



S.A(MD)No.68 of 2014

**WEB COP BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED: 30.04.2024**

**CORAM:**

**THE HONOURABLE MR.JUSTICE S.SOUNTHAR**

**S.A(MD)No.68 of 2014  
and  
M.P(MD) No.1 of 2014**

Vemburaj ...Appellant  
-Vs-

- 1.Mahesh Gunasekaran
- 2.Nataraja Pillai
- 3.Palanisamy
- 4.Kalaimuthu ... Respondents

**PRAYER:** Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree dated 20.03.2012 in A.S.No.29 of 2011 passed by the learned District Judge cum Additional Sub Judge, Thoothukudi, dated 20.03.2012 confirming the decree and judgment in O.S.No. 608 of 2007 passed by the learned Principal District Munsif, Thoothukudi, dated 30.06.2010.

For Appellant : Mr.D.Saravanan



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For R1, R2 & R4 : Mr.G.Mohankumar

For R3 : Mr.D.Nallathambi

## **JUDGMENT**

The plaintiff in the suit is the appellant. He filed a suit for declaration of title, recovery of possession and for mandatory injunction to remove the construction in the suit property. The suit was dismissed by the trial Court and the findings of the trial Court were affirmed by the first appellate Court. Aggrieved by the concurrent findings, the appellants is before this Court.

2. According to the plaint averment, the suit property originally belonged to one Rengasamy Naickar and he sold the same to plaintiff under a registered sale deed, dated 30.11.1981. The plaintiff has been in possession and enjoyment of the property by changing the revenue records in his name from the date of his purchase. The defendants without having any manner of right trespassed into the suit property and put up a house. The plaintiff, after acquiring knowledge about the same, objected the encroachment by the defendants by



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**WEB COPY** making a police complaint. The plaintiff also issued a lawyer notice directing the defendants to hand over the possession and the same was not acceded to. Hence, the plaintiff was constrained to file a suit for the aforesaid relief.

3. The defendants filed the written statements denying the title of Rengasamy Naickar, who allegedly sold the property to the plaintiff. The defendants also denied the alleged possession of the plaintiff over the suit property from the date of purchase by him from Rengasamy Naickar. It was further pleaded by the defendants that 1 Acre 42 cents of land in suit Survey No. 511/1 originally belonged to one Thatha Venkata Krishnappa Naicker and after his death, his children filed a suit for partition in O.S.No.276 of 1980, on the file of Sub Court, Tuticorin and the said suit ended in a compromise decree. Under the compromise decree, 1 Acre 42 cents in the suit survey number was allotted to the share of one of the daughters of Venkata Krishnappa Naicker, namely, Rengammal. The said Rengammal sold the property to various persons and the property changed hands many time and the defendants are the purchasers of lands in the suit survey number. The defendants also denied the boundary description found in the plaint and sought for dismissal of the suit.



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**WEB COPY** 4.The trial Court, on consideration of oral and documentary evidence available on record, came to the conclusion that the plaintiff failed to establish his title over the suit property and dismissed the suit. Aggrieved by the same, the plaintiff filed an appeal in A.S.No.29 of 2011, on the file of learned District Judge cum Additional Sub Judge, Thoothukudi. The first appellate Court also affirmed the findings of the trial Court. Aggrieved by the same, the plaintiff is before this Court.

5.At the time of admission, this Court formulated the following substantial questions of law by order dated 03.02.2014:-

*(a) Whether the Courts below are right by rejecting the suit of appellant on the basis of Ex.B2, B3 and B4, wherein the vendor of appellant is not a party?*

*(b) Whether the Courts below has erred by piecemeal appreciation of evidence rather than in entirety?*

*(c) Whether the Courts below are right in dismissing the suit, when the suit property I S.No.511/1 were included only in final decree proceedings which strikes at the root of Ex.B2?*



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**WEB COPY** 6.The learned counsel for the appellant submitted that the suit property was purchased by the appellant/plaintiff under a registered sale deed from its original owner Rengasamy Naicker and he got the suit property under partition deed, dated 29.08.1974 marked as Ex.A10. The sale deed in favour of the plaintiff was marked as Ex.A1. Thus, relying on Ex.A1 and Ex.A10, the learned counsel for the appellant vehemently contended that the title of plaintiff was proved and the same has been overlooked by the Courts below.

7.It is seen from the judgment and decree passed by the trial Court that based on Ex.A10-partition deed, the plaintiff's vendor Rengasamy Naicker filed a suit for declaration of title in O.S.No.138 of 1985, on the file of learned Principal District Munsif, Tuticorin and the same was dismissed. He also filed an appeal challenging the dismissal of the suit. The first appeal was also dismissed. The certified copy of the decree passed in O.S.No.138 of 1985 was marked as Ex.B4 and the certified copy of the judgment passed in A.S.No.12 of 1990, on the file of the Sub Court, Tuticorin, was marked as Ex.B5. The Ex.B5 establish that the judgment of the trial Court dismissing the declaration suit filed by the plaintiff's vendor Rengasamy Naicker was confirmed by the first appellate Court.



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WEB COPY Therefore, Ex.B4 and Ex.B5 establish that the plaintiff's vendor Rengasamy Naicker's title was negatived by the competent Court and thereafter, he sold the suit property to the plaintiff under Ex.A1. When the plaintiff's vendor title was already negatived by the competent Civil Court, the plaintiff, who is claiming title under Rengasamy Naicker, is not entitled to file another suit for declaration of title and consequential relief. Therefore, the conclusion reached by the Courts below that the plaintiff failed to establish his title over the suit property is based on proper appreciation of evidence available on record.

8. It is also seen that Venkata Krishnappa Naicker purchased 1.42 acres of land in the suit survey number under Ex.B10. Thereafter, the heirs of Venkata Krishnappa Naicker filed partition suit in O.S.No.276 of 1980, on the file of Sub Court, Tuticorin. The compromise decree passed in O.S.No.276 of 1980 has been marked as Ex.B3. Under Ex.B3, 1.42 acres of land in the suit survey number was allotted to the share of Venkata Krishnappa Naicker's daughter Rengammal. The defendants are claiming right under Venkata Krishnappa Naicker. It is also seen that the heirs of Venkata Krishnappa Naicker were not made parties to the partition deed under Ex.A10. Even otherwise, as mentioned earlier, subsequent to



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**WEB C.R.** Ex.A10 partition deed, the suit for declaration of title was filed by the plaintiff's vendor Rengasamy Naicker and the same was dismissed. In such circumstances, the plaintiff is not entitled to reagitate the matter by filing a suit for declaration of title after purchasing the property from Rengasamy Naicker.

9. In view of the discussion made earlier, all the substantial question of law framed at the time of admission were answered against the appellant and in favour of the respondents. Accordingly, this Second Appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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NCC : Yes / No  
Index : Yes / No  
Internet : Yes / No  
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**S.SOUNTHAR, J.**

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To

1. The District Judge cum Additional Sub Judge,  
Thoothukudi.
2. The Principal District Munsif,  
Thoothukudi.
3. The Record Keeper,  
V.R.Section,  
Madurai Bench of Madras High Court,  
Madurai.

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