

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 15.02.2017

Date of Verdict : 02.03.2017

CORAM

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

S.A.No. 383 of 1999
and Cross Objection No.92 of 2013

Chinnappa

....Appellant/Appellant/Plaintiff

Vs.

1. Peddanna @ Venkatasamy
2. Nyathappa
3. Papamma (died)
4. Munusamy
5. Mallamma
6. Muniamma
7. Venkatasappa
8. Srinivasa
9. Saveendra
10. Ayyappa
11. Venkatalakshmi (minor)

(11 respondent minor rep. by
her father and natural Guardian
Peddanna @ Venkatasamy)

(R 7 to 11 are brought on record
as LR's of the deceased 3rd
respondent vide order of Court
dated 14.10.2008 made in
C.M.P.No.1661 of 2008)

....Respondents

Cross Objection No.92 of 2013 :-

1. Peddanna @ Venkatasami
2. Nyathappa
3. Venkatalakshmi (Minor)
4. Venkatesappa
5. Srinivasa

6. Saveendra
7. Aiyyappa
4 to 7 sons of Peddanna
@ Venkatasami

...Cross Objectors

Vs.

1. Chinnappa
2. Munusamy
3. Mallamma
4. Muniamma

...Respondents

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 18.09.1998 passed in A.S.No.152 of 1996 on the file of Court of the Subordinate Judge of Hosur in confirming and modifying the judgement and decree dated 16.04.1996 passed in O.S.No.834 of 1993 on the file of Court of the District Munsif of Denkanikottai.

For Appellants : Mr.P.Mani in S.A.No.383 of 1999

Mr.M.V.Krishnan in Cross Objection

For Respondents: Mr.M.V.Krishnan for R1, R7 to R11
R2, R4 & R5 - No appearance
R6 - died.

COMMON JUDGMENT

The suit property is in survey No.786/7 extent of 3.38 acres. Out of which, 2.62 acres of land lying on North purchased by one Krishnamma who is mother of plaintiffs 1 and 2 from Kengaiah, S/o Abbaiah. 0.76 acres land purchased by third plaintiff from one Pappamma. Thus the total extent of 3.38 acres, owned by plaintiffs 1 to 3. The second defendant taking advantage of the mistake in the UDR patta, sold a portion of S.No.386/7 to the second defendant on 13.08.1992. Based on that sale deed, which does not bind the plaintiff, the second defendant encroached upon the suit land on 17.10.1992. Hence, suit for declaration and permanent injunction.

2. The case of the defendants as pleaded by the second defendant and adopted by the first defendant is that Chengiaya and Abbaiya the vendors of Krishnammal and the third plaintiff have no right or title in the suit property. In the suit property, 2.01 acres of land, owned by the first defendant Appaiah who is the brother of the first defendant and the first defendant have the balance of 1.37 acres land. The suit property is in survey number 786/7. The entire extent in survey No.786/7 was handed over to the first defendant as early as 1964. The

allegation that his name was erroneously crept in the patta during UDR scheme is not correct. In the year 1969, the first defendant and his two brothers Appaiah and Pillaiya effected partition. Pillaiya released his right of share in favour of the first defendant thereby the first defendant is entitle to 2/3 share. Later in the year, 1972, division of property was effected orally between the first defendant and his brother Appaiah, in which land in survey No.789/4, 790/1 and 1.37 acres in survey No.786/7 was allotted to the first defendant. This 1.37 acres later sold to second defendant.

3. The trial Court based on the pleading framed 9 issues. Plaintiff examined four witnesses and marked 69 documents. The defendants examined 8 witnesses and marked 22 exhibits. The trial Court held that, the suit property extent of 3 acres 38 cents is self acquired property of Appaiah. From 1977 to 84 he had been enjoying it. Vide Ex.A.1 dated 20.01.1977, Appaiah has sold 2.62 acres to Chengaiah. He in turned has hold it to Krishnammal on 26.04.1980. The said Krishnammal is mother of 1st and 2nd plaintiffs. The second defendant who have purchased the suit property from Munusamy the brother of Appaiah, claims Pillappa, who is the brother of Munusamy, released his share to Munusamy. When Pillappa was cross examined as P.W.4 he denies the execution of the release deed. For the said reasons, the trial Court allowed the suit for declaration and permanent injunction.

4. On appeal by the second defendant, the lower appellate Court partly allowed the appeal. While upholding the trial Court decree in respect of first item property extent of 2.62 acres rejected the plea; in respect of second item extent of 0.78 cents, which the third plaintiff purported to have purchased from one Papamma. While the second defendant has preferred the appeal against the decree the plaintiffs have filed Cross Objection in so far as dismissal of their suit in respect of second item properties disallowed by the first appellate Court.

5. This Court on admission has formulated the following substantial question of law :-

1. Whether in law the lower appellate Court correctly acted in declaring the first and second plaintiff's title over 2.62 acres of lands covered under Exs.A1 and A2 sale deeds only on the ground of estoppel as if the defendants 1 and 2 did not object to and challenge the said sale deeds, without there being any pleadings, issue and evidence as to estoppel and when the rule of estoppel is one of evidence and does not create any

substantive right or confer any case of action on the other?

2. Whether the Courts below erred in law and misdirected themselves in casting the burden on the defendants 1 and 2 to establish their title over 1.37 acres claimed by them in the suit lands when under Sections 101 and 102 of the Indian Evidence Act 1872 it is for the plaintiffs to establish their title over the entire extent of the suit lands and when the plaintiffs have failed to discharge the initial burden?
3. Whether the lower appellate Court erred in law and misdirected itself in declaring the first and second plaintiffs title over 2.62 acres of lands merely because the first and second defendants did not object to Exs.A1 and A2 sale deeds without the title of the plaintiffs' predecessor in title was proved and established by documentary evidence?
4. Whether in law the first and second defendants was and is entitled to 1.37 acres in the suit lands when admittedly the suit lands was assigned to the first defendant at the first instance and subsequently joint patta was issued to the first defendant and his brother the plaintiffs predecessor in title and when the plaintiffs have failed to pursue the proceedings initiated by them to cancel the VDR patta issued to the first defendant separately with respect to 1.37 acres in the suit land and the defendants 1 and 2 had and has been in possession and enjoyment of the said extent of lands openly and uninterruptedly for more than the statutory period?
5. Whether the lower appellate Court having found that the plaintiffs predecessor in title Appaiah and his brother the first defendant were jointly entitled to the suit lands measuring 3.38 acres, erred in law and misdirected itself in holding that the first defendant was entitled to only 76 cents and the plaintiffs 1 and 2 are entitled to the remaining extent of 2.62 acres without ascertaining and determining the shares of the first defendant and his brother the plaintiffs predecessor in title?
6. Whether the sale of lands effected by the plaintiffs predecessor in title more than his

due share affects the first defendant's due share in the suit lands, when the first defendant and his brother the plaintiffs predecessor in title were co-parceners of the suit land?

6. The learned counsel for the appellant submitted that, having held that Appaiah had no exclusive right over the suit property and restricted his share to 1/3 portion, it ought not to have decreed the suit in respect of first item property for the extent of 2.62 acres while the total extent of land in S.No.786/7 is only 3.38 acres, in which the share of Appaiah will work out to 1.12 acres only. The plaintiff, so cannot be entitle for the entire 2.62 acres in plot No.1 of the suit schedule property. By declaring title to an extent more than vendors title to nuscarriae of justice has occurred.

7. During the partition between the Appaiah and his brother Munusamy (I defendant) 1.37 acre of land was allotted to the first defendant and 2.01 acres allotted to the plaintiff. The second defendant purchased 1.37 acres from Appaiah the plaintiff's vendor under the sale deed Ex.B.1 dated 13.08.1992. The Court below erroneously disbelieved the defendants case. By casting the burden of proof on the defendants, the Court below has deviated from the rule of evidence, that it is for the plaintiff to prove the case and he cannot succeed on the failure of the defendant. In sale deed executed by Appaiah in favour of first defendant is non est in law since the vendor has no transferable right in the property. No separate suit to declare the said sale deed void is necessary as wrongly held that the lower appellate Court.

8. The plaintiffs in their Cross Objection has raised the doubt about the legal sustainability of the lower appellate Court judgement reversing the judgement of the District Munsif regarding 0.76 cents in plot No.2 of the suit schedule. The non-examination of the first defendant and the denial of the execution of alleged released deed by Pillaiiah (P.W.4) been pointed out by the learned Counsel buttress his cross appeal to allow the relief sought in respect of plot No.2 of the suit schedule. The appellate Court ought to have concurred the judgement of the trial Court holding Appaiah was the assignee from the Government in respect of entire suit property and he sold 2.62 acres of land to Chengaiah and Chengaiah in turn sold plot No.1 to Plaintiffs' mother under Ex.A1.

9. Regarding the suit property, namely plot No.1 with extent of 262 acres and plot No.2 with extent of 0.76 acre are in S.No.789/7 at Chettipalli Village, Denkanikottai, Dharmapuri District, the title deeds relied by the rival parties are:-

(1) Ex.A-1 sale deed executed by Appaiah in favour of Mugurulu Chintha Reddi. The property is described as self acquired property of Appaiah (the vendor). The measurement of the property alienated is described as 2.62 acres in common out of 3.38 acres falling North in S.No.786/7.

(2) Ex.A.2-sale deed executed by Chengaiah, S/o.Appaiah dated 26.04.1980 to Krishnamma, W/o. Anyappa in respect of 2.62 acres of land in S.NO.786/7.

(3) Ex.A.4, dated 13.07.1992 - sale deed executed by Munusamy, S/o. Kenjappa and his minor sons Sampangi and Rajappa in respect of S.No.786/7B extent 1.37 acres. (No reference about how he derived title on this property)

(4) Ex.B.1 - Sale deed dated 13.08.1992, executed by Munusamy and his minor sons in favour of Chinnanna, S/o. Essappa

10. Ex.B.15 the proceedings of the Sub collector, dated 20.01.1992, reveals Appaiah who sold 2.62 acres of land to one Chengaiah in the year 1980, has again sold 76 cents to Pappammal during the year 25.02.1984. Having sold the entire land to Sengaiah, Appaiah has nothing more to alienate, but had executed sale deed in favour of Pappammal without any right over the property. With the said observation Sub Collector has rejected the petition of Pappammal.

11. Thus it is very clear from Ex.B.15 that the sale of Pappammal to the third plaintiff is void and the lower appellate Court has rightly held that, neither the third plaintiff's vendor Pappammal nor her Vendor Appaiah had any transferable interest in survey No.786/7. The substantial question of law answered accordingly.

12. The lower appellate Court has rightly modified the trial Court decree and this Court finds no error in the lower appellate Court judgment to interfere. As a result, second appeal and cross objection dismissed. No order as to costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

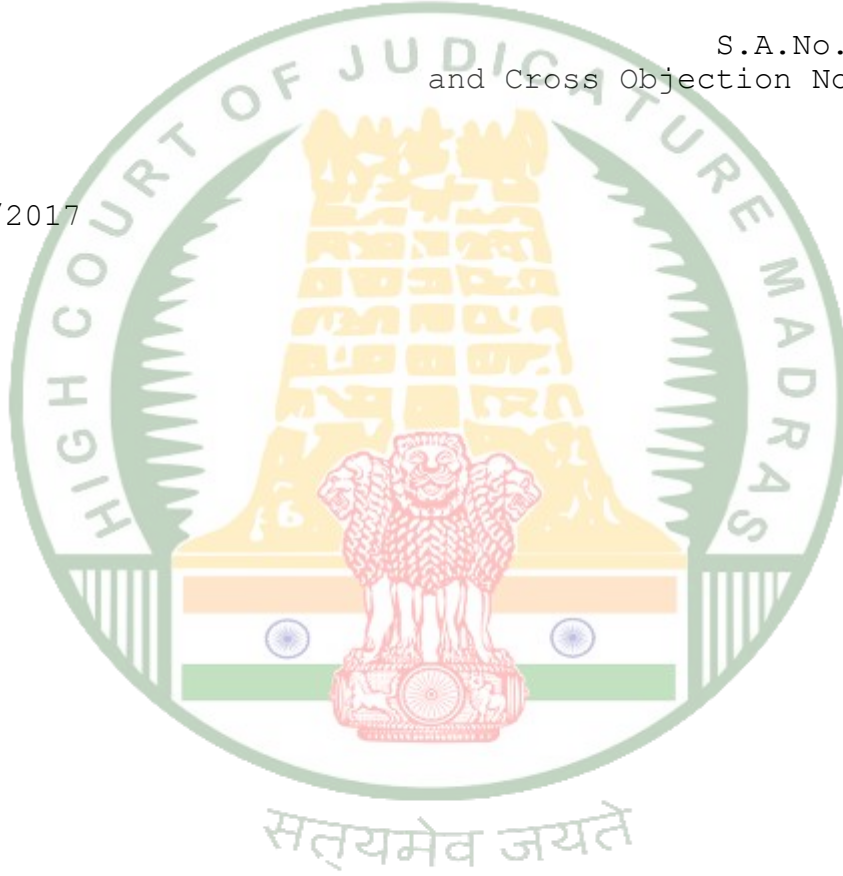
To

1. The Subordinate Judge of Hosur.
2. The District Munsif of Denkanikottai.

+1cc to M/S.P.Mani, Advocate Sr.13688
+1cc to M/S.M.V.Krishnan, Advocate Sr.13964
+1cc to M.Sudhakar, Advocate Sr.14329

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