

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**RESERVED ON : 21.11.2016**

**PRONOUNCED ON :08.12.2016**

**CORAM :**

**THE HONOURABLE MR.JUSTICE T.RAVINDRAN**

**S.A.No.370 of 2011**

**&**

**M.P.No.1 of 2011**

Chinna Kulandhai Ammal

Vs.

... Appellant

Rajaram

... Respondent

**Prayer:-** This Memorandum of Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 20.09.2010 passed in A.S.No.21 of 2008 on the file of the Principal Subordinate Judge, Gingee, reversing the judgment and decree dated 21.04.2008 passed in O.S.No.54 of 1999 on the file of the Principal District Munsiff, Gingee.

For Appellant : Mr.R.Rajarajan

For Respondent : Mr.V.Bhiman

**J U D G M E N T**

The defendant in this Second Appeal has challenged the judgment and decree dated 20.09.2010 made in A.S.No.21 of 2008

on the file of the Principal Subordinate Judge, Gingee, reversing the judgment and decree dated 21.04.2008 passed in O.S.No.54 of 1999 on the file of the Principal District Munsiff Court, Gingee.

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

3.The suit has been mainly laid by the plaintiff seeking the reliefs of declaration and permanent injunction in respect of the 75 palm trees and the 2 tamarind trees stand on the eastern side of the property situated in S.No.201/4A, New S.No.201/4A4 ad-measuring to an extent of 1 acre 15 cents out of a total extent of 4 acre 34 cents. It is admitted that the land of the defendant is situated on the eastern side of the plaintiff's above said land and the defendant claims title to the property ad-measuring to an extent of 1 acre 44 cents in S.No.201/4A6. Now, according to the plaintiff, the 75 palm trees and the two tamarind trees, the subject matter of the suit are lying within his property and according to the defendant, the subject matter of the suit above referred to lies within the land owned by him in S.No.201/4A6.

4.The trial Court disbelieved the case of the plaintiff and

dismissed the suit. On appeal by the plaintiff, the lower Appellate Court has granted the relief sought for by the plaintiff in respect of the 75 palm trees alone and dismissed the suit in respect of the 2 tamarind trees.

5.The plaintiff claims title to his property under the Sale Deed dated 27.05.1998 and the copy of the same has been marked as Ex.A1. The plaintiff's vendor Sulochana Ammal has purchased the property from Muniammal under the Sale Deed dated 21.07.1966 and the copy of the same has been marked as Ex.B4. A perusal of Ex.B4 would go to show that as found by the Courts below Sulochana Ammal, examined as PW2 had purchased only 1 acre 2 cents under Ex.B4. However, she has sold an extent of 1 acre 15 cents under Ex.A1 to the plaintiff.

6.Further, as found by the Courts below, a perusal of Ex.A1, Sale Deed would go to show that the palm trees and the tamarind trees are stated to be situated only on the western side of the property sold under Ex.A2. However, as far as this suit is concerned, the palm trees and the tamarind trees situated on the eastern side of the suit property are under consideration. Therefore the case of the plaintiff, as found by the Courts below

that he had purchased his property under Ex.A1, inclusive of the 75 palm trees and the 2 tamarind trees on the eastern side of the suit property as such cannot be believed. Similar, as regards the case of the defendant that she has purchased her property under Ex.B1, from Ramanatha Gounder inclusive of the 75 palm trees and the 2 tamarind trees cannot be readily accepted in as much as there is no reference about the abovesaid palm trees and the tamarind trees in Ex.B1 also.

7.However, the fact remains that the defendant's property is situated on the eastern side of the plaintiff's property and in between the two properties i.e., on the eastern side of the plaintiff's property and on the western side of the defendant's property, the subject matter of the suit namely the 75 palm trees and the two tamarind trees are situated. Therefore, as rightly found by the Courts below the title deeds of the respective parties did not in any manner advance their respective case that they are the owners of the 75 Palm trees and the 2 Tamarind trees. The other documents marked on the side of the plaintiff namely patta and kist receipts are no way helpful to sustain the plaintiff's case that the 75 Palm trees and the 2 Tamarind trees belonged to and enjoyed by him. Equally the documents Ex.B2 and B3 filed on

behalf of the defendant also do not throw any light to hold that the disputed 75 Palm trees and the 2 Tamarind trees belonged to and enjoyed by the defendant. The vendor of the plaintiff Sulochana Ammal and PW3, Natarajan, who is stated to have attested Ex.A1 would claim that the disputed trees are about 30 years old. However, their version cannot be readily accepted in comparison with the recitals found in the Sale Deed marked as Ex.A1.

8.Further, when Ex.A1, does not indicate that any Palm trees and the Tamarind trees situated on the eastern side of the property are conveyed and on the other hand only portray that the Palm trees and the Tamarind trees are situated on the western side of the property sold, it could be seen that Ex.A1 would not in any manner be helpful to establish the plaintiff's case.

9.The Second Appeal was admitted and the following substantial questions of law are formulated in this second appeal for consideration:

(a)Is not the Appellate Court wrong in reversing the decree and judgment of the trial Court merely on the basis of suppositions, assumptions and conjectures without any evidence?

(b) Whether the first Appellate Court is correct in partially decreeing the suit by observing that the defendant failed to prove and establish that palm trees and tamarind trees are standing in his land when the plaintiff also failed to establish that the palm trees and tamarind trees are standing in his land?

10. The plaintiff having come forward with the specific reliefs should establish the case by acceptable and reliable evidence. The plaintiff has to stand or fall on the strength of his own case. He cannot be allowed to take shelter in the weakness of the defendant's case and thereby try to project his case during the course of trial. The parties have not endeavoured during the course of trial to have the properties examined through the Advocate Commissioner with the help of surveyor to ascertain as to where actually the disputed Palm trees and the Tamarind trees are located. However, it could be seen that in the Appellate Court, the defendant has taken out an application and based upon the same, the Advocate commissioner has inspected the subject matter of the suit property with the help of surveyor. The report and plan are marked as Exs.C1 to 3. However, a perusal Exs.C1 to C3 would go to show that they are also not helpful to hold as to within whose property limits, the disputed Palm trees and the Tamarind trees are located.

11. In this connection, even the first Appellate Court has noted that though the Commissioner has mentioned the extent of available S.Nos.201/4A4 and 4A6, the surveyor's report does not clearly indicate as to whether the disputed trees are lying in S.No.201/4A4 or 4A6.

12. Therefore, as rightly put forth by the learned counsel for the defendant, when the Commissioner's report and plan also do not in any manner advance the case of either parties as to fix where actually the disputed Palm trees and the Tamarind trees are located, according to him, the lower Appellate court has without any basis, on mere surmises and conjectures decided that the 75 Palm trees are located within the limits of the plaintiff's property and thereby erred in upholding the plaintiff's case to that extent.

13. In this connection, a perusal of the judgment of the lower Appellate Court would go to show that without any basis and material the court proceeded to hold that the 75 Palm trees in particular are actually located within the limits of the property purchased by the plaintiff under Ex.A1 and decided the issue on mere surmises and conjectures and came to hold that the 75 Palm

trees are located in the plaintiff's property based upon the description of the land as Manalmedu in the Sale Deeds concerned. Further, when according to the first Appellate Court, the Palm trees and the Tamarind trees are found to be in the ridge/boundaries between the properties of the plaintiff and the defendant and when the Commissioner's report and plan are not helpful to fix within whose limits the same are situated it could be seen that the lower Appellate Court has erred in holding that the disputed 75 Palm trees are owned by the plaintiff merely taking into account the shape of the stretch of piece of land where the palm trees are situated.

14. In the light of the above discussions, it is evident that the lower Appellate Court has partially decreed the suit in favour of the plaintiff as regards the palm trees are concerned without the plaintiff establishing that the 75 Palm trees are actually located in his property through acceptable and reliable evidence. Resultantly, as rightly argued, the lower Appellate Court has reversed the well considered judgment and decree of the trial Court merely on surmises and conjectures without any basis or material to support the same.

15. In conclusion, the substantial questions of law formulated in this Second Appeal are answered in favour of the appellant and against the respondent.

16. Resultantly, the Second Appeal is allowed. The judgment and decree dated 20.09.2010 made in A.S.No.21 of 2008 on the file of the Principal Subordinate Judge, Gingee are set aside and the judgment and decree dated 21.04.2008 made in O.S.No.54 of 1999 on the file of the Principal District Munsif Court, Gingee are restored. No costs. Consequently, connected miscellaneous petition is closed.

08.12.2016

Index: Yes/No  
Internet: Yes/No

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To

1. The Subordinate Judge,  
Gingee

2. The District Munsif,  
Gingee

**T.RAVINDRAN.J.,**  
Dn

**S.A.No.370 of 2011**

**08.12.2016**