

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 05-01-2017

CORAM:

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH

Second Appeal No.356 of 2015

and

M.P.No.1 of 2015

1. Pannerselvam

2. Mariappan

.. Appellants/Respondents/
Defendants

Vs.

Mohandoss

.. Respondent/Appellant/Plaintiff

Second Appeal is filed under section 100 of CPC against the judgment and decree dated 29-11-2013 made in A.S.No.4 of 2013 on the file of Subordinate Judge, Tiruvarur reversing the the judgment and decree dated 24-11-2012 made in O.S.No.112 of 2009 on the file of the District Munsif Court, Tiruvarur.

For appellants

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Mr. C. Munusamy

For respondent

::

Mr. R.S.Varatharajan for

M/s.Ram & Rajan Associates

JUDGMENT

The plaintiff and the first defendant are brothers. The suit property is a joint family property belonging to both these parties. They have partitioned the suit property by way of a registered partition deed dated 23-04-1984 as per which the plaintiff was given 'E' Schedule property and the defendant the 'B' Schedule property. The survey number of the suit property is 102/1A. In pursuance of the partition, it was sub-divided as 102/1A-1 and 102/1A-2 in favour of the defendant and plaintiff, respectively. The defendant sold his share in favour of one Sukumaran under Ex-A13 dated 19-03-2001 for the entire extent of 19 cents. The defendant was permitted to be in possession in the house belonging to the plaintiff which forms part of the 19 cents allotted to him under Ex-A13. As the said house belongs to the plaintiff absolutely and on the refusal of the defendant to handover the same, the suit has been laid for possession, permanent injunction not to alienate or encumber and the consequential reliefs. The Trial Court dismissed the suit on the ground that there was no proper subdivision of Survey No.102/1A

and the suit is liable to be dismissed for non-joinder of necessary party viz., Sukumaran who was the purchaser from the defendant.

2. The Lower Appellate Court reverses the judgment and decree of the Trial Court on the premise that the parties having been allotted specific extents with clear boundaries and the share of the defendant having been sold in favour of one Sukumaran under Ex-B2/A13, the plaintiff is entitled to succeed.

Incidentally, the Lower Appellate Court found that Ex-A1 having been admitted and in view of the specific demarcation of the boundaries of the land allotted to each of the parties, the finding of the Trial Court with respect to the wrong description cannot be accepted. Reliance has also been made on the Report of the learned Commissioner.

3. Challenging the said judgment and decree of the Lower Appellate Court, the present appeal has been filed by framing the following substantial questions of law:

1. "Whether the suit for possession and permanent injunction is maintainable in law without any prayer for declaration of title?
2. Whether the suit is liable to be dismissed on the ground of non joinder of necessary parties?
3. Whether the Plaintiff can go beyond the recitals of the partition deed dated 23.04.1984 which is admitted by all the parties concerned and the same is marked as Ex.A.1 and Ex.B.1?

4. The learned counsel appearing for the appellant submits that he has been in possession and enjoyment of the property which has been sold in favour of the said Sukumaran, who in turn has permitted him to reside therein. There are no issues framed by the Trial Court and the suit for possession and permanent injunction is not maintainable with a prayer for declaration of title as the said Sukumaran has not been arrayed as a party defendant. It is liable to be dismissed for non-joinder of necessary parties.

5. The learned counsel appearing for the respondent submits that Ex-A1 coupled with the Commissioner's Report makes the position very clear. The boundaries are clearly marked. It is an admitted fact that the appellant has sold his share to Sukumaran. Even the said purchaser has got specific boundaries. Therefore, there is absolutely no basis for allowing this appeal.

6. The execution and genuineness of Exs-A1 and A13 are not in dispute. Partition has taken place as per Ex-A1 between the plaintiff and defendant. The defendant has sold his share to one Sukumaran under Ex-A13/B2, is also not in dispute. Ex-B2 also has its own clear boundaries, apart from mentioning the extent. Thus, the Lower Appellate Court was right in showing that after selling his share to a third party by name Sukumaran, it is not open to the appellant to contend to the contrary. The suit property is a tiled house. Ex-B2/A13 does not deal with the said tiled house. The appellant in his cross-examination has accepted that the sale deed in favour of Sukumaran did not include the house. He has also accepted that he has sold the extent of land available in Survey No.102/1A-1. The suit property is situate in S.No.102/1A-2. In fact, even in the written statement, the appellant has stated that the land in survey No.1A-2 of the sub-division which has been allotted to the plaintiff is in his possession. The land allotted to the plaintiff is situate in the Northern side as rightly found by the learned Commissioner. The boundaries have been clearly stated in both the documents. The appellant has not proved that the boundaries have been wrongly marked. When once Ex-B2 is in consonance with Ex-A1, the appellant does not have any case. The learned Commissioner has measured the property with the help of the land Surveyor. The property has been measured as per Ex-A1. The boundaries tally with the Commissioner's Report, Ex-A1. Therefore, this Court does not find any error in the judgment and decree rendered by the Lower Appellate Court.

7. As there is an admission of title by the appellant as per Ex-A1, there is no necessity to seek a relief of declaration. Since the said Sukumaran is in no way connected with the suit property, the question of arraying him as a party defendant does not arise. Therefore, he is neither a necessary party nor a proper party. There is also no necessity to frame specific issues, when the Lower Appellate Court has considered the entire materials available on record while reversing the judgment and decree of the Trial Court.

8. Accordingly, the questions of law framed are answered in favour of the respondent and against the appellant. This second appeal stands dismissed. Costs made easy. The connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

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Sub-Assistant Registrar

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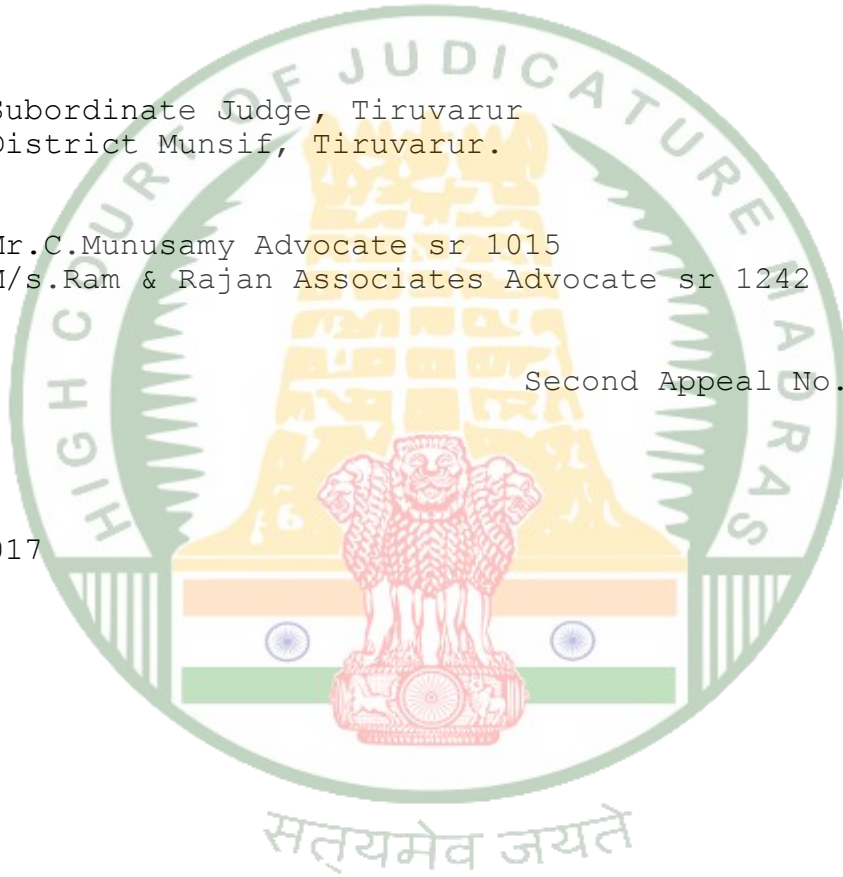
1. The Subordinate Judge, Tiruvarur
2. The District Munsif, Tiruvarur.

+1 cc to Mr.C.Munusamy Advocate sr 1015

+1 cc to M/s.Ram & Rajan Associates Advocate sr 1242

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