

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2017

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

S.A.No.570 Of 1999

Janma ..Appellant/2nd defendant

vs.

1. Maideen Batcha 1st Respondent/Plaintiff

2. Bhavani Town Panchayat
rep. By its Executive Officer,
Nerunjipettai,
Bhavani Taluk,
Periyar District. ...2nd Respondent/1st defendants

Prayer:- Second Appeal is filed under Section 100 of the Code of Civil Procedure against the decree and judgment dated 17.12.1998 rendered in A.S.No.66 of 1998 on the file of Subordinate Judge, Bhavani, Erode reversing the decree and judgment dated 10.03.1998 rendered in O.S.No.28 of 1994 on the file of Additional District Munsif Court, Bhavani.

For Appellant : Mr.S. Kumaran

For RR1 : Ms. Jebitha

(in place of Mr.T. Murugamanickam who
has since been designated as Senior
Advocate by this court)

For RR2 : No appearance

JUDGMENT

The parties in this Second Appeal are referred by their names for the sake of convenience and clarity.

2. One Maideen Batcha filed a suit in O.S.No.28 of 1994 on the file of the Additional District Munsif Court, Bhavani. In this suit, Nerunjipettai Town Panchayat through its Executive Officer and one Janma, W/o.Late Sathar Sahib were arrayed as defendants 1 and 2 respectively.

3. The prayer in the suit was that the above said local body should be enjoined by way of an injunction from levying

or collecting any property tax with regard to the suit property being residential house.

4. In the suit, exhibits were marked, evidence was let in and there was full contest. After full trial, the trial court dismissed the suit, primarily on the ground that patta stands in the name of the second defendant, Janma, and that an injunction as prayed for against the local body cannot be granted.

5. Aggrieved, the plaintiff in the trial court, namely Maideen Batcha filed a regular first appeal being A.S.No.66 of 1998 on the file of subordinate Judge's Court, Bhavani.

6. The first appellate court, reversed the judgment and decree of the trial court primarily on the ground that a suit being O.S.No.758 of 1993 on the file of District Munsif Court, Bhavani has been filed by Maideen Batcha, inter alia for declaration of title with regard to the same suit property. The first appellate court, was of the view that there is a decree in favour of Maideen Batcha, in the declaration suit and therefore, the injunction granted by the trial court needs to be reversed.

7. Considering the trajectory, this litigation has taken and owing to the judgment I propose to deliver, I refrain from going into the deposition and exhibits in great detail.

8. The above said declaration suit travelled to this court as S.A.No.284 of 2008 via A.S.No.18 of 2006 on the file of the Additional District Court. (Fast Track Court -IV) Bhavani, Erode District, wherein the declaration decree was set aside.

9. Today, before this court, both Second Appeals, viz., S.A.Nos. 570 of 1999 and 284 of 2008 are listed together where Maideen Batcha is the lone appellant. It was represented by the learned counsel for Maideen Batcha that he is no more and that his legal heirs are not interested in pursuing the matter. S.A.No.284 of 2008 had abated and was therefore, dismissed as abated today.

10. In other words, there is no declaration of title in favour Maideen Batcha as of today. Therefore, the only ground on the basis of which the first appellate court reversed the trial court judgment in the instant Second Appeal does not survive as of today. Moreover, this second appeal itself was admitted by this court on 21.04.1999 and the substantial question of law on which this second appeal was admitted reads as follows:

"Whether the lower appellate court is correct in holding that the ex parte decree passed in O.S.No.758 of 1993 is final and granting permanent injunction in favour of the plaintiff when the application in I.A.No.2523 of 1997 for setting aside the ex parte decree is pending."

The instant Second Appeal was admitted on only one substantial question of law and that is extracted above.

11. It will now be evident from the lone substantial question of law on which the Second Appeal was admitted by this court that the Second Appeal also turns on the decree in O.S.No.758 of 1993 which does not exist now and the Second Appeal arising out of O.S.No.758 of 1993 stands dismissed today. Therefore, there is no difficulty or hesitation whatsoever in answering the lone substantial question of law case in this Second Appeal in favour of the appellant.

12. The substantial question of law is answered in favour of the appellant and it is held that there is no decree of declaration of title qua the suit property in favour of Maideen Batcha as of today. Therefore, the Second Appeal deserves to be allowed.

13. The following order is passed:

- a) S.A.No.570 of 1999 is allowed.
- b) Consequently, the judgment and decree in A.S.No. 66 of 1998 on the file of the Subordinate Judges court, Bhavani stands set aside.
- c) As a further consequence, the judgment and decree dated 10.03.1998 made by the Additional District Munsif Court, Bhavani in O.S.No.28 of 1994 dismissing the suit stands confirmed.

Second Appeal is allowed. Considering the nature of the matter and the trajectory the litigation has taken, the parties are left to bear their respective costs.

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Asst.Registrar

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Sub Asst. Registrar

gv

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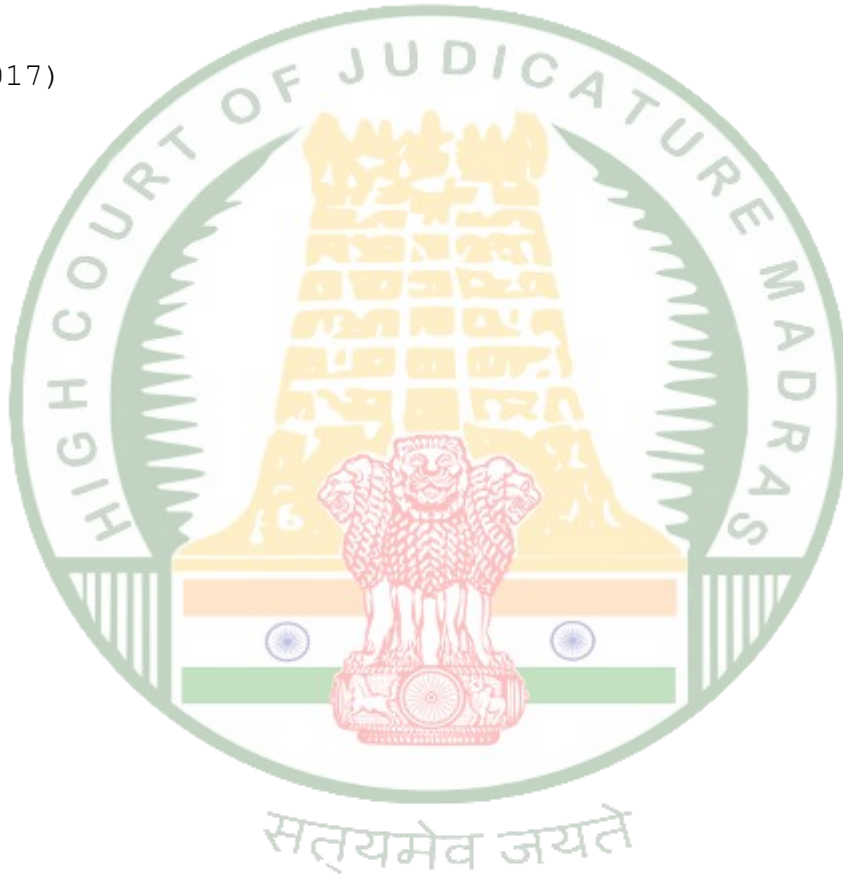
1.The Subordinate Court,, Bhavani.

2.The District Munsif Court, Bhavani.

+1cc to M/S. R.T. Doraisamy, Advocate Sr. 16663

S.A.No.570 Of 1999

VD (CO)
VR (26/4/2017)



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