

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.11.2016

PRONOUNCED ON : 15.11.2016

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Second Appeal Nos.213 of 1998 and 1339 of 2002

1.Dhamodaran
2.Dharmalingam
3.Mangammal

...Appellants /Respondents/Defendants
in S.A.No.213 of 1998

Gangadharan (died)
1.Rosammal
2.Velu
3.Murali
4.Ambika
5.Mariammal (Minor)
6.Poonammal (Minor)

...Appellants /Appellants/Plaintiff
in S.A.No.1339 of 2002

Minors 5 & 6 rep by
guardian mother Rosammal

Vs

1.Gangadharan (died)
2.Rosammal
3.Velu
4.Murali
5.Ambika
6.Mariammal (Minor)
7.Poonammal (Minor)

... Respondents/Appellants/Plaintiff
in S.A.No.213/1998

(R6 & R7 minors rep
by mother and guardian Rosammal

1.Dhamodaran
2.Dharmalingam
3.Mangammal

.. Respondents/Respondents/Defendants
in S.A.No.1339 of 2002

Common Prayer:- Second Appeals have been filed under Section 100 of C.P.C., against the judgment and decree dated 15.09.1997 passed in A.S.No.12/1995 on the file of the Subordinate Judge, Tiruvallur reversing the judgment and decree in O.S.No.288/1987 dated 29.10.1993 on the file of the District Munsif Court, Tiruvallur.

In S.A.No.213 of 1998:-

For Appellants : Mr.N.R.Anantharamakrishnan

For Respondents : Mr.J.Hariharan, for
Mr.V.Nocholes

In S.A.No.1339 of 2002:-

For Appellants : Mr.J.Hariharan, for
Mr.V.Nocholes

For Respondents : Mr.N.R.Anantharamakrishnan

COMMON JUDGMENT

Since, these two second appeals are filed both by the plaintiff and the defendants in the suit, they are described as per their rank and description in the suit.

2.Brief facts, leading to these appeals, are as follows:-

One Mr.Gangadaran, the plaintiff in O.S.No.288/2007 claiming right over the 3rd Item of the suit schedule property bearing S.Nos.35/2, 43/3 and 21/7 at Mampallam Village, Ponnalurpet Taluk, Tiruvallur District, through assessment order of the government, which is marked as Ex.A.1, sought for declaration and injunction against Mr.Damodaran; Mr.Dharmalingham and Ms.Mangamma, the defendants in the suit.

3.While the case of the plaintiff was that he was assigned the suit schedule property in three survey numbers, to the total extent of 1.59 cents, the case of the defendants is that they are all sons of one Mr.Kumarasamy Naicker and they were cultivating the land which was originally belongs to one Mr.Parthasarathy Mudaliar. After the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 the excess land owned by the said Mudaliar was taken by the Government and leased out to their family who were already lessee under the erstwhile owner Mr.Parthasarathy Mudaliar. Mr.Gangadaran being the eldest

member of the family and handling cultivation, they allowed him to get the assignment order in his favour on behalf of the other family members. Subsequently, for the convenient sake, the defendants have taken their respective portions and exclusively enjoying those portions in the suit schedule property which has been taken note by the revenue authorities and property has been sub divided and patta has been given to the respective members of the family. In the written statement, the defendants have listed out the new patta numbers and the extent of the property given to the respective parties.

4. During trial, the trial Court has framed the following issues.

"1. As claimed by the defendants, whether the existence of lease is true and the same is valid?

2. Whether by way of adverse possession, the defendants have got title over the suit property ?

3. Whether the plaintiff is entitled for the relief of declaration and permanent injunction ?

4. What relief, the plaintiff is entitled to?"

5. After examining the witnesses and appreciating the documents relied upon by the parties, the trial Court dismissed the suit filed by the plaintiff for declaration and injunction. The trial Court found that while the parties are related to each other, the plaintiff has patently denied the relationship and the joint enjoyment of the suit property by them. Further, taking note of the chitta and adangal issued in favour of the defendants in respect of the portions of the suit properties which are in their possession and sub divided by metes and bounds, the possession and title of the plaintiff as claimed was found to be false.

6. Aggrieved by that, the plaintiff preferred the first appeal before the Subordinate Court, Tiruvallur and the First Appellate Court after appreciating the revenue records and assignment - Exs.A.1 & A.5 respectively, which stood in the name of the appellant/plaintiff as well as the factum of subsequent sub division of land and assignment of patta to respective holders, interfered with the judgment of the trial Court and partly allowed the appeal in respect of the third Item of the suit schedule property which is in S.No.21/7 extent of 1 acre.

7. Aggrieved by the order of the First Appellate Court, which has partly allowed the suit, both the plaintiff and the defendants have preferred these second appeals to the extent they are aggrieved .

8. This Court at the time of admission of S.A.No.213 of 1998, has formulated the following substantial question of law:-

"1. Whether the lower appellate court was right in law in granting declaration of title in favour of the respondent on the basis of Ex.A.1, which is only a lease deed?

2. Whether the lower appellate court was right in law in granting the relief of declaration of title and permanent injunction in view of its own finding that Ex.A.5 the assignment order does not contain any survey number ?

3. Whether the lower appellate Court was right in law in upholding the assignment in favour of the respondent thereby granting declaration of title in his favour when its own finding that there are no documents on the part of the respondent to prove assignment ?"

9. At the time of admission of S.A.No.1339 of 202, this Court has formulated the following substantial question of law.

"Whether the conclusion of the First Appellate Court is contrary to its finding?"

10. The learned counsel for the appellants and the respondents made an elaborate arguments drawing the attention of this Court in respect Exs.A.1 & A.5 and other documents and submitted that the First Appellate Court has erred in appreciating the evidence and also erred in partly allowing the appeal inconsistent to the finding.

11. At the outset, this Court is constrained to point out that the First Appellate Court has categorically held that S.Nos.35/2, 21/7 and 43/3 were later sub divided into several portions and patta had been given to the respondents and the appellants. It has also found based on recitals that the appellants herein are in possession of 5 ares of land in S.No.43/3 C1, 4 ½ ares of land in S.No.35/2D1 and 2 ½ ares of land in S.No.35/2F1. After holding so, the First Appellate Court ought to have passed the judgment in consonance to the finding. Unfortunately, the First Appellate Court has granted declaration

for the entire one acre of land in S.No.21/7 in favour of the appellants and injunction to an extent of 9 ½ ares of land falling in S.No.21/7 D2.

12.The learned counsel for the appellants pointed out this error and submitted that if the decree of the First Appellate Court is modified to the effect in consonance with the finding, regarding S.Nos.35/2, 43/3 and 21/7, recognising the rights of the respective parties to the respective extent, as deposed by the Village Administrative Officer based on the revenue records, the parties have no further issues.

13.This Court finds force in the said submission. Though, the plaintiff in the suit has suppressed the relationship and had filed the suit claiming the entire extent of the suit property. Now, through the evidence and by admission of the defendants, it is clear that they have right only to the portion of the properties in all the three survey numbers as spoken by the Village Administrative Officer who was examined as P.W.3. The revenue records and the Commissioner's report are in support of the oral evidence of P.W.3. Hence, the judgment and decree of the First Appellate Court is liable to be modified.

14.In the result, the second appeals are allowed in part and the judgments and decrees passed by the Courts below are modified to the effect that the plaintiff is entitled for a declaration and injunction to the restricted extent of property which is 4 ares in S.No.35/2D2; 2 ½ ares in S.No.35/2 F1; 9 ½ ares in S.No.21/7D2 and 5 ares in S.No.43/3C1. The suit in O.S.No.288 of 1987 is partly allowed as indicated above. There shall be no order as to costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The Subordinate Court,
Tiruvallur.

2.The District Munsif Court,
Tiruvallur

copy to
The Section Officer
VR Section High Court Madras

+2 ccs to Mr.N.R.Anantharamakrishnan Advocate sr 66483 &
66484

+3 ccs to Mr.V.Nicholas Advocate sr 66078 &66079 & 65155

Second Appeal Nos.213 of 1998 &
1339 of 2002

gj (co)
aa16/02/2017



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