

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.11.2016

CORAM

THE HONOURABLE MR. JUSTICE P.KALAIYARASAN

S.A. Nos.2129 and 2130 of 2003
and
C.M.P.No.19844 of 2003

S.A.No.2129 of 2003

1. P.T.Gopalakrishnan
2. R.Vellingiri
3. N.M.Mathaiyan
4. R.Santhamani
5. Pushpa
6. K.Muthukumar
7. Linda Sarasan

... Appellants/Plaintiffs

Vs.

M.Dhananjayan

... Respondent/Defendant

Second Appeal is preferred under Section 100 of the Code of Civil Procedure against the Judgment and Decree, dated 30.04.2003 made in A.S.No.45 of 2003 on the file of the II Additional District Court at Coimbatore, confirming the Judgment and Decree, dated 31.12.2002 made in O.S.No.231 of 1996 on the file of the District Munsif Court at Mettupalayam.

S.A.No.2130 of 2003

1. Sarojini @ Subbulakshmi
2. V.Kandasami
3. M.Damodharan
4. P.T.Gopalakrishnan
5. R.Vellingiri
6. R.Santhamani
7. Pushpa
8. K.Muthukumar
9. Linda Sarasan
10. Arasakumar

... Appellants/Defendants

Vs.

M.Dhananjayan

... Respondent/Plaintiff

Second Appeal is preferred under Section 100 of the Code of Civil Procedure against the Judgment and Decree, dated 30.04.2003 made in A.S.No.44 of 2003 on the file of the II Additional District Court at Coimbatore, confirming the Judgment and Decree, dated 31.12.2002 made in O.S.No.82 of 1995 on the file of the District Munsif Court at Mettupalayam.

For Appellant : Mr.Srinath Sridevan
in both the Second Appeals

For Respondent : No Appearance
in both the Second Appeals

COMMON JUDGMENT

Both these Second Appeals are directed against the concurrent Judgment and Decree passed in common by the Courts below in O.S.No.82 of 1995 filed by Dhananjayan for declaration and permanent injunction and in O.S.No.231 of 1996 filed by the purchasers from Sarojini Subbulakshmi, who is first defendant in the former suit.

2. For the sake of convenience, this Court refers the plaintiff and defendants as referred in O.S.No.82 of 1995.

3. The case of the respondent / plaintiff in nutshell are as follows :

(i) As per the partition deed, dated 07.12.1977, the plaintiff was allotted 3.79 acres in 52(1D) and 0.07 acres in 52(1B), totally 3.86 acres. On the western side of the above land, the first defendant Sarojini Subbulakshmi was allotted in the same partition, 1.51 acres in 50(1B). In the land allotted to the plaintiff, 52(1D), there is a well.

(ii) With the help of D2 and D3 being financier and retired Head Surveyor, D1 got false certificate from Municipality claiming more than 4 acres in 50(1B), 52(1D), 52(1B) and 52(1C), executed a sale agreement in favour of D2 and D3. The plaintiff issued lawyer notice to the first defendant on 08.01.1995. She also executed sale deeds for the lands without any title to other defendants. Therefore, the present suit has been filed.

3. The averments in the written statement filed by D1 to D3 and the plaint filed by the subsequent purchasers are as follows:

(i) Though the plaintiff and the first defendant were allotted properties as per the partition deed, dated 07.12.1977, defendant has been in possession of 1.48 1/2 acres in S.F.No.50

(1B) and 0.15 acres in 52(1D). Thus, the first defendant had been in possession of 1.63 1/2 acres of land from the date of partition. Similarly, the plaintiff has been in possession of 3.64 acres in 52(1D), 0.07 acres in 52(1B) and 2 1/2 cents in 50 (1B) totally 3.73 1/2 acres of land. During town survey, the lands were sub-divided, as per the possession of the land by the parties.

(ii) The first defendant also claims adverse possession as she had been in possession of the land, as stated above from the date of partition. D1 sold the entire property retaining only 17 cents with her to D4 to D11. D4 to D11 are bonafide purchasers and therefore, the suit filed in O.S.No.82 of 1995 is to be dismissed.

4. The learned trial Judge framed necessary issues and after analysing both oral and documentary evidence decreed O.S.No.82 of 1995 filed by Dhananjayan and dismissed O.S.No.231 of 1996 filed by the purchasers. Aggrieved by the said Judgment, defendants in O.S.No.82 of 1995 and plaintiffs in O.S.No.231 of 1996 filed appeal before the II Additional District Court, Coimbatore.

5. The learned Additional District Judge, by reappreciating the evidence, confirmed the Judgment and Decree of the trial Court. Against the concurrent finding and Judgment of the Courts below, the present two appeals have been preferred by the defendants in O.S.No.82 of 1995 and plaintiffs in O.S.No.231 of 1996.

6. While admitting these Second Appeals, this Court framed the following Substantial Questions of Law for consideration :

"1. In the face of Ex.B.3, an official record, under which the property forming the subject matter of both the suits found in possession and enjoyment of the first defendant in O.S.No.82/95 (the plaintiff in the above referred to suit and the first defendant therein are parties to Ex.B.3 and they have signed it), have not the courts below committed an error of law in acting on the terms of Ex.A.3, a partition deed, to which the above referred to persons are the only parties, to deny the relief prayed for by the alinees from Sarojini and to grant the relief as prayed for in favour of Dhananjayan?

2. Would not Ex.B.3 has the effect altering the legal rights of the parties to Ex.A.3 ?

3. When the question of proving the fact with

reference to the official record is concerned, can the ordinary law relating to burden of proof be applied ?"

7. There is no dispute that plaintiff Dhananjayan and first defendant Sarojini @ Subbulakshmi were allotted adjacent properties under the partition deed, dated 07.12.1977. The partition deed has been marked as Ex.A.3. As per the partition deed, the plaintiff was allotted 3.79 acres in S.F.No.52 (1D) and 0.07 acres in 52 (1B) totally 3.86 acres. The first defendant was allotted 1.51 acres in 50 (1B). The defendant claims that from the date of partition, physical possession of the properties is as follows :

Plaintiff	52 (1D)	- 3.64 acres
	52 (1B)	- 0.07 acres
	50 (1B)	- 0.02 1/2 acres
	Total	- 3.73 1/2 acres

The defendant has been in possession : 50 (1B) - 1.48 1/2 acres
52 (1D) - 0.15 acres

Thus the defendant claims 12 1/2 cents in excess of what she has been allotted as per the partition deed. For this, the defendant's contention is that the property was sub-divided with the knowledge of the plaintiff, as per the sub-division order, dated 07.04.1994. Except this Ex.B.3, no other document has been filed to establish that the first defendant had been in possession of the land as alleged by her, contrary to the extent mentioned in the partition deed.

8. It is also pertinent to note that D1 has not even stepped into the box to aver that she had been in possession of the land as pleaded by her.

9. The plaintiff apart from partition deed has also filed the certificate issued by Tahsildar on 01.10.1987 confirming the possession of the land as pleaded by him. Even after the alleged sub-division, chitta adangal is found in the name of the plaintiff in respect of the land allotted to him under the partition deed.

10. The Advocate-Commissioner inspected with the Surveyor and filed the report before the trial Court. The Commissioner's Report, Sketch and Surveyor's Report are marked as Ex.C.1 to Ex.C.3. These also confirm the physical features of the land as per the partition deed. Thus the plaintiff has established his title and possession of the land as pleaded by him.

11. The only question that arises in these appeals is whether Ex.R.3 has the effect of altering the legal rights of the parties, that too when Ex.R.3 was issued with the knowledge of the plaintiff.

12. It is well settled that mutation entries even the sub-division does not confer any title to any party. No doubt notice was issued to the plaintiff when the sub-division was made at the request of the first defendant. The same authority, namely Tahsildar subsequently issued Ex.A.9 in conformity with the partition deed. This subsequent document does not reflect Ex.B.3 sub-division. The same has also not been explained by the defendants, who claim possession of the extent contrary to the partition deed. Therefore, Ex.B.3 does not have the effect of altering the legal right conferred by the partition deed, Ex.A.3.

13. For the aforesaid reasons, both the Courts below have rightly decreed the suit in O.S.No.82 of 1995 and dismissed the suit in O.S.No.231 of 1996 and this Court does not find any reason to interfere with the findings and Judgments of the Courts below and accordingly, the Substantial Questions of law are answered against the appellants and in favour of the respondent.

In fine, both these Second Appeals are dismissed confirming the common Judgment and Decree, dated 30.04.2003 made in A.S.Nos.44 and 45 of 2003 on the file of the II Additional District Court, Coimbatore. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

tsvn

To

1. The II Additional District Judge,
Coimbatore.
2. The District Munsif,
Mettupalayam.
3. The Section Officer,
V.R.Section,
High Court, Madras 104.

+1cc to Mr.Srinath Sridevan, Advocate, S.R.No.63031

S.A.No.2129 and 2130 of 2003

MSM(CO)
CA(21/12/2016)