

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.09.2015

CORAM :

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

S.A.No.148 of 2009

and

M.P.No.1 of 2009

1. Nagabushnamma
2. Subramanian
3. Srinivasulu
4. Krishna
5. Neela

... Appellants/Respondents/Plaintiffs

Vs.

1. Krishnamma Naidu (Deceased)
2. Megavarnam
3. Gajendra Naidu
4. Sekar @ Chandrasekar

R2 to R4 recorded as LRs of the deceased R1 vide order of Court dated 27.01.2015 made in M.P.No.1 of 2009 in S.A.No.148 of 2009

... Respondents/Appellants/Defendants.

Prayer:- This Second Appeal filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 12.08.2008 made in A.S.No.41 of 2006 on the file of the Subordinate Court, Thiruvallur, reversing portions of the judgment and decree dated 18.01.2006 made in O.S.No.222 of 1998 on the file of the District Munsif Court, Thiruttani.

For Appellants : Mr.A.K.Kumarasamy  
for Mr.D.Aravindan  
For Respondents 2 to 4 : Mr.S.Rajendrakumar  
for M/s.Norton and Grant

J U D G M E N T

The appellants herein are the plaintiffs in a suit for declaration and injunction.

2. The suit properties are 13 in number which originally belonged to the grandfather of the appellants herein, one Duraiswamy Naidu.

3. The case of the plaintiffs is that the father-in-law of the first defendant was taking care of the properties and that now the defendants denied their right. Hence, the suit came to be filed.

4. After elaborate trial, the trial Court decreed the suit of the plaintiff with respect to item Nos.1,3,4,5,7,10,11,12 and 13 and with respect to item No.9 only 66 cents was decreed. Therefore, with respect to item Nos.2,6,8 and 32 cents of item no.9 were dismissed against the plaintiff. The plaintiff did not prefer any appeal against the same. However, the defendants were aggrieved by the decree, preferred an appeal in A.S.No.41 of 2006 on the file of the Sub Court, Thiruvallur. The lower appellate Court partly allowed the appeal, modifying the decree with respect to item No.1, in which, only 84 cents were granted to the plaintiff and with respect to item No.7, only 50 cents were granted, out of 1.18 cents, with respect to the other items, the trial court decree was confirmed. Aggrieved by the said judgment of the lower appellate Court, the plaintiffs have come up with the Second Appeal and the following questions of law were formulated at the time of admission for consideration.

1. Whether the finding based on which, the suit relief in respect of item Nos.1,7 and 13, rejected is perverse and contra to the admission made in the written statement and by overlooking the oral and documentary evidence adduced?

2. Whether the Courts below are right in rejecting the suit relief in respect of the items above referred to, on the basis of the documents, if any, without any pleadings.

5. The Second Appeal is only with respect to two items of property in the suit schedule, one is item No.1 and the second one is item No.7. In item No.1, which is situate in Survey No.96/4, there was total extent of 1.38 acres, of which, the original plaintiff Andalammal's

mother Rajammal had sold 54 cents in favour of one Ramasamy Naidu, who is the father-in-law of the first defendant. Therefore, the plaintiffs can claim only the balance of 84 cents, out of 1.38 acres in Survey No.96/4.

6. In the written statement, the defendants had specifically admitted that as per the settlement deed-Ex.A1, the plaintiff got 0.98 acres in Survey No.96/1, which is the first item in the schedule. Hence it was contended by the learned counsel for the appellant that the appellate Court ought to have decreed for entire lands. The above contention may not be correct, because, the mother of the original plaintiff, viz., Rajammal had sold 54 cents, out of 1.38 acres under Ex.A16 on 07.07.1947, in favour of one Ramasamy Naidu, who is the father-in-law of the first defendant. Therefore, the settlor having parted with 54 cents could not have settled 98 cents in favour of the plaintiff. Hence, the reasoning of the lower appellate Court that only the balance of 84 cents that is available after selling 54 cents under Ex.A16 is correct and it does not require any interference.

7. Insofar as item No.7 is concerned, the original plaintiff has claimed 1.18 acres situate in Survey No.90/1. Originally, the owner had 4.38 acres in her possession, out of which, 3.20 acres was sold by Rajammal, in favour of the first defendant's father-in-law under Ex.B.1- Sale deed. Therefore, what would be available in the hands of the plaintiffs is 1.18 acres. However, the lower appellate Court has granted a decree only for 50 cents. The reasoning given by the lower appellate Court is that as per Ex.A1-Settlement deed, the settlor had given away only 50 cents of the lands in survey No.90/1. Therefore, the plaintiffs are entitled to only 50 cents. The above reasoning of the lower appellate Court is incorrect. There is no dispute that the original owner is Duraisamy Naidu and his wife Rajammal and the appellants are the heirs of the original plaintiff, Andalammal, who is the only daughter of Duraisamy Naidu. Even, if the said Rajammal had executed settlement deed in favour of Andalammal an extent of 50 cents by a doctrine of inheritance, the plaintiffs are entitled to the balance of the lands also. Hence, the finding of the lower appellate Court holding that the plaintiffs are entitled to 50 cents and the defendants are entitled to the balance 68 cents is, in my considered opinion, is perverse. The lower appellate has come to such conclusion without application of mind. Hence, the same is liable to be set aside.

8. In view of the above discussion, this Court comes to the conclusion that as far as item No.1 is concerned, the plaintiffs are entitled to get only 84 cents that is what is available in Survey No.96/1 and so far as the item No.7 is concerned, the plaintiffs are entitled to 1.18 acres of lands, 50 cents by virtue of the settlement deed under Ex.A7 and the balance by inheritance. Hence, the questions of law are answered in favour of the appellants to the extent indicated above.

8. In the result, the judgment and decree of the lower appellate Court is modified only with respect to item No.7, wherein, the plaintiffs are entitled to an extent of 1.18 acre in Survey No.90/1. With respect to other items, the judgment and decree of the lower appellate Court are confirmed. Accordingly, the Second Appeal is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

srn

-s/d-

Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

To

1.The Subordinate Judge,  
Subordinate Court, Thiruvallur

2.The District Munsif,  
District Munsif Court, Thiruttani

+ 1 cc to Mr.D.Aravindan, Advocate SR 52005

+ 1 cc to Mr.North and Grant, Advocate SR 51972

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S.A.No.148 of 2009  
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