

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:18.12.2017

CORAM

THE HONOURABLE MR.JUSTICE P. RAJAMANICKAM

S.A. Nos.27 & 28 of 2000

G. Kesavan ... Appellant -in both Appeals

Vs .

R. Kesavan ...Respondent-in both Appeals

Common Prayer: S.A. No.27 of 2000 and S.A. No.28 of 2000 have been filed under Section 100 of the Civil Procedure Code, against the Judgment and Decree dated 22.09.1999 passed in A.S. Nos.30 of 1999 and 29 of 1999 respectively on the file of the Additional District Judge, Tiruvannamalai, reversing the Judgment and Decree dated 21.01.1999 passed in O.S.Nos.41 of 1993 and 1026 of 1992 on the file of the First Additional District Munsif, Tiruvannamalai.

In Both Appeals:

For Appellant : Mr.S. Thirumavalavan

For Respondent : Mr.B. Ravi Raja

C O M M O N J U D G M E N T

The Second Appeal in S.A. No.27 of 2000 has been filed against the Judgment and Decree passed in A.S.No.30 of 1999 on the file of the Additional District Judge, Tiruvannamalai, dated 22.09.1999 reversing the Judgment and Decree passed in O.S.No.41 of 1993 on the file of the First Additional District Munsif Tiruvannamalai, dated 21.01.1999.

The Second Appeal in S.A. No.28 of 2000 has been filed against the Judgment and Decree passed in A.S.No.29 of 1999 on the file of the Additional District Judge, Tiruvannamalai, dated 22.09.1999 reversing the Judgment and Decree passed in O.S.No.1026 of 1992 on the file of the First Additional District Munsif, Tiruvannamalai, dated 21.01.1999.

2. The appellant in both the Second Appeals had filed a suit in O.S.No.1026 of 1992 against the respondent herein for

the relief of declaration of title and for permanent injunction. The respondent herein had filed a suit in O.S. No.41 of 1993 against the appellant herein for declaration of title to the suit property, delivery of possession and for mesne profits. The learned Additional Munsif, by the Common Judgment, decreed the suit in O.S. No.1026 of 1992 and dismissed the suit in O.S. No.41 of 1993. Aggrieved by the same, the respondent herein had filed the First Appeals in A.S. No.29 of 1999 and A.S. No.30 of 1999. The First Appellate Court had allowed both the appeals reversing the Judgment and Decree of the Trial Court by the Common Judgment dated 22.09.1999. As against the same, the appellant herein has filed the above Second Appeals.

3.This Court has disposed of both the Second Appeals on 08.03.2000 at the stage of admission itself and allowed both the Second Appeals reversing the Judgment and Decree passed by the First Appellate Court and restored the Judgment and Decree passed by the Trial Court. Aggrieved over the same, the respondent herein has filed a Civil Appeal No.6575 of 2000 before the Hon'ble Supreme Court of India. The Hon'ble Supreme Court of India, by the order dated 24.01.2007, allowed the said Civil Appeal by setting aside the Judgment and Decree passed by this Court in the above Second Appeals dated 08.03.2000 and remitted the matter back to this Court with a direction to formulate the substantial questions of law and proceed to determine the matter on merit, if it is found that the substantial question of law is involved therein.

4.In obedience to the aforesaid order of the Hon'ble Supreme Court of India, this Court has restored the above Second Appeals on file and after hearing both sides, the following questions of law have been formulated:-

"1. Whether the judgment of the lower appellate Court reversing the judgment of the trial Court is sustainable in law having regard to the evidence on record, which would go to show that there had been a mistake in the sub Division effected to the lands in Survey No.97/3?

2. Having regard to the description of the property covered by Ex.B-1 and Ex.A-3, whether the judgment of the lower appellate Court decreeing the suit filed by respondent and dismissed the suit filed by appellant based on the incorrect sub-division effected by the Revenue Authorities is sustainable in law?

3. Whether the judgment of the appellate Court which seeks to declare the rights of parties based on sub division effected by the Revenue Authorities, ignoring the incorrectness of the same is sustainable

in law?

4. In the light of the fact that the respondent has not questioned Ex.A3, whether his claim is based on Ex.B1 and B3 would be sustainable in law?

5. Whether the findings of the Appellate Court ignoring material admissions and material evidence, both oral and documentary, do not amount to a perverse finding warranting interference under Section 100 C.P.C.?"

5. Today, when the Second Appeals came up for hearing, both the parties (Appellant & Respondent) along with their Advocates appeared in person and filed a memorandum of compromise. The said memorandum of compromise has been read over and explained to the parties. They expressed that they have compromised the matter, knew the terms and conditions of the memorandum of compromise and requested the Court to record the said Memorandum of Compromise and pass the decree accordingly. This Court satisfied that the parties have voluntarily arrived at the compromise and hence the said memorandum of compromise has been recorded.

6. In view of the compromise arrived at by both the parties, the above Second Appeals are allowed. The Judgments and Decrees passed by the First Appellate Court and the Trial Court are set aside. A common compromise decree is passed, in terms of Memorandum of Compromise, in O.S. No.1026 of 1992 and O.S.No.41 of 1993 on the file of the First Additional District Munsif, Tiruvannamalai. The Memorandum of compromise and the Sketch annexed with the said memorandum of compromise shall form part of the Decree. The Parties shall bear their own costs.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

lbm

Copy to:

1. Additional District Judge,
Tiruvannamalai.

2.First Additional District Munsif,
Tiruvannamalai.

3. The Section Officer,
V.R. Section, High Court.

+1 CC to Mr.S. Thirumavalavan, Advocate sr 90359.

+2 CC to Mr.B. Raviraja, Advocate sr 90310.

S.A. NOS. 27 & 28 OF 2000

CNR(CO)
SP(18/04/2018)