

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :06.07.2017

Pronounced on : 12.07.2017

Coram

The Honourable Dr.Justice G.JAYACHANDRAN

Second Appeal No.257 of 1999

Lingasamy Gounder

.. Appellant/1st Respondent/
1st Defendant

/versus/

1.S.Palanisamy Gounder (deceased)

..1st Respondent/Appellant/
Plaintiff

2.Valliyathal

..2nd Respondent/2nd
Respondent/2nd Defendant

3.Govindammal

4.Duraisamy

5.Kamalavathy

(RR3 to 5 brought on record as LRs of the deceased
First Respondent vide Court order dated 22/2/2017
made in CMP Nos.3222 to 3224/2017 in
S.A.No.257/1999)

.. Respondents

Second Appeal is filed under Section 100 of the Civil
Procedure Code against the judgment and decree of the learned
Subordinate Judge of Dharapuram in A.S.No.55 of 1989 dated
27.10.1989 and on appeal from the judgment and decree of the
District Munsif Court of Kangeyam dated 29.07.1989 and made in
O.S.No. 779 of 1985.

For Appellant :Mr.N.S.Sivakumar

For Respondents:Mr.S.Saravanan for R3 to R5

R2-Dismissed vide
court order dated 04/12/2009

सत्यमेव जयते

JUDGMENT

The Second Appeal arises from the suit for declaration of
title and permanent injunction filed by one Palanisamy Gounder
against Lingasamy Gounder (Appellant herein) and one
Valliyathal. Exs.A-1 to A-4 are the core documents relied by the
plaintiff. The first defendant, who is the appellant herein
contested the suit while, the second defendant Valliammal
remained exparte. The Trial Court accepted the partition deed
Ex.A-1 and sale deed Ex A-2. Doubted the veracity and validity
of Exs.A-3 and Ex A-4. Thus, partly allowed the suit in respect
of properties covered under Exs.A-1 and A-2 alone.

2. Aggrieved over the dismissal portion of the property covered under the sale deeds Ex A-3 and A-4, the plaintiff preferred first appeal and the same was allowed. Hence, this second appeal is laid by the first defendant against the judgment and decree of the first appellate court, reversing the judgment passed by the trial Court regarding the disallowed portion.

3. For convenience sake, parties are described as per their description and ranking in the plaint.

4. The suit is in respect of a portion of the land bearing S.No. 1050-C at Vadachikkuripalayam Village, Kankeyam Sub District, Erode District totally measuring to an extent of 7.07 acres originally owned by Nachiappa Gounder. It is admitted by both the parties that the property owned by Nachiappa Gounder was divided among his sons, grandsons and great grandson vide Ex.A-1, dated 09.06.1965. As per the said partition, from 7.07 acres of land, Nachiappa Gounder's sons viz., Muthu Gounder, Karuppa Gounder and Chinnia Gounder together were allotted 1.19 acres of land located on the east of the southern end. Chennimalai Gounder, Karuppana Gounder and Karumanda Gounder, who were grandsons of Nachiappa Gounder born through his son Chinnia Gounder were jointly allotted 1.19 acres on the west of the Southern end and 3.50 acres on the northern side. Chellakumarasamy great grand son of Nachiappa Gounder born to his grandson Karumanda Gounder, son of Chinnia Gounder was allotted remaining 1.19 acres of land.

5. The case of the plaintiff is that, he is the grandson of Chellakumarasamy Gounder, who got 1.19 acres of the land through the partition deed of the year 1915 marked as Ex A-1. Apart from 1.19 acres of land inherited by him through his grand father, his father Subburaya Gounder purchased 2 acres of land in the said survey number from Nachimuthu Gounder, son of Karuppa Gounder, vide, sale deed Ex-A2, dated 22.11.1945 and he purchased 1.55 acres out of 7.07 acres in S.No.1050 C held in common from one K.S.Nataraja Gounder vide, sale deed dated 31.05.1976 marked as Ex.A-3. Thus, he is in possession of total extend of 4.74 acres of land in the S.No.1050 C, whereas the first and second defendants are trying to interfere with his peaceful possession and trying to encroach upon it.

6. The first defendant contested the suit denying all the allegations. He pleaded that the sale deed Ex.A-3, dated 31-05-1976 executed by K.S. Nataraja Gounder, S/o Maniyam Subbaraya Gounder in favour of the plaintiff and the sale deed Ex.A-4 of his vendor's father Maniyam Subbaraya Gounder executed by Karuppana Gounder on 22.07.1941 are null and void. In so far as the portions of the property covered under Exs.A-1 and A2 are

concerned, there was no much contest and the decree passed in favour of the plaintiff regarding that portion, the defendant has not filed appeal and thus, the decree in so far as that portions of the properties, has become final. The contest is only in respect of 1.55 acres, which is covered under Exs.A-3 and Ex A-4.

7. Whereas, the case of the defendant is that as per the partition deed Ex.A-1, in S.No.1050-C, his grand father Sennimalai Gounder along with Karuppana Gounder and Karumanda Gounder got 1/3 share in 1.19 acres and 3.50 acres. The share of Sennimalai gounder was brought to Court action in O.S.No.159/1930. In the court auction, one Muthaiah Chettiar was the successful bidder. The said Muthaiah Chettiar got possession of the property through subsequent decree in O.S.No. 95/1944 dated 10.07.1945 . Thereafter, Muthaiah Chettiar sold the property to Karuppana Gounder and Subbaraya Gounder vide, sale deed dated 10.01.1946 marked as Ex.B-5. Thus, the property was purchased jointly by his father and Paternal Uncle from the lawful title holder, whereas the title deeds of the plaintiff Exs.A-3 and A-4 will show that they are deeds executed by persons, who never had title.

8. Before the trial court, on the side of the plaintiff, two witnesses were examined as PW1 and PW2 and Exs.A-1 to A-37 were marked. On the side of the defendants, two witnesses were examined as DW-1 and DW-2 and Exs.B-1 to B-29 were marked.

9. The trial Court accepting the case of the plaintiff in respect of portions covered by the partition deed Ex.A-1 and sale deed Ex.A-2 partly allowed the suit. In so far as the claim of 1.55 acres of land alleged to have been purchased from K.S.Nataraja Gounder vide, Ex.A-3 based on his vendors title Ex.A-4 , the trial Court disallowed the relief on the ground that these two documents are subsequent to the Court auction. Without title, Karuppana Gounder has sold the property to K.K.Subbaraya Gounder in the year 1941, vide, Ex.A-4 and K.S.Nataraja Gounder, Son of K.K. Subbaraya Gounder has in turn sold the property to the plaintiff in the year 1976.

10. On appeal by the plaintiff, the lower appellate court reversed the trial court judgment on the ground that, on analysis of Ex.B-4, the property of Chennimalai was brought into Court auction and only 1/3 share in the present suit property is shown as Item No.4 in the decree of O.S.No.95/1944. Therefore, under Ex.B-5 the auction purchaser Muthaiah Chettiar can alienate only 1/3 in 4th item of the property and not the whole property. Since Ex.B-5 covers whole extend of property, it is

not valid. It is also pointed out by the lower appellate court that the reference of Subbaraya Gounder's land as one of the four boundaries in Ex.A-4 proves that Subbaraya Gounder has land in S.No.1050 C. Therefore, the plea of the defendant that Subbaraya Gounder had no land in S.No.1050 C, is not correct. The lower appellate court taking note of the ocular evidence of PW-2 and the kist receipts relied by the plaintiff, held that, the plaintiff had proved the title over 1.55 acres of land and its possession.

11. Aggrieved by the finding of the lower appellate court, the second appeal is filed. The following Substantial Questions of Law were framed at the time of admission for consideration:

1. Whether the suit of the respondent for declaration and permanent injunction is maintainable in view of the fact that the respondent is not owning any piece of land on the western side of the suit property?

2. Is the lower appellate Court correct in holding that the respondent's suit for declaration and permanent injunction maintainable, ignoring the clinching documents of Ex.D7 to D29 of the appellant?

12. During the course of final hearing, memo was filed raising the following Additional Substantial Question of Law:

"Whether Ex.A4 followed by Ex.A3 confer any title as such the judgment and decree of the lower appellate Court is sustainable in law?"

13. Learned counsel for the appellant submitted that, while the trial court rightly held that the documents Ex.A-3 and Ex.A-4 are not genuine, after analysing the documents and oral evidence of the parties concerned. The lower appellate court had erroneously relied upon Ex.A3 and Ex.A-4, which are per se void documents, to reverse the well considered finding of the lower court. Neither Ex.A-3 nor Ex.A-4 contains the detail about the boundaries to the property described in it. The appellant, who has purchased the property from the court auction purchaser through sale deed Ex.B-5 with proper description and boundaries, proves the title. While other Exs.B7 to B-29 clinchingly proves the continuous possession of the property with the appellants.

14. Further, the Learned counsel for the appellant, after referring the recitals in the sale deeds Ex.A-3, A-4 and Ex.B-5, besides the partition deed Ex.A-1, contended that, the entire extent of 7.07 acres of land was divided into 4 parts through partition deed of the year 1915. In the said partition, 1.19 acres and 3.50 acres of land, which are on the North West and

North side, were allotted to the 3 grandsons born through Chinnaiah Gounder. (Chennimalai Gounder, Karuppana Gounder and Karumanda Gounder). In satisfaction of the decree in O.S.No.159/1930 suffered by one of the grand son namely, Chennimalai Gounder, his 1/3 share in the joint possession, was put into auction. In the said auction, Mr.Muthaiah Chettiar has purchased the undivided 1/3 share held by Chennimalai. After the auction purchase, in O.S.No.95/1944, he has obtained decree of declaration and partition of the property. Therefore, the alienation of the property through Ex.A-4 by one of the sons of Chennimalai namely, Karuppana Gounder to K.K.Subbaraya Gounder subsequent to the alienation of the property through court auction sale, is invalid and non-est in law.

15. The contention of the appellant counsel is that, while the payment of kist receipts and issuance of patta is evident to prove the possession in favour of the defendant, the decree of declaration and injunction by the lower appellate court in favour of the respondent is contrary to the documentary and ocular evidence. Though it is evidently clear that no right flows to the plaintiff from the sale deed Exs.A-3 or A-4, the lower appellate court, without proper appreciation of those sale deeds, in the light of Ex.B-5, has erroneously reversed the trial court finding by observing that under Ex.B-4, only 1/3 share in the property is put into auction and not the entire land, hence, the claim of the plaintiff is sustainable. The said observation is incorrect and contrary to the recital of Ex.A-4.

16. Per contra, the learned counsel for the respondent submitted that, Exs.A-3 and A-4 are valid title deeds. The alleged court auction sale, pursuant to the decree passed in O.S.No.159/1930 and the subsequent decree for declaration and partition for 1/3 share in the suit property in O.S.No.95/1944, does not confer any right or title to the appellant, without any division by metes and bound. In Ex.B-5, it is admitted that, the possession was not with the vendor/deed holder. Whereas prior to the decree in O.S.No.95/1944, dated 10.07.1945, Karuppana Gounder, S/o Chennimalai Gounder has sold 1.55 acres of land to Maniyam Subbaraya Gounder vide, Ex.A-4 on 22.07.1941. Later, 1) Karuppana Gounder and 2) Subbaraya Gounder the sons of Chennimalai Gounder also have effected partition of their remaining property on 27.08.1943 under Ex.A-6, where the name of Maniyam Subbaraya Gounder property is shown as one of the four boundaries. Therefore, on 10.01.1946, the date on which, Ex.B-5 was executed in favour of the defendant by Thiru.Muthaiah Chettiar, his vendor had neither title nor possession.

17. The suit is for declaration of title and possession. The plaintiff/ respondent rely upon Ex.A-3 and A-4 to show the title over 1.55 acres of land in S.No.1050-C. A close scanning of these two documents reveals that, these two sale deeds does

not describe the property with four boundaries. Except mentioning the extent as 1.55 acres of land in common out of 7.07 acres of land in S.No.1050-C, both deeds are deafeningly silent about the boundaries. The non mentioning of boundary gains more significance, when the partition deed Ex.A-1 of the year 1915 has divided the properties into several parts with extent and specific boundaries, the latter documents Exs.A-3 and A-4 through which the plaintiff claim, his title and possession have not mentioned how Karuppana Gounder had exclusive right to sell 1.55 acres out of 7.07 acres to Maniyam Subbaraya Gounder vide, Ex.A-4 or where that 1.55 acres is located in the field. Contrarily, Ex.B-4 and Ex.B-5 through which the appellant's claim title, it clearly mentions the right and source of title along with the boundary and extent. The failure of the lower appellate court to read ExB-4 in full has lead to the erroneous finding and miscarriage of justice.

18. Ex.B-4 is the decree passed in O.S.No.95/1944. The plaintiff in that suit is Thiru.Muthaiah Chettiar represented by his Agent. The suit is for declaration of title and separte possession of 1/3 share in the suit schedule properties. The defendants are the decendants of Nachiyappa Gounder, who inherited the properties through the partition deed Ex.A-1. In the said decree, it is clearly mentioned that pursuant to the money decree against Chennimalai Gounder (the grand father of the appellant herein) passed in O.S.No.159/1930, the properties shown as items 1 to 5 were symbolically taken possession and actual possession of items 6 and 7 were taken on 6.4.1932. Items 1 to 5 are 1/3 undivided interest in the suit properties. Therefore, in the subsequent suit in O.S.No. 595/1944 declaration, partition and separate possession are sought. Item No.4 in the said decree is 1/3 share in 1.19 acres and 3.50 acres of land in S.No.1050 C, which was allotted to Chennimalai Gounder under the partition deed Ex.A-1. Therefore, it is crystal clear that, the court auction purchaser after purchase of 1/3 share being the interest of Chennimalai Gounder in the schedule property, he has sought for partition and separate possession. 1/3 share in (1.19 acres + 3.50 acres) is about 1.55 acres. When the vendors of the plaintiff are parties to the said proceedings, the decree in O.S.No.95/1944 is binding on them and they cannot claim any right beyond what they are entitled.

19. The trial court while upholding the right of declaration in respect of two items of suit properties covered under Exs.A-1 and A-2, has rightly rejected the claim, based on Exs.A-3 and A-4 , since the source of title is defective.

20. Since the substantial questions of law raised by the appellant is in favour of the appellant, the second appeal is allowed. The judgment and decree of the lower appellate court dated 27.10.1989 passed in A.S.No.55 of 1989 is set aside. The

trial court judgment and decree dated 29.07.1989 passed in
O.S.No.779 of 1985 is restored. No order as to costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

ari

To

The Subordinate Court, Dharapuram.

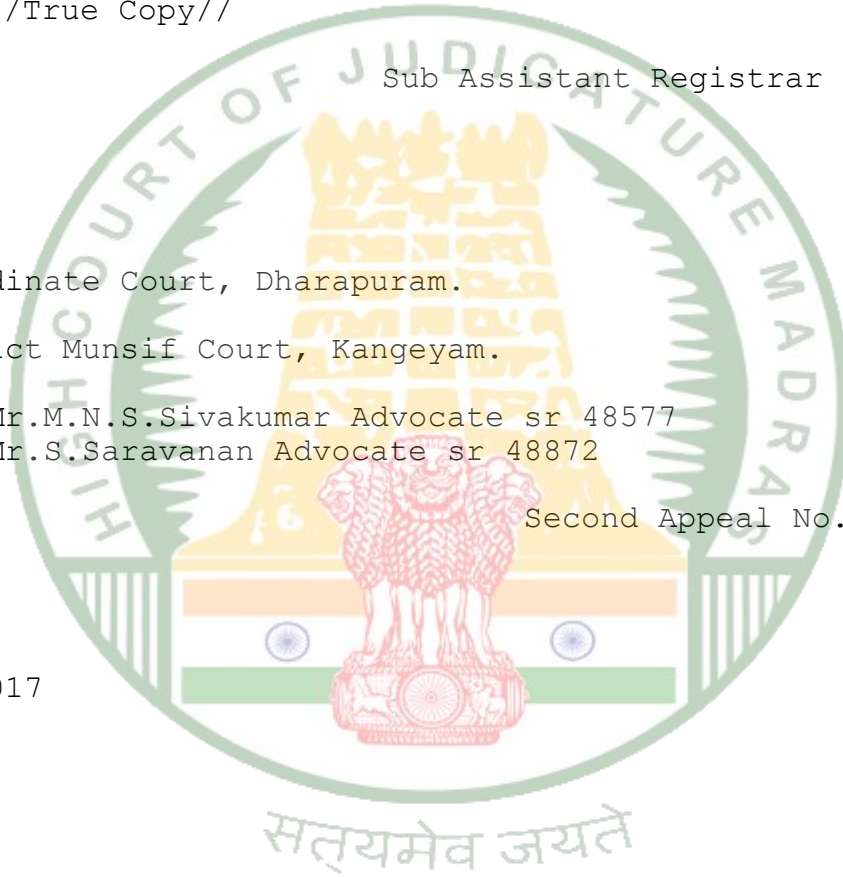
The District Munsif Court, Kangeyam.

+1 cc to Mr.M.N.S.Sivakumar Advocate sr 48577

+1 cc to Mr.S.Saravanan Advocate sr 48872

Second Appeal No.257 of 1999

sks(co)
aa21/08/2017



WEB COPY