

IN THE HIGH COURT OF JUDICATURE AT MADRAS**RESERVED ON : 21.11.201****PRONOUNCED ON : 24.11.2016****CORAM****THE HONOURABLE MR. JUSTICE T.RAVINDRAN****S. A.No.19 of 2011****and****M.P.No.1 of 2011**

K.P.Srinivasan ... Appellant

Vs.

K.K.Nagarajan ... Respondent

Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree in A.S.No.47 of 2006 dated 17.04.2007 on the file of the Subordinate Judge, Tiruppattur, confirming the judgment in O.S.No.720 of 1995 on the file of the District Munsif Court, Tirupattur dated 04.04.2006.

For Appellant : Mr.S.V.Jayaraman
for M/s.P.Devadas Associates

For Respondent : Mrs.V.Srimathi

JUDGMENT

The plaintiff, in this second appeal, has challenged the judgement and decree dated 17.04.2007 made in A.S.No.47 of 2006 on the file of Subordinate Court, Tiruppattur, confirming the judgement and decree dated 04.04.2006 in O.S.No.720 of 1995 on the file of the District Munsif Court, Tirupattur.

2. The suit has been laid by the plaintiff for declaration and permanent injunction.

3. The suit property has been described as an extent of 3.80 acres in old survey No.156/1, new survey No.156/1B with 2 doruvu wells in Koodapattu village, Tirupattur Taluk, North Arcot Ambedkar District. It is therefore evident that as found by the courts below, the description of the suit property being immovable property is very vague and not clear. As mandated under Order 7 Rule 3, where the subject matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it, and, in case such property can be identified by boundaries or numbers in a record of settlement or survey, the plaint shall specify such boundaries or numbers. However, as mandated under the law above referred to, the plaintiff has not come out with clear description of the suit property, to which, he seeks the relief of declaration.

4. On the footing that the suit property and other properties originally belonged to his father Ponnusami Gounder ancestrally and after his death, the suit property was allotted to him under the partition deed dated 26.06.1959 and the copy of the same has been marked as Ex.A1, the plaintiff has laid the case for declaration and permanent injunction and the above case of the plaintiff has been

seriously disputed by the defendant. Therefore, it could be seen that the plaintiff having come forward with the suit seeking for the reliefs of declaration and permanent injunction, as rightly found by the courts below, has to establish by acceptable and convincing evidence that the suit property belongs to him and that, the same is in his possession and enjoyment as pleaded in the plaint. From the evidence adduced in the matter by the respective parties, it could be seen that the suit property and other properties originally belonged to Manicka Gounder, the grand father of the plaintiff and the defendant. The said Manicka Gounder had three sons viz., Ponnusamy Gounder, Kuppusamy Gounder and Ramasamy Gounder. The plaintiff is the son of Ponnusamy Gounder, the defendant is the son of Kuppusamy Gounder. It could be seen that there has been a partition between the Manicka Gounder and his three sons on 31.01.1938 and the copy of the said partition deed has been marked as Ex.B1 and thereafter, the heirs of Ponnusamy Gounder, as found above, had effected partition amongst themselves under Ex.A1 partition deed. Further, it could also be seen that Kuppusamy Gounder and his family members had effected partition under the partition deed dated 11.02.1957 and the copy of the partition deed has been marked as Ex.A5. On the basis of the above said partition deeds effected between the heirs of Manicka Gounder, according to the plaintiff, he has been allotted the property comprised in survey No.156/1 and the same has been sub divided as

156/1B. Similarly, according to the case of the defendant, he has been allotted the property comprised in survey No.156/1 and the property, so allotted to him, has been sub divided as 156/1A. Therefore, it could be seen that the plaintiff claims title to the property, now, situated in survey No.156/1B and the defendant claims title to the suit property, now, situated in survey No.156/1A. However, as adverted to earlier, the plaintiff has not given the description of the property, to which he claims title. It is also admitted that to east of the properties belonging to the plaintiff and the defendant, Pambar river situated in Survey No.137 runs. Now, according to the plaintiff, on the basis of the representation to the authorities, survey authorities had issued proceedings marked as Ex.A2 and as could be seen from the plaint averments, the plaintiff seems to have based his case mainly upon the proceedings marked as Ex.A2 and the plan Ex.A3.

5. Per contra, it is argued and contended by the defendant that the proceedings of the authorities under Ex.A2 and the plan Ex.A3 are invalid and not binding on the defendant and based on the above, the plaintiff is not entitled to claim title over the suit property as described in the plaint. The defendant has also laid a suit in O.S.No.516 of 1996 seeking the relief of permanent injunction against the plaintiff. It appears that both the suits filed by the plaintiff and the defendant

were tried jointly and common evidence was recorded in both suits and it could also be seen that the trial court has rendered a common judgment in both suits. The trial Court has, on a consideration of the evidence adduced by the respective parties, dismissed the suit filed by the plaintiff in O.S.No.720 of 1995 and also, dismissed the suit filed by the defendant in O.S.No.516 of 1996. As against the dismissal of O.S.No.720 of 1995, the plaintiff has preferred the first appeal in A.S.No.47 of 2006.

6. It could also be seen that an advocate commissioner was taken out by the defendant in his suit in O.S.No.516 of 1996 and the advocate commissioner had also inspected the suit properties in entirety belonging to the parties concerned and submitted his report and plan, which have been marked as Exs.C1 and C2. The features noted by the advocate commissioner as pointed out in his report and plan, as rightly found by the courts below, would clearly establish and settle the controversy, which had arisen between the parties concerned.

7. As per the report and plan of the advocate commissioner, it could be seen that, there are four Wells, W1, W2, W3 and W4 situated in the area. Further, it could also be seen that in the Pamber River bed, the Wells W1 and W3 are situated and in the adjacent land

belonging to the plaintiff the Well W2 is situated and in the land belonging to the defendant the Well W4 is situated. W2 is situated on the western side adjacent to W1 and W4 is situated on the western side adjacent to W3. Further, as per the report and plan of the advocate commissioner, it could be seen that W1 and W2 Wells have become defunct and not in use. On the other hand, it could be seen that the Wells W3 and W4 had been used by the defendant and the advocate commissioner has noted that the defendant had installed electric motor pump set in the Wells W3 & W4 and taking water out of the same and irrigating his land through the channel given in red colour in the plan Ex.C2. As per the report of the advocate commissioner, the defendant has been utilising the water for the purpose of irrigating his crops and coconut trees in survey No.156/1A and also, coconut trees situated in survey No.157 also stated to be belonging to the defendant. Further, the advocate commissioner has also noted that the pump set situated near the Well W2 is in a dilapidated condition and also, noted the features for pulling out of the water from the Well manually. Therefore, it could be seen from the above facts that W1 and W2 Wells have not been put in use for a long time and the Wells W3 and W4 are in use and the same had been used by the defendant for irrigating his lands. Further, the commissioner has also noted that the defendant had also installed pumpset running through solar energy for taking out water from the W4 Well and

irrigating his lands through the red colour channel and the red colour channel is passing through the land belonging to the plaintiff and there are also coconut trees adjacent to W2 Wells. Further, the commissioner has also noted that the green colour Cart Track and black colour pathway depicted in Ex.C2 plan had been utilised by both the plaintiff and the defendant for reaching their respective properties and also, the yellow colour cemetery depicted in the plan. Therefore, from the above report and plan of the advocate commissioner, it could be seen that the defendant has also been enjoying the portions in the property allotted to the plaintiff in survey No.156/1B. To the above report and plan of the advocate commissioner, the plaintiff has not put forth any objection. The defendant has also marked documents to substantiate his case of enjoyment of his land with Wells and electric pump sets. Therefore, it could be seen that the plaintiff, as found by the courts below, has miserably failed to establish that the two wells alleged to have been situated within his property had been actually used by him. As adverted to earlier, the plaintiff has not given the limits within which the land allotted to him under the partition deed effected among his family members is situated. The description of the suit property is misleading and not clear. Therefore, it could be seen that the courts below have rightly found that the plaintiff has failed to establish that he has valid title to the suit property as descried in the plaint and that, the same is in his possession and enjoyment

exclusively. So holding, it could be seen that the courts below have non suited the plaintiff. The decision of the courts below in negating the reliefs sought for by the plaintiff cannot be faulted with. Nothing has been pointed out that the findings of the courts below for rejecting the case of the plaintiff are perverse and erroneous in law.

In the light of the above discussions, it could be seen that the second appeal is found to be not based on any substantial question of law. Accordingly, the second appeal is dismissed. No cost. Consequently, connected miscellaneous petition is closed.

24.11.2016

Index : Yes/No
Internet: Yes/No
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To

1. The Subordinate Court, Tiruppattur.
2. The District Munsif Court, Tirupattur.

T.RAVINDRAN,J.

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Pre-delivery Judgment in
S. A.No.19 of 2011
and
M.P.No.1 of 2011

24.11.2016

Pre-delivery Judgment made
in
S. A.No.19 of 2011
and
M.P.No.1 of 2011

To

The Hon'ble Mr.Justice T.Ravindran

Most respectfully submitted
sms
P.A. to TRNJ