

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.03.2015

CORAM:

THE HON'BLE MS. JUSTICE K.B.K.VASUKI

Second Appeal No.121 of 1999

Thangayee Ammal

.. Appellant/Plaintiff

Vs

1.Nallammal

2.Muthusamy

... Respondents/Defendants

Second Appeal is filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 19.09.1997 made in A.S.No.317 of 1996 on the file of the Sub Court, (Senior Divn) Kallakurichi confirming the Judgment and Decree dated 31.10.1995 made in O.S.No.657 of 1989 on the file of the Additional District Munsif, Kallkurichi.

For Appellant : M/s.Mukunth for Sarvabhauman Associates.
For Respondents : No appearance.

J U D G M E N T

The unsuccessful plaintiff in OS.No.657 of 1989 and the appellant in AS.No.677 of 1996 is the appellant herein.

2.The suit is filed for declaring the plaintiff's title in respect of suit property and for permanent injunction restraining the defendants from interfering with the plaintiffs peaceful possession and enjoyment of the suit items 1 to 5.

3.The suit reliefs are claimed by the plaintiff on the basis of Ex.A1 to A3 documents. The same is resisted by the defendants 1 and 2 by admitting the plaintiff's title in respect of suit items 1 and 2 and by denying the plaintiff's title in respect of suit items 3 to 5. It is their case that the portion of the suit items 3 to 5 was already purchased by the first defendant from the plaintiff and his daughters under Ex.A4 sale deed dated 28.03.1988 and another portion of the suit items 3 to 5 was already sold to one Thagapillai under sale deed dated 29.02.1972 by the plaintiff and her husband and the same was thereafter sold by Thagapillai to the first defendant under sale deed dated 07.03.1990, as such the plaintiff cannot claim absolute ownership in respect of entire suit items 3 to 5. The defendants also denied the plea regarding plaintiff's possession and enjoyment of suit items 3 to 5.

4.The trial court on the basis of the oral and documentary evidence adduced on both sides, granted the suit reliefs in respect of suit items 1 and 2 and negatived the suit reliefs in respect of items 3 to 5 and accordingly decreed the suit in part and partly dismissed the suit. Aggrieved against the judgment and decree of the trial court insofar as it relates to the items 3 to 5 is concerned the plaintiff preferred AS.No.317 of 1996. The lower appellate court after due appreciation and analysis of evidence on record, arrived at conclusion that the suit items 3 to 5 measuring an extent of 19cents in S.No.113/12 originally belonged to the plaintiff and the plaintiff along with her husband sold a portion of the same to one Thagapillai under Ex.B1 and the plaintiff along with her daughter sold another portion to the first defendant under Ex.A4 and the first defendant again purchased the property from Thagapillai under Ex.B2, thereby the first defendant is entitled to 9/16 shares in 19cents in S.No.113/12 and the plaintiff is entitled to get 7/16 and dismissed the appeal. Hence, the Second Appeal by the plaintiff before this Court seeking appropriate relief in respect of the suit items 3 to 5.

5.The second appeal is admitted on the following substantial questions of law :

1.Whether the Courts below are right in law in construction of Ex.A4-sale deed which confers title only to ½ share in the suit well, namely item No.5, to the respondents predecessor in title and not in entirety of 19 cents?

2.Whether the Courts below are right in law in brushing aside the evidence of DW1 who had admitted the appellant's title to suit items 3 to 5?

3.Whether the lower appellate court is correct in law in rendering a judgment without framing points for determination as contemplated by Order 41 Rule 31 of Code of Civil Procedure?

6.During the course of arguments, the following additional substantial question of law is framed by this Court.

1.Having found that the appellant is entitled for 7/16 share in items 3 to 5 in the suit property, are the Courts below justified in dismissing the suit in entirety even without molding the relief of grant of decree of declaration with respect of that extent?

7.Heard the arguments on the side of the appellant. There is no representation for the respondents either in person or through their learned counsel on record.

8.Though the judgment and decree of the courts below in respect of suit items 3 to 5 are challenged on more than one grounds the learned counsel for the appellant has restricted his argument only in respect of additional substantial question of law framed by this Court on 02.03.2015. It is argued before this court, that both the courts below

having found that the plaintiff is entitled to suit items 3 to 5 and having found that portion of the same was sold to Thagapillai and the first defendant, ought to have declared the right of the plaintiff in respect of the remaining extent and the failure to do so by overlooking the oral and documentary evidence in this regard renders the findings of the Courts below to be perverse and legally sustainable. This Court finds greater force in the argument so advanced by the learned counsel for the appellant.

9. Both the courts below have in their judgment discussed the nature of the transactions and the nature of the documents under which the plaintiff became entitled to the suit items 3 to 5 and the plaintiff parted with her title in respect of portion of the suit item 3 to 5 in favour of first defendant and one Thagapillai and as to how the first defendant has on the strength of the sale in his favour by the plaintiff and by Thagapillai become entitled to the portion of the property in suit items 3 to 5 and have rightly found that the plaintiff and defendants are entitled to 7/16 and 9/16 shares respectively in the suit items 3 to 5 in S.No.113/12 which is subsequently sub divided as 113/12, 113/12b and 113/12C. While Well in S.No.113/12, is shown as item No.5 and the lands surrounding the same in sub division Nos.113/12b and 113/12C are described as suit items 3 and 4. Both the courts below have also discussed in detail regarding the right of the parties in respect of the entire 19cents comprised in composite S.No.113/12. Having held so, both the courts below declared the right of the plaintiff to that extent, with liberty given to the plaintiff to go for partition of his share so declared and have dismissed the suit in respect of suit items 3 to 5. As rightly argued by the learned counsel for the appellant, the judgment and decree of the Courts below is nothing but perverse and warrants interference by this Court to that extent. The substantial questions of law 1 to 3 are dismissed as given up and the additional substantial question of law is accordingly answered in favour of the plaintiff.

10. In the result, the judgment and decree of the courts below are modified by declaring the right of the appellant/plaintiff for 7/16 share in respect of suit items 3 to 5 with the liberty given to the plaintiff to take appropriate legal remedy for final decree for partition of his 7/16 share in respect of the suit items 3 to 5 and the second appeal is accordingly disposed of. No costs.

sd/-
ASSISTANT REGISTRAR(CS-IV)

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SUB-ASSISTANT REGISTRAR

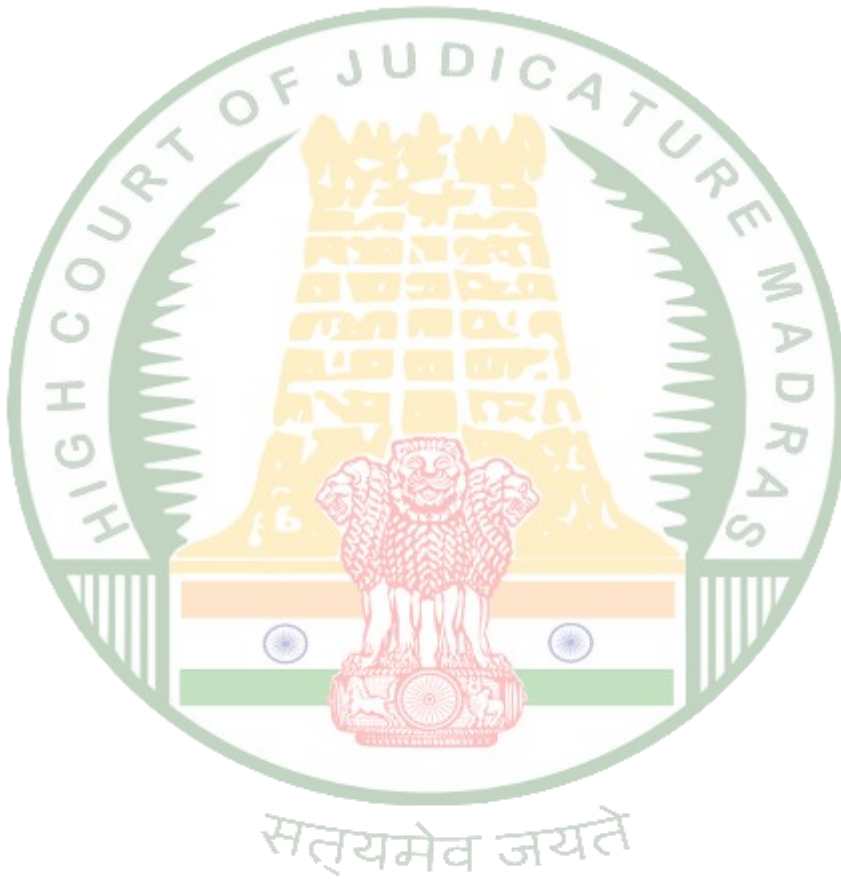
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To

1. The Sub Court, Kallakurichi.
2. The Additional District Munsif, Kallakurichi.

SA.No.121 of 1999

CO-UG
JD 14/10/2015



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