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SA No. 27 of 2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17-02-2026

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THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

SA No. 27 of 2022

1. Palanisamy
S/o Kaveri Gounder, Thanrayan Valavu,
Malaiadikadu, Chinnasorakai Village
And Post, Mettur Tk, Salem Dist.

Appellant(s)

Vs

1. Abimannan
S/o Chinnappa Gounder, Malaiadikadu,
Chinnasorakai Village And Post, Mettur
Tk, Salem Dist.

Respondent(s)

SA No. 27 of 2022

PRAYER

To set aside the decree and judgment dated 26-08-2021 passed in A.S.No.13/2016 on the file of the Subordinate Judge, Mettur reversing the decree and Judgment dated 17-12-2014 passed in O.S.No.227/2009 by the District Munsif Court at Mettur by allowing this Second Appeal.

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For Appellant(s): MR.R.Nalliyappan

For Respondent(s): Mr.R.Subramanian For
Respondent Mr.S.Kaithamalai
Kumaran Advocate
Commissioner



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JUDGEMENT

This Second Appeal has been filed seeking to set aside the decree and judgment dated 26-08-2021 passed in A.S.No.13/2015 on the file of the Subordinate Judge, Mettur reversing the decree and Judgment dated 17-12-2014 passed in O.S.No.227/2009 by the District Munsif Court at Mettur.

2.1. The case of the plaintiff is that on 22.12.2008 the partition was entered between the plaintiff and his father in respect of suit property; based on that he has been in possession of the suit property. While so, on 15.06.2009, the defendant trying to obstruct the possession and enjoyment of the plaintiff. Hence, the plaintiff filed the suit for the relief of declaration, praying to declare his title over the suit property as described in the plaint schedule against the defendant.

2.2 The objection of the defendant is that the property comprised 1 Acre 25 cents in S.No.1/4 with specific four boundaries purchased by his elder brother/ Kuppusamy through sale deed dated 07.02.1975 vide document No. 184/2025 from father of the plaintiff and his brother. Now, based on the partition deed dated 22.12.2008 held in the family of the plaintiff, he claimed right over the property as described in the plaint schedule but the said partition



was objected by the defendant stating that both the plaintiff and his father are colluding each other and filed the suit by including property which was purchased by the Kuppusamy as one of the properties in the suit schedule in order to grab the property.

2.3. Now as per the boundary description as mentioned in the plaint schedule, the plaintiff has claimed 1 acre 17 cents with four boundaries. But the objection of the defendant is that suit schedule is not correct one. On considering the oral and documentary evidence, the Trial Court decreed the suit based on the partition deed/Ex.A1.

3. Challenging the findings of the Trial Court, the defendant filed the First appeal before the Subordinate Judge, Mettur. Upon considering the oral and documentary evidence, the First Appellate Judge finally held that plaintiff has not proved the earlier partition in respect of S.No.1/4 and also held that an extent of 3 acres 98 cents available in respect of survey number 1/4. The plaintiff claimed that there was partition happened among other sharers along with his father. But as per the defendant contention, he purchased the property with an extent of 1 acre 25 cents. Therefore, remaining extent alone to be taken into consideration. Therefore, without claiming any declaration relief in respect of purchase made by the defendant in the suit as described in the plaint is not



maintainable. Accordingly, first appeal was dismissed.

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4. Aggrieved over the same, the plaintiff preferred this Second appeal.

5. When the matter was taken up for hearing for arguments, the learned counsel for the respondent/defendant submits that in the year 1975 as per Ex.B1, the defendant enjoyed the property as described in the sale deed with four boundaries. Ever since, from the year 1975, the plaintiff has not come forward with any suit. Admittedly the sale deed of the year 1975 was not disputed by the plaintiff. As on date, documents relied on by the defendants also proved and he is in possession of the property. Therefore, this Court in order to clarify the same, appointed Advocate Commissioner to measure the property with the help of surveyor who surveyed the property and submitted the report along with plan, wherein the green colour portion comes around 1 acre 24 cents which was sub divided as 1/4B and survey stone also planted. Therefore, remaining extent of 2 acres 74 cents and it is shown in blue colour portion with clear boundaries.

6. Moreover, as on date purchase made by the defendant with regard to 1 acre 8 cents was sub divided as S.No. 1/4B in which plaintiff have no right and title. Ever since from the year 1975 the defendant possessed and enjoyed blue



colour portion as mentioned in plan and also there is an extent of 2.75 acres in S.No. 1/4A wherein the plaintiff is entitled to claim any right against his father and other sharers. Hence, the liberty is granted to the plaintiff workout his remedy in respect of an extent of 2 acre 74 cents marked in blue colour portion as mentioned in the Advocate Commissioner Report.

7. Since the description of the property is not talied with the relief claimed in the suit, this Court is not inclined to grant the relief as prayed in the plaint. Liberty is granted to the appellant/plaintiff to work out whatever remedy available in respect of in respect of 2.75 acres. Accordingly, the trial court is directed to comply with part of decree as per the observation made in this appeal. Advocate Commissioner Report shall form part of decree.

8. The defendant is entitled to make any encumbrance in respect of blue colour portion which belongs to defendant's family. So also the plaintiff is directed not to cause any interference in respect of green colour portion as mentioned Advocate Commissioner report. This Second Appeal is disposed of with the above observation. No costs.

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To

1. The Subordinate Judge, Mettur.
2. The District Munsif Court, Mettur
3. The Section Officer, V.R. Section, High Court, Madras.

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