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SA No. 12 of 2024



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21-04-2025

CORAM

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

SA No. 12 of 2024

1. MURUGESAN
- 2.Lakshmi
- 3.Dhayalan
- 4.Kannagi
- 5.Arjunan
- 6.Nagammal
- 7.Sampath

Appellant(s)

Vs

Saroja Ammal

Respondent(s)

PRAYER

Second Appeal filed Under Section 100 of the Civil Procedure Code, against the Judgment and decree dated 09.03.2023 passed in A.S.No. 26 of 2022 on the file of the Subordinate Court, Katpadi, and reversing the Judgement and Decree Dated 17.03.2022 on the file of the District Munsiff Court, Katpadi.



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For Appellant(s): D.Vijaya Babu

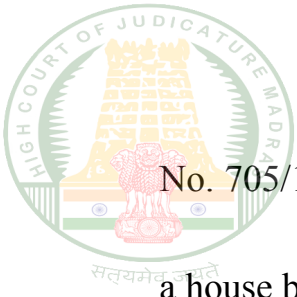
For Respondent(s): M/s.J.Ramakrishnan

JUDGMENT

The appellants have filed this appeal to set aside the Judgment and decree dated 09.03.2023 passed in A.S.No. 26 of 2022 on the file of the Subordinate Court, Katpadi, and reversing the Judgement and Decree Dated 17.03.2022 on the file of the District Munsiff Court, Katpadi.

2. For the purpose of convenience, the parties herein are referred to as they were ranked in the suit.

3. Challenging the reversal findings of the first appellate Court, the defendants have preferred this appeal. Before the trial Court, the respondent/plaintiff, Saroja Ammal, filed a suit in O.S. No. 140 of 2014, seeking a permanent injunction to restrain the defendants from interfering with her peaceful possession and enjoyment of the suit property as described in the plaint schedule. The property is located in Old Survey No. 705/1A, New Survey



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No. 705/1A2, with four boundaries, comprising an extent of 10 cents along with a house bearing Door No. 286. The B Schedule property comprises 1.55 cents in Old Survey Nos. 705/1A and 705/1B, New Survey Nos. 705/1A4 and 705/1B4, also with four boundaries.

4. The plaintiff claims that the said property was purchased by her husband, Ramasamy, from one Munusamy through a registered sale deed dated 03.07.1986. Since then, her husband had been in possession and enjoyment of the property. After his demise, the plaintiff and her children, his legal heirs, continued possession and enjoyment.

5. The defendants 1, 3, and 5, sons of one Singara Gounder, allegedly interfered with the plaintiff's enjoyment of the property. Along with their wives, defendants 2, 4, and 6 and D7 (his son), they caused repeated interference. The plaintiff resides in the house at the A Schedule property and cultivates the B Schedule land. Taking advantage of her husband's demise, the defendants allegedly disturbed her possession, leading to the institution of the present suit.



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6. In their written statement, the defendants admitted that they are the legal heirs of Singara Gounder. However, they denied the plaintiff's claim and right over the suit properties. According to them, both A and B Schedule properties are the absolute properties of Singara Gounder. During his lifetime, he executed two registered settlement deeds on 23.09.2010 in favour of his sons, D1, D3, and D5. Since then, they have been in possession and enjoyment of the said properties as absolute owners.

7. The defendants further contended that although the plaintiff and her children are legal heirs of Ramasamy, they have no right over the A and B Schedule properties. They also relied on prior litigations. During the lifetime of Singara Gounder, he filed a suit O.S. No. 438 of 1993 on the file of the District Munsif Court, Ranipet and transferred to the Court of the District Munsif, Walajapet, in O.S.No.112 of 1996. Ramasamy Gounder also filed another suit O.S. No. 2 of 1995, later renumbered as O.S. No. 313 of 1995 before the Court of District Munsif, Walajapet Court. Both suits were tried jointly.



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8. In those proceedings, the court held that Singara Gounder was the rightful owner of the suit properties described as A and B Schedules. Ramasamy preferred appeals in A.S. Nos. 12 and 87 of 2006 before the Subordinate Court, Ranipet, but both appeals were dismissed. Though a second appeal in S.A. No. 2435 of 2003 is said to have been preferred, no such appeal is presently pending. Therefore, the defendants argued that title over the A Schedule property was already declared in favour of Singara Gounder, and that Ramasamy had no rights over the properties. The present suit, filed by suppressing material facts, is barred by *res judicata* and is an abuse of the process of law. Hence, they prayed for dismissal of the suit as being devoid of merit.

9. Before the trial court, both the parties adduced oral and documentary evidence on the side of plaintiff, P.W.1 to P.W.3 were examined and Exs.A1 to A7 were marked. On the side of defendants D.W.1 and D.W.2 were marked and Exs.B1 to B12 were marked. The plaintiff marked Exhibits A1 and A2 to establish her title. Exhibit A1 is a document dated 08.11.1985 showing that



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Munusamy, the vendor, held title to land in Old Survey No. 697/1 (21 cents),

Survey No. 705/1A and 1B (1.20 acres). Exhibit A2 is the sale deed executed in

favour of Ramasamy. However, the trial court found discrepancies. The

properties described in the sale deeds do not correlate with those described in

the suit schedule. There was no documentary evidence explaining how Old

Survey No. 705/1A became 705/1A2, or how B Schedule properties 705/1A and

705/1B were converted to 705/1A4 and 705/1B4.

10. Although the plaintiff relied on tax receipts and claimed that patta stood in the name of Ramasamy Gounder, the relevant tax receipts were not produced. Furthermore, she failed to prove that Door No. 286 lies within Survey No. 705/1A2. The tax receipts produced were related to another door number 31/160, standing in the name of one Sivakumar, who was not made a party to the proceedings. Therefore, possession was not established.

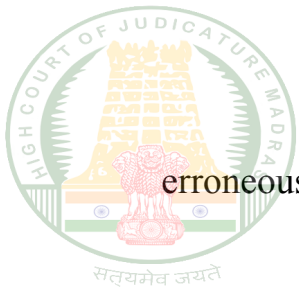
11. Additionally, PW2, a close relative of the plaintiff, gave evidence that was found to be interested and unconvincing. The learned trial Judge also



observed that the earlier suit filed by Singara Gounder (O.S. No. 122 of 1996), wherein his title was declared and an injunction granted against Ramasamy, had not been disclosed. Suppressing this material fact, the plaintiff filed the present suit.

12. Moreover, Patta No. 15/23 stands in the names of defendants 1, 3, and 5. In light of the above, the trial Court held that the plaintiff had failed to prove her title and possession and accordingly dismissed the suit. Challenging the said findings, the plaintiff preferred an appeal in A.S. No. 26 of 2022.

13. The learned first appellate Judge independently analyzed the entire evidence and facts, framed separate points for consideration, and ultimately held that based on the evidence of DW-1, the plaintiff was residing in the suit house. The boundaries mentioned in the A and B Schedule properties in the present suit differed entirely from those described in the earlier suit in O.S. No. 112 of 1996. These boundaries were not disputed by the respondents/defendants during the hearing. Therefore, the appellate court held that the learned trial Judge had



erroneously dismissed the suit.

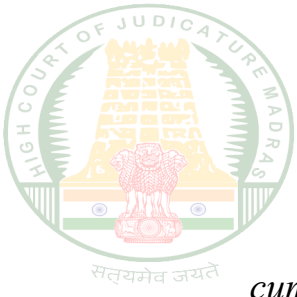
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14. Further, it was held that in the earlier suit filed by Singara Gounder, no specific boundaries were mentioned, and the lands belonging to Singara Gounder were only adjacent to the present suit properties. The house tax receipt produced by the plaintiff substantiated that she was residing in the suit property. Moreover, the declaratory relief obtained by Singara Gounder pertained only to the property he had purchased and not to the remaining extent. Accordingly, the appeal was allowed by setting aside the findings of the trial Court. Challenging those findings, the defendants have now preferred this second appeal.

15. Heard both sides.

16. The appeal is admitted on the following substantial questions of law:

"A. Whether the First Appellate Court wrongly concluded whether resjudicata not applicable plaintiff suit in O.S.No.140 of 2014, it is valid or not?"



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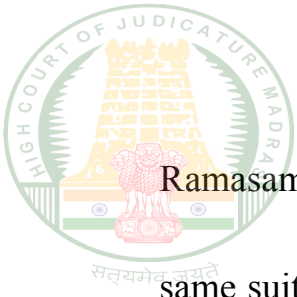
B. Whether the First Appellate Court without any materials

cum document evidence came to the conclusion of DW.1 & DW.2

evidence it is valid or not?"

17. The learned counsel for the appellants argued that Exhibits B1 to B12, relied upon by the defendants, clearly established that the father of the first defendant, namely Singara Gounder, had already filed a suit in respect of the same A and B Schedule properties in O.S. No. 112 of 1996. Similarly, it is the same property involved in the suit filed by the plaintiff's husband, Ramasamy, in O.S. No. 313 of 1995. After a joint trial, the learned trial Judge had declared that Singara Gounder was the absolute owner of Survey Nos. 705/1A, 705/1A4, 705/1B4, and 705/1B2. The courts below failed to properly appreciate the findings in those earlier proceedings and erroneously concluded that the plaintiff was the owner of the suit property, which is perverse, illegal, and liable to be set aside.

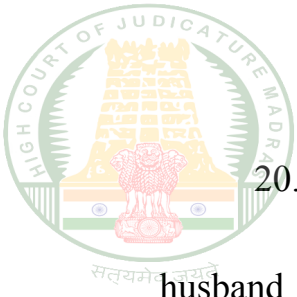
18. Furthermore, the counsel submitted that the plaintiff had suppressed material facts by failing to disclose in her pleadings that her husband,



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Ramasamy Gounder, had already been a party to earlier litigation involving the same suit properties. This amounts to a second round of litigation and an abuse of process, as rightly held by the learned trial Judge. The first appellate Judge, however, failed to consider this crucial point, and his findings are therefore liable to be set aside. He also pointed out that the house tax receipt filed by the plaintiff, Saroja Ammal, did not pertain to the suit property but to another house bearing Door No. 31/160, standing in the name of one Sivakumar. The trial Court had rightly considered this fact, but the first appellate Judge overlooked it, rendering his findings invalid and unsustainable.

19. By way of reply, the learned counsel for the plaintiff submitted that she was in possession of the A Schedule property and cultivating the B Schedule property. In support of her right and title, she relied on the sale deeds marked as Exhibits A1 and A2 and certain tax receipts. He submitted that these documents were properly appreciated by the learned first appellate Judge and that no interference was warranted. Hence, he prayed for dismissal of the present appeal.



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20. On considering the submissions from both sides, it is evident that the husband of the plaintiff, Ramasamy Gounder, and the father of the first defendant, Singara Gounder, had previously filed suits, O.S. Nos. 313 of 1995 and 112 of 1996, respectively, before the Walajah Court. After a full-fledged trial, the declaration suit filed by Singara Gounder was decreed, and the suit filed by Ramasamy Gounder was dismissed. The certified copies of the judgments and decrees in those suits were marked as Exhibits B1 to B8, and these facts remain undisputed.

21. However, on a perusal of the present plaint, the plaintiff has not disclosed any details about the prior litigations. She also did not file a reply to the defendants' written statement, wherein it was clearly pleaded that the suit property had already been declared in favour of Singara Gounder. Thus, the present suit, filed involving the same property and between the same family members, is clearly barred by the principles of *res judicata*. The learned trial Judge rightly applied this legal principle, but the learned first appellate Judge failed to appreciate it. Therefore, the findings of the appellate court are illegal



and liable to be set aside. Accordingly, **Question of Law 1** is answered in favour of the appellants.

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22. By merely relying on the oral evidence of DW-1 and DW-2, the learned appellate Judge concluded that the plaintiff was in possession of the suit property. However, the house tax receipt relied upon by the plaintiff pertains to a different house and stands in the name of Sivakumar, who is the son of the plaintiff. There is no corroborative evidence to establish that these documents relate to the suit property. The learned trial Judge rightly pointed out these inconsistencies. The appellate Judge, however, overlooked this and granted relief to the plaintiff without applying the well-settled legal principle that the plaintiff must prove her case independently and cannot rely on the weakness of the defendants' case. Accordingly, **Question of Law 2** is also answered in favour of the appellants.

23. Furthermore, the earlier suit proceedings clearly show that Singara Gounder held valid title documents and a patta in respect of the suit properties.



In respect of Survey Nos. 705/1A and 705/1A4, the claim of possession by

Ramasamy Gounder was rejected. Despite the dispute over title, Ramasamy

Gounder did not file a suit for declaration. Even in the present suit, the plaintiff

has not sought any declaratory relief. Moreover, the plaintiff failed to produce

the original sale deed, whereas the original documents were filed in the earlier

proceedings. This further establishes that the plaintiff filed the present suit by

suppressing material facts, amounting to an abuse of the process of law.

24. In O.S. No. 112 of 1996, Ramasamy Gounder's suit for injunction over Survey No. 705/1A2 was dismissed, whereas in O.S. No. 438 of 1992, filed by Singara Gounder, his title was declared. The suit properties were thus declared to belong to Singara Gounder, the father of the first defendant. Suppressing this fact, the plaintiff filed the present suit seeking only bare injunction, without establishing possession.

25. The learned first appellate Judge, without properly appreciating the earlier legal proceedings and evidence, erroneously granted relief to the



plaintiff. Therefore, the findings rendered by the first appellate court is set aside.

Accordingly, the second appeal is allowed by confirming the findings of the trial Court. The suit is dismissed as devoid of merits. There shall be no order as to costs.

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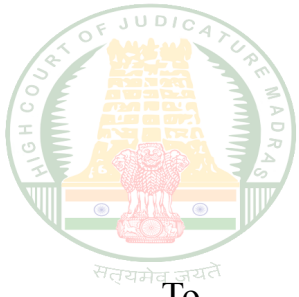
Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

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To
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1. The Subordinate Court, Katpadi.
2. The District Munsiff Court, Katpadi.
3. The Section Officer, VR-Section,
High Court of Madras.



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T.V.THAMILSELVI J.

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