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IN THE COURT OF DISTRICT MUNSIF, AT SATHYAMANGALAM

PRESENT: Tmt.K.RENUGADEVI, B.A., B.L.,
District Munsif, Sathyamangalam

Wednesday the 31 day of March, 2021
18th day of Panguni, Sri Saarvari Aandu, Thiruvalluvar Year 2052

OS.No. 117 / 2020

P.Thiruvengadam

...Plaintiff

/Versus/

1. Padmavathi
2. Selvi

...Defendants

The suit is come on 11.03.2021 for final hearing before this court, in the presense of **Mr.K.Prakash Balaji, Learned Counsel** for the Plaintiff. The **Defendants remind exparte** and upon hearing the Plaintiff side Arguments and upon perusing all connected material records and having stood over till this day, for consideration, this court delivered the following:

JUDGMENT

1. PRAYER:

The suit is for declaration declaring that, the correct New Survey Number in the Sale Deed vide Doc.No.1606/2005 dated 06-06-2005 between the plaintiff and the 1st defendant as S.F.No.95/1 and declaring that, the correct New survey field number in the Sale Deed vide Document No. 2692/2005

dated 24.08.2005 between the plaintiff and the 2nd defendant as S.F.No.95/1 and for the costs.

2.GIST OF THE PLAINT:

- 2.1** The contention of the Plaintiff is that, the Plaintiff herein purchased two suit properties from the 1st and 2nd Defendant vide Sale Deeds bearing No.1606/2005 and 2692/2005. After purchase of the same, the Plaintiff is in peaceful possession and enjoyment of the suit schedule property.
- 2.2** In such circumstances, to the shock of the Plaintiff, while referring to the revenue records for the purpose of the bank loan, he came to know that, the survey number in the revenue record is stated as 95/1 and in the Sale Deed as 95/2 instead of 95/1 and correspondingly, on perusal of A-Register, chitta extract of item no. 1 and item no.2 of the suit schedule property. Further, he came to know that, the correct Re-survey number is 173/3, Patta No.261 and S.F.No.95/ 1 and not 95/2. Moreover, all the parent documents also mistakenly referred as S.F.No.95/2, But, there is no disputes regarding the boundaries.
- 2.3** When the Plaintiff came to know the error in the survey number in the Sale Deeds, the Plaintiff have approached the 1st and 2nd Defendants on 08.08.2020 to execute a rectification deed by correcting the mistakes. However, the Defendants refused to execute the rectification deed. Hence the present suit.

3. *Due to COVID-19, private Notice was ordered on 14.09.2020 and the same was served on 1st Defendant on 28.09.2020 and on 19.09.2020 to the 2nd Defendant and the same was evident from the memo for service of notice along with the Acknowledgement card Due to non-appearance of the Defendants on the hearing date, he was set exparte on 1.12.2020.*

4. To substantiate the case of the Plaintiff, the Plaintiff has examined himself as P.W.1 and marked EX.A1 to EX.A7. This court has marked acknowledgement card as Ex.C.1 on perusal of records, the notice to the 1st Defendant address differ from plaint and the private notice. (Memo also filed by the Counsel for the Plaintiff in respect of the same).

5. As there is no written statement in the suit, no issues were framed but in order to arrive at a definite finding as a matter in issue, this court formulated the following Point for determination.

6. POINT FOR DETERMINATION

6.1 *The point of determination is whether the Plaintiff is entitled for the relief of Declaration as prayed for ?*

6.2 Heard the Plaintiff side. Records perused. On the side of Plaintiff he examined P.W.1 and 7 Exhibits were marked.

6.3 The issue before this court is Whether the Plaintiff is entitled for declaration

as to Survey no. 95/1 as prayed for instead of Survey No. 95/2 which is found in the Sale Deeds. The burden is heavily cast upon the Plaintiff to prove that, he purchased the suit property bearing S.No. 95/1 and not 95/2.

6.4 In order to support the claim of the Plaintiff, he has marked **7 Exhibits**. **Ex.A1** and **Ex.A2** is the Sale Deeds infavour of the Plaintiff. Considering the chain of title, the Plaintiff has filed parent document namely **Ex.A3** and **Ex.A4**, whereas, it is seen from the said document that, one K.Subramani executed a Sale Deed infavour of Padmavathi vide document no. 2766/1997. In the said **Ex.A3**, it is evident that, the survey number is stated as 95/2. Further, it is found in recitals that, the property was devolved on Mr.K.Subramani vide Partition deed dated 05.12.1994 bearing Doc. No. 3086/1994. However, the copy of the said Partition Deed is not produced before this court to prove that, the previous vendor is having right over S.F.No.95/1.

6.5 Even though, the Plaintiff has filed **Ex.A5 to 7** Patta name transfer proceedings, Chitta and A Register shows the name of the Plaintiff, the same is obtained only before filing the suit which creates a doubt in the mind of this court.

6.6 Further, it is evident from **Ex.A1** and **Ex.A2** that the property was purchased in the year 2005, however, no reasons has been stated as to why no steps has taken for almost 16 years and came up with this suit without proper reason and materials. Even the Plaintiff have not filed the Encumbrance certificate that, there is no transaction till filing of suit and to show that, he came to know about the error only in the year 2020.

Further, the plaintiff has also not filed any document that, the plaintiff requested to defendants for rectification. Further during the court question that, **P.W.1** deposed that, "தாவா சொத்தின் தவறான புல எண்ணை திருத்தம் செய்ய கோரி பிரதிவாதிகளிடம் நான் வாய்மொழியாக கேட்டுக் கொண்டேன். அறிவிப்பு எதுவும் கொடுக்கவில்லை." Which shows the non active participation of the Plaintiff to rectify the S.No.95/1 of the suit property.

6.7 Further the Plaintiff has not produced any documents to show that he had been in possession and enjoyment of the suit survey number since the date of purchase till the date of suit. No revenue records, kist receipts is filed by the Plaintiff to prove that the survey number had been given wrongly and he is in continue to be in possession of the specific extent purchased by him under **Ex.A1** and **ExA2**.

6.8 Therefore, the Plaintiff sought for declaration of correct survey no 95/1 in **Ex.A1** and **Ex.A2** without any sufficient oral or documentary evidence which creates a confusion and an ambiguity in the minds of the Court as to the genuineness of the claim of the Plaintiff and the plaintiff fails to prove that, the 3rd party right is not affecting.

6.9 Further, the Plaintiff submit that, the Boundaries will prevail over the extent and the survey number. Even if considering the submissions made by the Plaintiff, it is not supported by any oral and documentary evidence.

6.10 Therefore, in nutshell the Plaintiff does not prove a) That, the Plaintiff is entitled for the relief of Declaration for Survey No.95/1, is the correct one, Since, no document nor oral evidence except **P.W.1** b) No revenue officials were examined c) No oral or documentary evidence is produced or examined to prove that the suit property is situated in 95/1 and the vendor intended to sell the survey no 95/1 and not 95/2 and no parent documents filed to prove the property is S.No.95/1 d) Further, the Plaintiffs has failed to prove that, 3rd party right is not affected by declaring the correct survey number is 95/1 instead of 95/2 and the encumbrance certificate is also not filed. e)The Plaintiff failed to prove the date of knowledge of the error.

In the result,

The suit is dismissed without costs.

Dictated to steno-typist directly and typed by him and corrected by me and pronounced in open court on this the 31st March, 2021.

(Sd)Tmt.K.Renugadevi
District Munsif,
Sathyamangalam.

List of documents marked on the side of the plaintiff:

Ex.A.1	06.06.2005	Sale deed	Certified Copy
Ex.A.2	24.08.2005	Sale deed	Certified Copy
Ex.A.3	12.09.1997	Sale deed	Certified Copy

Ex.A.4	06.06.2005	Sale deed	Certified Copy
Ex.A.5	22.06.2020	Chitta for suit property	Online Copy
Ex.A.6	06.02.2020	Patta Name transfer order	Online Copy
Ex.A.7	22.06.2020	A register	Online Copy

List of Witnesses examined on the side of the Plaintiff:

P.W.1. P.Thiruvengadam

List of documents marked on the side of the Defendant: Nil

List of Witnesses examined on side of the Defendant: Nil

Court side Document:

Ex.C.1	22.06.2020	Acknowledgement card	Original
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(Sd)Tmt.K.Renugadevi
District Munsif,
Sathyamangalam.