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S.A.No.1290 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.05.2025

CORAM:

THE HONOURABLE MRS. JUSTICE **R.KALAIMATHI**

S.A.No.1290 of 2013
and M.P.No.1 of 2013

1.Devadass
2.Mekala

... Appellants/Defendants

Vs.

Kanagasabhai

... Respondent/Plaintiff

This Second Appeal is filed under Section 100 of C.P.C. to set aside the decree and Judgment dated 24.08.2012 passed in A.S.No.65 of 2010 on the file of the Subordinate Court, Kancheepuram, reversing the Judgment and decree dated 24.09.2010 passed in O.S.No.76 of 2007 by the District Munsif Court cum Judicial Magistrate, Uthiramerur.

For Appellants : Mr.S.D.S.Phillip

For Respondent : Mr.B.Srinivasan

JUDGMENT

This second appeal has been preferred by the defendants No.1 and 2 against the Judgment and Decree dated 24.08.2012 passed by the Sub Court, Kancheepuram in A.S.No.65 of 2010.



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2. Parties are indicated as per their litigative status and ranking before the Trial Court.

3. According to the plaintiff, Mr. Kanagarsabai S/o. Manickam Naicker, the suit property originally belonged to Angamuthu Naicker. He got the suit property through oral partition that took place between him and his brother, Manickam Naicker. Angamuthu Naicker had two sons - Ramasamy Naicker and Durai. Durai died leaving his three sons, 1. D.Kumar, 2. D.Ekambaram, 3. D.Devaraj. The suit property was in possession and enjoyment of the said Angamuthu Naicker. After his death, his two sons namely Ramasamy and Durai were in joint possession of the suit property.

3.1. After the death of the above said Durai, Ramasamy along with the three sons of Durai were in joint possession and enjoyment of the suit property. They jointly sold the suit property to the plaintiff under a registered sale deed, dated 19.06.2007 and placed him in possession thereof. Thereafter, the plaintiff is in possession and enjoyment of the suit property by stocking manure. The plaintiff in order to construct a house has completed the foundation till ground level.



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3.2.The defendants have no manner of right or title, interest or possession in respect of the suit property. As they inimically trespassed towards the purchased suit property of the plaintiff and in competition with them on 01.07.2007 attempted to interfere with the plaintiff's peaceful possession and enjoyment of the suit property, the plaintiff warned the defendants from trespassing upon the suit property, and sent a lawyer notice dated 04.07.2007. Despite the receipt of notice, the defendants did not issue any reply. As the defendants were threatening to trespass into the suit property which is in possession of the plaintiff, the suit for relief of declaration of title and for permanent injunction came to be filed.

4. Contending contra, the defendant Nos.1 and 2 would inter-alia state that the schedule of property is not correctly described in the plaint. The plaintiff has purchased the property very recently on 19.06.2007. The alleged vendors namely, Ramasamy and the legal heirs of Durai had no right to sell the suit property to the plaintiff. The sale deed which is created in favour of the plaintiff is a self-serving document. No other document is filed to assert the possession of the plaintiff's father. The suit property is a natham site. The defendants are in possession and enjoyment of the suit property for a long period by constructing thatched



house. In recognition of the defendants' possession of the suit property, the Government allotted the suit land to the defendants for building house under Group Housing Scheme (Thoguppu Veedu Thittam), Village Panchayat levied tax for the superstructure from the first defendant. There is no cause of action for the suit. The allegation of the plaintiff is that he has completed construction, put up foundation and he is in possession and enjoyment of 0.12 cents with boundaries in east by Manickam Naicker property, west by Kanagasabai Naicker's property, north by street and south by Vedhagiri's property. The first defendant has constructed the foundation measuring east-west 11 feet north-south 22 feet and the remaining property is used by the defendants for storing manure and for domestic purpose.

5. Based on the divergent pleadings, the Trial Court framed the following issues:-

i) Whether the plaintiff is entitled for the relief of declaration of title in respect of the suit property?

ii) Whether the plaintiff is entitled for the relief of mandatory injunction?

iii) Whether the plaintiff is entitled for the relief of damages, since 13.10.2007 at the rate of Rs.200/- p.m.?

iv) Whether the contention of the defendants to the effect that the vendors of the plaintiff do not have



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any right to sell the suit property is correct or not?

v) To what other relief, the plaintiff is entitled to?

6. At trial, to substantiate the plaint details, on the plaintiff's side, two witnesses were examined and five documents have been marked. Ex.A1 is the Sale Deed dated 19.06.2007 executed by Ramasmy Naicker and three sons of Durai Naicker in favour of Kanagasabai (Plaintiff) in respect of the suit property . Ex.P5 is the sale deed dated 19.08.1970 executed by Ramasamy Naicker S/o.Angamuthu in favour of Kanagasabai S/o.Manickam in respect of four items of the properties and the suit property is not dealt with. On the defendants' side, three witness have been examined and one document has been marked. Ex.B1 is the copy of resolution passed by the President Edaiyambudur Panchayat Union and its members.

7. Upon consideration of oral and documentary evidence and after hearing the arguments of both sides, the trial Court held that the except Ex.A1- Sale Deed, no other documents connected to the suit property have been marked and as the suit property is a natham property. As no documents to prove the possession of the property has filed by the plaintiff, the Trial Court dismissed the suit in entirety.



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8. Aggrieved, the plaintiff preferred appeal before the Sub Court, Kancheepuram in A.S.No.65 of 2010.

9. The First Appellate Court in consideration of the case records and after hearing the arguments of both sides, concluded that based on the Ex.A1- Sale Deed, the suit property belongs to the plaintiff and allowed the appeal in respect of declaration of title and for recovery of possession and in respect of relief of damages, appeal was dismissed. Against the said findings, this Second Appeal has been preferred by the defendants 1 and 2 herein.

10. The following substantial questions of law arise for consideration:-

- i) Whether the Appellate Court was right in relying of Ex.A1 for confirming the title of the respondent?
- ii) Whether the Trial Court erroneously decreed the suit for declaration of title based on assumption and presumption ?

11. Sum and substance of the case of the plaintiff is that he



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purchased the suit property from his Pangalis, Ramasamy Naicker and three sons of Durai Naicker on 19.06.2007 and he has raised construction and is in the foundation stage. Initially, the suit was filed for the relief of declaration of title and for permanent injunction and at the later point of time, instead of the prayer for permanent injunction for recovery of possession and mandatory injunction were added.

12. The defendants no.1 and 2 would contend that the plaintiff's predecessor's title do not have any right or title over the suit property and the suit property is an ancestral property of the plaintiff's vendor is an imaginary one. The defendants would strongly contend that the suit property is not in the possession and enjoyment of the plaintiff.

13. Schedule of the property given in the plaint is extracted hereunder:

The property is situated at Edayambudur Village, Uthiramerur Taluk, Gramanatham Old S.No.36/1, New No.181/12 to an extent of 2557 sq.ft. On the west side/out of 4557 sq.ft. with foundation put up to ground level boundaries on the north by Nadu Theru, on the south by vacant site of M.Veerasamy Naicker, on the east by vacant site of Manicka Naicker, [the father of plaintiff] on the west by vacant site of Kannippan.



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14. The plaintiff has laid the suit on the strength of Ex.A1 – Sale Deed dated 19.06.2007 in respect of the suit property, The suit property is a natham property. If it is a Government land, and if the declaration of title is sought for, then the Government has to be added as a party to the suit in order to have effective adjudication. The reasons being that in case of Government lands, Government should have a say about its property and what the type of land and who is in possession of the land etc., and such other information with regard to the suit property may be obtained from the Government enabling the Trial Court to come to an appropriate conclusion depending upon the relief sought for.

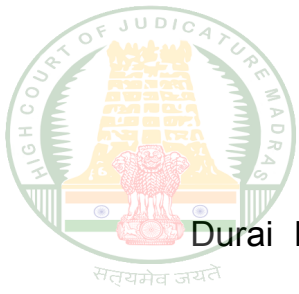
15. In this regard, it is relevant to refer to the observations made by the Apex Court in ***Milkhi Ram (dead) represented by LRs. and others*** reported in 2007 (15) SCC 750, the Hon'ble Supreme Court has observed that *the trial Court, having noticed that, prima facie, the suit property vested in the State Government and no effective decree could be passed without impleading the State, being a proper party, ought to have directed the plaintiffs to implead the State or the Court itself could have directed impleadment of the State. It was further observed that even in the first appeal, the District Judge though issued notice to the Collector to*



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intervene in the matter, did not think it proper to direct impleadment of the State as a party respondent. It was the further observation of the Hon'ble Supreme Court that having regard to the fact that the property, prima facie, vested in the State Government, opportunity should have been given to the State to contest the claim of the plaintiffs and direction was given to implead the State as additional defendant in the suit and remanded the suit to the trial Court .

16. On perusal of the plaint, it appears that the Government is not added as a party to the suit. Ex.A1 is the Sale Deed dated 19.06.2007. P.W.1 would depose that the suit property originally belonged to Angamuthu Naicker, who is the elder paternal uncle of the plaintiff and he got the suit property through an oral family partition that took place between him and his brother Manickam Naicker (father of the plaintiff herein). Within 35 days from the date of Ex.A.1 Sale Deed, the suit has been filed on 24.07.2007. In this case, on application by the plaintiff, Advocate Commissioner was appointed to note down the physical features of the suit property and he has filed his report on 28.08.2007. Furthermore, the plaintiff issued notice to the defendants on 04.07.2007 (Ex.A2- office copy) Ex.A5- Sale Deed is not connected to the suit property at all. The plaintiff has not filed any revenue documents in the name of his vendors namely Ramasamy Naicker and the Legal heirs of



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Durai Naicker. More so, no revenue document such as patta or tax receipts have been filed in the name of plaintiff's predecessor's in title, in order to prove the possession and enjoyment of the suit property.

17. It is the evidence of P.W.1 that his vendors are residing in Chennai and the suit property was left in his possession.

18. Whereas, Edayambudur Village, Panchayat President and its members have passed a resolution under Ex.B1 dated 19.03.2007 granting permission to the defendants to construct house under 'Group Housing Scheme', as the suit property is a Gramanatham and in consideration of the prayer sought for in the plaint namely, i)for declaration of title; ii) for mandatory injunction and iii) and for recovery of possession. The plaintiff has only marked the sale deed dated 19.06.2007- Ex.A1 as mentioned supra. Non-filing of revenue documents to prove the possession and enjoyment of the suit property by the predecessors in title of the plaintiff is fatal to the plaintiff's case. But the First Appellate Court based upon the sale deed Ex.A1 has granted the relief of declaration of title which finding is necessarily to be interfered with. In the given circumstances, the substantial questions of law are answered against the plaintiff.



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19. Based on the aforesaid observations and discussions, this second appeal stands allowed. Sequel to this, the Judgment and Decree dated 24.08.2012 passed by the Sub Court, Kancheepuram in A.S.No.65 of 2010 stands set aside and the Judgment and decree dated 24.09.2010 passed in O.S.No.76 of 2007 by the District Munsif-cum-Judicial Magistrate, Uthiramerur stands confirmed. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

22.05.2025

kkd
Internet:Yes
Index:Yes/No
Speaking/Non speaking order

To

1. The Subordinate Court, Kancheepuram.
2. The District Munsif cum-Judicial Magistrate Court,
Uthiramerur.



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R.KALAIMATHI,J.

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