

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24 .06.2015

CORAM :

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

S.A.No.344 of 2009

and

M.P.No.1 of 2009

Perumal Gounder

... Appellant/Appellant/
Plaintiff

Vs.

1. Anandan
2. Murugesan
3. Pancharathinam
4. Rani

... Respondents/Respondents/
Defendants

Prayer:- This Second Appeal has been filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 15.11.2007 passed in A.S.No.20 of 2005 on the file of the Principal Subordinate Judge, Krishnagiri, confirming the judgment and decree dated 08.02.2005 made in O.S.No.71 of 2003 on the file of District Munsif, Krishnagiri.

For Appellant : Mr.V.Nicholas

For Respondents 1,3 & 4 : Mr.P.M.Duraiswamy

For Respondent -2 : Mr.S.A.Rajesh

J U D G M E N T

The plaintiff, who lost his case before the Courts below, has come forward with the present second appeal.

2.The brief facts of the case of the plaintiff are as follows:

The suit property originally belonged to one Tekkan @ Muniyan. An extent of 0.14 cents in S.No.13/3 within specific boundaries was purchased by the plaintiff from the said Tekkan on 11.06.1964. From the date of purchase, he has been in possession and enjoyment of the property. Out of the total 40 cents owned by Tekkan, an extent of 14

cents was sold in favour of the plaintiff and the balance 26 cents of land was inherited by the sons of Tekkan @ Muniyan viz., Sakkappan, Chinnaraj and Sakkan. Subsequently, Sakkan also died leaving behind his wife and heirs. As per Ex.A2, registered partition deed dated 17.11.1978 executed between the heirs of Tekkan, Sakkappan was allotted an extent of 8 ½ cents and Chinnaraj and Chinna Sakki were allotted an extent of 8 ¾ cents each. While so, when the plaintiff was away from the village, the defendants had made false representations to the survey officials during UDR Survey scheme and got patta issued in their name for an extent more than what they are entitled to. Therefore, the plaintiff has given representation to the revenue authorities. Pending the same, the defendants had trespassed into the suit property and occupied the same on 01.03.2003. Hence the suit is filed for declaration of title and permanent injunction.

3. The suit was resisted by the defendants contending that there was no measurement made at the time of purchase by Tekkan @ Muniyan. Though the defendants admitted the sale in favour of the plaintiff, they contended that the same was not binding on them. The partition between the heirs of Tekkan @ Muniyan dated 17.11.1978 was also admitted by the defendants. According to the defendants, the plaintiff was entitled only to an extent of 10 cents of land and not as claimed by him. At the time of purchase by the plaintiff, the properties were not measured exactly and only an approximate to an extent of 14 cents was conveyed, however, within given boundaries, the plaintiff is entitled only 10 cents of land. It is further contended by the defendants that an extent of 0.02 cents was acquired by the Government for National Highways and compensation was also paid to the said Chinnaraj. Suppressing all these, the plaintiff has come up with this case on false allegations. Hence, the defendants prayed for dismissal of the suit.

4. Before the Trial Court, the plaintiff examined himself as PW.1 and Exs.A1 and A2 were marked. On the side of the defendants, the first defendant examined himself as DW.1 and two more witnesses were examined as DW.2 and DW.3 and Exs.B1 to B8 were marked.

5. Based on the above pleadings, the trial Court had dismissed the suit.

6. On appeal by the plaintiff in A.S.No.20 of 2005, the judgment and decree of the trial Court was confirmed by dismissing the appeal. Aggrieved by the same, the above second appeal has been filed by the plaintiff.

7. This court heard the submissions of the learned counsel for the parties and also perused the material records placed.

8. At the time of admission, the following substantial questions of law were formulated as under:

a) When the plaintiff based his title on the sale deed of the year 1964 executed by the original owner Tekkan alias Munusamy in respect of 14 cents out of 40 cents in S.No.13/3, whether the courts below are correct in declining to accept the same on the ground that patta has been granted to the defendants including the 4 cents out of 14 cents sold to the plaintiff?

b) When the sale deed executed by Tekkan alias Munusamy the original owner of an extent of 40 cents in S.No.13/3, in respect of 14 cents even in the year 1964 in favour of the plaintiff and admittedly his three sons have partitioned the remaining extent of 26 cents, whether the courts below are correct in declining to grant the relief to the plaintiff contrary to the evidence on record in respect of the suit property which includes in the 14 cents sold to him.

9. The suit property, viz., an extent of 40 cents in S.No.13/3 originally belonged to Tekkan @ Muniyan and he had sold 0.14 cents as per sale deed Ex.A1 dated 11.06.1964 and the remaining 26 cents of land were divided between the three sons of Tekkan @ Muniyan as per Ex.A2, partition deed dated 17.11.1978 are all undisputed facts.

10. The only contention of plaintiff, who was examined as P.W.1, is that at the time of URD scheme, the defendants had made false representations and got patta issued in their favour in S.No.13/3C to an extent of 4 cents. Hence, the suit is filed for declaring the title of the plaintiff for the said 4 cents. The above contention of the plaintiff was assailed by the defendants, contending that the plaintiff had though purchased 14 cents as per Ex.A.1, he had actually taken possession of 10 cents only. The lands were not exactly measured at the time of sale. The plaintiff had also constructed a house to an extent of 5 cents and kept the remaining portion vacant. It is also not in dispute that the National Highways acquired an extent of 2 cents in S.No.13/3B 1C for the purpose of laying 4 lane road. The compensation for the lands acquired by the Government were also received by the defendants. It is not disputed that at the time of acquisition, the appellant has also appeared before the Land Acquisition Officer and deposed. Though the plaintiff was aware of the land acquisition proceedings and the award of the compensation, the same has not been mentioned in the plaint. The acquisition is also not challenged by the plaintiff. It also appears that the plaintiff has received a sum of Rs.34,575/- as compensation for the lands acquired. Though the plaintiff had also alleged that the defendants had trespassed into the property, there seems to be no complaint regarding the same given by him.

11.In the above factual matrix, the claim of the plaintiff for declaration of title regarding 4 cents out of 14 cents is not correct. Admittedly, when 2 cents of land were acquired by the Government, the plaintiff has made a claim including the same, which go to show that the claim is not bonafide.

12.Accordingly, the Second Appeal is dismissed and the judgment and decree dated 08.02.2005 made in O.S.No.71 of 2003 on the file of District Munsif, Krishnagiri, as confirmed by the judgment and decree dated 15.11.2007 passed in A.S.No.20 of 2005 on the file of the Principal Subordinate Judge, Krishnagiri, are affirmed. No costs.

-s/d-

Assistant Registrar (CSIV)

Dated:28/07/2015

True Copy

Sub-Assistant Registrar

srn
To

1.The District Munsif, Krishnagiri

2.The Subordinate Judge, Krishnagiri

+1 cc to Mr.V.Nicholas, Advocate vide sr.30942

+1 cc to Mr.P.M.Duraiswamy, Advocate sr.31270

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gj (co)
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