right title flows anterior in point of time and required to be upheld. "

10. The learned counsel for the appellant/plaintiff submitted that the suit survey number consisted of only 1 ½ cents, the plaintiff purchased



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1 ½ cents in the year 1978. His vendor purchased the same in 1968. In the sale deed – Ex.A.1, the vendor has not retained any portion of the land. The vendor has mentioned as 2 cents instead of 1 ½ cents. The plaintiff's title deeds were marked as Ex.A.1 and Ex.A.2. The defendant admitted that the plaintiff is entitled to 1 ½ cents in suit survey number in his written statement as well as in his evidence as D.W.1. Admission is the best evidence which need not be corroborated by any other evidence. In the case, an advocate/commissioner visited the suit property and filed Exs.C.1, C2 reports mentioning that on ground there is 5.1 kuzhi only in the suit survey number, out of which, the plaintiff is entitled to 4.5 kuzhi and the defendant is entitled to the rest portion 0.6 kuzhi. As per measurement, one cent denotes three kuzhis if so, ½ cents denotes 1 ½ kuzhi, but on the ground, the rest portion is only 0.6 kuzhi according to the commissioner's report. The Courts below observed that the commissioner has not mentioned the actual property to which both parties are entitled and thereby ignored the commissioner's report without any reasoning and contrary to the facts and circumstances of the case. Both the Courts below held that the plaintiff and the defendant failed to establish their respective title. The plaintiff has established his case by producing title deeds and also the commissioner's report revealed about the



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plaintiff's property. The plaintiff has clearly averred in the pleadings and let in evidence about his title. The plaintiff's definite case is that there is only 1 ½ cents in the suit survey number and his vendor mistakenly mentioned as 2 cents in the sale deed, so when there is misconstruction of a document or wrong application of a principle of law in understanding a document, it gives rise to a question of law and the question of law involved in the case emerged from the findings of facts by the Courts below. The plaintiff seeks reappraisal of evidence adduced in the case as the courts below dismissed the case based on complete misappreciation of evidence. Both the Courts below failed to consider these aspects, but erred in dismissing the suit. Hence, the learned counsel requested to allow the Second Appeal. In support of his argument, the learned counsel for the appellant/plaintiff relied on the following citations:

***"(1) (2020) 19 Supreme Court Cases, 57 (Nazir
Mohamed /v/ J.Kamala and Others)***

***(2) (2019) 9 Supreme Court Cases 381 (Ravi
Setia /v/ Madan Lal and Others)***

***(3) (2007) 1 Supreme Court Cases 546 (Gurdev
Kaur and Others /v/ Kaki and Others)"***



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11. Per contra, the learned counsel for the defendant contended that the plaintiff's vendor's vendor is one Ramasamy son of Kuppusamy, who sold 1 ½ cents to the plaintiff's vendor through Ex.A.1 registered sale deed. In the said sale deed, the western boundary is the defendant's father's property. The very same Ramasamy son of Kuppusamy sold ½ cents to the father of the defendant through Ex.B.1 sale deed, in which also the western boundary was mentioned as the defendant's father's land. Even as per the plaintiff's case, the suit survey number has 5.1 kuzhi out of which, 4.5 kuzhi belongs to the plaintiff, so there is the rest of portion i.e., 0.6 kuzhi. So, it is enough to hold that the plaintiff's vendor had more than 1 ½ cents and disproves the averment of the plaintiff that the said Ramasamy is not having any extent more than 1 ½ cents in the suit survey number. Ex.A.1 and Ex.B.1 were taken place even prior to the purchase of the plaintiff through Ex.A.2. Moreover, there is a joint patta for the suit survey number issued in the name of the plaintiff and the defendant. The latrine and septic tank were constructed by the father of the defendant. The D.W.2 evidence is clear that they were constructed before 30 years. The commissioner also mentioned in his Ex.C.1 report that they were constructed 8 years ago. So, the latrine and septic tank were in existence for the past several years. Since the plaintiff has



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no case, he has not objected the same. The plaintiff admitted that the defendant has ancestral land on the western side, which showed as boundary in Ex.A.1 and Ex.B.1. The plaintiff has not taken any steps to rectify the wrong mentioning in his sale deed - Ex.A.2. The Courts below correctly appreciated the evidences adduced by both parties and correctly dismissed the suit. The finding of the Courts below is a concurrent one. Concurrent findings could not be set aside unless the question of law decided favouring the appellant in the Second Appeal. The question of law could not be decided in favour of the appellant as the suit was factually decided by the Courts below. Therefore, this Second Appeal may be dismissed. In support of his argument, the learned counsel for the defendant relied on the following citations:

***"(1) 2023 (1) TLNJ 179 (Civil) (Raja Counder
& Ors. /v/ Sengodan and Others)***

***(2) (2012) 8 Supreme Court Cases 516
(Ahmedsaheb (Dead) by LRs. & Ors. /v/ Sayed
Ismail)"***

12. Heard the arguments of both sides and perused the material records of the case.



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13. The suit property is about $\frac{1}{2}$ cent in suit S.No.711/52 and present S.No.769/19. The plaintiff's definite case is that there is only $1\frac{1}{2}$ cents in the suit survey number and his vendor mentioned in the sale deed as 2 cents instead of $1\frac{1}{2}$ cents. The defendant's case is that his father purchased $\frac{1}{2}$ cent in the suit survey number from its original owner even prior to the purchase of the plaintiff and constructed the latrine and septic tank therein. On perusal of records, it is evident that the plaintiff admitted that even prior to his purchase the land was taken measurement through revenue officials and there was 5.1 kuzhi available. The same was mentioned in the commissioner's report Ex.C.1. According to the citation of both sides, it is settled principle that admission is the best evidence, which need no corroborative evidence. So, the plaintiff's case that the suit survey number had only $1\frac{1}{2}$ cents and that his vendor had no land more than that of $1\frac{1}{2}$ cents is not established.

14. Admittedly, the defendant's ancestral land was situated on the western side of the suit survey number. The same was mentioned as boundary in Ex.A.1 and Ex.B.1, both came into existence prior to Ex.A.2. Ex.A.2 is a sale deed through which the plaintiff purchased $1\frac{1}{2}$ cents. There is no dispute in it. If really the suit survey number was $1\frac{1}{2}$ cents, while it was



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mentioned as 2 cents in his sale deed, which was registered in 1978, why the plaintiff has not taken any rectification at that time? There is no acceptable reason on the plaintiff's side. It is evident from the records that joint patta was issued in the name of the plaintiff and the defendant for the suit survey number property. The plaintiff has not disputed the same. The Courts below correctly appreciated the evidence and held correct decision. As per rulings relied on both sides, it is a settled proposition of law that in the Second Appeal it is not open to the appellant to reagitate facts or to call upon the High Court to reanalyze or reappraise evidence in the Second Appeal and this Court cannot expand the scope of the appeal.

15. In the citations relied on by the appellant/plaintiff, it is also clear that reappraisal of evidence is permissible only where the findings are perverse i.e., based on complete misappreciation or erroneous consideration of evidence. But, in this case on hand, the Courts below have come to the conclusion based on correct appreciation of evidence let in by both sides. P.W.1 admitted in his evidence that prior to his purchase, he caused measurement of land and found that there was 5.1 kuzhi of land in the suit survey number i.e., more than 1 ½ cents, which itself disproved the plaintiff's



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own case that the suit survey number has only 1 ½ cents.

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16. Admittedly in this case, the joint patta stood in the name of the plaintiff and the defendant for the suit survey number. The joint patta was not disputed by the plaintiff. In Ex.A.2 - sale deed, which is executed in favour of the plaintiff, the recital is mentioned as 1 ½ cents out of 2 cents sold. So the plaintiff admitted an ½ cent was left out in the said survey number. Ex.A.1 stands in the name of plaintiff's vendor and Ex.B.1 stands in the name of defendant's father. In both deeds, the western boundary is shown as the defendant's ancestral property. It is not the case of the defendant that the plaintiff is not entitled to 1 ½ cents, the defendant admits that the plaintiff is entitled to 1 ½ cents. But, the plaintiff has not established that the suit survey number is only 1 ½ cents against his own Ex.A.1 and Ex.A.2 which clearly mentioned the extent as two cents. Even as per the commissioner's report, more than 1 ½ cents of land is available in the suit survey number.

17. A decision based on no evidence and ignoring material evidence can be interfered by way of Second Appeal. In the case on hand, the Courts



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below took decisions based on oral and documentary evidence. This Court does not see any misappreciation of evidence by the Courts below. Concurrent findings cannot be interfered with unless in the absence of any ignorance or wrong inferences from proved facts by the Courts below. From the above facts and circumstances, the Courts below found concurrent findings based on evidences adduced in the case. The said findings need not be interfered by this Court by way of Second Appeal. Hence, the question of law framed in this appeal is answered against the appellant/plaintiff. Thus, this Second Appeal fails.

18. In the result, the Second Appeal is dismissed. The judgment and decree dated 18.09.2017 passed in A.S.No.50 of 2012 on the file of the Sub Court, Pattukottai confirming the judgment and decree dated 06.08.2012 passed in O.S.No.241 of 2010 on the file of the District Munsif Court, Pattukottai is confirmed. No costs.

23.09.2024

NCC : Yes / No
Internet : Yes / No
Index : Yes / No
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To

- 1.The Sub Court,
Pattukottai.
- 2.The District Munsif Court,
Pattukottai
- 3.The Record Keeper,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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P.VADAMALAI, J.

VSD

**Pre-Delivery Judgment made in
S.A(MD)No.188 of 2018**

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