



A.S.No.71 of 2022

THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

Date : 07.03.2025

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

A.S.No.71 of 2022 & CMP.No.2819 of 2022

Rathinapangi [died]

1. Govindan
2. Rajeswari
3. Jayalakshmi
4. Anusha

... Appellants

Versus

1. Velmurugan
2. Satish Kumar
3. S.G. Mehta
Rep. by his Power Agent
Deepakraj

... Respondents

PRAYER : This Appeal Suit has been filed under section 96 of Code of Civil Procedure to set aside the judgment and decree dated 27.08.2021 passed in O.S.No.159 of 2011 on the file of the learned Sessions Judge, Mahila Court, Cuddalore.



WEB COPY



A.S..No.71 of 2022

For Appellants : Mr.R.Gururaj
for Mr.D.Baskar

For Respondents : Mr.S.Patrick – R3

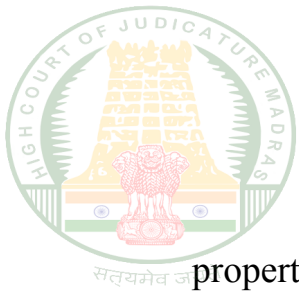
No appearance – R1 & R2

JUDGMENT

Aggrieved over the decree and judgment of the trial Court dismissing the suit filed for declaration and for partition, the present appeal has been filed by the unsuccessful plaintiffs.

2. The parties are arrayed as per their own ranking before the trial Court.

3. Chinnadurai Samuttir was the husband of the first plaintiff and they had three sons and a daughter. The second plaintiff and the first defendant are their sons and the third plaintiff is their daughter. Their eldest son Dhanaraj died and the fourth plaintiff is the wife of the said Dhanraj. The property originally belonged to one Parasurama Padayachi. He has settled the



A.S..No.71 of 2022

WEB COPY

properties in favour Sellapangi, who was then minor, by a registered settlement deed dated 07.05.1965. In the said settlement, life estate was reserved to Sellapangi on the said Parasurama Padayachi marrying her and vested remainder to the male children to be born to the settlor and settlee. The said Sellapangi along with her minor son Rajendran sold the suit properties by virtue of a sale deed dated 13.06.1976 to Chinnadurai Samuttir. The said Chinnadurai Samuttir died leaving behind the plaintiffs and the first defendant and one Dhanraj, who is the father of the second defendant. After the death of the Chinnadurai, the first plaintiff and her eldest son Dhanraj executed a simple mortgage in the year 1982 and the patta also stand in the name of Chinnadurai. Therefore, according to the plaintiffs, the suit property belong to the plaintiffs and the defendants 1 and 2. The third defendant has purchased the 'B' schedule property by virtue of sale deeds dated 31.08.2005 and 19.09.2005. The vendor of the third defendant has no title to convey the suit property. The third defendant is making an attempt to trespass into the suit property. Hence, the suit.

4. The defendants 1 and 2 assailed with the plaintiffs.

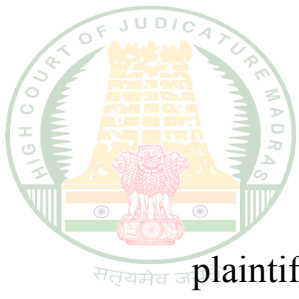


A.S..No.71 of 2022

WEB COPY

5. The third defendant denied the allegations in the plaint. According her, the property belong to one Vellaiammal and her minor children. They sold the property to this defendant on 31.08.2005 for valid consideration. Similarly the second item of the 'B' schedule property was purchased from Raghavan and his son Udhayasuriyan on 19.09.2005. Ever since the date of purchase, the third defendant was in possession of the property and revenue records also stand in her name. According to her, Sellapangi did not have any right or title covered under the settlement deed dated 07.05.1965. The said sale deed dated 30.06.1976 is invalid. The plaintiffs were never in possession of the property. The survey number for the first item of the property is 95/2 and 95/5 covered under patta No.552. The property belong to Vellaiammal and others and the third defendant has purchased the property from them. Similarly, survey No.139/14A and 139/14B was in possession of the predecessors-in-title of the third defendant. They sold the property to the third defendant for valid consideration.

6. In the reply statement filed by the plaintiffs, it is their contention that the since the vendors of the third defendant had no title, the possession of the



A.S..No.71 of 2022

plaintiffs cannot be denied.

WEB COPY

7. On the basis of the above pleadings, the following issues have been framed by the trial Court :

1. Whether the suit properties were belonging to Parasurama Padayachi?

2. Whether Parasurama Padayachi settled the suit properties in favour of one Sellapangi on 07.05.1965?

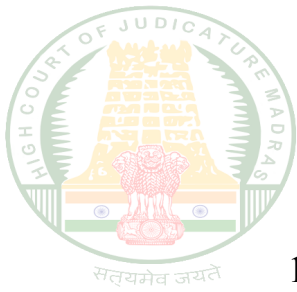
3. Whether the sale deed dated 30.06.1976 executed by Sellapangi is legal, valid and binding upon the defendants?

4. Whether the plaintiffs are entitled to a declaration of title over the suit properties?

5. Whether the first item of the suit properties were belonging to Aruna and Amudhan?

6. Whether the second item of the suit properties were belonging to Raghavan and Udhayasurian?

7. Whether the sale deeds dated 31.08.2005 and



A.S..No.71 of 2022

WEB COPY

19.09.2005 are legal, valid and binding upon the plaintiffs?

8. Whether the plaintiffs are entitled to 11/15 share in the suit property?

9. Whether the first and second defendants are entitled to 4/15 share in the suit properties?

10. To what relief the plaintiffs are entitled?

8. Additional Issues :

1. Whether the plaintiffs and defendants 1 and 2 are the owners of the suit 'B' schedule properties?

2. Whether the plaintiffs and the defendants 1 and 2 are entitled to a preliminary decree the partition and separate possession as prayed for?

3. To what other reliefs are the plaintiffs entitled?

9. On the side of the plaintiffs, the second plaintiff has been examined as P.W.1 and Ex.A.1 to Ex.A.7 have been marked. On the side of the third defendant, her power agent has been examined as D.W.1 and Ex.B.1 to Ex.B5 have been marked. Apart from that Ex.C.1 to Ex.C.3series have been marked.

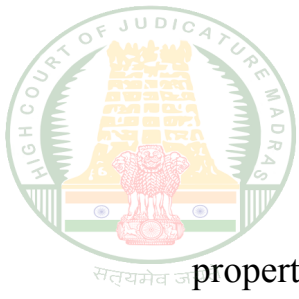


A.S.No.71 of 2022

WEB COPY

10. The trial Court appreciating both oral and documentary evidence, had come to the conclusion that the plaintiffs are not entitled to the relief of declaration and dismissed the suit. Challenging the same, the present appeal came to be filed by the plaintiffs.

11. It is the contention of the learned counsel appearing for the appellants that the suit properties belong to Parasurama Padayachi and he settled the property under Ex.A.1 with life estate to Sellapangi and vested remainder to his male legal heirs. The life estate holder and vested remainder joined together and sold the property under Ex.A.2 sale deed dated 30.06.1976 to the husband of the first plaintiff. That apart, Ex.A.3 mortgage deed clearly show that the first plaintiff and her eldest son executed the mortgage deed. Ex.A.4 and Ex.A.5 patta also, the name of Chinnadurai is found. According to him, the third defendant has obtained patta in the year 2014. Whereas in the revenue records, the name of Chinnadurai, is very much found. The trial Court has not appreciated these facts. Hence, according to the appellants, they have proper title. Therefore, the third defendant, who had purchased the



A.S..No.71 of 2022

WEB COPY

property in the year 2005, did not get any title.

12. Whereas, the learned counsel appearing for the third defendant would submit that the old Survey number of the appellants is not correlated with the new survey number. The plaintiff has not proved the description of the property. According to the third defendant, she had purchased the property from the original owners. Their names are very much found in the A register and revenue records. Though the husband of the plaintiff claim to have purchased the larger extent of the property, the suit has been laid only for a smaller extent. The boundaries have also not been tallied. Therefore, his contention is that the trial Court appreciated entire aspects and dismissed the suit.

13. In the light of the above submissions, now the points that arise for consideration are as follows :

1. Whether the plaintiff has prior title and the purchase made by the third defendant under the document Nos.2025 and 2132 of 2005 did not convey any title to her?

2. Whether the plaintiff has established their title by



A.S..No.71 of 2022

WEB COPY

correlating the revenue records?

3. To what relief, the parties are entitled?

14. Points : 1 to 3 :

The plaintiffs traced title on the basis of Ex.A.1 settlement deed and Ex.A.2 sale deed. Ex.A.1 when carefully perused, one Parasurama Padayachi settled the property to one Sellapangi, being a minor with life estate and vested remainder to his male children. The settlement has been executed in consideration of marriage.

15. Be that as it may. Under Ex.A.2 sale deed dated 30.06.1976, the said Sellapangi along with his minor child, vested remainder, has sold the property in favour of one Chinnadurai Samuttar, husband of the first plaintiff in respect of 1 acre 24 cents in Survey No.90/3, 95/5 and 111 and 89. The suit property relates to survey number 90/3 and 90/5. A perusal of Ex.A.2 indicate that in Survey No.95/3 an extent of 14 cents have been conveyed. Similarly, in Survey No.96/5 an extent of 34 cents have been conveyed in favour of



A.S..No.71 of 2022

WEB COPY

Chinnadurai Samuttir. Further perusal of Ex.A.2 makes it clear that except survey No.111 for an extent of 66 cents, there were no other boundaries mentioned with regard to survey number 95/3 and 95/5. Ex.A.3 mortgage deed executed by the first plaintiff and her eldest son Dhanraj in respect of survey No.95/3 and 95/5, in survey No.95/3 14 cents and 95/5 34 cents. In the above mortgage deed also there is no boundaries mentioned. In Ex.A.6 patta, the name of Chinnadurai is found and apart from the name of Chinnadurai, one Adimoolam, Thillai Govindan and Chidambaram Samuttir names were also found in patta No.540. The patta No.540 has been sub divided as survey Nos.135/10 and 139/14. Ex.A.7 'A' Register relate of old survey No.95/3 and its new survey number is 113/4, wherein also one Thillai Govindan and Adhimoolam names are found. Similarly, survey No.95/2, renumbered as 139/13. In Ex.A.7 the name of Chinnadurai along with Thillai Govindan and four others were found.

16. The third defendant traces title on the basis of Ex.B.1 and Ex.B.2 . The recital in Ex.B.1 indicate that the property has been sold to one Vailliammal and others. The Valliammal is the wife of one Nalla Thambi.



A.S..No.71 of 2022

The name of Nallathambi is also found in Ex.A.6 series. The extent in survey No.139/13 is only 17 ares, roughly around 42 cents. Wherein one Chinna Duari, Nallathamb, Adhimolam names have been found in the above document. It is relevant to note that under Ex.A.2, the husband of the first plaintiff has purchased to an extent of 14 cents in survey No.95/3 and in survey 95/5 34 cents without any boundaries. According to the third defendant, survey No.139/13 correspond to old survey No.95/2. Survey No.95/2 and 95/5 correspond to new survey No.139/13 covered under patta No.155/7. Ex.A.6 series also show that old survey No.95/2 and 95/5 classified as new survey number 139/13 to a total extent of 17 ares wherein the name of co-sharers have also been mentioned. What was purchased under Ex.A.2 is an extent of 14 cents survey number 95/3 and in survey 95/5 34 cents. The description of the property given in the plaint also indicate that old survey No.95/2 correspond to new survey No.139/13. The old survey No.95/3 correspond to new survey No.139/14. The fact remains that under Ex.A.2 sale deed, survey No.95/2 has not been purchased. What was purchased is an extent of 14 cents in survey No.95/3. The plaintiffs predecessor purchased the property in survey No.95/3 to an extent of 14 cents, which according to the plaintiff correspond to new



A.S..No.71 of 2022

survey No.139/14. Another 34 cents was purchased in old survey No.95/5.

Survey No.95/2 was the subject matter of sale under Ex.A.2. The survey No.139/13 correspondent to old survey No.95/5 has not been established by the plaintiff by any convincing evidence. Though the name of Chinnadurai has been found in Ex.A.6 and Ex.A,7 series, along with his name, other co-owners name also found.

17. The defendants claims to have purchased the property from one Nallathambi and his legal heirs and also one Raghavan and Udhayasuriyan and Adhimoolam. Ex.C.3 is in the name of Athimoolam and Thillai Govindan. Therefore, this Court is of the view that the husband of the first plaintiff though purchased the property under Ex.A.2, wherein boundaries were not given, the plaintiffs have not correlated the property. Though the name of the predecessor of the plaintiffs' name is found in Ex.A.6 and Ex.A.7, whether the survey No.95/5 correspond to new survey No.139/13 has not been satisfactorily explained and proved by the plaintiffs. The commissioner report though indicate that the survey No.139/3 relates to old survey No.95/2 and 95/5 for an extent of 17 ares roughly around 45 cents, according to the

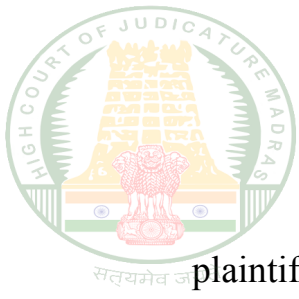


A.S..No.71 of 2022

commissioner's report, Nallathambi name found in the revenue records.

Similarly, in respect of survey No.95/3 an extent of 7 ares patta stands in the name of one Raghavan and new survey No.is 139 /14A and one Adhimoolam name is also found in the revenue records.

18. The third defendant has traced title through Ex.B.1 and Ex.B.2 sale deeds and her vendors name is very much found in the 'A' register. Therefore, this Court is of the view that when the boundaries have not been established and the old survey number has not been co-related to new survey numbers, the plaintiffs cannot seek for declaratory relief. When the plaintiffs seek declaratory relief, they have to establish the description of the property with correct boundaries and correlation to the old and new survey number also has to established, which has not been done by the plaintiffs. Though the predecessor of the plaintiffs name is found in the revenue records, as long as boundaries have not been established, the suit for declaration without specific boundaries cannot be maintainable. On what basis, boundaries have been stated in the plaint has also not been explained. Therefore, this Court is of the view that though Ex.A.2 shows the purchase made by the husband of the first



A.S.No.71 of 2022

WEB COPY

plaintiff in respect of survey No.95/3 and 95/5 to an extent of 14 cents and 34 cents respectively, the plaintiffs have not established correlation and boundaries properly.

19. It is relevant to note that as the revenue records also indicate that the name of other co-owners in the same survey number, the plaintiffs ought to have filed a suit for partition including all other co-owners for determination of their sharers. When the property has not been identified and there was no specific boundaries given in Ex.A.2, merely on the basis of some imaginary boundaries, the plaintiffs cannot seek declaratory relief. Hence, I do not find any merits in appeal for declaratory relief. The points are answered accordingly.

20. In the result, this Appeal Suit is dismissed and the decree and judgment of the trial Court in O.S.No.159 of 2011 dated 27.08.2021 is confirmed with liberty to the plaintiffs to file a fresh suit for partition including all other co-owners found in Ex.A.6 and Ex.A.7 along with subsequent purchasers. Consequently, connected miscellaneous petition is closed. No



A.S..No.71 of 2022

WEB COPY

07.03.2025

Index : Yes / No

Internet: Yes

Speaking/non speaking order

vrc

To,

1. The Sessions Judge, Mahila Court, Cuddalore,
2. V.R. Section, High Court, Madras.



WEB COPY



A.S.No.71 of 2022

N. SATHISH KUMAR, J.

vrc

A.S.No.71 of 2022

07.03.2025