



S.A.No.1581 of 2000

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.06.2024

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No.1581 of 2000
and C.M.P.No.14828 of 2000

- 1.Abdul Lathif
- 2.Mohamed Gani (Died)
- 3.Asanathu
- 4.Zainambu (Died)
- 5.P.M.Abubackker
- 6.A.Kalafullah
- 7.A.Amardeen
- 8.A.Abudhaheer
- 9.S.Razhiyad Begum
- 10.A.Rahanathullah
- 11.A.Yoosuff
- 12.H.Mariam Beevi
- 13.M.Hassan Mohamed
- 14.M.Safiullah
- 15.M.Fakkrudeen
- 16.M.Shahul Hameed
- 17.M.Naina Mohamed
- 18.M.Amardeen
- 19.S.Ayesha Banu
- 20.A.Siddika Begum
- 21.M.Mumthaj Begum
- 22.M.Mohamed Umar Farook
- 23.M.Subhaitha Begum

... Appellants

***(Appellants 5 to 15 are brought on record as
LRs of the deceased 4th appellant vide order dated
30.08.2009 made in M.P.(MD)Nos.1 to 3/2009)***

(Appellants 13 to 23 are brought as LRs of deceased 2nd



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***appellant vide Court order dated 09.02.2016 made in
M.P.(MD)Nos.1 to 3 of 2013)***

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Vs

- 1.Sheik Mohamed (Died)
- 2.Abdul Gani
- 3.S.Sabber Ali
- 4.S.Sahul Hameed
- 5.Habitha Negam
- 6.Vahitha Begam

... Respondents

***(Respondents 3 to 6 are brought on record as LR's of
the deceased first respondent vide Court order
dated 17.08.2023 made in C.M.P.(MD)No.11818/2017)***

PRAYER: Second Appeal filed under Section 100 of C.P.C. against the judgment and decree dated 07.08.2000 made in A.S.No.223 of 1999 on the file of Subordinate Judge, Tiruchirapalli, reversing the judgment and decree dated 27.07.1995 made in O.S.No.94 of 1987 on the file of District Munsif, Manaparai.

For Appellants : Mr.P.Thiagarajan

For Respondents : Mr.K.Govindarajan for R3, R5 & R6
No Appearance for R2 & R4
R1 Died.

JUDGMENT

The plaintiffs in the suit are the appellants. The suit is for declaration of title in respect of 'A' schedule property, permanent



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injunction and mandatory injunction in respect of the 'B' schedule property. The suit was decreed by the trial Court. The first appeal filed by the respondents was allowed and the suit was dismissed. Aggrieved by the same, the plaintiffs are before this Court.

2. According to the plaintiffs, the suit property originally belonged to Chinniya Rowthar @ Syed Mohamed Rowthar. The father of the plaintiffs Naina Mohamed purchased the suit property on 04.10.1908 under Ex.A1. From the date of purchase, the suit property has been in possession and enjoyment of the plaintiffs' father and after his death, the plaintiffs have been in possession and enjoyment. In the year 1987, the defendants encroached the portion of the suit property in the Southern portion. The entire property purchased by the plaintiffs' father was shown as 'A' schedule and the portion encroached by the defendants was shown as 'B' schedule.

3. The defendants resisted the suit by setting up title in themselves. It was the case of the defendants that they purchased the suit property from one Rahamad Beevi under Ex.B1 dated 09.02.1965. The defendants claimed that they have been in possession and enjoyment of



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the suit property from the date of purchase openly and continuously and hence, claimed adverse title also.

4. Before the trial Court, the second plaintiff was examined as P.W.1 and one Ismail was examined as P.W.2. Three documents were marked on the side of the plaintiffs as Ex.A1 to Ex.A3. The first defendant was examined as D.W.1 and two other witnesses were examined on behalf of the defendants as D.W.2 and D.W.3. On behalf of the defendants, 9 documents were marked as Ex.B1 to B9. The plans and reports of the Advocate Commissioner were filed as EX.C1 to Ex.C4.

5. The trial Court, on appreciation of oral and documentary evidence available on record, came to the conclusion that the plaintiffs established their right over the suit property and hence, granted a decree for declaration, permanent injunction and mandatory injunction as prayed for. Aggrieved by the same, the defendants preferred an appeal in A.S.No.223 of 1999. The first appellate Court reversed the findings of the trial Court and allowed the appeal. Hence, the plaintiffs are before this Court.

6. At the time of admission, this Court formulated the following



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substantial question of law by an order dated 29.09.2000:

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“When the defendants having not disputed the identity of Exs.A1 & B1 which is the suit property still is the learned Subordinate Judge right in holding that Exs.A1 and B1 are not one and the same?”

7. Elaborating the substantial question of law framed at the time of admission, the learned counsel for the appellants submitted that the defendants have not disputed the identity of the property covered by EX.A1 and Ex.B1 and in such circumstances, Ex.A1 being anterior in time, the first appellate Court ought have upheld the title of the plaintiff by negating the plea of the defendants based on a subsequent document. The learned counsel further submitted that when the suit property was purchased by the plaintiffs in the year 1908 itself, absolutely, there was no chance for the vendor of the defendants to convey the very same property under Ex.B1.

8. The learned counsel appearing for the respondents submitted that the boundary descriptions found in Ex.A1 and the plaint boundary descriptions are not tallying and by pointing out the discrepancies, the first appellate Court rightly negated the relief prayed for by the



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plaintiffs.

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9. The plaintiffs claim right over the suit property under Ex.A1. It is settled law in a suit for declaration and other consequential reliefs, the plaintiffs have to establish the case on their own strength and they cannot rely on the weakness of the defence. In Ex.A1, title document of the plaintiffs, four boundaries of the suit properties are mentioned as follows:

“South of Sandaipettai compound

North of ஆறு (River)

East of vacant site

West of property of the purchaser I.e., father of the plaintiffs.”

In the plaint description, the suit 'A' schedule property has been described as follows.

South of Sandaipettai Street.

North of plaintiffs' vacant site

West of plaintiffs' house and vacant site



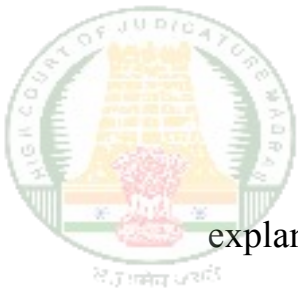
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East of Mohamed Ismail's house

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10. The comparison of the boundary description in Ex.A1 and plaint schedule would indicate that the Northern and Eastern boundaries are tallying. However, the Southern and Western boundaries mentioned in Ex.A1 are not tallying with the boundaries mentioned in suit schedule. The learned counsel for the appellants submitted that at the time of purchase in the year 1908, the property on the Western side of suit property was vacant site and now it has been developed by one Mohammed Ismail and hence, Mohammed Ismail's house has been shown as the Western property of the plaintiff. However, the said fact has not been spoken to by the plaintiffs' side witnesses. In the absence of any evidence to show that vacant site on the Western side of the suit property was purchased by Mohamed Ismail and developed by him, the submission made by the learned counsel for the appellants cannot be accepted.

11. On the other hand, a perusal of evidence of P.W.1 would indicate that the property located on the Western side of the property was purchased by the father of the plaintiffs under Ex.A2. There is no



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explanation how the said Mohamed Ismail put up a construction in the property purchased by the father of the plaintiffs on the western side of the property and further, as rightly pointed out by the first appellate Court, the Southern boundary of the suit property was shown as a river in Ex.A1 and in the suit schedule, the southern boundary was shown as plaintiffs' property. Therefore, there is a serious discrepancy in the plaint schedule and Ex.A1 regarding the Southern and Western boundaries. In such circumstances, the first appellate Court rightly came to the conclusion that Ex.A1 is not relating to the suit property and hence, the plaintiffs failed to prove their right over the suit property. A perusal of the boundary description in Ex.A1 and Ex.B1 would indicate that the properties dealt with under Ex.A1 and Ex.B1 are not one and the same. The substantial question of law framed at the time of admission is thus answered against the appellants and in favour of the respondents. As a necessary consequence, the findings of the first appellate Court is confirmed and the Second Appeal shall stand dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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Neutral Citation : Yes/No

Index : Yes/No

Internet : Yes/No

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To

- 1.The Subordinate Judge, Tiruchirapalli.
- 2.The District Munsif, Manaparai.
- 3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SOUNTHAR, J.

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