



S.A.(MD)No.231 of 2017,

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.09.2024

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A(MD)No.231 of 2017

1.Mani @ K.Masilamani

2.Pappathi

... Appellants /
Appellants /
Plaintiffs

-Vs-

1.Eranaveeran (Died)

2.Kuruvammal

3.Narayanamoorthy

4.Karuppasamy

5.Murugan

***(R.2 to R.5 are brought on record as
LRs of the deceased Sole Respondent
vide order of this Court dated 15.11.2023
in CMP(MD)Nos.15083, 15084 and
15085 of 2023)***

... Respondents

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, to allow this Second Appeal by setting aside the decree and judgment of the Subordinate Court, Srivilliputhur in A.S.No.04 of 2012 dated 16.02.2017 confirming the judgment and decree of the learned Principal



S.A.(MD)No.231 of 201 ,

District Munsiff, Srivilliputhur made in O.S.No.471 of 2008 dated 01.07.2011.

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For Appellants : Mr.S.Manikandan

For Respondent : Mr.P.Vadivel
for R.2 to R.5

R.1 - Died

JUDGMENT

Heard both sides.

2.The plaintiffs in O.S.No.471 of 2008 on the file of Principal District Munsif Court, Srivilliputhur are the appellants in this second appeal. The suit was for declaration and permanent injunction. The defendant filed written statement controverting the plaint averments. The plaintiffs examined themselves as P.W.1 and P.W.2. Ex.A1 to Ex.A12 were marked. The defendant examined himself as DW.1 and one Suresh was examined as DW.2. Ex.B1 to Ex.B3 were marked. After consideration of the evidence on record, the trial Court dismissed the suit vide judgment and decree dated 01.07.2011. Aggrieved by the same, the plaintiffs filed A.S.No.04 of 2012 before the Sub Court, Srivilliputtur. Vide judgment and decree dated 16.02.2017, the first appellate Court confirmed the decision of the trial Court and dismissed the appeal. Challenging the same, this Second Appeal came to be filed.



3.Though the Second Appeal was filed in the year 2017, it has not been admitted till date.

4.The learned counsel for the appellants reiterated all the contentions set out in the grounds of appeal and called upon this Court to frame substantial questions of law, admit the second appeal and thereafter take up the second appeal for final disposal.

5.The defendant has passed away and the legal heirs have come on record.

6.The learned counsel for the respondents submitted that the impugned judgments are well reasoned and that no substantial question of law arises for consideration. He pressed for dismissal of the appeal.

7.I carefully considered the rival contentions and went through the evidence on record.

8.The plaintiffs trace their title to Ex.A8 dated 28.05.2008 executed by Josephraj in his capacity as power agent of Anthonisamy and Babu. The property originally belonged to one Chellam Iyyengar. According to the plaintiffs, Chellam Iyyengar had sold the suit property vide Ex.A11 dated



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30.10.1997 in favour of one Muthammal. Muthammal and others joined together and conveyed the suit property along with another item in favour of one Manivel, Josephraj and Anthonisamy in Ex.A1 vide sale deed dated 09.09.1981. There was partition between Josephraj and Anthonisamy under Ex.A2 dated 04.06.1984. Vide Ex.A3 dated 28.07.1994 Manivel executed settlement deed in favour of his son Josephraj. Subsequently, vide Ex.A6 Josephraj executed settlement deed dated 29.12.2006 in favour of his son Babu. Babu vide Ex.A7 dated 05.11.2007 executed power of attorney in favour of his father Josephraj. Subsequently, Ex.A8 dated 28.05.2008 came to be executed in favour of the plaintiffs.

9.This tracing of title by the plaintiffs over the suit property was contested by the defendant. The defendant pointed out that the suit property is comprised in Survey No.3A/1A2, Sivanthipatti Village and that this survey number is not mentioned in Ex.A.11 dated 03.10.1977 as well as in Ex.A1 dated 09.09.1981. It finds mentions for the first time only in the settlement deed Ex.A6 dated 29.12.2006 and the subsequent documents.

10.The plaintiffs contended that even in Ex.A11, the eastern boundary has been mentioned as main road and that therefore from the four boundaries one can easily come to the conclusion that the suit property is covered under Ex.A11.



11.The defendant also traced his title only to Chellam Iyyengar.

There was partition in the family of Chellam Iyyengar in the year 1963.

Chellam Iyyengar passed away and his son Srinivasan and grandson Suresh executed Ex.B1 dated 07.02.2007 in favour of the defendant.

12.I went through Ex.A11. The four boundaries are found mentioned therein are as follows :

“to the south of Shanmugam Pillai's land,

to the west of the main road,

to the north of Thathankulam boundary and Narayankulampatti pathway,

to the east of Santhanam @ Krishnan and Vasantha land”

13.It is seen that the plaintiffs had not taken any step for appointing an Advocate Commissioner to co-releate the four boundary description found in Ex.A11 with the suit property. Admittedly, the parent documents of the plaintiffs do not contain the survey number. There is only description of boundaries. Therefore, it was incumbent on the part of the plaintiffs to have taken steps to co-relate the description in the parent documents with the suit property. This they have not done. And this is fatal.



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14.Of course, the learned counsel for the appellants would contend that Chellam Iyyengar had three sons and that only one of them had executed the sale deed Ex.B1 in favour of the defendant.

15.There may be some weakness in the defendants' case. But the plaintiffs cannot take advantage of the same. When the plaintiffs seeks relief of declaration, it is incumbent on their part to prove their case to the satisfaction of the Court. The plaintiffs have failed to do so. And that is why both the Courts below found the case against the plaintiffs. No substantial question of law arises for consideration.

16.This Second Appeal stands dismissed. No costs.

04.09.2024

Internet : Yes/No

Index : Yes/No

NCC : Yes/No

To

1.The Subordinate Court,
Srivilliputhur.

2.The Principal District Munsiff,
Srivilliputhur.

Copy To

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



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G.R.SWAMINATHAN.J.,

MGA

**Judgment made in
S.A.(MD)No.231 of 2017**

04.09.2024