



S.A.(MD)No.577 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.09.2024

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THE HONOURABLE MR.JUSTICE B.PUGALENDHI

S.A.(MD)No.577 of 2024

R.Natarajan

Appellant

Vs.

1.S.K.Raja

2.Veluchamy

Respondents

PRAYER:- Second Appeal filed under Section 100 of Code of Civil Procedure, against the Judgment and Decree dated 23.04.2004 passed in A.S.No.11 of 2004, on the file of the Principal Sub Court, Tirunelveli District, presently Tenkasi District thereby erroneously confirming the judgment and decree, dated 01.08.2003 passed in O.S.No.239 of 1995, on the file of the Principal District Munsif Court, Tirunelveli District, presently Tenkasi District.

For Appellant : Mr.B.Prahalad Ravi

For Respondents : Mr.C.Anand Chandrasekaran



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J U D G M E N T

The first defendant in O.S.No.239 of 1995 has filed this second appeal as against the concurrent findings of the Courts below.

2.The plaintiff has filed the above suit for the relief of declaration and injunction with regard to the suit schedule property in S.No.468/12, to an extent of 1 acre, which is an agricultural land. The suit schedule property was purchased by the plaintiff by way of a registered sale deed, dated 07.10.1992, Ex.A1. However, the document was registered only in the month of January 1993. In the meantime, the defendant has purchased the suit schedule property by way of two registered documents in Ex.B1 and Ex.B2 from one Lakshmana Nadar on 27.11.1992 and from one Narayanasamy Nadar on 04.12.1992 respectively. The case of the plaintiff and the defendants is that the property in S.No.468/11 originally belonged to one Pattamuthu Nadar. The said Pattamuthu Nadar was having three



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legal heirs, namely, Periyasamy Nadar, Lakshmana Nadar and Madasamy Nadar. The plaintiff has purchased the suit schedule property, by way of a registered sale deed from Periyasamy Nadar on 07.10.1992. The first defendant has purchased the suit property from Lakshmana Nadar to an extent of 33 cents by way of a registered document, dated 27.11.1992 vide Ex.B 1 and another 33 cents have been purchased by the first defendant from one Narayanasamy Nadar, the son of Madasamy Nadar on 04.12.1992 vide Ex.B.2. According to the learned counsel for the appellant, Periyasamy Nadar, Lakshmananadar and Madasamy Nadar are the legal heirs of Patta Muthu Nadar and therefore, all the three sons of Patta Muthu Nadar are having equal shares in the suit schedule property. Since the first defendant has purchased the 33 cents of land from Lakshmana Nadar and another 33 cents from Narayana Samy Nadar, son of Madasamy Nadar, he is entitled for 66 cents. However, the trial Court, without considering the same has decreed the suit in favour of the plaintiff. Challenging the same, the first defendant has preferred an appeal in A.S.No.11 of 2004 before the Principal Sub



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Court, Tenkasi and the same was dismissed by the first Appellate Court. Aggrieved over the concurrent findings, the first defendant has preferred this second appeal.

3.The learned counsel appearing for the appellant submits that though the plaintiff has claimed that there was a oral partition, it has not been sufficiently proved by the plaintiff before the trial Court, without any iota of doubt. The trial Court believed that there is a oral partition among the legal heirs of Patta Muthu Nadar and granted the relief in favour of the plaintiff. The learned counsel submits that the trial Court has failed to consider the registered documents Ex.B1 and Ex.B2, by which, the first defendant has purchased this property from one of the legal heirs of Patta Muthu Nadar and therefore, he is entitled for 66 cents. This has not been properly appreciated by the trail Court as well as the first Appellate Court.



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4.The learned counsel by relying upon the report of the Advocate Commissioner submits that as per the Advocate Commissioner's report, the suit schedule property is a vacant land and therefore, it cannot be presumed that the suit property is in possession of the plaintiff and therefore, the trial Court is not justified in decreeing the suit in favour of the plaintiff. The learned counsel further submits that the plaintiff has not substantiated the right of his vendor Periyasamy Nadar for the entire suit schedule property, which originally belonged to Patta Muthu Nadar.

5.This Court considered the submissions of the learned counsel for the appellant and perused the Judgment and decree rendered by the Courts below.

6.The suit was filed in the year 1995, seeking the relief of declaration and permanent injunction. The suit was decreed in favour of the plaintiff, by the judgment dated 01.08.2003. As against which, the first defendant preferred an appeal in A.S.No.11 of 2004



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and the same was dismissed on 23.04.2004. As against the concurrent findings of the Courts below, the first defendant has now preferred this Second appeal.

7.It is not in dispute that the suit schedule property to an extent of 1 acre belongs to Patta Muthu Nadar. He died 40 years prior to the institution of the suit. It is also an admitted fact that the said Patta Muthu Nadar is having three sons, namely Periyasamy Nadar, Lakshmana Nadar and Madasamy Nadar. The plaintiff has purchased the suit schedule property to an extent of one acre, vide Ex.A1 in the year 1992 from Periyasamy Nadar on 07.10.1992. Subsequent to the purchase of the plaintiff, the appellant/first defendant has purchased this property to an extent of 33 cents from Lakshmana Nadar, by way of a registered document on 27.11.1992, vide Ex.B1 and another 33 cents from Narayanasamy Nadar, the son of the Madasamy Nadar on 04.12.1992 vide Ex.B2. There was an oral partition and pursuant to the oral partition, the legal heirs of Patta Muthu Nadar are having equal shares in the suit schedule



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property. The case of the plaintiff is that pursuant to the oral partition, which took place 20 years prior to the institution of the suit, the said suit schedule property was allotted to the elder son Periyasamy Nadar and the land in the opposite side was allotted to Lakshmana Nadar and Madasamy Nadar. This fact has been established by the plaintiff by examining one Subramaniam, the uncle of the legal heirs of Patta Muthu Nadar. The defendant has not disputed the evidence of PW 2 Subramaniam, in whose presence, the oral partition was effected and in pursuant to the oral partition, the land, which was allotted to Periyasamy Nadar was leased to this plaintiff in the year 1980. Since then, the plaintiff is in occupation of the property and he was also paying kist for the suit schedule property. None of the legal heirs of Patta Muthu Nadar have raised any objections with regard to the change of revenue records in favour of the plaintiff. In the year 1986, patta was also transferred in the name of the plaintiff. Admittedly, the plaintiff was paying tax for the suit schedule property and those tax receipts have also been placed before the trial Court as Ex.A6 to A8. Patta, which stands in



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the name of the plaintiff was also marked as Ex.A7. Though the first defendant claims that there was a equal share, according to the legal heirs of Patta Muthu Nadar, none of the legal heirs have raised objections with regard to the transfer of revenue records in favour of the plaintiff. More over, mutation of revenue records in favour of the plaintiff has been done pursuant to the lease entered between the Periyasamy Nadar and the plaintiff and the subsequent sale. The plaintiff is in possession of the suit schedule property from the year 1980.

8.The appellant /first defendant has also created a sale deed in favour of the second defendant. The second defendant has again sold the property in favour of the first defendant. The first defendant was also examined as a witness as DW 2 on the side of the defendants, wherein, DW 2 admitted that the plaintiff is in possession of the suit schedule property.

9.In view of the above, this Court finds no



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error/infirmary in the judgments rendered by the trial Court as well as the first Appellate Court. Therefore, this Court is not inclined to interfere with the decisions of the Courts below. Accordingly, this second appeal is dismissed without being admitted. No costs.

26.09.2024

NCC : Yes/No

Index : Yes/No

Internet: Yes/No

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- 1.The Principal Sub Court, Tenkasi.
- 2.The Principal District Munsif, Tenkasi.
- 3.The Section Officer,
Madurai Bench of Madras High Court,Madurai



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B.PUGALENDHI, J.

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Judgment made in
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