



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **25.04.2024**

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.NO.749 OF 1994

1.Thothan(died)

2.Nagan :Plaintiffs/Appellants/Appellants

.vs.

1.Rakkammal(died)

2.Muniyandi(died)

3.Sengole Udayar(died)

4.Vanakamary

5.Irudhayaraj

6.Nirmala

7.S.Ayyathurai

8.Anthoniammal

9.Lawrance

10.JosphinMary

11.Arul

12.Boominathan(died)

13.Natarajan

14.Yasotha

15.Susila



16.Muthulakshmi

17.Nagalakshmi

18.Saravanakumar

19.Anitha

20.Vinoth Kumar

21.Panchu

22.Suresh

23.Ramesh

24.Priya

:Defendants/Respondents/
Respondents

(Death of the second respondent is recorded as per order of this Court made in C.M.P(MD)No.2681 of 2022 in S.A.No.749 of 1994, dated 14.10.2022)

(Respondents 4 to 11 are brought on record as legal representatives of the deceased third respondent as per order of this Court made in C.M.P(MD)Nos.2675, 2678 and 2680 of 2022 in S.A.No.749 of 1994, dated 16.11.2022)

(Respondents 12 and 13 are brought on record as legal representatives of the deceased first appellant vide order of this Court made in C.M.P(MD)Nos.2670, 2672 and 2674 of 2022 in S.A.NO.749 of 1994, dated 3.11.2022)

(Respondents 14 to 20 are brought on record as legal representatives of the deceased first respondent as per order of this Court made in C.M.P(MD)Nos.11504 of 2022 in S.A.No.749 of 1994, dated 20.1.2023.)

(Respondents 21 to 24 are brought on record as legal representatives of the deceased 12th respondent as per order of this Court made in C.M.P(MD)Nos.660, 663 and 665 of 2023 in S.A.No. 749 of 1994, dated 6.2.2023)

PRAYER: Second Appeal filed under Section 100 of Civil Procedure



Code against the judgment and decree made in A.S.No.66 of 1986, dated 24.11.1992, on the file of Subordinate Judge Court, Sivaganga in partially allowing the appeal by modifying the judgment and decree made in O.S.No.169 of 1981, dated 28.6.1985, on the file of District Munsif Court, Sivaganga.

For Appellants :Mr.A.L.Vijay Devaraj

For Respondents :Died
1 to 3 and 12

For Respondents :No appearance
4 to 10,11,13
and 21 to 24

For Respondents :Mr.V.Shathurthi Raja
14 to 20

JUDGMENT

The plaintiffs in the suit are the appellants. The suit is filed for declaration of title and permanent injunction. The suit was dismissed by the trial Court. On appeal filed by the plaintiffs, the suit was decreed in part by granting the relief as prayed for in respect of 5 acres and 26 cents as against the claim of the plaintiffs in respect of 9 acres and 86 cents. Aggrieved by the negatived portion, the plaintiffs have come by way of this Second Appeal.

2. According to the plaintiffs, the suit property originally belonged to one Udayan and he had two sons by name, Rakkan and Muniyandi (the second defendant). The plaintiffs are the sons of



Rakkan. It is the case of the plaintiffs that the suit property has been in possession and enjoyment of the plaintiffs and second defendant and the revenue proceedings like sub-division, patta transfer etc., would not affect the rights of the plaintiffs. As the defendants attempted to interfere with the possession, the plaintiffs were constrained to file the suit for declaration that the plaintiffs and second defendant were entitled to the suit property and for consequential injunction restraining the first defendant from interfering with their alleged possession over the suit property.

3.The contesting first defendant filed a Written Statement denying various averments contained in the plaint including title and possession of the plaintiffs and second defendant over the suit property. It was the case of the first defendant that 4 acres and 60 cents in Old S.No.271/1 belonged to one Irulappan Servai and he sold the said property in favour Guruswamy by sale deed, dated 26.7.1943 marked as Ex.B3. The said Gurusamy sold the said 4 acres and 60 cents in favour of the first defendant by sale deed, dated 26.09.1966 marked as Ex.B4. After sale, the first defendant applied for mutation of revenue records and Patta No.492 was given in favour of the first defendant in New Sub-Division No. 127/1B. Subsequently, the first defendant sold a portion of the property purchased by her with an extent of 1 acre and 68 cents to



the third defendant Sengole Udayar under sale deed, dated 20.5.1968 marked as Ex.B10. Thus, claiming title as well as possession over 4 acres and 60 cents in Old S.No.127/1, the first defendant sought for dismissal of the suit.

4.Before the trial Court, the second plaintiff was examined as P.W.1 and 18 documents were marked on behalf of the plaintiffs as Ex.A1 to Ex.A18. The first and third defendants were examined as D.W.1 and D.W.2. One Arockiam was examined as D.W.3. On behalf of the defendants, 18 documents were marked as Ex.B1 to Ex.B18. The Advocate Commissioner's report and plan were marked as Ex.C1 and Ex.C2.

5.The trial Court, on appreciation of evidence available on record, came to the conclusion that the plaintiffs failed to establish their right and possession over the entire suit property and consequently, dismissed the suit. Aggrieved by the same, plaintiffs preferred an appeal in A.S.No.66 of 1986, on the file of Sub-Court, Sivagangai. The First Appellate Court came to the conclusion that the defendants established their right over 4 acres and 60 cents in suit survey number and hence, granted the relief of declaration and injunction in respect of remaining extent of suit survey number in favour of the plaintiffs. Aggrieved by the negatived



portion, the plaintiffs are before this Court.

WEB COPY

6.At the time of admission, this Court formulated the following substantial questions of law by order, dated 11.08.1995:

Whether the First Appellate Court was correct in reversing the judgment and decree of the trial Court and restricting the right of the plaintiff and the second defendant to 5 acres and 26 cents and granting title to the other defendants for 4 acres and 60 cents in S.No.127/1B2, 127/1B1 especially when the defendants were unable to correlate their claim of S.No.127/1B1 and 127/1B2 with their document?

7.The learned counsel for the appellants by taking this Court to Ex.A1 and Ex.A2 submitted that in New R.S.No.127/1 to 6 which is relevant to Old S.No./Pimash No.127/ 1 to 4, the plaintiffs' predecessor-in-title Rakkan Vagayara had 9.86 acres, whereas, the defendants predecessor-in-title namely, Guruswamy Servai had only 82 cents. Therefore, it is the submission of the learned counsel that Guruswamy, the vendor of the first defendant, who had only 82 cents in suit survey number could not have conveyed 4 acres and 60 cents in suit survey number to the first defendant under Ex.B4, dated 26.9.1966.

8.The learned counsel for the first respondent/first defendant



submitted that the first defendant established his title by producing his parent document marked as Ex.B3. Taking into consideration the earliest document produced by the first defendant, the first appellate Court, rightly came to the conclusion that the first respondent was entitled to 4 acres and 60 cents in suit survey number and the said finding requires no interference.

9.The plaintiffs filed a suit for declaration that the suit property belonged to the plaintiffs and second defendant on a specific plea that the suit property originally belonged to their fore-fathers and they have been in possession and enjoyment of the same. In order to establish their right over the suit property, the plaintiffs produced the Settlement Register Ex.,A1, dated 04.12.1961. A perusal of the same would suggest 9 acres and 86 cents in R.S.No.127/1 relevant to Old S.No.127/1 registered in the name of Rakkan Vagayara. The said Rakkan happens to be the father of the plaintiffs. Based on this document, it is contended by the learned counsel for the appellants that the entire extent of 9 acres and 86 cents belonged to the plaintiffs, who are the sons of Rakkan and Rakkan's brother Muniyandi, the second defendant. However, the plaintiffs have not produced any document of title or revenue documents to establish their right over 9.86 acres of land prior to settlement proceedings. On the other hand, the defendants



claim right over 4.60 acres in suit survey number. The defendants produced Ex.B3 sale deed, dated 26.7.1943 executed by one Irulappan Servai in favour of first defendant's vendor Guruswamy. A perusal of the same would suggest that 4 acres and 60 cents of land (Iruwaram lands) in Old S.No/Pimash No.127/1, was purchased by the first defendant's vendor Guruswamy. The very same property was conveyed by the said Guruswamy, the vendor of first defendant under Ex.B4, dated 26.9.1966. Therefore, by producing 1943 registered sale deed in favour of his vendor, the first defendant has established his pre-existing right in respect of 4.60 acres of land in Old. S.No.127/1. However, the plaintiffs who filed a suit asserting title failed to produce any title or revenue documents to prove their pre-existing right prior to the settlement proceedings. It is settled law that dehors the patta issued in settlement proceedings, the Civil Court can very well consider the question of title based on the pre-existing rights of the parties as held by the Full Bench of this Court in ***Srinivasan and others .vs. Sri Madhyarjuneswara Swami and others reported in 1998(2) LW 189 = 1998 II MLJ 722 = 1998(1) CTC 630***. The appellants/Plaintiffs failed to produce any document to establish their right to the entire extent of 9.86 acres of land in suit survey number. However, the defendants by producing 1943 sale deed in favour of his vendor had established his pre-existing



right over the suit property. Therefore, the entry in Ex.A1 and Ex.A2 as if the first defendant's vendor Guruswamy Servai had only 0.82 acres of land in S.No.127/1 can be ignored by virtue of the registered sale deed produced by the first defendant and marked as Ex.B3. The First Appellate Court by taking into consideration the oral and documentary evidence available on record, rightly came to the conclusion that the first defendant had established his right over 4.60 acres of land in suit survey number. The Advocate Commissioner also located it in his report. Therefore, in respect of the remaining extent in the suit survey number, based on the settlement register produced by the plaintiffs, the First Appellate Court has granted the relief as prayed for.

10. In view of the discussion made earlier, the substantial question of law formulated at the time of admission is answered against the appellants and in favour of the first respondent. Accordingly, the Second Appeal stands dismissed. No costs.

25.04.2024

Index:Yes/No

Internet:Yes/No

NCC:Yes/No

vsn



10

To

1. The Sub-Judge,
Sivaganga.
2. The District Munsif,
Sivaganga.
3. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



11

S.SOUNTHAR, J.

vsn

JUDGMENT MADE IN
S.A.NO.749 OF 1994

25.04.2024