

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2015

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.1615 of 1999

1.Ramasamy Gounder

2.Komarasamy Gounder ... Appellants/ Plaintiffs
Vs.

Sengoda Gounder ... Respondent/ Defendant

Prayer:- This second appeal has been filed under Section 100 C.P.C., against the Judgment and Decree of the learned Subordinate Judge, Bhavani, Erode District dated 09.11.1998 made in A.S.No.65 of 1998 thereby confirming the judgment and decree of the learned Principal District Munsif, Bhavani in O.S.No.331 of 1998 dated 24.12.1997.

For Appellants : Mr. R.Babu
for Mr.S.Uthirasamy

For Respondent : Mr.AK.Kumarasamy

J U D G M E N T

The plaintiffs are the appellants. The respondent is the sole defendant in the suit O.S.No.331 of 1998 on the file of the Principal District Munsif, Bhavani. The plaintiffs filed the said suit for declaration of title and permanent injunction to restrain the defendant in any manner from interfering with the plaintiffs' peaceful possession and enjoyment of the suit property. By decree and judgment dated 24.12.1997, the trial court dismissed the suit. As against the same, the appellants filed an appeal in A.S.No.65 of 1998. The learned Subordinate Judge, Bhavani, Erode District by decree and judgment dated 09.11.1998 dismissed the appeal, thereby confirming the decree and judgment of the trial court. As against the same, the plaintiffs have come up with this second appeal.

2.When this appeal came up for hearing before this court on 28.09.2015, it was reported that the first appellant Ramasamy Gounder died in the month of December 2014 itself. Time was taken by the learned counsel to bring on record the legal

representatives of the first appellant. But so far it was not done. Therefore, this court declared this appeal as abated as against the first appellant and adjourned the appeal for hearing the case of the second appellant. That is how, this appeal in respect of the second appellant alone is before this court for consideration.

3.The case of the plaintiffs is as follows:

The suit property, which is the ancestral property originally owned by one Mr.Ucchathambadi. His wife was one Mrs.Sannakathiammal. Mr.Ucchathambadi died leaving behind his wife as his legal heir. Accordingly, Mrs.Sannakathiammal inherited the same and became the absolute owner of the property. She sold away the suit property by means of a registered sale deed dated 07.12.1987 to the plaintiffs. Her daughter Mrs.Ithiammal also joined in the execution of the sale deed. Thus, from 07.12.1987, the plaintiffs became the owners of the suit property but the defendant has disputed the same.

4.According to the defendant, the suit property absolutely belongs to him. He has the earliest documents, viz., patta issued on 01.12.1923 and the sale deed executed by Guruchathambadi in favour of Gurusamy Mudaliar on 11.05.1965. Mr.Gurusamy Mudaliar in turn sold away the suit property to the defendant by means of sale deed dated 25.11.1987. Patta was transferred in the name of the defendant and he has been in possession and enjoyment of the same. Thus, according to the defendant, the plaintiffs have no right over the suit property.

5.Based on the above pleadings, the trial court framed appropriate issues. On the side of the plaintiffs, two witnesses were examined and Exs.A1 to A7 were marked and on the side of the defendant, he was examined as P.W.1 and Exs.B1 to B13 were marked. Considering all the above, the trial court dismissed and the lower Appellate Court dismissed the appeal confirming the judgment and decree passed by the trial court. That is how, the plaintiffs are before this Court with this Second Appeal.

6. I have heard the learned counsel for the second appellant and the learned counsel appearing for the respondent. I have also perused the records carefully.

7.When the second appeal was admitted, this court has framed the following substantial question of law:

Whether the findings of the court below that the respondent has got title to the suit property on the basis of Ex.B1 patta issued in favour of one Erannathambadi is correct in law in the absence of any document or title?

8.I have considered the submission made by the learned counsels on either side. The plaintiffs claim title for the

suit property and therefore, it is for them to prove the same. They should either stand or fall on their own legs and they cannot make use of the weakness of the defendant. So far the title claimed by the plaintiffs is concerned, it is based on the sale deed dated 07.12.1987 (Ex.A1) executed by Sannakathiammal and Ithiammal in favour of Ramasamy Gounder and Komarasamy Gounder. This is the earliest document according to the plaintiffs to prove their title and possession. The suit was filed on 23.06.1988. How Mrs.Sannakathiammal and her daughter got title to convey under Ex.A1, has not been either explained or proved by the plaintiffs. No documents have been produced in evidence to prove that Sannakathiammal and her daughter had got title to the the suit property. Since it was not established that Sannakathiammal and her daughter got title to the property in question, they would not have conveyed title to the plaintiffs. The court below have considered the same correctly and have held the said issue is against the plaintiffs. So far as the title of the defendant is concerned, he has proved the same by producing ancient documents of the year 1923 and 11.05.1965. Patta also stands in the name of the defendant. Thus, in my considered view, the courts below were right in dismissing the suit as the plaintiffs have failed to prove their title to the suit property. Thus, I find no merit at all in the second appeal. In view of the above, the substantial question of law framed in this case is answered in favour of the defendant.

9.In the result, the second appeal fails and the same is dismissed. The decree and judgement of the lower appellate Court confirming the decree and judgement of the trial Court is confirmed. No costs.

Sd/-

Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

vri

To

1.The Principal District Munsif,
Bhavani.

2.The Subordinate Judge
Bhavani, Erode District.

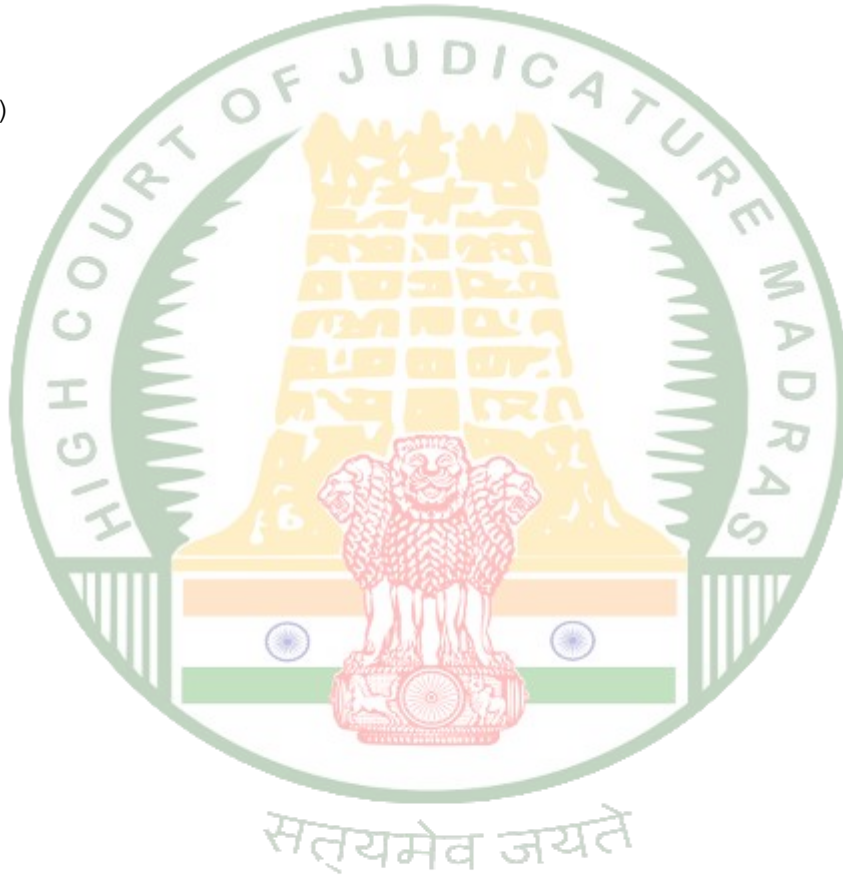
Copy to

The Section Officer
VR Section,
High Court, Madras

1 cc to Mr.B. Kumarasamy, Advocate, Sr. 60015
1 cc to Mr.A.K. Kumarajan, Advocate, Sr. 59949

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SVI (CO)
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