

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.06.2017

CORAM:

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

Second Appeal No.1229 of 2012

C.Raja

... Appellant/Plaintiff

Vs.

1. V.Rangasamy
2. V.Venkatachalam
3. Subulakshmi
4. Kesavan
5. Govindaraj
6. Muthulakshmi

.. Respondents/Defendants 1 & 3

Second Appeal filed under Section 100 C.P.C. against the judgment and decree dated 11.01.2012 passed in A.S.No.44 of 2008 by the Principal Subordinate Judge, Krishnagiri, confirming the judgment and decree dated 29.10.2008 passed by the District Munsif cum Judicial Magistrate, Pochampalli in O.S.No.57 of 2007.

For Appellant : Mr.Hariharan
for Mr.V.Nicholas

For Respondents 1, 3 & 4 : Mr.V.Meenakshi Sundaram

Respondents 2, 5 & 6 : No Appearance

J U D G M E N T

The plaintiff, who lost before both the Courts below, is the appellant herein. He has come up with the present Second Appeal challenging the judgment and decree 11.01.2012 passed in A.S.No.44 of 2008 by the Principal Subordinate Judge, Krishnagiri, confirming the judgment and decree dated 29.10.2008 passed by the District Munsif cum Judicial Magistrate, Pochampalli in O.S.No.57 of 2007.

2. This Court, by an order dated 28.11.2012, ordered only Notice of motion returnable in four weeks. Thereafter, the matter stood adjourned from time to time for one reason or the other. Today, the Second Appeal is taken up for final disposal on the merits of the matter.

3. According to the appellant/plaintiff, the suit schedule properties situated in Rangampalli Village of Pochampalli Taluk, which originally belonged to his father, viz. Munian @ Chinna Poosali Gounder, was purchased by him vide registered sale deed dated 25.02.1977 for valuable consideration and since then, he was in possession and enjoyment of the same. After the demise of his father, the plaintiff, his brother and sister succeeded the suit properties by way of oral arrangement and the suit properties were divided among them. Thus, according to the plaintiff, he is in actual possession and enjoyment of the suit properties for the past 30 years without any interruption.

4. While so, it is the case of the respondents/defendants that they acquired the suit properties through their mother Pavaiammal, vide Ex.B1 and thereafter, one Arumugam, Boopathi, Theerthagiri and Ramalingam had also purchased the properties in the same Survey number and were using the suit cart track along with the defendants. According to the respondents/defendants, they along with the abovesaid four persons, are using the 'ABGF' portion mentioned in the plaint plan as the cart track along with the land of the defendants in 'AFE' portion and that the plaintiff himself has admitted that ABGF portion is part of the suit properties. It is their further case that the appellant/plaintiff is not able to give correct particulars as to his share and his brother's share.

5. The Trial Court, on a consideration of the pleadings and oral and documentary evidence, dismissed the suit against the plaintiff holding that the suit is bad for non-joinder of necessary parties, against which, the plaintiff went on appeal in A.S.No.44 of 2008 before the Principal Subordinate Judge, Krishnagiri and the First Appellate Court, by a judgment and decree dated 11.01.2012, dismissed the appeal, confirming the judgment and decree of the Trial Court. Aggrieved by the same, the plaintiff is before this Court with the present Second Appeal.

6. It is the contention of the learned counsel for the appellant/plaintiff that the appellant had established through Ex.A1 - Sale Deed, Exs.A2 to A8 - Kist Receipts, Exs.A9 and A10 - House Tax Receipts and Exs.A11 and A12 - Pattas that he is the absolute owner of the suit property. It is his further contention that the Courts below failed to see that it has been admitted by the 3rd defendant in his evidence that the plaintiff has constructed a house in his own land and is residing therein, which would prove that the plaintiff is in possession and enjoyment of the properties given to him in the oral partition.

7. On the other hand, learned counsel appearing for the respondents/defendants submitted that the appellant/plaintiff

has not specifically pleaded his extent of share in the entire suit property. Hence, according to him, the Trial Court has rightly dismissed the suit on correct appreciation of evidence, which needs no interference.

8. Heard the learned counsel on either side, gave careful consideration to their submissions and perused the material documents available on record.

9. It is represented by the respondents/defendants that the appellant/plaintiff filed a suit contending that he is the only son and that after the demise of his father, the entire properties devolved upon him. Thereafter, denying the averments made by the respondents/defendants in the Written Statement, the plaint was sought to be amended, wherein, it has been stated that there was a oral partition between the brothers and sisters of the plaintiff.

10. It is seen that there is no dispute with regard to the brothers and sisters of the appellant/plaintiff as regards the allotment of properties of their shares. Admittedly, the defendants are third persons and neighbours of the plaintiff and he has questioned the family arrangement or partition and that since the defendants interfered with the properties belonging to him, the plaintiff has approached this Court for the above relief.

11. A perusal of the patta and Revenue Records shows that the suit properties are said to have been owned by the respondents/defendants and the relief sought is only for a limited extent. Admittedly, there was a cart-track in the suit properties, but it does not belong to the appellant/plaintiff. It is not in dispute about the sale of the properties purchased by the plaintiff, vide Ex.A1-Sale Deed, dated 25.02.1997. It is the contention of the appellant/plaintiff that the defendants and four others were using the pathway and are said to have attempted to lay a pathway. According to the appellant/plaintiff, his father died 25 years back and he has paid Kist and House Tax from the year 1997, as evidenced from Exs.A2 to A10. Further, Ex.A11 - Old Patta reveals that the plaintiff was allotted only a portion of the suit properties. But, Ex.A12 - New Patta reveals more extent of the property than the properties purchased by the plaintiff's father through Ex.A1, but the plaintiff claims to have been allotted his share through Ex.A12 - New Patta.

12. On ascertaining the above facts, this Court is of the view that the Trial Court was right in holding that the brothers and sisters of the plaintiff are necessary parties to the suit. Even though several chances have been given, the plaintiff did

not evince any interest to implead his brothers and sisters as parties to the suit. That apart, the plaintiff has also not initially approached the Court below with clean hands. He has stated that he is the only son of his father and thereafter, he went on to contend that there was a partition between his brothers and sisters. Hence, the Trial Court was right in holding that the brothers and sisters of the plaintiff are not only necessary parties, but also proper parties to the suit and the First Appellate Court rightly confirmed the judgment and decree of the Trial Court.

13. In view of the above discussion, the concurrent findings of the Courts below do not warrant any interference by this Court under Section 100 CPC. It is settled law from a catena of decisions of the Supreme Court and this Court that the findings of facts concurrently recorded by the Trial Court, as also by the First Appellate Court, could not be legally upset by this Court, sitting in Second Appeal under Section 100 CPC, unless it is shown that the findings are perverse, being based on no evidence or that on the evidence on record, no reasonable person could come to that conclusion. Further, the scope for interference with the concurrent findings of fact, while exercising jurisdiction under Section 100 CPC, is very limited, and re-appreciation of evidence is not permissible, and if the Trial Court and the First Appellate Court misdirected themselves in appreciating the question of law or placed the onus on the wrong party, certainly, there is a scope for interference under Section 100 CPC. This Court finds no illegality or perversity in the concurrent findings of both the Courts below, and hence, they are liable to be confirmed. There is no question of law much less substantial question of law that arises for consideration in this Appeal.

In fine, the Second Appeal is dismissed in limine, confirming the judgment and decree of the Courts below. No costs. Consequently, connected M.P.No.1 of 2012 is closed.

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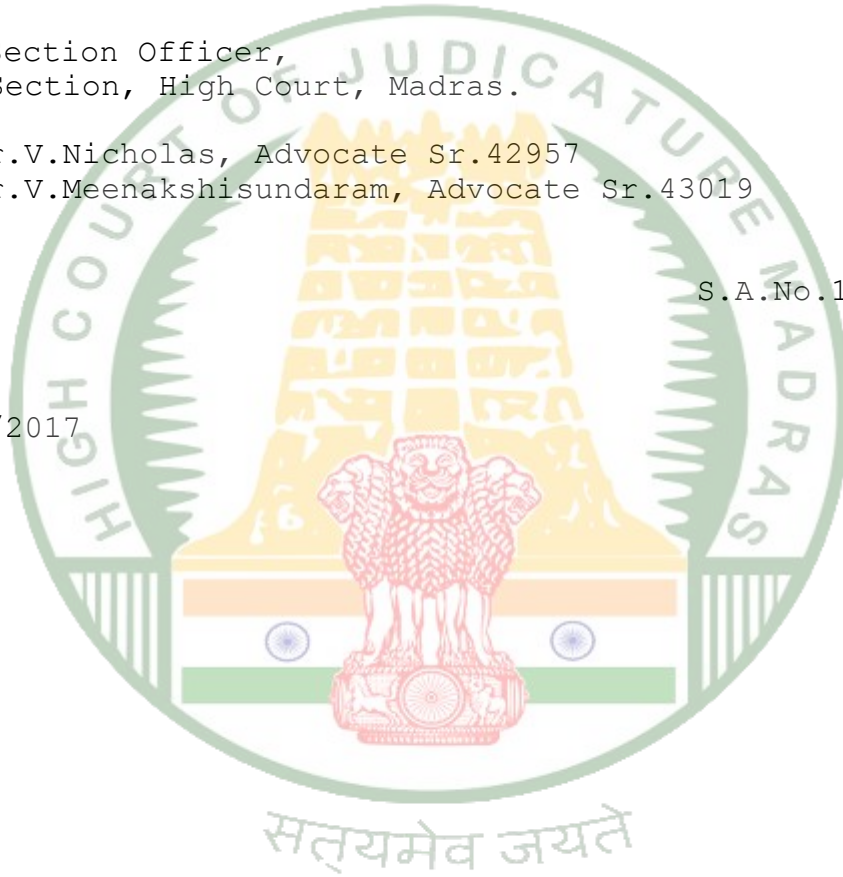
1. The Principal Subordinate Judge,
Krishnagiri.
2. The District Munsif cum Judicial Magistrate,
Pochampalli.
3. The Section Officer,
V.R.Section, High Court, Madras.

+lcc to Mr.V.Nicholas, Advocate Sr.42957

+lcc to Mr.V.Meenakshisundaram, Advocate Sr.43019

S.A.No.1229 of 2012

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