



S.A.Nos.1702 & 1764 of 20

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **25.09.2024**

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THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

S.A.Nos.1702 and 1764 of 2003

Gandhi ... Appellant / Appellant / Plaintiff
in both appeals

Vs.

Santhanamari ... Respondent / Respondent / Defendant
in both appeals

Prayer in S.A.No.1702 of 2003: Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree in A.S.No.45 of 2001, on the file of the Sub-Court, Sankarankoil, dated 25.01.2002, partly confirming and partly reversing the judgment and decree in O.S.No.169/1998, on the file of the District Munsif-cum-Judicial Magistrate, Sivagiri, dated 28.09.2001.

Prayer in S.A.No.1764 of 2003: Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree in A.S.No.46 of 2001, on the file of the Sub-Court, Sankarankoil, dated 25.01.2002 partly confirming and partly reversing the judgment and decree in O.S.No.172 of 1998, on the file of the District Munsif-cum-Judicial Magistrate, Sivagiri, dated 28.09.2001.



For Appellant : Mr.C.Gangai Amaran

For Respondent : Mr.M.P.Senthil

COMMON JUDGMENT

The appellant filed a suit in O.S.No.169 of 1998 before the District Munsif Court, Sivagiri against the defendants Adaikkan and one Santhanamari for declaration to declare that the suit schedule property is belong to the plaintiff and for permanent injunction, restraining the defendants and their agents from interfering with the plaintiff's peaceful possession and enjoyment of the suit property.

2. The second defendant filed a suit in O.S.No.172 of 1998 before the District Munsif Court, Sivagiri against one Gandhi, the appellant herein, for declaration to declare that the suit schedule property is belongs to the plaintiff/respondent and permanent injunction restraining the defendant/appellant from disturbing the peaceful possession and enjoyment of the suit property.

3. For the sake of convenience, the appellant and the respondent shall be referred to as per their ranks in the plaint, as the plaintiff and defendant respectively.



4. On analyzing the documentary and oral evidence, the learned District Munsif-cum-Judicial Magistrate, Sivagiri, had allowed the suit in O.S.No.172/98 and granted the relief of declaration and permanent injunction in respect of the extreme end of the Eastern side 4 1/2 cents in survey No.56/12 and partly allowed the suit in O.S.No.169/98 and granted the relief of declaration and permanent injunction with regard to the remaining property except 4-1/2 cents. Aggrieved over the same, the said Gandhi, who is the plaintiff in O.S.No.169 of 1998 and defendant in O.S.No.172 of 1998, filed the first appeals in A.S.No. 45 & 46 of 2001 before the Sub-Court, Sankarankovil. The first appellate Court on carefully considering the materials on record, has dismissed the appeal in A.S.No.46 of 2001 by confirming the judgment and decree of the trial Court made in O.S.No.172 of 1998 and also dismissed the appeal in A.S.No.45 of 2001 by setting aside the judgment and decree passed in O.S.No.169 of 1998. Aggrieved over the same, the said Gandhi has filed the present appeals.

5. The case set-up by the plaintiff in the plaint in O.S.No.172 of 1998 is as under:-

The suit schedule property belonged to one Maruthaiahpandian. On 27.06.1991 the said Maruthaiahpandian had sold the property to



the plaintiff through a registered deed, for a sale consideration of Rs. 1,000/-. Now, the title deeds and Tax receipts are in the name of the said Maruthaiahpandian and hence, the plaintiff has filed an appropriate petition to the authorities to transfer the title deeds of the property to his name. As the plaintiff has refused to purchase the suit schedule property from the buyer Marudaiiahpandian, the defendant has been in vain against the plaintiff and has no any right or interest in the suit schedule property at any time and has been disturbing the property in many ways since 08.11.1991. If the action of the defendant is not stopped by a Court of Law, the plaintiff will suffer a lot of hardship and he prays for permanent injunction.

6. The defence set-up by the defendants in the written statement is as under:-

(i) The sale deed was fraudulently created by Malaiyammal in favour of one Maruthaiyapandian to threaten the appellant. The suit schedule property is located in the village of Echalpotalpudhur and the suit schedule property is not belonged to the Maruthaiyapandian and he is a stranger to the suit schedule property. The sale deed dated 27.06.1991 was executed by Maruthaiyapandian in favour of the plaintiff. She is the wife of one Adaikkan. The suit schedule property measuring to an extent of 14 cents in Survey No.56/12 originally



belonged to one Joseph Chelliah. The sons of Sankarapandian viz., 1) Periya Shanmugam 2) Chinna Shanmugam 3) Madasamy 4) Perumal were jointly purchased the suit property from the said Joseph Chelliah by virtue of a registered sale deed dated 12.11.1959. All four of them were orally divided the property and the western portion was allotted to the said Periya Shanmugam, the middle portion was allotted to Chinna Shanmugam and the Eastern portion was allotted to Madasamy. The ancestral house and adjoining land at Door No.3/10B was allotted to Perumal while he was alive and he died leaving behind his wife Malaiyammal, as his legal heirs. The said Periya Shanmugam constructed two houses in his share on the western side while he was alive and the western side house was allotted to appellant, the another house was allotted to his brother viz., Krishnan. The said Chinna Shanmugam died 10 years ago leaving behind his only daughter viz., Valliammal as his legal heir. The said Valliammal sold the western half of portion to Krishnan and the eastern half of portion sold to the defendant on 07.09.1987 under a registered sale deed. Since the said Madasamy was under the care of the defendant/appellant during his life time, he orally gave the eastern portion of his share to the defendant/appellant. The defendant purchased the 2-1/4 cents of land from the said Valliammal and the 4-1/2 cent lands orally given to the defendant by the said Madasamy, hence, he is entitled to the extent of



6-3/4 cents of land. Therefore, he prayed for dismissal of suit.

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7. The case set-up by the plaintiff in the plaint in O.S.No.169 of 1998 is as under:-

The suit schedule property measuring to an extent of 14 cents in Survey No.56/12 originally belonged to one Joseph Chelliah. The sons of Sankarapandian viz., 1) Periya Shanmugam 2) Chinna Shanmugam 3) Madasamy 4) Perumal had jointly purchased the suit property from the said Joseph Chelliah by virtue of a registered sale deed dated 12.11.1959. All four of them had orally divided the property and the western portion was allotted to Periya Shanmugam, the middle portion was allotted to Chinna Shanmugam, the eastern portion was allotted to Madasamy. The ancestral house of adjoining land at Door No.3/10B was allotted to Perumal while he was alive and he died leaving behind his wife Malaiyammal as his legal heirs. The said Periya Shanmugam constructed two houses in his share on the western side while he was alive and the western side house was allotted to appellant, the another house was allotted to his brother viz., Krishnan. The said Chinna Shanmugam died 10 years ago leaving behind his only daughter viz., Valliammal as his legal heir. The said Valliammal sold the western half of portion to Krishnan and the eastern half of portion sold to the defendant on 07.09.1987 under a registered sale deed. Since the said



Madasamy was under the care of the defendant/appellant during his life time, he orally gave the eastern portion of his share to the defendant/appellant. The defendant purchased 2-1/4 cents of land from the said Valliammal and the 4-1/2 cents land orally given to the defendant by the said Madasamy, hence he is entitled to an extent of 6 3/4 cents of land. The plaintiff and his brother have entered into an oral partition and the western side house was allotted to the appellant and he is in continuous possession and enjoyment of the house along with the remaining extent of vacant lands. The defendant is disturbing the plaintiff's peaceful possession and enjoyment of the suit schedule property, hence the suit.

8. The defence set-up by the defendants in the written statement is as under:-

In the said suit, the defendant/respondent filed a detailed written statement by denying the entire averments in the plaint. The defendant/respondent's father in law viz., Joseph Chellaiah sold the property to 1) Periya Shanmugam 2) Chinna Shanmugam 3) Madasamy 4) Perumal including the common foot pathway on the southern side of property measuring to an extent of one yard. The plaintiff/appellant's father viz., Periya Shanmugam separated from



joint family in the year 1959 and he got his share of 3 1/4 cents.

Further, he constructed two houses in the said property allotted to him. After the demise of the said Periya Shanmugam, the

plaintiff/appellant is living separately on the western side house and his brother viz., Krishnan living in the eastern side house. The said Chinna Shanmugam died before 10 years ago leaving his only daughter viz., Valliammal as his legal heir. The said Valliammal sold the western half of the portion to Krishnan and the eastern half portion of the property sold to the defendant/respondent on 07.09.1987 through a registered sale deed. The Periya Shanmugam left the family after receiving the 3 1/4 cents of land. The other 3 brothers remained in the joint family, Madasamy died without any issues. The remaining 9 3/4 cents of land out of 14 cents was divided equally between the Chinna Shanmugam and Perumal, out of which, the southern portion of 1 cent was allotted for pathway. Chinna Shanmugam and Perumal got the last 4 7/8 cents equally. However, Chinna Shanmugam and his successor viz., Valliammal have enjoyed 4 1/2 cents alone.

9. The defendant filed the Additional written statement stating that the defendant/appellant filed a suit for the particular schedule property and subsequently took out application to amend the schedule



of the property as well as the prayer belatedly, which is not entertained by law as the suit schedule property shown in the suit are correct. It is clearly argued that the extent and the four boundaries are not mentioned in the schedule of property. When the suit in the stage of arguments, the plaintiff/appellant filed an application seeking to amend the suit schedule property as well as the prayer is not sustainable. The plaintiff/appellant has no legally valid case in respect of the suit schedule property.

10. Before the trial Court, the plaintiff Santhanamariamammal was examined as P.W.1, marked 13 documents as Ex.P1 to Ex.P13. The defendant Gandhi was examined as D.W.1 and marked 6 documents as Ex.D1 to Ex.D6.

11. On the basis of the rival pleadings made on either side, the trial Court, after framing necessary issues and after evaluating both oral and documentary evidence, has allowed the suit in O.S.No.172/98 and granted declaration and permanent injunction in respect of the extreme end of the Eastern side 4-1/2 cents in survey No.56/12 and partly allowed the suit in O.S.No.169/98 and granted the declaration and permanent injunction with regard to the remaining property except 4-1/2 cents.



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12. Aggrieved over the same, the plaintiff in O.S.No.169 of 1998 and defendant in O.S.No.172 of 1998, filed the first appeals in A.S.Nos.45 & 46 of 2001 before the Sub-Court, Sankarankovil.

13. The first appellate Court, after hearing both sides and upon re-appreciating the evidence available on record, has dismissed the appeal in A.S.No.46 of 2001 by confirming the judgment and decree of the trial Court made in O.S.No.172 of 1998 and also dismissed the appeal in A.S.No.45 of 2001 by setting aside the judgment and decree passed in O.S.No.169 of 1998.

14. Challenging the said judgments and decrees, the said Gandhi has filed the present appeals.

15. At the time of admitting the present second appeal, this Court had formulated the following substantial question of law for consideration:

"1. Whether both the Courts below failed to appreciate the case of the appellant in correct perspective that he is entitled to entire extent of suit property i.e., 6-3/4?



16. Mr.C.Gangai Amaran, learned counsel appearing for the appellant would submit that the Courts below failed to note that the appellant has been in uninterrupted possession, enjoyment and title in respect of land extent of 6-3/4 cents of the suit property for more than 12 years. One Valliammal conveyed entire extent of her share in favour of the appellant and his brother under Ex.B2. One Madasamy orally conveyed his share to an extent of 4-1/2 cents in favour of the appellant. The Courts below failed to note that the appellant has prescriptive title and possession in respect of the suit property over the period of 15 years. The respondent has not filed any documents to disprove the case of the appellant. The appellant categorically stated in the cross-examination that he is entitled for suit property i.e., extent of 6 3/4 cents. The trial Court ought not to have gone into the factum of validity of the oral sale made by Madasamy in favour of the appellant as there is no pleading by the respondent with regard to validity of oral sale. The Courts below failed to note that the respondent did not file any documentary evidence to show that the share of the Madasamy to an extent of 9-3/4 share had been sold by Chinna Shanmugam and Perumal and as such Perumal got 4 7/8 share on the eastern externity of S.No.56/12, The lower appellate Court failed to note that in the written statement filed in O.S.No.172/98



clearly stated that he purchased 2-1/4 cents of lands from Valliammal under Ex.B2 and that finding with regard to this aspect that Ex.B2 is contrary to pleading of the appellant is patently erroneous without any basis. The lower appellate Court failed to assign any reasons or findings on the aspect which warranted the reversal of relief granted by the trial Court in favour of the appellant.

17. Mr.M.P.Senthil, learned counsel for the respondent would submit that the judgments and decrees of the Courts below are well considered one and there is no interference required in the judgment and decree of the Courts below.

18. I have heard the learned counsel for the appellant and the respondent and also perused the materials on record carefully.

19. It is not in dispute that as per Ex.B3, dated 25.06.1955, the property in question initially belonged to one Joseph Chelliah; Ex.B12, dated 12.11.1959 is the sale deed, executed by the said Joseph Chelliah, in favour of one Periya Shanmugam @ Shanmugam, Chinna Shanmugam, Madasamy Perumal S/o. Sankara Pandian, in respect of 14 cents of land in Sy.No.56/12 and based on Ex.B7, a joint patta had been issued. It is an admitted case of both sides that Madasamy died



without any issues. The Periya Shanmugam left the family after receiving 3-1/4 cents of land. The other three brothers remained in the joint family. The remaining 9-3/4 cents of land out of 14 cents was divided equally between the Chinna Shanmugam and Perumal, out of which, the southern portion of 1 cent was allotted for pathway. Chinna Shanmugam and Perumal got the last 4-7/8 cents equally. However, Chinna Shanmugam and his successor viz., Valliammal have enjoyed 4-1/2 cents alone. Therefore, the contention that Perumal and Chinna Shanmugam got an extent of 4-7/8 cents of land is not true that they got the property with an extent of 4-1/2 cents. The eastern portion was allotted to Madasamy and he gave his share to defendant/appellant before 15 years ago. The defendant/appellant is enjoying it by cultivating paddy and built a cow shed and had erected a barbed fence. As per Ex.B2, the defendant/appellant purchased the eastern portion of 2 1/4 cents from the said Valliammal on 07.09.1987. In the sale deed, the four boundary shows that the eastern boundary lies to Madasamy portion. If it is true that the said Madasamy had orally surrendered the eastern portion to the defendant/appellant in the year 1978 itself, there is no need to mention in Ex.B2, that the eastern boundary as Madasamy's plot. One Maruthaiyapandian had purchased the property on 02.04.1987, which was prior to the purchase of the defendant/appellant. The appellant cannot claim right



over the property by way of adverse possession. Valli had sold 4-7/8 cents to Maruthiyapandian, when the said Valliammal has right and enjoyed only 4-1/2 cents. Therefore, the Maruthiyapandian is entitled for 4-1/2 cents only and the plaintiff is also entitled to only 4-1/2 cents.

20. Be that as it may, on perusal of the Judgment of the Courts below it is seen that the first appellate Court, after due discussion of all relevant facts relating to execution of the documents and after careful scrutiny of all the material documents, rendered specific findings against the appellant. Though the correctness of such findings are seriously questioned by the appellant before this court, the arguments put-forth on the side of the appellant before this court are of no help to prove the case of the plaintiff. The appellant is unable to show that the findings rendered by the Courts below are contrary to the particulars contained in the documents. On the other hand, the detailed discussion made in the judgment of the trial court would only demonstrate the efforts taken by it in not omitting any material particulars relating to the main controversy in issue. That being the manner of appreciation and analysis of the oral and documentary evidence by the trial court, the factual findings rendered by the trial Court do not suffer from any infirmity, inconsistency or



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perversity and when the findings of fact by the trial court are supported by cogent and clear reasonings, the same warrant no interference. The substantial questions of law is accordingly answered in favour of the respondent.

21. In the result, the Second Appeal in S.A.No.1702 of 2003 is partly allowed by setting aside the judgment and decree, dated 25.01.2002 made in A.S.No.45 of 2001, on the file of the Sub-Court, Sankarankovil and confirming the judgment and decree, dated 28.09.2001 made in O.S.No.169 of 1998, on the file of the District Munsif-cum-Judicial Magistrate, Sivagiri.

22. In S.A.No.1764 of 2003 is dismissed by confirming the judgment and decree dated 25.01.2002 made in A.S.No.46 of 2001, on the file of the Sub-Court, Sankarankovil and judgment and decree dated 28.09.2001 made in O.S.No.172 of 1998, on the file of the District Munsif-cum-Judicial Magistrate, Sivagiri.

25.09.2024

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To

- 1.The Sub-Court,
Sankarankoil.
- 2.The District Munsif-cum-Judicial Magistrate,
Sivagiri.
- 3.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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V.BHAVANI SUBBAROYAN, J.

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Judgment made in
S.A.Nos.1702 and 1764 of 2003

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