

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.04.2015

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.456 of 2013

Mr.P.R.Bakthavatchala Naidu (deceased)

1.P.Suresh Babu

2.P.Paranthaman

3.P.Padmavathi Appellants/Plaintiffs

Vs.

1.K.Ramachandra Naidu

2.The Thasildhar
Tiruthani Taluk, Tiruthani.

3.The Deputy Zonal Tahsildar,
Tiruvalangadu Pirkha
Tiruthani Taluk, Tiruthani.

4.The Deputy Surveyor,
Tiruvalangadu,
Tiruthani. Respondents/Defendants

Prayer:- This second appeal has been filed under Section 100 C.P.C., against the judgement and decree passed in A.S.No.2 of 2011 dated 19.01.2012 on the file of the learned Subordinate Judge, Tiruthani by confirming the decree and judgement passed in O.S.No.130 of 2001 dated 22.01.2007 on the file of the learned District Munsif, Tiruthani.

For Appellant : Mr.P.Sivamani

JUDGEMENT

The plaintiffs in O.S.No.130 of 2001 on the file of the learned District Munsif, Tirutani, are the appellants herein. The respondents are the defendants in the suit. The said suit was filed for declaration of title and for permanent injunction to restrain the defendants from in any manner interfering with the alleged peaceful possession and enjoyment of the suit property. By decree and judgement dated 22.01.2007, the trial Court dismissed the suit. As

against the same, the plaintiffs filed an appeal in A.S.No.2 of 2011 on the file of the learned Subordinate Judge, Tiruthani. By decree and judgement dated 19.01.2012, the First Appellate Court dismissed the appeal thereby confirming the decree and judgement of the trial Court. Challenging the same, the plaintiffs are before this Court with this second appeal.

2.This second appeal has come up today for admission. I have heard the learned counsel for the appellants and I have also perused the records carefully.

3.The case of the plaintiffs is as follows:-

The suit property has been described only by means of Survey Number and extent. It is stated that the suit property measures 0.29.5 airs (0.75 cents) comprised in S.No.66/4 at Kapulakandiga Village, Tiruthani Taluk. According to the plaintiffs, the suit property was originally owned by one Mr.Narasam Naidu of Salivendra Village. He had executed a sridhana document on 30.09.1923 (Ex.A.1) in favour of his two daughters. One of his daughter is one Ms.Kilari Kanniamma. The plaintiffs are the grand children of Ms.Kilari Kanniamma. Ms.Kilari muniamma who is another daughter of Mr.Narasam Naidu, executed a settlement deed dated 09.04.1953, in respect of her undivided half share in favour of her younger sister Ms.Kilari Kanniamma. Mr.Kanniah Naidu, son of Ms.Kilari Muniamma questioned the said settlement deed by filing a suit in Nellore Court. That was compromised. Thus, Ms.Kilari Kanniamma was the absolute owner of the suit property and she, in turn, executed the settlement deed dated 15.01.1970 in favour of her daughter Ms.Lakshmi Kanthamma. The plaintiffs are the legal representatives of Ms.Lakshmi Kanthamma.

4.But, the case of the defendants is that, originally, Survey No.66 in Kapulakandiga Village, was divided into five sub divisions and registered in the name of five different persons in the Survey Settlement of the year 1955-1956. So far as S.No.66/4 is concerned, for 70 cents, patta was issued in the name of Ms.Kilari Kanniamma. Subsequently, under Updating Registering Scheme (UDR scheme), the land in S.No.66/4 has been re-surveyed and assigned New Survey No.66/3 measuring 0.28.5 hectares. Thus, as on the date of filing of the suit, the plaintiffs have got no right whatsoever in the New Survey No.66/4 as they have got right only in respect of S.No.66/3. As a matter of fact, Old Survey No.66/5 was re-surveyed and New Survey No.66/4 was assigned in the name of Ms.R.Muniammal W/o Ravagalu Naidu measuring 0.29.5 airs. Thus, the suit is liable to be dismissed.

5.Based on the above pleadings, the trial Court framed appropriate issues. On the side of the plaintiff two witnesses were examined and three documents were exhibited. On the side of the defendants two witnesses were examined and eleven documents were exhibited.

6.Having considered all the above, the trial Court dismissed the suit which was confirmed by the First Appellate Court. That is how the appellants/plaintiffs are before this Court with this second appeal.

7.This second appeal has come up today for admission. I have heard the learned counsel for the appellants and I have also perused the records carefully.

8.In this second appeal, it is contended that as per the Survey Settlement of the year 1955-1956, patta for S.No.66/4 was assigned in the name of the plaintiffs' grand mother. Having considered the same, the Courts below have held that after the New Survey number was assigned, S.No.66/4 (New Survey Number) does not belong to the plaintiffs. Their Old Survey No.66/4 was re-numbered as S.No.66/3. But, the plaintiffs have filed the suit only for S.No.66/4 and not for S.No.66/3. The plaintiffs have not described the suit property by means of four boundaries at all. It is for these reasons, the Courts below have dismissed the suit. In the said finding, I do not find any perversity. Further, I do not find any substantial question of law at all in this second appeal so as to admit the same. At the same time, I wish to clarify that dismissal of the suit will not be a bar for the plaintiffs to establish their title for the New Survey No.66/3. Apart from that, it is not explained to the Court as to why the District Collector was not added as party to the Suit when the relief is sought for as against the Tahsildar concerned. Hence, for non impleading the necessary party also, the suit is liable to be dismissed.

9.In the result, the second appeal fails and accordingly, the same is dismissed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

jbm

To

1.The Subordinate Judge,
Tiruthani.

2.The District Munsif,
Tiruthani.

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UG(CO)
CA(02/06/2015)