



S.A.No.1894 of 2001

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.No.1894 of 2001

1.Annammal (died)

2.M.A.Sebastian

... Appellants

-VS-

1.Sivagangai RC Diocese
through its Procrator General

2.R.C.Church through Pangu Thanthai

3.M.A.Berkmans

... Respondents

(Respondent No.3 recorded as LR.
of the deceased first appellant)

PRAYER: Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree, dated 30.11.2000 passed in A.S.No.21 of 1999 on the file of Sub-Court, Devakottai, reversing the judgment and decree, dated 24.04.1998, passed in O.S.No.88 of 1995 on the file of District Munsif, Devakottai.



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For Appellants : Mr.K.K.Senthil
For Respondents 1 & 2 : Mr.Father Savarimuthu
for Father Xavier Associates
Respondent 3 : Mr.A.T.Anbarasan

JUDGMENT

The plaintiffs in the suit are the appellants. The suit was for declaration of title and permanent injunction. The trial Court granted decree in favour of the plaintiffs with a direction to survey the property. On appeal filed by the defendants, the first appellate Court reversed the findings of the trial Court and dismissed the suit. Aggrieved by the same, the plaintiff is before this Court.

2. According to the appellants/plaintiffs, the suit property was originally purchased by the plaintiffs' forefathers Satyahu and Arogyam under Ex.A-1, dated 17.12.1903. It was the case of the plaintiffs that after purchase, there was oral partition between Satyahu and Arogyam, whereunder the southern half was allotted to the share of Arogyam. The plaintiffs' forefather – Arogyam had constructed a church on the northern portion of the plot allotted



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to him. He had also put up a thatched shed on the southern side of the church and had been enjoying the vacant site, surrounding the property. The said Arogyam died leaving behind his only daughter Silivainayagam. The said Silivainayagam and her husband Maria Michael died leaving behind their son Arogyam as their only heir. The said Arogyam is the husband of the first plaintiff and father of the second plaintiff. He executed a gift deed, dated 25.06.1956 in favour of the first plaintiff and settled the property on the south of the church building with thatched house. After the death of Arogyam, the first plaintiff had been enjoying the suit property by paying tax to the village panchayat. The second plaintiff had put up a terrace building in the suit property and the property on the west of the said building was kept as a vacant site. It was the case of the plaintiffs that the vacant site on the south of the church building belonged to them and during Natham settlement survey, the suit property was wrongly included along with the church and questioning the same, the plaintiffs approached the revenue authorities and the proceedings before the revenue authorities ended against the plaintiffs. Hence, they were constrained to file a suit for declaration of their title and for permanent injunction in respect of the vacant site, surrounding the church building.



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3. The contesting defendants 1 and 2 filed their written statement and resisted the suit by denying the title as well as the possession of the plaintiffs over the suit property. The defendants specifically denied the averments in the plaint as if the church was constructed by the forefathers of the plaintiffs. It was the case of the defendants that the church was constructed by the villagers and later on, it came under the control of the second defendant. It was asserted by the defendants that the suit site and the church building belonged to the second defendant Diocese and the plaintiffs had no right or title over the same. It was also claimed by the defendants that the forefather of the plaintiffs, namely, Arogyam had been living in a thatched house situated on the south of the church property and the thatched building has been now removed by the plaintiffs and a new terrace building was constructed by them. On these pleadings, the defendants sought for dismissal of the suit.

4. Before the trial Court, the second plaintiff was examined as P.W.1 and yet another witness was examined as P.W.2. On behalf of the plaintiffs, 24 documents were marked as Exs.A-1 to A-24. On behalf of the defendants, one witness was examined as D.W.1 and 6 documents were marked as Exs.B-1 to B-6. Advocate Commissioner's Report and Plan were marked as Exs.C-1 and C-2.



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5. The trial Court, on appreciation of oral and documentary evidence available on record, came to the conclusion that the survey number of the property in which the church and the house building of the plaintiffs were situated, namely, S.Nos.387/6 and 387/26 should be surveyed again by the surveyor of the revenue department and during the survey, if it was found that the vacant site on the south of the church building with a width of 9 feet belonged to the plaintiffs' as per the title document, the plaintiffs were entitled for declaration of title and for consequential injunction in respect of that portion. Thus, the trial Court granted a conditional decree for declaration and injunction, based on the survey to be done in future. Aggrieved by the said judgment, the second defendant preferred an appeal in A.S.No.21 of 1999 on the file of Sub-Court, Devakottai. The first appellate Court reversed the findings of the trial Court and dismissed the suit. Aggrieved by the same, the plaintiffs are before this Court.

6. At the time of admission, this Court formulated the following substantial questions of law, by an order, dated 07.12.2001 :

(1) Whether the lower appellate Court should have given preference to documentary evidence ?



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(2) Whether in view of the documents Exs.A-4 and A-15, the lower Appellate Court should have decreed the suit as prayed for ?

7. The learned counsel for the appellants submitted that Ex.A-1 proved that the suit property, including the property situated in which the church building was constructed, was originally purchased by the forefathers of the plaintiffs and the said fact had not been properly taken into consideration by the first appellate Court. The learned counsel further submitted that the trial Court, on proper consideration of the documents filed by the plaintiffs, passed a decree that the suit property should be surveyed with reference to the title documents of the plaintiffs and if it was found that the vacant site on the south of the church building belonged to the plaintiffs, the plaintiffs were entitled for declaration of title. He would also submit that the first appellate Court, based on the boundary description found in Ex.A-15, on erroneous view, came to the conclusion that the vacant land available on the south of the church building belonged to the second defendant. According to the learned counsel, the finding of the first appellate Court was based on misreading of Exs.A-1 and A-15.



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8. The learned counsel appearing for the respondents, by taking this Court to the findings rendered by the first appellate Court, submitted that based on the boundary description found in Ex.A-15, the first appellate Court rightly came to the conclusion that the plaintiffs were entitled to only the property on the south of the church property and as per Ex.A-15, the property in sub-division No.387/6 belonged to the church and the vacant site on immediate south of the church building with a breadth of 9 feet north-south fell within the sub-division No.6.

9. It was the specific case of the plaintiffs that their forefathers purchased the suit property, including the property in which the second defendant church stood under Ex.A-1 in the year 1903. It was further claimed by the plaintiffs that a portion of the property purchased under Ex.A-1 was settled by the first plaintiff's husband in her favour under Ex.A-15, dated 25.06.1956. It was claimed by the plaintiffs that subsequent to purchase under Ex.A-1, there was a partition among the forefathers, namely, Satyahu and Arogyam and southern half was allotted to the share of Arogyam. However, the plaintiffs were unable to substantiate the said plea by leading any evidence. The documents filed by the plaintiffs to prove their enjoyment,



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such as tax receipts, were all subsequent to Ex.A-15 document. There is no evidence on record to suggest that the entire suit property, including the land in which the church was constructed, was in enjoyment of the plaintiffs' forefathers prior to Ex.A-15 document. In such circumstances, the description of the property found in Ex.A-15, settlement deed, executed in favour of the first plaintiff by her husband Arogyam, assumes significance. The recital in Ex.A-15 would suggest that the first plaintiff's husband Arogyam got the properties of his grandfather Senior Arogyam. The property settled in favour of the first plaintiff was described in Ex.A-15 as follows :

"The land with a measurement of east-west human feet 60; north-south human feet 35 with thatched house; south of Sivasthanar Church building; east of Oorani; north of Arulandayar garden land and west of Santhanam's house."

Therefore, the property on the south of the church was settled in favour of the plaintiff. It was the case of the plaintiffs that the property settled under Ex.A-15 was only a portion of the property owned by the settler. If the claim of the plaintiffs that the property covered under Ex.A-15 was only a portion of the property purchased under Ex.A-1, then, the remaining portion should



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have been shown as a boundary in any one of the directions in Ex.A-15. In fact, it is the specific submission of the learned counsel for the appellants that the property on the north, wherein the church building stood, also belonged to the family and the plaintiffs restricted their claim in respect of the vacant site, surrounding the church building. However, in Ex.A-15, while describing the four boundaries, the property retained by the first plaintiff's husband had not been shown as a boundary. If the property on the north was retained by settler, then, certainly, the same should have been found place in the boundary description. Therefore, from the boundary description found in Ex.A-15, we can safely come to the conclusion that the property on the north belonged to the church even in the year 1956. If Ex.A-15 is read along with FMB, marked as Ex.B-6, it would reveal that the entire property covered by Ex.A-15 with north-south measurement of 35 human feet, included in sub-division No.26, belongs to the plaintiffs. The north-south measurement of S.No.387/26 on the western side is 9 metres; and on the eastern side is 8.4 metres. 9 metres is roughly equivalent to 35 human feet, as mentioned in Ex.A-15. Therefore, the entire property covered under Ex.A-15 has been measured and given sub-division No.387/26. The property on the north belonging to the church is given sub-division No.387/6. Therefore, the contention of the learned counsel for the appellants that a strip of vacant site



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on the south of the church building also belonged to the plaintiffs is not acceptable to this Court. The questions of law, framed at the time of admission, are answered accordingly against the appellants and in favour of the respondents. Therefore, the Second Appeal fails and is dismissed, by confirming the judgment and decree passed by the first appellate Court. No costs.

10. At this juncture, the learned counsel for the appellants submitted that the narrow strip of land on immediate south of the church building is the only access for the plaintiffs to reach the road and, therefore, their easementary right over the same may be declared. This is a suit for declaration of title. The plaintiffs asserted their title over the suit property. Therefore, the relief sought for with regard to easementary right cannot be granted in this suit. It is for the plaintiffs to work out their remedy by filing appropriate suit in the manner known to law.

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

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To:

- 1.Sub-Court,
Devakottai.
- 2.District Munsif,
Devakottai.
- 3.Section Officer,
V.R. Section,
Madurai Bench of Madras High Court.



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S.SOUNTHAR, J.

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