

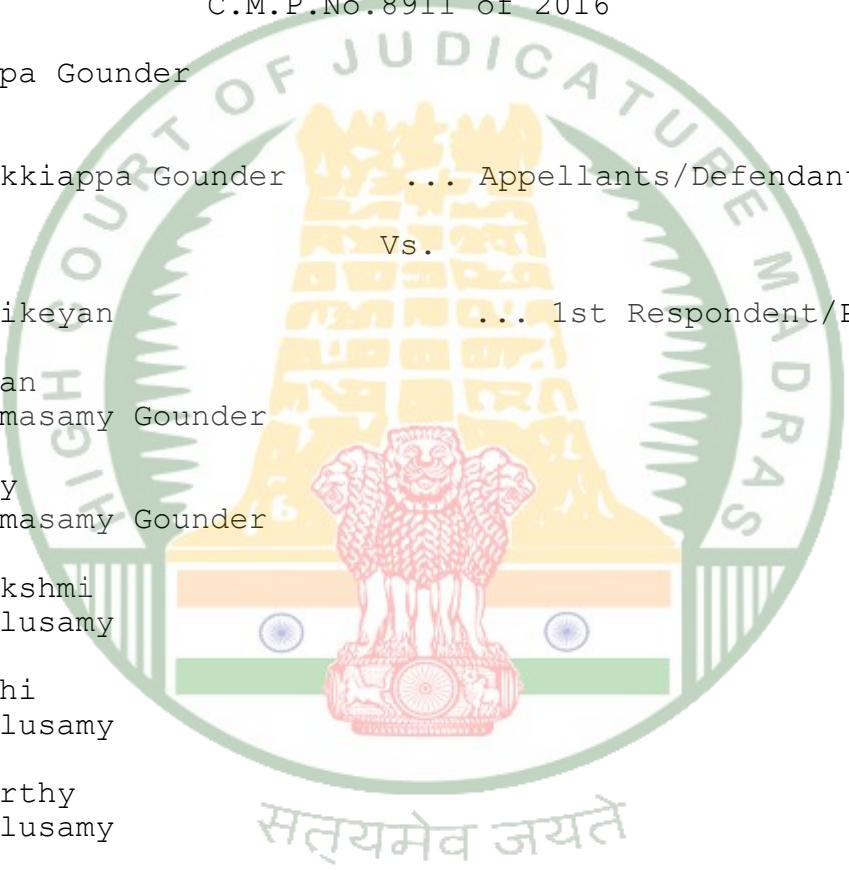
IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.10.2016

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM
and
THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

A.S.No.394 of 2016
and
C.M.P.No.8911 of 2016

- 
1. Rakkiappa Gounder
2. Rajan
S/o. Rakkiappa Gounder ... Appellants/Defendants 1 & 2
Vs.
1. A.Karthikeyan ... 1st Respondent/Plaintiff
2. Natarajan
S/o. Ramasamy Gounder
3. Sivasamy
S/o. Ramasamy Gounder
4. Subbulakshmi
W/o. Velusamy
5. Ragupathi
S/o. Velusamy
6. Thirumurthy
S/o. Velusamy
7. A.C.Eswaran ... Respondents 2 to 7/Defendants 3 to 8

Prayer : Appeal Suit filed under Section 96 of the Code of Civil Procedure, against the Judgment and Decree, dated 16.02.2016 made in O.S.No.301 of 2013 on the file of the II Additional District -cum-Sessions Court, Tiruppur.

For appellants : Mr.V.Raghavachari

For respondents : Mr.C.R.Prasannan for R1
Mr.V.P.Sengottuvel for R7
Notice dispensed with for
R2 to R6

JUDGMENT

(Judgment of the Court was delivered by P.KALAIYARASAN, J)

This Appeal Suit is directed against the Judgment and Decree, dated 16.02.2016 made in O.S.No.301 of 2013 on the file of the Additional District Judge, Tiruppur granting preliminary decree as prayed for in the suit.

2. The case of the plaintiff as averred in the plaint is as follows :

(i) The total extent in S.F.No.47 of Thekkalur village is 10.82 acres and S.F.No.49 is 7.90 acres. Both SF Numbers were subdivided as S.F.No.47/1 and 47/2 and S.F.No.49/1 to 49/5. Originally one Muthusamy Gounder, Kaliappa Gounder and Palanisamy acquired the property by virtue of various sale deeds in 1956 and 1960. Their legal heirs conveyed their shares in the said properties to the plaintiff. The plaintiff entered into a Deed of Exchange on 14.05.2007 with R.Velusamy, A.Sivasami and R.Nataraj and got 0.66 cents in S.F.No.49/1, as he wanted peace and to enjoy the property in a single lot. Thus plaintiff has been in possession and enjoyment of northern portion of the property in S.F.No.47/1 and 49/1.

(ii) The first defendant intended to purchase the property exchanged to the plaintiff and he failed. In order to wreck vengeance, the first defendant filed a false suit for partition taking advantage of wrong extent mentioned in certain documents.

(iii) The plaintiff is in possession of northern portion of S.F.No.47/1 and 49/1 of Thekkalur village and the same should be allotted to him at the time of final decree for partition. Though the sale deed had no specific mention, the plaintiff's vendor possessed northern portion of land in S.F.No.47 and 49. Since the plaintiff is having landed properties adjoining to S.F.No.49/1 and the property measuring punjai 6.24 acre has to be allotted to him contiguously for convenient enjoyment of his properties in whole.

(iv) Since there was no partition between the plaintiff and the defendants, entire properties are deemed to be in joint possession. The sale deeds executed by the first defendant, dated 06.09.1999 with specific boundaries are not in accordance with earlier documents. The defendants 1 and 2 have taken advantage of handwriting mistake in the sale deed of the year 1963 and the subsequent documents tried to convey more extent than what they are actually entitled to. Therefore, the present suit has been filed.

3. The averments in the written statement filed by the first defendant are as follows :

(i) The plaintiff has not specifically stated the extents which belong to him in S.F.No.47/1 and 49/1 by virtue of the sale deed, dated 11.09.2006 and he claims title and possession in respect of 6.24 acres common in both S.F.No.47/1 and 49/1. The total extent mentioned by the plaintiff in S.F.No.47/1 and 49/1 is not correct.

(ii) Even as per exchange deed, dated 14.05.2007 common undivided 0.66 acres in S.F.No.49/1 and common 1.56 acres in S.F.No.47/1 have been mentioned. Therefore, the plaintiff could not have taken actual possession of any specific extent. The defendant is in possession and enjoyment of the extent of land in S.F.No.47/1 and 49/1 as claimed in O.S.No.79 of 2009 on the file of the District Munsif Court, Avinashi.

(iii) The defendant sold to D8 the extent of lands that were purchased from one Sennimalai Gounder and Ayyammal under the sale deed, dated 25.10.1967 with specific extent of 5.91 acres in S.F.No.47. Apart from the properties sold by the defendant under the sale deed, dated 06.09.1999, he became entitled to 0.66 acres with common 1/2 share in 1/3 share in common 1/4 share in the common well in S.F.No.49 and 0.90 acres with common 1/2 share in 2/3 share in the common 1/4 share in the well in S.F.No.47 by virtue of the sale deed, dated 20.03.1989. There is no cause of action for the suit. Therefore, the suit is to be dismissed.

4. The averments in the written statement filed by the 8th defendant are as follows :

(i) The defendants 1 and 2 were entitled to more than the extent they had sold to the 8th defendant and therefore, the sale to the 8th defendant is proper and valid. The first defendant is entitled only to 40 cents and not 90 cents. The first defendant has not added 8th defendant as a party in O.S.No.79 of 2009 on the file of the District Munsif Court, Avinashi.

(ii) The defendants 1 and 2 had sold an extent of 5.91 acres in S.F.No.47/1 & 2 after sub-division. The 8th defendant had purchased a specific extent with specific boundaries from defendants 1 and 2. Therefore, the 8th defendant is not necessary party to this suit. The plaintiff is not proper in mentioning that 6.24 acres has to be allotted out of the suit properties. The present suit is not maintainable and hence is to be dismissed against the 8th defendant.

5. The learned Additional District Judge, by framing necessary issues analysed both oral and documentary evidence let in on either side, passed preliminary decree as prayed for by the plaintiff. Aggrieved by the Judgment and Decree, defendants 1 and 2 have preferred this appeal.

6. The learned counsel appearing for the appellants contends that the trial Court has not appreciated the documents properly and further patta in respect of the properties has also been mutated in the name of the appellants and revenue record included his name; that the trial court has granted decree without appreciating the title of the plaintiff; that the property sold to the 8th defendant has nothing to do with the suit property and that the second suit for partition is inconceivable while the earlier suit is pending.

7. The learned counsel appearing for the first respondent per contra contends that the learned District Judge, after analysing both oral and documentary evidence has rightly decreed the suit and the same does not warrant any interference by this Court.

8. It is seen from all the documents, viz., Ex.A.4, A.6, A.7, A.8, Ex.B.1, B.3, B.5, B.6, B.7, B.8, B.9 and B.10 that S.F.No.47 and 49 have been in possession and enjoyment of various persons without effecting actual partition among the sharers. It is well settled that mutation and entry in revenue records do not confer title. In this case, title is to be decided with available documents.

9. The plaintiff claims partition of the property on the basis of the sale deed executed in favour of him under Ex.A.1, dated 11.09.2006. Through this sale deed, he purchased 6.24 acres in S.F.No.47/1 and 49/1 in common. The schedule of property in the above document also says northern portion. The title deeds of predecessors marked as Ex.A.6 and Ex.A.7 also depict that total extent in S.F.No.47/1 is 10.82 acres and the properties derived and enjoyed by the predecessors is its northern half. Plaintiff exchanged 0.66 acres of land with legal heirs of Ramasamy Gounder taking land in S.F.No.47 by giving in S.F.No.49. In S.F.No.47, the plaintiff claims 3.61 acres.

10. As per Ex.B.1, partition deed, southern half of S.F.No.47 was allotted to Ayyammal and Sennimalai and they sold the same to D1 and Rangasamy under Ex.B.2, dated 25.10.1967. In Ex.B.1, partition deed and Ex.B.2, sale deed, though they mentioned as southern half of S.F.No.47, the extent has been mentioned as 5 acres 91 cents. As per the document, total extent of S.F.No.47 is 10.82 and therefore, southern half should be 5.41 acres. Instead of mentioning the extent as 5.41, it has been wrongly mentioned as 5.91 in the above document.

11. Under Ex.B.2, sale deed, D1 along with Rangasamy purchased the property and subsequently D1's son D2 purchased the share of Rangasamy from him under Ex.B.6, dated 16.12.1981. D1 also purchased common 90 cents in S.F.No.47 out

of northern half of 5.41 acres under sale deed, Ex.B.9, dated 20.03.1989. Therefore, under Ex.B.1, B.6 and B.9 sale deeds, D1 and D2 had sufficient extent as mentioned in Ex.B.10 to sell to D8. Thus, D8 has got title to the extent mentioned in the sale deed, Ex.B.10, i.e., 5.91 acres in S.F.No.47. As per the above sale deeds, D1 and D2 have purchased 5.41 + 0.90 cents, which comes to 6.31 acres. Out of 6.31 acres, they sold under Ex.B.10 to D8 an extent of 5.91 acres and therefore, the remaining extent with D1 and D2 is 0.40 cents in S.F.No.47.

12. It is also pertinent to note that in Ex.B.10, northern boundary to the property sold to D8 is shown as D1's property. This also establishes the availability of the property as mentioned earlier.

13. Thus out of total 10.82 acres in S.F.No.47, the plaintiff is entitled to 3.61 acres; D8 is entitled to 5.91 acres; first defendant is entitled to 0.40 cents and Velusamy and others are entitled to 0.90 cents.

14. The contention of the learned counsel appearing for the appellants that the second suit for partition is inconceivable while the earlier suit is pending is not acceptable. The first appellant was examined as D.W.1 in the suit. During his cross-examination, he says that in the suit filed by him before District Munsif Court, Avinashi for partition, he neither included the 8th defendant herein as a party nor included the property sold to him by D1. Thus from the above evidence, it is clear that the present suit has been filed for the whole property in S.F.No.47 and 49 of Thekkalur village by including all parties concerned.

15. As already discussed the plaintiff has established his title to 6.24 acres in S.F.No.47/1 and 49/1 in common and the defendants 1 and 2 have got only 0.40 cents in S.F.No.47 after their sale of 5.91 acres to D8. Therefore, the trial Court has rightly passed preliminary decree as prayed for and this Court does not find any reason to interfere with the Judgment and Decree of the trial Court.

In fine, this Appeal Suit is dismissed with costs, confirming the Judgment and Decree of the trial Court, dated 16.02.2016 made in O.S.No.301 of 2013. Consequently, connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

tsvn

To

The II Additional District
-cum-Sessions Court,
Tiruppur.

+1cc to Mr.V.Raghavachari, Advocate, S.R.No.59250
+1cc to Mr.V.P.Sengottuvel, Advocate, S.R.No.59246

+1cc to Mr.V.P.Sengottuvel, Advocate, S.R.No.59841(18.01.2017)
+1cc to Mr.C.R.Prasanan, Advocate, S.R.No.59730(18.01.2017)

A.S.No.394 of 2016

TM(CO)
CA(11/11/2016)



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