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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.06.2025

Coram

The Hon'ble Mr. Justice **C.V.KARTHIKEYAN**

S.A.No.1174 of 2010

and

M.P.No.1 of 2010

- 1.Karuppanna Gounder (Deceased)
- 2.Rajendran
- 3.Vijayalakshmi
- 4.Pandian

...Appellants

Vs.

- 1.Periasamy
- 2.Ramasamy
- 3.Muthusamy Gounder alias Paramasivam
- 4.Masilamani

..Respondents

The Second Appeal filed under Section 100 of CPC, against the judgment and decree made in A.S.No.162 of 2005 dated 23.02.2010 on the file of the Sub Court, Namakkal, confirming the judgment and decree made in O.S.No.341 of 2002 dated 10.02.2005 on the file of the Principal District Munsif, Namakkal.

For Appellants : Mr.S.Kalyanaraman



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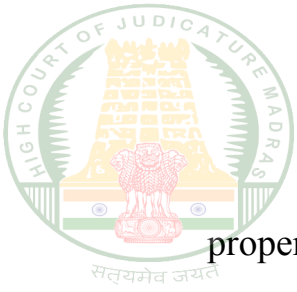
For R1 & R4 : Mr.S.Saravanakumar
For R2 : Died
For R3 : No appearance

JUDGMENT

Heard the learned counsel for the appellant.

2.The appellant had died and his legal representatives had been brought on record in C.M.P.No.4797 of 2022. Before issuing the order copy, the Registry may carryout necessary amendment in the cause title reflecting the death of the sole appellant and bring on record his legal representatives as stated in C.M.P.No.4797 of 2022.

3.The 1st plaintiff in O.S.No.341 of 2002 on the file of the Principal District Munsif Court, Namakkal, is the appellant herein, and had filed the present Second Appeal. The said suit had been filed seeking declaration of title and for permanent injunction restraining the defendants from interfering with peaceful possession. The suit had been filed by two plaintiffs. It is to be noted that the 2nd plaintiff had not filed the Second Appeal and it is only the 1st plaintiff who had filed the Second Appeal. The property was actually owned not only by the two plaintiffs but also by one Rangasamy who had died even prior to the institution of the suit. His legal representatives were not shown as further plaintiffs in the suit. But that he had a share in the



property is not in dispute and is not denied by the plaintiffs.

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4.The case of the defendants is that there was an earlier suit in O.S.No.881 of 1971 which was a suit for recovery of money from the plaintiffs and consequent to a decree passed, 1/3rd of the suit schedule property as described in O.S.No.341 of 2002 from which the present Second Appeal had emanated, had been sold by Court auction and purchased by the defendants. It is to be noted that the property is vacant land at Kalappanaickanpatti Village, Senthamangalam, Namakkal District. It had been described in the schedule to the plaint.

5.The contention of the plaintiffs was that the defendants had interfered with their possession and therefore it had necessitated filing of a suit to protect possession and incidentally, since there was a cloud raised over the title, they had also sought for declaration of title. The defendants primarily relied on the sale deed in their favour consequent to the execution petition in O.S.No.881 of 1971 to an extent of 1/3rd undivided portion of the property.

6.The learned Principal District Munsif, Namakkal, by judgment dated 10.02.2005 had dismissed the suit in entirety. It must be reiterated that



the plaintiffs had sought declaration of title not just over the 1/3rd portion but for the entire property. This has left the plaintiffs in a very prejudiced position since, not only was their title to the 1/3rd portion questioned, but also the entire other 2/3rd portion.

7.The plaintiffs had therefore a necessity to file an Appeal Suit in A.S.No.162 of 2005 which again had been filed only by the 1st plaintiff and not by the 2nd plaintiff. It is therefore to be conclusively held that the 2nd plaintiff had abandoned his cause to pursue the remedy of declaration of title and injunction against the defendants. Once there has been abandonment under Order XXIII of the Code, then the same right cannot be again sought unless there leave had been granted by the Court. The 2nd plaintiff had also not filed the Second Appeal. This leaves the entire title of the 1st plaintiff / appellant in a quandry. His claim to title is certainly disputable.

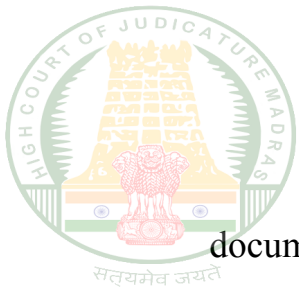
8.The learned counsel for the appellant argued that the defendants having purchased an undivided 1/3rd share of the property through Court auction should have filed a suit for general partition to demarcate their 1/3rd share. It is contended that the plaintiffs continue to be in possession and



since the defendants had not filed a suit for general partition, the suit for declaration of title would survive. It is also contended that the plaintiffs had perfected their title by prescription through adverse possession of the portion sold through public auction.

9. But both these contentions had not been viewed favorably by the Courts below. The possession has been declared to be in the hands of the defendants so far as the undivided $1/3^{\text{rd}}$ share is concerned. The documents produced in Ex.B1 which is the Suit Register extract of O.S.No.881 of 1971 on the file of the District Munsif Court, Namakkal, Ex.B2 which is the copy of the return of C.A.No.2185 of 2002 in O.S.No.881 of 1971 and Ex.B3 which is the document handing over possession to the defendants in R.E.A.No.2175 of 1974 in O.S.No.881 of 1971 and Ex.B4 which is R.E.P.No.498 of 1974 in O.S.No.881 of 1971 and which is the copy of the sale certificate Ex.B4 clearly shows establish that the Court had executed a sale certificate in favour of the defendants to the extent of $1/3^{\text{rd}}$ share in the suit property.

10. There cannot be any oral evidence questioning the written



documents, particularly the documents which are Court documents and therefore, any oral evidence adduced by the plaintiffs relating to possession will necessarily have to be rejected under Section 91 of the Indian Evidence Act, 1872. The written documents speak for themselves.

11. Therefore, I hold that, no substantial question of law arises and the Second Appeal will necessarily have to suffer an order of dismissal and the same stands dismissed. No costs. Consequently, connection miscellaneous petition is closed.

12. The learned counsel for the appellants, however extended the scope of the arguments and stated that the plaintiffs continue to be in possession of $\frac{2}{3}$ rd portion of the property and the defendants can never claim title to the $\frac{2}{3}$ rd portion. If that be so, this judgment would not preclude the 1st plaintiff from seeking appointment of a surveyor to demarcate the property into $\frac{2}{3}$ rd and $\frac{1}{3}$ rd and retain their right over the $\frac{2}{3}$ rd share leaving out the $\frac{1}{3}$ rd share as covered under the Ex.B4, sale certificate in R.E.P.No.498 of 1974 in O.S.No.881 of 1971.



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Index : Yes/No
Internet : Yes/No
Speaking order : Yes/No

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To

- 1.The Sub Court, Namakkal.
- 2.The Principal District Munsif Court, Namakkal.
- 3.The Section Officer,
VR Section, Madras High Court.

C.V.KARTHIKEYAN,J.

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