



S.A.(MD)No.185 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 23.07.2025

CORAM

THE HON'BLE MR.JUSTICE G.ARUL MURUGAN

S.A.(MD)No.185 of 2019
and
C.M.P.(MD)No.3993 of 2019

Arulvictoriya

... Appellant/Appellant/
Plaintiff

vs

1.S.Gandhimani
2.S.Vijayaraghavan
3.S.Nagarajan

...Respondents/Respondents/
Defendants

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, against the judgment and decree of the lower appellate Court, dated 19.12.2018 made in A.S.No.31 of 2014, on the file of the Sub Court, Sivagangai, confirming the judgment and decree of the trial Court, dated 09.11.2012, made in O.S.No.189 of 2009, on the file of the District Munsif Court, Sivagangai.

For Appellant : Mr.S.P.Maharajan

For Respondents : Mr.Muthupandiyadav



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JUDGMENT

The unsuccessful plaintiff is before this Court on appeal.

2. The Second Appeal is filed challenging the judgment and decree, dated 19.12.2018, in A.S.No.31 of 2014, on the file of the Subordinate Court, Sivagangai, confirming the judgment and decree, dated 09.11.2012, in O.S.No.189 of 2009, on the file of the District Munsif Court, Sivagangai.

3. For the sake of convenience, the parties are referred to as per the litigative status before the trial Court.

4. It is the case of the plaintiff that she had purchased 1 acre of the property on 13.05.1996 through a registered sale deed for valuable consideration. The plaintiff, pursuant to her purchase had been carrying on cultivation in the property in S.No.49/2. The plaintiff had leased out the suit property for a play ground. When the property was sub-divided, a portion of the property which was sub-divided as S.No.49/2A1C had been



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wrongly included and patta was granted in favour of the defendants' father.

In this regard, on 10.04.2009, the plaintiff had filed a petition to the Revenue Divisional Officer. On coming to know about the same, the defendants are attempting to encroach the suit property. Hence, the plaintiff has come up with the suit for declaration and permanent injunction.

5. The defendants resisted the suit contending that the defendants' father Shanmugam @ Shanmugam Sundaram Pillai was in possession of the suit property in S.No.49/2A1C for the past 60 years. In view of the possession and enjoyment, Adangal had been issued and also 10A(1) records stand in the name of the defendants' father. Further the defendants' father had also sold a portion of the property in S.No.49/2A1C measuring 4 cents through a sale deed, dated 26.03.2004, in favour of one Rajeswari and the purchaser is in possession of the property to that extent of 4 cents. The plaintiff, who had purchased the properties recently wanted the defendants also to sell this suit property to the plaintiff, which the defendants' refused and as such, the plaintiff had come up with the suit with false claim and sought for dismissal of the suit and also sought for counter claim.



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6. During trial, the plaintiff examined herself as P.W.1 and one Radhakrishnan as P.W.2 and marked exhibits A.1 to A.6. The second defendant examined himself as D.W.1 and one Irulappan and Velayutham as D.W.2 and D.W.3 and marked exhibits B.1 to B.3.

7. The trial Court, after analysing the evidences, came to the conclusion that when the plaintiff had purchased the property measuring 1 acre in S.No.49/2, which was sub-divided and patta was issued in favour of the plaintiff, that property purchased by the plaintiff does not include 13 cents, for which, patta was issued in favour of the defendants' father in S.No.49/2A1C in Ex.B.1 and thereby had dismissed the suit and allowed the counter claim. On appeal, the lower appellate Court reappraised the evidence and on finding that since the plaintiff failed to produce the copy of the patta issued in her favour in S.No.49/2A1B held that adverse inference has been drawn and only if the plaintiff shows that there is a lesser extent available than the lands purchased through the sale deed, the proposition that the boundary will prevail over the extent will be applicable and as such, dismissed the appeal, confirming the judgment and decree of the trial Court.



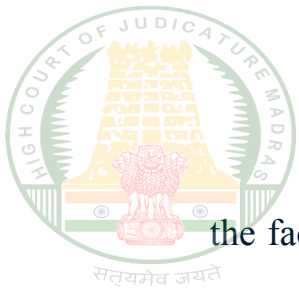
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Assailing the concurrent findings of fact, the plaintiff had preferred the above Second Appeal.

8. The Second Appeal has not been admitted and this Court, by order dated 15.04.2019, only issued notice to the respondents.

9. The learned Counsel appearing for the appellant argued that when the plaintiff had filed the sale deed in Ex.A.2 and also the lease agreement in Ex.A.3, she has proved her title and when the defendants had only filed patta in Ex.B.1, patta will not be a document conferring any title, the Courts below have erroneously dismissed the suit and decreed the counter claim, placing reliance on the patta in Ex.B.1 and therefore, the findings are perverse and sought for interference of this Court.

10. Mr.S.Muthupandiyadav, learned Counsel appearing for the respondents argued that the plaintiff had though purchased the property through sale deed in Ex.A.2, she had purchased only an extent of 1 acre by specific boundaries and for which, after sub-division, patta had also been issued in her favour. The plaintiff purposely had avoided filing of patta, as



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the fact that the plaintiff does not have right in S.No.49/2A1C would come out. Further it his vehement contention that even the lease agreement relied on by the plaintiff in Ex.A.3 is in respect of the lands in S.No.49/2A1A and does not include S.Nos.49/2A1B and 49/2A1C, those documents would not enure to the benefit of the plaintiff and therefore, the Courts below have rightly dismissed the suit and decreed the counter claim, which needs no interference and sought for dismissal of the appeal.

11. Heard the rival submissions and perused the materials available on record.

12. Admittedly, the plaintiff had purchased an extent of 1 acre of lands through a sale deed dated 13.05.1996 in Ex.A.2. As per the sale deed, 1 acre has been purchased with specific boundaries. Though at the time of purchase by the plaintiff, the property was situated in S.No.49/2, admittedly they were vast extent of property available. After sub-division, the property purchased by the plaintiff had been sub-divided and the patta in the sub-divided S.No.49/2A1B has been issued in favour of the plaintiff. The plaintiff had come up with the suit claiming for declaration and permanent



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injunction in respect of the suit property having S.No.49/2A1C. It is the claim of the plaintiff that when the sub-division was carried out, for the lands to 13 cents in S.No.49/2A1C which also forms part of the land in S.No.49/2A1B, patta had been wrongly issued in favour of the defendants' father.

13. It is the specific claim of the plaintiff that 13 cents in which patta was issued for the defendants' father in S.No.49/2A1C forms part of S.No. 49/2A1B. When the plaintiff had come up with such a claim and when admittedly the patta has been issued in her favour for the lands purchased by her in S.No.49/2A1B, the plaintiff ought to have filed the copy of the patta issued in her favour. Only on the perusal of the patta, it would be revealed as to what was the exact extent for which patta was granted in favour of the plaintiff. The plaintiff, who had come up with the suit for declaration and permanent injunction, is expected to prove her claim through the best evidence available with her. Further as per Section 101 of the Indian Evidence Act, the onus was on the plaintiff to discharge her burden to prove the claim made by her.



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14. When admittedly, the patta was issued in favour of the plaintiff for the S.No.49/2A1B, then the failure on the part of the plaintiff purposely in not filing the patta before the Court would only lead to an adverse inference to the effect that if the patta is produced, then the fact that the patta has been issued for the entire extent of 1 acre purchased by the plaintiff in Ex.A.2 would be revealed.

15. Only if the plaintiff files the copy of the patta granted in her favour and establishes the fact that when she purchased 1 acre land through a sale deed in Ex.B.2, in the field, only a lesser extent of land is available, then the proportion that the boundaries will prevail over the extent would be applicable. But in the instant case, when the plaintiff has not brought any documents to establish that the lands available with her in patta is lesser than the extent which was conveyed to her in the sale deed, the plaintiff has miserably failed to prove her claim.

16. Further it is to be noted that the defendants' father had been in long possession of the suit property based on which patta in Ex.B.1 came to be issued in favour of the defendants' father. Based on the patta issued and



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also his ownership in the suit property, out of 13 cents of land, the defendants' father had already sold 4 cents of land to one Rajeswari as early as on 26.03.2004 and the copy of the sale deed has also been filed and marked in Ex.B.3. When the plaintiff claims that she is entitled for the entire 13 cents in S.No.49/2A1C, the failure and silence on the part of the plaintiff for not having chosen to challenge the sale deed executed by the defendants' father in Ex.B.3 conveying a portion of 4 cents would go to detrimental to the claim of the plaintiff. In the absence of any such challenge and also in view of the documents filed by the defendants establishing their right in respect of the suit property and the plaintiff having failed to file any documents to prove that the extent purchased by her includes the land in patta covered in Ex.B.1, the Courts below had rightly arrived at concurrent finding of the fact that the plaintiff had failed to prove her claim and thereby had dismissed the suit, decreeing the counter claim.

17. This Court does not find any illegality or perversity in the concurrent findings arrived at by the Courts below. No question of law,



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much less a substantial question of law arises for consideration in the

Second Appeal.

18. Accordingly, the Second Appeal stands dismissed. However, there is no order as to costs. Consequently, the connected Civil Miscellaneous Petition is closed.

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Internet :Yes/No
Index :Yes/No
NCC :Yes/No

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To

- 1.The Subordinate Court, Sivagangai.
- 2.The District Munsif Court, Sivagangai.
3. The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ARUL MURUGAN, J.

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Judgment made in
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