

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2017

CORAM

THE HONOURABLE Mrs.JUSTICE PUSHPA SATHYANARAYANA

S.A.No.697 of 2017  
and  
C.M.P.No.17972 of 2017

1. Kiston

2. Karpagam

3. Raju ... Appellants/Defendants in trial court

..vs..

Munusamy Reddy ... Respondent/Plaintiff in Trai Court

Second Appeal filed under Section 100 C.P.C. against the Judgment and decree dated 21.12.2009 in A.S.No.102 of 2007 on the file of the Subordinate Judge, Thiruvelllore confirming the judgment and decree made in O.S.No.109 of 1998 dated 31.07.2006 on the file of the District Munsif, Tiruvelllore.

For Appellant : Mr.C.R.Dhasarathan

For Respondent : Mr.R.Munuswamy

J U D G M E N T

Aggrieved by the concurrent findings of the Courts below, the defendants have preferred the above Second Appeal in a suit for permanent injunction.

2. The suit property is a site in Survey No.28/1, which originally belonged to one Poongavanam, Velayutham and Kaniappa Reddi. Presently, the property is in possession of their grand sons and a joint patta was also issued in Patta No.78 on 23.10.1989. Since the plaintiff is a joint pattadhar and also the eldest among the grandsons, the suit is now filed by himself and on behalf of his other co-sharers for their benefits. The property West of the suit property measuring about 20 feet East-West and 200 feet North-South was purchased from one Kuppammal under the sale deed dated 15.09.1982. The suit item comprises

of 30 feet East-West and 234 feet North-South inclusive of encroachment into the Southern road. As per partition deed dated 07.03.1990, the said Poongavanam, Velayudam, Kanniappan got the site divided into three shares each getting 10 feet on the East-West. The plaintiff and others are in common enjoyment of the suit item. The defendants, who had no right or interest in the suit property, had purchased from one Kuppan, an extent measuring 20 feet East-West on the East of the house of Duraisami Reddy. The defendants are trying to encroach upon beyond the said 20 feet and attempted to remove the cattle shed. Hence, the suit is filed for permanent injunction.

3. Resisting the suit, the defendants had filed the written statement denying the averments mentioned in the plaint. The patta produced by the plaintiff was denied contending that it does not relate to the suit property. The partition mentioned in the plaint dated 07.03.1990 was also denied and disputed by the defendant. The case of the defendants is that the property measuring East-West 50 feet and North-South 228 feet in Survey No.28/1 was owned by Narasimhulu Naidu and he had sold the same on 14.03.1964 to one Kuppammal, who, in turn, had sold the same to the defendants. The first defendant had executed a registered Power of Attorney in favour of one Karpagambal through a registered deed dated 24.05.1993 and the third defendant Selvam purchased the same on 10.01.1996 from the Power Agent. Hence, the defendants prayed for dismissal of the suit, as the plaintiff did not have any right over the suit property.

4. Before the trial Court, the plaintiff himself examined as P.W.1 and two more witnesses were examined as P.W2 and P.W3 and Exs.A1 to A5 were marked. One Raja @ Selvam was examined as D.W.1 and Exs.B1 to B13 were marked on the side of the defendants.

5. After considering the oral and documentary evidence, the Courts below had concurrently found that the plaintiff was entitled to the decree and accordingly, decreed the suit. Being aggrieved against the same, the defendants have filed the above Second Appeal.

6. Heard the learned counsel for the appellants and the learned counsel for the respondent and perused the materials available on record.

7. The question that has to be determined is as to whether the plaintiff has got any right or title in the suit property?

8. The suit property is shown as 'ABCD' in the plaint plan including cow sheds, two neem trees and also manure pits.

The injunction is sought for against the defendants not to disturb the peaceful possession and enjoyment of the plaintiff. Admittedly, the plaintiff claimed and traced his title through his ancestor Kuppammal. The said Kuppammal had sold 20 feet of land to the first defendant, whereas, the first defendant had sold 30 feet of land through his Power Agent to the third defendant. Therefore, the third defendant has got no right or title beyond what his vendor was entitled to. The said Kuppammal had purchased 50 feet x 228 feet in Survey No.28/1 from one Narasimhulu Naidu on 14.03.1964 as per Ex.A-3, which is within the specific boundaries. The said Kuppammal, on 15.09.1982, had sold 20 feet x 200 feet to the first defendant. Though the first defendant claimed that he had purchased 30 feet x 200 feet, the said sale deed was not filed before this Court. The plaintiff had also specifically stated that the first defendant had purchased only 20 feet. On the contrary, the defendants had claimed to have purchased 30 feet from the said Kuppammal. The plaintiff has also placed his reliance on Ex.A-2, which is the partition deed whereunder three branches of the original owners have divided the property by 10 feet x 234 feet. The plaintiff had also obtained 'thoraya patta' as per Ex.A-4. When the first defendant himself had purchased only 20 feet, the second defendant, as his Power of Attorney, had no right to sell 30 feet to the third defendant. The first defendant had also not been examined on the side of the defendants. The tax receipts produced by the defendants under Exs.B5 to B13 were also standing in the name of Arumugha Reddy and not in the names of the first and third defendants. The defendants also had not pleaded that they had put up the construction subsequent to their purchase. In the absence of any pleadings, the defendants cannot be allowed to state that they had put up a construction and living there. On the other hand, the plaintiff had established his possession by examining P.W.2 and P.W.3, who are the residents of the same village. They had specifically deposed that the plaintiff is in possession of 30 feet. The third defendant was examined as P.W.1, who had categorically admitted that excepting the property that was purchased by the first defendant on 15.09.1982, the first defendant did not own any other property. Further, the first defendant had obtained only 20 feet x 200 feet is also admitted by the third defendant in his evidence. When the third defendant, who had purchased from the first defendant, had categorically admitted that the first defendant owned only 20 feet x 200 feet, he cannot claim an additional 10 feet making it 30 feet by depriving the plaintiff of his right and lawful entitlement. Thus, the plaintiff as well as the defendants claimed rights only from the common vendor and the defendants, having purchased only 20 feet land, are not entitled to claim more than that and the Courts below had concurrently held that the plaintiff is entitled to the relief as prayed for and granted a decree.

9. In the absence of any substantial questions of law arising for consideration out of the said facts, the decree granted by the Courts below, cannot be interfered with.

10. Accordingly, the Second Appeal is dismissed confirming the judgment and decree of the Courts below. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-  
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

srn

To

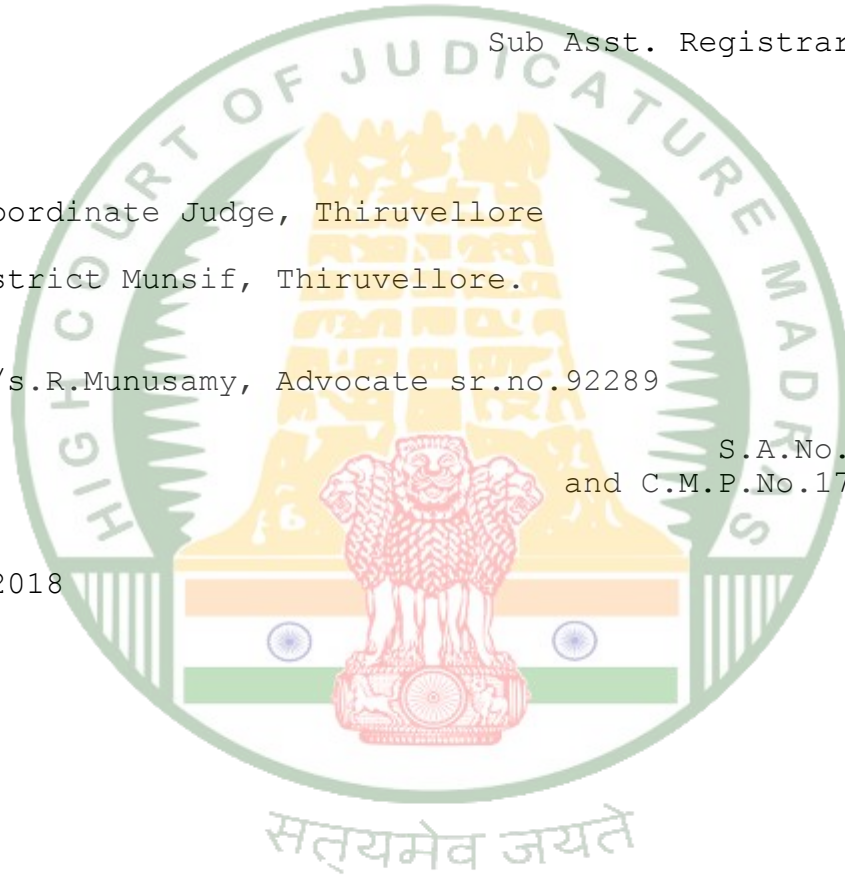
1. The Subordinate Judge, Thiruvelllore

2. The District Munsif, Thiruvelllore.

+lcc to M/s.R.Munusamy, Advocate sr.no.92289

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