

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:20.01.2016

CORAM

THE HONOURABLE MR.JUSTICE S. NAGAMUTHU

SECOND APPEAL No. 9 of 2016

&

C.M.P. No. 306 of 2016

Venkatraman

..Appellant/Plaintiff

Vs.

1. The State of Tamil Nadu rep. by its District Collector, Erode District, Erode.
2. The Tahsildar, Bhavani Taluk, Bhavani, Erode District.
3. The Revenue Divisional Officer, Gobichettipalayam, Erode District.
4. The District Revenue Officer, Erode District, Erode - 11.
5. Periyasamy ..Respondents

Prayer: Second Appeal as against the judgment and decree dated 16.07.2015 passed in A.S. No. 59 of 2014 by Sub Court, Bhavani, confirming the judgment and decree dated 30.06.2014 passed in O.S. No. 237 of 2010 by the II Additional District Munsif Court (in-charge), Bhavani.

For Appellant :: Mr.N. Manokaran

J U D G M E N T

The plaintiff in O.S. No. 237 of 2010 on the file of II Additional District Munsif Court, Bhavani, is the appellant herein. The respondents are the defendants in the suit.

2. The suit in O.S. No. 237 of 2010 was filed for a declaration that the order passed by defendants 3 and 4 in K.K. 346/08/m9 ep/m/ dated 18.12.2009 is null and void; to restore the order passed by the 2nd defendant, Tahsildar, Bhavani Taluk,

Bhavani, in ep/K/g/gh/g[/ vz;/ 706-2002 dated 05.12.2002 and also for permanent injunction to restrain the 5th defendant from in any manner interfering with the possession and enjoyment of the plaintiff over the suit property.

3. Learned II Additional District Munsif, Bhavani, by decree and judgment dated 30.06.2014 dismissed the suit. As against the same, the appellant filed an appeal in A.S. No. 59 of 2014 before Sub Court, Bhavani. By decree and judgment dated 16.07.2015, the Lower Appellate Court dismissed the appeal thereby confirming the decree and judgment of the Trial Court. Challenging the same, the appellant is before this Court with this second appeal.

4. This second appeal has come up for admission. Heard the learned counsel for the appellant and perused the records carefully.

5. The case of the plaintiff, in brief, is as follows:

The suit property measuring 1.02.28 hectares comprised in Survey No. 67/4A2 absolutely belongs to him. Originally, patta was issued in his name as per the order of the Tahsildar, Bhavani Taluk, in ep/K/g/gh/g[/ vz;/ 706-2002 dated 05.12.2002. Subsequently, the 5th defendant preferred an appeal to the Sub Collector, Gobichettipalayam, for cancelling the said order dated 05.12.2002 and for restoring the original position. Accordingly, the Sub Collector, Gobichettipalayam, passed an order in favour of the 5th defendant, which was also confirmed by the District Revenue Officer, Erode. In the impugned order, it has been stated that the 5th defendant is entitled for 2.53 acres of land in the suit survey number. According to the plaintiff, the 5th defendant is entitled to 2.47 acres and no more. Therefore, he filed the present suit seeking the above reliefs.

6. Before the Trial Court, the 5th defendant filed written statement wherein he contended that he is entitled to 2.53 acres of land in the suit survey number.

7. Based on the above pleadings, the Trial Court framed appropriate issues.

8. On the side of the plaintiff, he was examined as P.W.1 and as many as 11 documents were exhibited on his side. On the side of the defendants, two witnesses were examined and 5 documents were exhibited. Taking into consideration of the above, the Trial Court dismissed the suit, which was also confirmed by the Lower Appellate Court. Aggrieved by the same, the appellant is before this Court in this second appeal.

9. In this second appeal, learned counsel for the appellant would submit that both the Courts below dismissed the suit on the ground that the suit is not maintainable because according to the Courts below, the suit should have been filed for declaration of title and for consequential reliefs. Since the suit was laid only to declare the proceedings of the revenue authorities as null and void, according to the Courts below, the suit is not maintainable.

10. Learned counsel for the appellant pointed out that the said approach and the conclusion of the Courts below is not sustainable in law. According to him, the jurisdiction of the Civil Court to go into the issues involved in the suit has not been barred at all. Therefore, the Courts below ought to have gone into the issues and decided the suit on merits.

11. I have considered the above submissions.

12. At the outset, I should say that there is no substantial question of law involved in this second appeal warranting admission. The only ground urged before this Court is that the Civil Court has jurisdiction to entertain the suit. With regard to this proposition, there can be no quarrel. In my considered view, the Revenue Authorities are not competent to decide the complicated issue regarding title. It is always for the Civil Court to decide.

13. However, in the instant suit, since there was no prayer for declaration of title, the Courts below were not able to go into the question of title, which is disputed by the 5th defendant. Hence, the Courts below have dismissed the suit.

14. Learned counsel for the appellant would submit that though there was no prayer for declaration of title, the Courts below ought to have decided the issue relating to title as an incidental issue. I find it very difficult to accept the said contention. Since the issue relating to title, in this case, is a complicated one and since there was no prayer made for the same by paying the appropriate court-fee and since the defendant was not put on notice sufficiently by framing an appropriate issue on the question of title, it would not be proper for the Courts below to go into the question of title. Rightly, the Courts below have refused to go into the question of title and dismissed the suit. On this conclusion arrived at by the Courts below, I do not find any infirmity. But, at the same time, it needs to be clarified that since the present suit has been dismissed on a technical ground, it will not operate as a res judicata for the plaintiff to file a comprehensive suit for title and for other reliefs.

16. In the result, the second appeal fails and the same is dismissed. No costs. Connected C.M.P. Is closed

Sd/-
Assistant Registrar(CS III)

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Sub Assistant Registrar

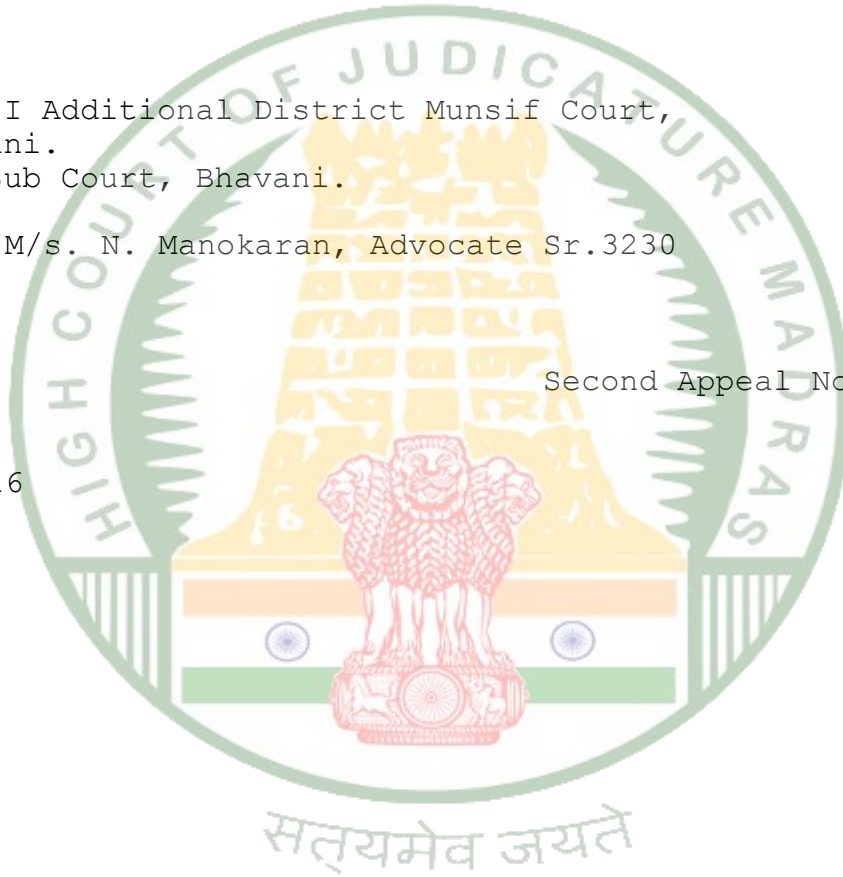
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To

1. The II Additional District Munsif Court,
Bhavani.
 2. The Sub Court, Bhavani.
- + 1 cc to M/s. N. Manokaran, Advocate Sr.3230

Second Appeal No. 9 of 2016

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