

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.11.2016

PRONOUNCED ON : 21 .11.2016

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Second Appeal Nos.811 and 812 of 2007 and
M.P.Nos.1 of 2007 in
S.A.Nos.811 and 812 of 2007

1.Lakshmana Mudali
2.Selvam
3.Nandagopal

...Appellants in S.A.No.811/2007/Defendants
...Appellants in S.A.No.812/2007/Plaintiffs

Vs

1.Chandrasekaran
2.Marimuthu

... Respondents in S.A.No.811/2007/Plaintiffs
... Respondents in S.A.No.812/2007/Defendants

Prayer in S.A.No.811 of 2007:- Second Appeal has been filed under Section 100 of C.P.C., against the judgment and decree passed in A.S.No.60 of 2006 on the file of the Subordinate Court, Ranipet, Vellore District dated 16.04.2007 confirming the decree and judgment passed in O.S.No.113 of 2002 dated 31.03.2006 on the file of the District Munsif Court, Sholinger.

Prayer in S.A.No.812 of 2007:- Second Appeal has been filed under Section 100 of C.P.C., against the judgment and decree passed in A.S.No.61 of 2006 on the file of the Subordinate Court, Ranipet, Vellore District dated 16.04.2007 confirming the decree and judgment passed in O.S.No.142 of 2002 dated 31.03.2006 on the file of the District Munsif Court, Sholinger.

For Appellants
in both S.As : Mr.P.R.Thiruneelakandan

For Respondents : Ms.Selvi George
in both S.As

COMMON JUDGMENT

The subject matter of these Second Appeals is in respect of land located at S.No.1121/2 at Pongilianpatadaiveli, Sholingar Village, Valaja Taluk, Vellore District, to the total extent of 2.67 acres. This property was originally held by one Mr.Ekambara Mudaliar, Kancheepuram, under undivided S.No.1121/2, to the total extent of 5.18 acres. On 04.10.1919, Mr.Ekambara Mudaliar has sold 2.60 acres of land to one Mr.Muruga Reddy s/o Mr.Motaiya Reddy. The said sale deed is marked as Ex.B.1. From the documents relied on by the parties concerned, it appears that (i) on 12.03.1954, Mr.Muruga Reddy had sold 3/4th share in S.No.1121/2 in the total extent of 2.67 acres; (ii) on 15.10.1958, Mr.Kupusami Mudaliar had sold 17 cents out of 2.67 acres of land to one Mr.Annamalai; (iii) on 22.10.1963, Mr.Gopal Mudaliar and Mr.Doraisami Mudaliar sons of Mr.Murugapa Mudaliar, on their behalf and on behalf of their minor children have sold 16 ½ cents of land to one Mr.Annamalai son of Mr.Muniappa Mudaliar vide Ex.B.5; (iv) on 25.02.1964, under Ex.A.1, one Duraisami Mudaliar s/o Muruga Reddy on his behalf and on behalf of his minor sons Mr.Venkatesan and Mr.Easwaran, had sold 9 ½ cents in S.No.1121/2 and the other items morefully described in the suit schedule in O.S.No.113/2002 which is the subject matter of the Second Appeal in S.A.No.811 of 2007; (v) on 12.09.1958, Mr.Kupusami Mudaliar has sold 33 cents of land in S.No.1121/2 from out of 2.67 acres to one Mrs.Saradhambal and (vi) Mrs.Saradhambal had sold that property along with another 33 cents of land in the said survey number to one Mr.Laxmana Mudaliar, on 11.03.1992. The said sale deed is marked as Ex.B.10.

2.Mr.Chandran and Mr.Munusamy Mudaliar who are sons of Mr.Gopal Mudaliar have filed O.S.No.113/2002 against Mr.Laxmana Mudaliar and his two sons Mr.Selvam and Mr.Nandogopal, alleging that their father Mr.Gopal Mudaliar had purchased 9 ½ cents of land from Mr.Duraisami Mudaliar vide sale deed dated 25.02.1964, (marked as Ex.A.1) and in possession and enjoyment of the property along with the right of irrigation through the water channel passing through the defendants land who are neighbours to his land. However, during the month of May 2002, the defendants started disturbing his peaceful possession and they have also obstructed the water channel passing through the land used to draw water from the Well. The plaintiffs in O.S.No.113/02 had caused notice to the defendants on 16.05.2002. The defendants, on receipt of the legal notice, given their reply through their learned counsel on 27.05.2002. After exchange of notices through their respective counsel, Mr.Chandran and Mr.Munusami Mudaliar have filed the suit in O.S.No.113/2002 for declaration of title; right and interest in

respect "A" schedule property and right to use the water channel passing through the defendants land and mandatory injunction to restore the channel shown as "JKLM" in the plaint plan described as "C" schedule property.

3.Mr.Laxmana Mudaliar; Mr.Selvam and Mr.Nandagopal who are the defendants in O.S.No.113 of 2002 apart from filing their written statement in that suit, have initiated independent suit against Mr.Chandran & Mr.Marimuthu in O.S.No.142/02.

4.The case of the plaintiffs in O.S.No.142/2002 is that S.No.1121/2 has been subdivided into several divisions starting from S.Nos.1121/2A to 1121/2J and on their own and on purchase of the portion of the properties from one Mrs.Saradambal and through the partition deed dated 14.07.1983, they are entitled to 50 cents of land in S.No.1121/2 which has been sub divided into S.Nos.1121/2A to 1121/2J.

5. 37 cents in "A" schedule property was sold by Mr.Anjaneya Mudaliar to Mr.Sarangabani Mudaliar, who is the elder brother of Mr.Laxmana Mudaliar, through a sale deed dated 06.03.1974. During the partition between Mr.Laxmana Mudaliar and Mr.Saranga Mudaliar, 13 1/4th cents in total extent of 2.67 acres in S.No.1121/2 was allotted to Mr.Laxmana Mudaliar vide partition deed dated 04.07.1983. Further, 33 cents of land out of 2.67 acres in S.No.1121/2 was purchased by Mr.Laxmana Mudaliar from Mrs.Saradambal vide Ex.B.10 dated 11.03.1992.

6.With this pleadings, the parties have gone for trial and the trial Court has taken up both the suits viz., O.S.No.113/2002 and 142/2002 for joint trial since, pleadings parties and disputes are same. After considering the title deeds relied on by the respective parties and the Commissioner report, the trial Court allowed O.S.No.113 of 2002, the suit filed by Mr.Chandrasekaran and Mr.Marimuthu and dismissed O.S.No.142/2002 the suit filed by Mr.Laxmana Mudali, Mr.Selvam and Mr.Nandagopal.

7.Aggrrieved by that, Mr.Laxmana Mudali and others have preferred two appeals one against the allowing of suit in O.S.No.113/2002 and two against the dismissal of the suit in O.S.No.142/2002. The First Appellate Court after re-appreciating the evidence morefully Ex.A.1 and Ex.B.5, the documents relied on by each parties claiming right and title over the disputed portion, has concluded that as per the Commissioner's report, 9 ½ cents of land though not found separately in the field it exists and the appellants have ameliorated the ridges to arrive at that conclusion. The First Appellate Court has gone into the description of the properties provided under Exs.B.1 to B.11 and in the light of Ex.A.1, and its boundaries, has held that

the contention that Mr.Muruga Reddy and his brothers have divided the entire extent of 2.67 acres of land in S.No.1121/2 in which, Mr.Muruga Reddy and Mr.Kupusamy were allotted one acre of land each and the remaining 67 cents of land was allotted to Mr.Anjaneya Mudaliar s/o Govindsamy, has no proof to believe.

8.Aggrrieved by the common judgment of the First Appellate Court, dismissing both the appeals preferred by Mr.Laxmana Mudali and his sons, the present Second Appeals in S.A.Nos.811 & 812 of 2007 have been preferred, on the ground that without declaring Ex.B.2 dated 12.03.1954 and Ex.B.9, dated 12.09.1958, as null and void, the Courts below should not have relied the subsequent sale deed Ex.A.1 dated 25.02.1964 executed in favour of the respondents herein.

9.It is further contended by the learned counsel for the appellants that Mr.Muruga Reddy had no right over "A" schedule property under Ex.B.2 - settlement deed and therefore, the vendor of the respondents herein cannot convey title over the "A" schedule property. Further, it is contended by the appellants that declaring the right of the respondents herein over the "A" schedule property based on the boundaries on Exs.B.6 and B.10, which are contrary to the boundaries described in Ex.B.2 is erroneous.

10.At the time of admission of these Second appeals, this Court has formulated the following substantial questions of law for consideration:-

"Whether the Courts below have committed an error of law in decreeing the suit filed by the plaintiffs and dismissing the suit filed by the defendants in the absence of evidence to show that Duraisamy had title to execute Ex.A.1 - Sale deed and when there is evidence to show that the defendants had purchased the suit property under Ex.B.10 sale deed, dated 01.03.1992 ?"

11.While the appellants trace their right through Ex.B.10 dated 01.03.1992, the respondents trace their right through Ex.A.1 sale deed dated 25.02.1964, to show that the appellants' predecessor in title have right over the suit properties, whereas, the respondents' predecessor in title had no right or title over the suit properties. IN support of this submission, the appellants relied upon Ex.B.2 which is a settlement deed dated 12.03.1954 by Mr.Muruga Reddy in favour of Mr.Kupusamy. The total extent of land in S.No.1121/2 is 5.18 cents. Ex.B.1 which is a sale deed as early as on 04.10.1919 indicates that Mr.Muruga Reddy purchased 2.67 cents of land from Mr.Ekambara

Mudaliar. Ex.B.2 - a registered settlement deed executed by Mr.Muruga Reddy to Mr.Kupusami Mudali on 12.03.1954, indicates that out of 2.67 acres of land, 3/4th share is settled in favour of Mr.Kupusami Mudali who is the brother of Mr.Muruga Reddy. From this document, it is clear that Mr.Muruga Reddy has settled only 3/4th share in 2.67 acres to Mr.Kupusamy while so, it is clear that 1/4th share has been with Mr.Muruga Reddy. Mr.Gopal Mudali and Mr.Duraisami Mudali who are the sons of Mr.Muruga Reddy from out of 1/4th share held by Mr.Muruga Reddy, had sold 16 1/3 cents to one Mr.Annamalai on 22.10.1963 vide Ex.B.5.

12.The very next year, Mr.Duraisami Mudali has sold 9 ½ cents of land from out of the total extent of 2.67 cents of land in S.No.1121/2 to his brother Mr.Gopal Mudali who is the father of the respondents. Therefore, the contention of the appellants that Mr.Duraisami Mudali had no title over the suit properties to convey the same to the respondents' father is found to be unsustainable and the Courts below have rightly held so, after giving due consideration with genealogy and tracing a title over the properties bearing S.No.1121/2.

13.As pointed out earlier, Ex.B.2 - a settlement deed dated 12.03.1954, executed by Mr.Muruga Reddy to his brother Mr.Kupusamy is not in respect of total extent of land in S.No.1121/2 but only 3/4th share. Therefore, it is to be understood from the recital of the document that out of 2.67 acres of land, only, 2 acres of land was settled in favour of Mr.Kupusamy mudali. Mr.Muruga Reddy has settled only 2 acres of land to his brother Mr.Kupusamy and the remaining 67 cents of land was available to his sons with Mr.Gopal Mudaliar and Mr.Duraisami Mudali to inherit.

14.Ex.A.1 dated 25.02.1964, reveals that Mr.Duraisamy Mudaliar one of the sons of Mr.Muruga Reddy has sold 9 ½ cents of land along with the right to draw water from the well described as Ponniamman Kinaru and to take water from the water channel running through the appellants land. For the purpose to identify, since, there are too many divisions among the sharers at various point of time and to find out the exact location at which the portion of 9 ½ cents land lay in S.No.1121/2, the Court has appointed Advocate Commissioner and the Advocate Commissioner has with the help of Surveyor and Revenue Officials, have marked the "A" schedule property in his report. Accordingly, the Courts below have held that the respondents herein are entitled for the declaration sought by them in their suit in O.S.No.113/2. On scrutiny of exhibits relied by the respective parties, this Court holds that Mr.Duraisamy, vendor of the suit property, to the plaintiffs' father had every right to sell the property under Ex.A.1 dated 25.02.1964.

15.From the recital of Ex.B.2 it is well found that it is only in respect of 33 cents of land held by Mrs.Saradambal who purchased it from Mr.Kupusamy Mudali. Thus, Exs.B.9 and B.10 relates to 3/4th share of property given by Mr.Muruga Reddy to his son Mr.Kuppusami Mudali. Therefore, Ex.B.10 sale deed executed by Mrs.Saradambal in favour of the appellants no way preclude the right of Mr.Duraisamy from selling away his share of property in the remaining 1/4th part inherited through his father Mr.Muruga Reddy.

16.The learned counsel for the appellants made a forcible submission that the Court should not look into the recitals as to boundaries in document, when the dispute is not between inter parties. In support of his submission, the learned counsel has also relied upon a judgment of this Court in Amiappa Nainar V. Annamalai Chettiar (AIR 1972 Mad 154) wherein in paragraph No.16, this Court has held as follows:-

"16.On a consideration of the aforesaid decisions, we hold that this decision of the Division Bench of the Court in Sripala Venkatarayagopala Raju v. Fota Narasayya is not in accordance with preponderance of authorities in various High Courts that recitals as to boundaries in documents not inter parties are in admissible in evidence under sections 11,13(a), 32(3) and 32(7). As pointed out by Wadsworth, J., in Thyagaraja v. Narayana, the only method by which recitals in a document not interparties could be admitted in evidence is by examination of the executant of the document in which such recitals as to boundaries are found. In this view we hold that the judgment of Ramaswami.J., in Rangayya v. Innasimuthu is wrongly decided. The result is that Exhibits A-2 to A-6 in the present case are inadmissible in evidence."

The said proposition of law laid down has been consistently followed by this Court and the learned counsel has also referred the following two judgments:-

- "(i) Sadhuran v. Sriramulu Naidu (AIR 1999 Madras 377) and
- (ii) M.Subramani v. P.Shanmugam (2007(4) CTC 125)"

17.This Court has no second opinion on the above said proposition of law. This Court is of the opinion that neither

the Courts below had any doubt about that. In the given facts and circumstances of the case, any Court will be forced to look into the boundaries of the respective sale deeds because, as discussed above, S.No.1121 as a whole nearly 5.18 acres was originally held by Mr.Ekambara Mudaliar. Out of which, 2.67 acres of land has been purchased by Mr.Muruga Reddy from Mr.Ekambara Mudaliar vide Ex.B.1 - dated 04.10.1919. Thereafter, the said property has been subjected to several divisions and several alienations between third parties and the family members of Mr.Muruga Reddy.

18.The bottom line of the facts of the case is that for irrigation of the said land, a Well known as "Ponnamman kinaru" was there and through that Well, the respective land owners were irrigating their portion of land. The Advocate Commissioner, in his report, has demarcated the portion 9 ½ cents of the land owned by the respondents herein. The Commissioner in his report and sketch - Exs.C.1 & C.2 respectively has categorically marked the portion of 9 ½ cents and also found that water channel is in existence from the suit Well - "B" schedule property with the width of 2 feet and stops at "K" marked point. It is also categorically said by the Advocate Commissioner that there was no demarcation to show that "A" schedule property at the time of his inspection. This is probably due to the ameliorated of ridges by the appellants

19.The Well found on the Northern side of the suit property and the F.M sketch annexed to the Commissioner report clinchingly proves that the total extent of 2.09.5 hectares of land in S.No.1121/2 had been initially divided into S.No.1121/1 and S.No.1121/2 while the Eastern portion of the land has been assigned S.No.1121/2 and Western portion of the land been assigned S.No.1121. This has been later subdivided into various portions and in so far as S.No.1121/2, has it been subdivided as S.Nos.1121/2A to 1121/2J. In the said circumstances, unless, the boundaries with the extent prescribed in the respective documents are reconciled, exact location of the disputed land could not be identified. But, that exercise, 9 ½ cents land purchased under Ex.A.1 could not have been identified. To add, the appellants, though claim right over the entire property, their title deeds do not convey more than 33 cents of land in the entire 2.67 acres and this also by virtue of a sale deed executed by Mrs.Saradambal in favour of Mr.Laxmana Mudaliar vide Ex.B.10 dated 11.10.1992 much later to Ex.A.1. When the location of the property could not be identified, without the help of boundaries, resorting to the boundaries described in the title deeds is not prohibited under law and the very purpose of furnishing boundaries to the property itself is to identify its

location that too when parties trace their right from common vendor or ancestors, boundaries play a vital role in identifying the property.

20.It is not the case where title is conferred based on the boundaries. Therefore, the judgments cited by the learned counsel for the appellants has no relevance to the facts of the present case, for the reasons stated.

21.In view of the above, both the appeals are dismissed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

1.The Subordinate Court,
Ranipet, Vellore.

2.District Munsif Court,
Sholinger.

+1cc to Mrs.Selvi George, Advocate Sr.67404

+2cc to Mr.P.K.Thiruneelakandan, Advocate Sr.67585

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Second Appeal Nos.811 & 812 of 2007

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