

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.07.2016

CORAM

THE HON'BLE JUSTICE T. MATHIVANAN

C.M.A.No:527/2010 &
Connected MPs.

1.Dhanam
W/o.Karuppannan

2.K.Dhanasekaran
S/o.Karuppannan

: Appellants/Respondents
Defendants 3 and 4

Vs

1.K.Chandra : Respondents/Petitioners/
Plaintiffs/

2.Saratha
W/o.Kuppusamy

Prayer: This Memorandum of Civil Miscellaneous Appeal is filed to set aside the order and decreetal order dt: 09.12.2009 and made in the petition in I.A.No.356 of 2009 in OS.No.112 of 2009 on the file of the Principal District Munisiff, Namakkal.

For Appellants : M/s.T.Dhanyakumar, and

D.Pradeep kumar

For Respondents : Mr.B.Umapathi.

ORDER

1. The fair and decreetal order dt: 09.12.2009 and made in the petition in I.A.No:356 of 2009 in the suit in O.S.No.112 of 2009 on the file of the Principal District Munisiff, Namakkal are under challenge in this Memorandum of Civil Miscellaneous Appeal.

2. Heard Mr.T.Dhanyakumar Learned Counsel appearing for the appellants and Mr.N.Umapathi Learned Counsel for the respondents 1 & 2.

3. It is manifested from the records that the respondents 1 & 2 had filed a suit in O.S.No:112 of 2009 on the file of the Learned Principal District Munisiff, Namakkal as against

the appellants herein/D3 & D4 and two others and thereby sought the relief of declaration to declare that they have got 1/4th share in the suit property and to allot their separate shares viz 1/4th share and also for the consequential relief of injunction.

4. The respondents 1 &2 /Plaintiffs had also filed an application in I.A.356 OF 2009 under order of 39 rules 1&2 of C.P.C. seeking the relief of an Interim injunction. This petition was contested by the appellants/defendants 3&4 by filing their counter statement.

5. After hearing both the sides the Learned District Munisiff, Namakkal had proceeded to allow the petition partly directing the parties to maintain status quo in respect of the physical features as mentioned in the Commissioner report, with regard to Item No:4 of the suit property measuring of 0.50 Cents. In other aspects this petition was dismissed.

6. Having been aggrieved by the order dt: 09.12.2009 the revision petitioners being the defendants 3&4 stand before the court with this appeal.

7.The case of the respondents 1 &2/plaintiffs is that the suit property was originally belonged to one Kolanda Gounder and his son Kumarasamy. That on 28.09.1987, a partition in respect of this property was effected between Kolanda Gounder, his son Kumarasamy on the one part and one Chinna Gounder who is none other than the younger brother of Kolanda Gounder. Through this partition Kolanda Gounder and his son Kumarasamy were allotted their respective shares and thereafter, they had been in possession and enjoyment on the said property.

8. On the southern side of this property, the Revision Petitioners/D3 & D4 are having their own property. Their land is located 4 ft. lower than the land belonging to Kolanda Gounder and Kumarasamy comprised in Survey No.323/2A.

9. On the northern side of this Survey No.viz 323/2A, Kolanda Gounder and his son Kumarasamy were in possession and enjoyment of 0.50 Cents of land. They had been in possession and enjoyment of this portion viz 0.50 Cents for more than 40 years. This portion of the land was in enjoyment of K.Kolanda Gounder and his son Kumarasamy along with their ancestral property. As afore stated, this property has been shown in Item No:4 of plaint schedule.

10. According to the respondents 1&2/plaintiffs, this land is being irrigated from the well located in the ancestral property. Thereafter Kumarasamy had died interstate on 07.11.1989 and his father Kolanda Gounder had also died intestate on 02.02.1992. After their death, the respondents 1&2/plaintiffs and the defendants 1&2 have been in possession and enjoyment of this property as they are the legal heirs of K.Kolanda Gounder and Kumarasamy. From this property, the respondents 1&2/plaintiffs and the 1st defendant are entitled

to get 1/8th share and the 2nd defendant is entitled to get 5/8th share. Under this circumstance, on 05.11.2009 the respondent/plaintiff 1 & 2 were put to understand that the defendants 1&2 with the connivance of the Revision Petitioners viz D3&4 were going to make some arrangements to show that the 4th item of suit property and a portion of 1st item which is located on the northern side of the 4th item were belonged to them exclusively and that they were also making arrangements to survey the said property.

11. They were also put to understand that the defendants 1&2 were going to fabricate some documents, in order to make encumbrance in respect of the right and possession of the respondents 1&2/plaintiffs and therefore they were constrained to file the above suit along with the petition, seeking the relief of Interim injunction as against the defendants.

12. The Revision Petitioners/defendants 3&4 had contested the petition by filing their counter statement stating that the plaintiffs, defendants 1&2, 2nd defendant's Father Kumarasamy and his grandfather Kolanda Gounder were having no semblance of right and interest in the 4th item of plaint schedule. It is also their contention that the 4th item of suit property was not in their possession for the past 40 years and as such they would not have prescribed adverse possession over the said properties. The revision petitioner claimed right over the 4th item of the suit property and other properties measuring 1-86.5 hectare comprised in Survey No.323/2A through a settlement dt:05.07.1985 said to have been executed by one Palani Ammal in favour of D3.

13. The trial Court had gone to discuss the entire issue on the point as to whether there is sufficient cause for granting Interim injunction. Having taken in to consideration of relevant facts and circumstances and on perusal of the materials placed before him, the Learned Trial Judge had found that though the plaintiffs are claiming right over the suit property along with the defendants 1&2 by way of adverse possession, they had not produced any document to prove their contention that the suit item no.4 was in their possession.

14. However the Learned Trial Judge had found that the parties to the suit might be directed to maintain status quo with regard to the physical features as mentioned in the Commissioner Report till the disposal of the suit. Therefore, the Learned Trial Judge had proceeded to allow the petition partly directing the parties to the petition to maintain status quo in respect of suit 4th item till the disposal of the suit.

15. On perusal of the impugned order this court finds that having been found that the respondents 1&2/plaintiffs had not produced any document to prove their possession, in respect of Item No:4 of the suit property, the trial Court

ought to have dismissed the petition and the order of status quo, ought not to have been granted.

16. Keeping in view of this fact, this court is of considered view that the Revision Petition may be allowed.

In the result, the Revision Petition is allowed and the impugned order dt: 09.12.2009 is set aside and the petition in I.A.No.356 of 2009 in O.S.No:112/2009 is dismissed. The trial Court is directed to dispose the suit in O.S.No:112 of 2009 on merit as expeditiously as possible. However there shall be no order as to cost.Connected MP's are closed.

Sd/-

Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

To:

1.The Principal District Munsif Court,

Namakkal

+2ccs to Mr.T.Dhanyakumar,Advocate sr.41151,50738

copy to:

The Section officer,

VR Section, High Court, Madras.

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C.M.A.No.527 of 2010

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