

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2017

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH

Second Appeal Nos.61 and 62 of 2017

L.Dhananjeya Reddy

..Appellant/Appellant/Respondent
in both the appeals

Vs

1.Ramakrishnan
2.Kumararaja
3.Dheenadayalan

..Respondents/Respondent/Plaintiffs
in S.A.No.61 of 2017

1.Ramakrishnan
2.Kumararaja
3.Dheenadayalan
4.Munirajulu

..Respondents/Respondents/Plaintiffs
in S.A.No.62 of 2017

Second Appeals filed under Section 100 C.P.C. against the judgment and decree dated 24.03.2014 passed in A.S.Nos.27 and 28 of 2012 on the file of the Sub Court, Gudiyatham, Vellore District, confirming the judgment and decree dated 21.01.2011 passed in O.S.Nos.192 and 282 of 2003 on the file of the District Munsif Court, Gudiyatham, Vellore District.

For Appellant

.. Mr.T.Dhanyakumar in
both the appeals

For Respondents

.. Mr.K.A.Ravindran
for R1 to R3 in both the appeals

COMMON JUDGMENT

Two suits have been filed by both the parties. The appellant filed a suit for declaration and possession and the defendants filed a suit for declaration and permanent injunction. The suit filed by the defendants was allowed as against the suit filed by

the appellant. Challenging the concurrent decision rendered by the Courts below, these second appeals have been filed by formulating the following substantial questions of law:

(a)Whether the decisions of the Courts below are vitiated in holding that the plaintiffs in O.S.No.192 of 2003 have proved their title over the suit properties and the plaintiff in O.S.No.282 of 2003 has not proved title over the suit properties?

(b)Whether the decisions of the Courts below are also vitiated in not considering Ex.B1 in favour of the predecessors in title of the plaintiff in O.S.No.282 of 2003 over the suit properties which is anterior in point of time than the documents filed by the defendants?

(c)Whether the decisions of the Courts below are also vitiated in considering the title deeds in favour of the plaintiffs in O.S.No.192 of 2003 without any document to prove ownership of the plaintiffs and their predecessors in title over the suit properties?

2.Learned counsel appearing for the appellant made one substantial submission, which is to the effect that Ex.B1, being a conditional patta issued by the Revenue officials from the State of Andhra Pradesh, the appellant is entitled for a decree as prayed for. There is no discussion on the validity of Ex.B1 and therefore, the judgment and decree of the Courts below require interference.

3.Learned counsel appearing for respondents 1 to 3 submits that Ex.B1 is fabricated, which is substantiated by evidence. There cannot be any condition assignment over a patta land and that too, when the lands came into the territorial jurisdiction of the State of Tamil Nadu in the year 1961. In other words, it is submitted that as rightly held by the trial Court, Ex.B1 is anterior to 1961, which makes a reference to the suit land in Survey Nos.248/A and 248/B and therefore, such a division or arraying of survey number would have been possible in the year 1958 in view of the development that has happened only in the year 1961. Hence it is submitted that the appeals will have to be dismissed.

4.The respondents 1 to 3, being the plaintiffs, made reliance upon Ex.A1, which is a registered deed dated 04.01.1940. This document stands in the name of power of

attorney. Ex.A2 is the translation of Ex.A1. Both the Courts have found that the suit property is the same as mentioned under Ex.A1 along with others. Now under Ex.A4, there was a partition between the children of Balakrishnan Naidu on 04.02.1985. It is also registered document. Thereafter, from their vendor, the plaintiffs/respondents have purchased the suit property under Ex.A7, which is also a registered sale deed dated 06.11.1995. The Courts below relied upon these documents coupled with other documents especially Exs.A29 and A30 and decreed the suit filed by the respondents 1 to 3 as prayed for and consequently dismissed the suit filed by the appellant.

5.Coming to the document relied upon by the appellant - Ex.B1 was in fact considered by the trial Court at length. The trial Court found that view of the admitted fact that only in the year 1961, the village concerned viz., Vizhudhonipalayam, in which the suit property is situated was segregated from the State of Andhra Pradesh and added to the State of Tamil Nadu. Therefore, there cannot be any document with respect to Survey No.248/B, which is the sub division of Survey No.248/A. Thus such a sub division, if any, would have been taken place after 1961. The evidence given on behalf of the appellant that the sub division has taken place after the village has been segregated from the State of Andhra Pradesh and added to the State of Tamil Nadu is not disputed. Secondly, the trial Court has held that in the teeth of Exs.A29, A30 and A33, the document filed under Ex.B1 is fabricated. One more factor that has been taken note of by the trial Court is, even according to the appellant, the suit property is a patta land. Thus when the suit property becomes the patta land, it is not known as to how the condition assignment has been given under Ex.B1. Therefore, the statement made by the defendants in the cross-examination would destroy their case. Further more, the documents have been called for from the Revenue Department and marked. These documents have been compared with the documents filed by the appellant and found to be forged. It is for the reason that the appellant's case is based upon Ex.B1. Therefore, when Ex.B1 is found to be forged, then, the very basis of the claim would fall to the ground as against the case of the respondents herein. But the patta granted thereafter in favour of the appellant was also cancelled by the revenue officials. The Courts below found that the respondents are in possession pursuant to the documents filed by them starting from Ex.A1 onwards. The appellant has not proved the factum of the lands given in favour of the predecessor in title of the respondents.

6.In view of the aforesaid categorical finding, based upon both oral and documentary evidence including the evidence given by the appellant himself, this Court does not find any

substantial question of law, warranting interference. In such view of the matter, this Court does not find any reason to interfere with the well merited judgments and decrees of the Courts below. Accordingly, the second appeals are dismissed. No costs.

Sd/-
Assistant Registrar(CS IV)

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Sub Assistant Registrar

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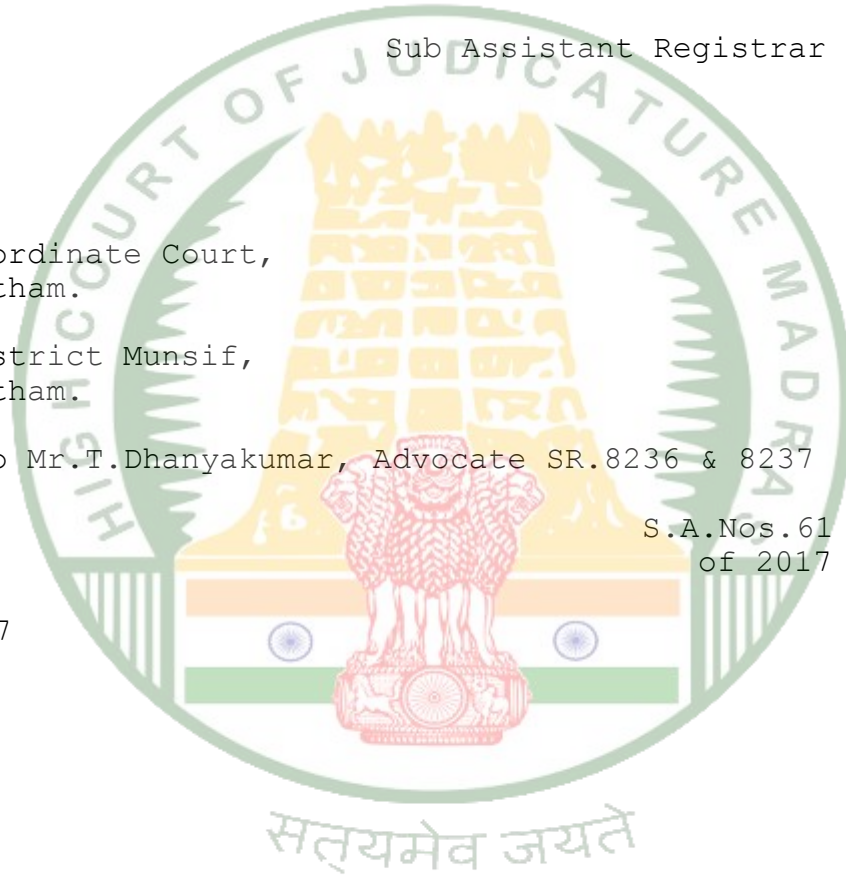
1.The Subordinate Court,
Gudiyatham.

2.The District Munsif,
Gudiyatham.

+ 2 ccs to Mr.T.Dhanyakumar, Advocate SR.8236 & 8237

S.A.Nos.61 and 62
of 2017

GJ(CO)
EU 25.4.17



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