



S.A.(MD).No.226 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 01.08.2025

CORAM

THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

S.A.(MD).No.226 of 2018

and

C.M.P.(MD).Nos.5995 of 2018 and 4902 of 2019

1.Arumugadurai

2.Murugesan

... Appellants/Appellants/Plaintiffs

Vs.

1.Eaganathan

2.Kovildurai

3.Packiaraj

...Respondents/Respondents/
Defendants

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree dated 23.02.2018 passed in A.S.No.94 of 2016 on the file of the III Additional District Judge, Tirunelveli confirming the judgment and decree dated 22.09.2016 passed in O.S.No.117 of 2011 on the file of the Subordinate Judge, Ambasamudram.

For Appellants : Mr.V.Meenakshi Sundaram
for Mr.N.Pragalathan

For R-1 & R-2 : Mr.J.Barathan

For R-3 : No appearance



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JUDGMENT

The unsuccessful plaintiffs are before this Court on appeal.

2. The Second Appeal is filed challenging the judgment and decree dated 23.02.2018 in A.S.No.94 of 2016 on the file of the III Additional District Judge, Tirunelveli, confirming the judgment and decree dated 22.09.2016 in O.S. No.117 of 2011 on the file of the Subordinate Judge, Ambasamudram.

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 plaintiffs that the suit properties originally belonged to Rajamani Nadar and others, who purchased the suit properties through two sale deeds dated 25.01.1969 and 13.12.1971. As per the two sale deeds, the properties were purchased by Rajamani Nadar along with several other persons. One among them was the plaintiffs' grandfather, Narayana Nadar. There was an oral partition on 10.01.1980, in which, the plaintiffs' grandfather Narayana Nadar was allotted the suit properties. Since he died intestate, his son Subbaiah Nadar, who is the plaintiffs' father, along with his brothers got the suit



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properties. In the family arrangement entered into on 10.01.1985, the plaintiffs' father, Subbaiah Nadar got the absolute right over the suit schedule properties.

Pursuant to which, two settlement deeds were executed on 21.12.2010 settling the first item of the suit property in favour of the first plaintiff and a settlement deed dated 23.06.2011 settling the second item of the suit property, in favour of both the plaintiffs. In view of the same, the plaintiffs are in the joint possession of the suit properties and since the defendants interfered with their possession, they had come up with the suit seeking for declaration and permanent injunction.

5. The defendants resisted the suit by disputing the claim of the plaintiffs.

It is their specific contention that neither the plaintiffs nor their father or grandfather have any right over the suit schedule properties. It is further contended that, even after the two sale deeds referred by them, there had been a partition suit instituted in O.S.No.200 of 1970 on the file of the District Munsif Court, Ambasamudram and pursuant to a compromise entered into on 14.10.1971, the suit came to be decreed. As per the decree granted in the partition suit, the properties were allotted to the parties in the suit and in view of the decree passed, the plaintiffs do not have any right over the suit properties.

The first defendant, who was allotted the properties, had executed the settlement



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deed in favour of the defendants 2 and 3 and therefore, they are the absolute owners. Further, yet another suit had been filed by the predecessor in title of the plaintiffs in O.S.No.719 of 1971 on the file of the District Munsif Court, Ambasamudram seeking for declaration of title over the suit properties, which had also been dismissed and suppressing all these proceedings, the plaintiffs had come up with the suit and as such, sought for dismissal of the suit.

6. During trial, the plaintiffs examined three witnesses, P.W.1 to P.W.3 and marked Exhibits A1 to A8. On the side of the defendants, the first defendant examined himself as D.W.1 and marked Exhibits B1 to B12.

7. The Trial Court, after analysing the evidences, came to the conclusion that the plaintiffs have not approached the Court with clean hands and they have suppressed the decree passed in O.S.No.200 of 1970, wherein, the suit property had already been dealt with and a decree came to be passed. In view of the decree passed in the earlier suit, which is evidenced from Ex.B1 and Ex.B2, the claim of the plaintiffs are not sustainable and thereby, dismissed the suit.

8. On appeal, the Lower Appellate Court concurred with the findings of the Trial Court and also on finding that from the document in Ex.B2, the portion



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that has been allotted to in favour of the plaintiffs' ancestors, are not the subject matter of the suit property, had dismissed the appeal.

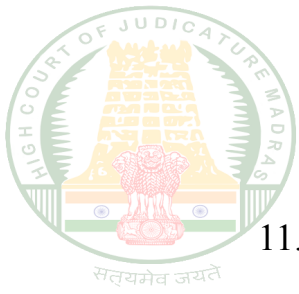
9. Assailing the concurrent findings of fact, the plaintiffs are before this Court on appeal.

10. By order dated 18.07.2018, the Second Appeal has been admitted on the following substantial questions of law:

“1. Whether the findings of courts below in holding that the appellants are not entitled for discretionary relief, since they have suppressed the material facts Ex.B.1 and B6, which are nothing but suit extracts is legally sustainable?

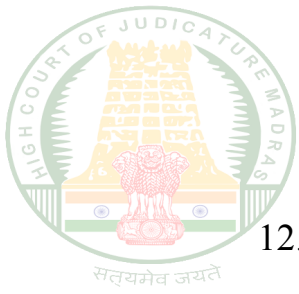
2. Whether the courts below are justified in attaching evidentiary value to documents marked as Ex.B1 and B6 namely the suit extracts and thereby denying the relief of declaration?

3. Whether the findings of courts below are justified in closing the evidence of DW-1 suo-motu and holding of closure of evidence cannot be construed as denying the admissible evidence?”



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11. The learned counsel for the appellants argued that, when the plaintiffs had filed documents in Ex.A1 and Ex.A2, which are the sale deeds standing in the name of the plaintiffs' grandfather along with other predecessors, the plaintiffs have traced the title to the suit properties by filing the registered sale deeds. It is his further contention that in view of the property having been vested with the plaintiffs' father, Subbaiah Nadar, the two settlement deeds in Ex.A3 and Ex.A4 came to be registered and the plaintiffs having got the right through the settlement deeds, got the revenue records mutated and were in possession of the suit properties and evidencing the same, they have filed documents in Ex.A5 to Ex.A8. Thus, when the plaintiffs have proved their title and possession over the suit properties, the Courts below, merely by relying on the suit register and Advocate Commissioner's report in Ex.B1 and Ex.B2, had rejected the claim. It is the further contention of the learned counsel that even from the perusal of the suit register in Ex.B1 and final decree incorporated in Ex.B2, it could be seen that the plaintiffs' ancestors were granted with a share in the properties and thereby, the plaintiffs are entitled to maintain the present suit. The Courts below had merely dismissed the suit on the ground of suppression of the suit in O.S.No.200 of 1970, when the plaintiffs are having a right over the suit properties from the ancestors, the findings rendered are perverse and sought for interference of this Court.



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12. Contending contra, the learned counsel appearing for the first and second respondents submitted that when the suit property has already been dealt with in the earlier suit as early as in the year 1970 itself and a final decree came to be passed, thereby, the parties were allotted their respective shares, the present suit filed by the plaintiffs without disclosing the proceedings in Ex.B1 and Ex.B2 and seeking a relief based on the sale deeds is an abuse of process and the Courts below have rightly dismissed the claim and needs no interference and sought for dismissal of the appeal.

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

14. The plaintiffs had come up with the suit for declaration and permanent injunction claiming title over the suit properties. It is the contention of the plaintiffs that in view of the purchase made by the plaintiffs' grandfather, Narayana Nadar along with other persons in the sale deeds dated 25.01.1969 and 13.12.1971, which are marked as Ex.A1 and Ex.A2, the plaintiffs' grandfather was having a share in the properties purchased. Pursuant to an oral partition entered between the predecessors, the suit properties came to the share of the plaintiffs' grandfather, Narayana Nadar and pursuant to his death, the



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same was inherited by the father of the plaintiffs, Subbaiah Nadar. It is their further claim that in view of an oral family arrangement, Subbaiah Nadar got absolute right over the suit properties and he had in turn settled the suit properties in favour of the plaintiffs through two settlement deeds dated 21.12.2010 and 23.06.2011 in Ex.A3 and Ex.A4 respectively. The plaintiffs further, by filing the documents in Ex.A5 to Ex.A8, claim title and possession over the suit property.

15. On the other hand, the defendants disputed the title of the plaintiffs over the suit property. The defendants in this regard had filed documents in Ex.B1 and Ex.B2, which are the suit register and the Advocate Commissioner's plan and report filed in the suit. The perusal of the documents in Ex.B1 and Ex.B2 would go to show that a suit in O.S.No.200 of 1970 came to be instituted on the file of the District Munsif Court, Ambasamudram seeking for partition. In the suit in O.S.No.200 of 1970, the first defendant herein was the second plaintiff, Rajamani Nadar was the first defendant, the plaintiffs' grandfather, Narayana Nadar was the second defendant and the plaintiffs' father, Subbaiah Nadar was the third defendant. In the said suit, a preliminary decree came to be passed on 14.10.1971. The perusal of the suit schedule properties therein would go to show that, the lands in Survey No.190/1 is the first item and the lands in



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Survey No.195/1 is the second item in that partition suit. In the suit, a

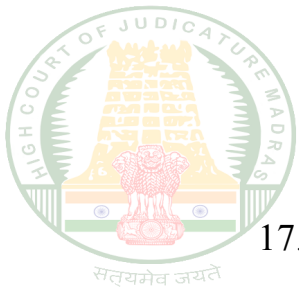
compromise memo had been filed and the terms of compromise therein were that the plaintiffs were entitled to 16 shares and the defendants 1 to 4 were entitled to 5 shares in the suit properties therein. Pursuant to the decree being passed, an Advocate Commissioner was appointed in the final decree proceedings and ultimately, final decree came to be passed, which could be seen from Ex.B2. In Ex.B2, the perusal of the schedule reveals that there were five schedules of the properties and the first schedule of the property was allotted to the plaintiffs. The first schedule contains 8 survey numbers totalling an extent of 27.48 acres. The first item in the first schedule is in respect of 5.80 acres in Survey No.190/1A, which is the first item of the present suit property and the third item of the first schedule is 7.87 acres in Survey No.195/1A, which is the second item of the present suit property. The defendants 1 to 4 therein were allotted lands in other survey numbers. Only the third item in the second schedule therein shows that 2.46 acres of lands were allotted to the defendants therein, who are the present plaintiffs' ancestors, in Survey No.195/1B.

16. From the above documents in Ex.B1 and Ex.B2, it is clear and evident that these properties had been the subject matter of partition, though when the partition suit was pending, there was no subdivision and the lands were only



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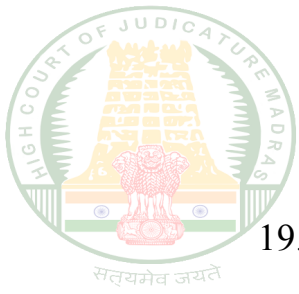
having Survey Nos.190/1 and 195/1. After a memorandum of compromise has been filed, a preliminary decree was passed. Even when the final decree proceedings were undertaken, the lands have already been subdivided and in the final decree, the plaintiffs, who are the first defendant herein and the other person, have been allotted with the lands specifically in Survey Nos.190/1A and 195/1A. When the lands have already been subdivided even at the time of passing of the final decree, the present suit filed by the plaintiffs claiming right over the lands in an undivided survey number, that too, based on the sale deeds in Ex.A1 and Ex.A2, cannot be sustained. The plaintiffs knowing well about this proceedings and that they have no right to claim the suit properties based on the sale deeds in Ex.A1 and Ex.A2, had suppressed the decrees passed in O.S.No.200 of 1970, whereby, the rights of the parties have already been determined and the defendants became the owner of Survey Nos.190/1A and 195/1A. When there has been a clear suppression of materials and the plaintiffs had not approached the Court with clean hands, the Courts below have rightly noticed these issues and also from the documents in Ex.B1 and Ex.B2, since the defendants have been allotted with the properties in two survey numbers, had dismissed the suit seeking for declaration and permanent injunction.



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17. It is only the contention of the learned counsel for the appellants that even though they ought not to have sought for a relief based on the documents in Ex.A1 and Ex.A2, in view of the documents in Ex.B1 and Ex.B2, it could be seen that the plaintiffs' ancestors were given a right for portion of lands in Survey No.195/1B. To this extent, the plaintiffs are having a right to claim.

18. When the plaintiffs on knowing well that the properties had already been subdivided and a decree came to be passed in the suit, which was filed in the year 1970 itself and from the written statement filed by the defendants, it is averred that yet another suit had also been filed by the plaintiffs' ancestors seeking for declaration, which also came to be dismissed, the present submission made by the learned counsel cannot be sustained. However, this Court is not apprised as to what happened to this extent of lands granted to the plaintiffs' ancestors in Survey No.195/1B and as to whether those lands are still available and who are all the eligible persons to claim right over the lands. If at all the plaintiffs are having any right over the lands, that were allotted to their ancestors through the final decree passed in O.S.No.200 of 1970, which could be seen from Ex.B1 and Ex.B2 and they can trace their right over those properties, it is for them to work out their rights for the lands allotted to their ancestors by contesting with the eligible beneficiaries.



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19. In view of the above findings, this Court does not find any illegality or perversity in the concurrent findings of fact rendered by the Courts below. As such, the substantial questions of law are answered as against the appellants and in favour of the respondents.

20. Accordingly, the Second Appeal stands dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

01.08.2025

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

- 1.The III Additional District Judge,
Tirunelveli.
- 2.The Subordinate Judge,
Ambasamudram.
- 3.The Record Keeper,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ARUL MURUGAN,J.

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