

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.12.2017

CORAM :

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

S.A.No.571 of 2015
and M.P.No.1 of 2015

1. Sala Seerangan
2. Rajammal
3. Raju
4. Rajammal
5. Sala Rajendran
6. Jothi

... Appellants/Defendants
versus

Duraisamy ... Respondent/Plaintiff

Prayer: This second appeal filed under Section 100 of C.P.C. prays to set aside the Judgment and Decree dated 22.07.2011 made in A.S.No.24 of 2011 on the file of the Additional District Court, Namakkal, confirming the judgment and decree dated 18.04.2007 made in O.S.No.719 of 2005, on the file of the Principal District Munsif Court, Namakkal.

For Appellants : Mr.T.Dhanyakumar
For Respondent : Mr.T.L.Thirumalaisamy

J U D G M E N T

The unsuccessful defendants are the appellants herein. The suit was filed by the plaintiff for permanent injunction restraining the appellants herein not to interfere with his rights of mining of sand from the suit property and transport the same through his T.V.R. Lorry Transport to Madras Aluminium Company Limited, Mettur.

2. The case of the plaintiff is that the suit property was purchased by one Sala Seerangan and Sala Vadaman on 07.09.1934 as per Ex.B-1. After the death of said Sala Vadaman and Sala Seerangan the property devolved on the son of Sala Seerangan, namely, Sala Thiruman. The said Sala Thiruman died leaving behind his son Sala Selvaraj and daughter Sala Pitchayee born through his 1st wife and his younger wife Thangammal and her daughter Sala Vijayalakshmi. The above said legal heirs of Sala Thiruman sold the suit property measuring an extent of 4.68 acres comprised in S.No.205, Sennur Village, Kollimalai to the

respondent/plaintiff under Ex.A-10 Sale Deed on 16.12.1997. Thus the plaintiff claimed right to the suit property.

3. As the suit is filed for injunction in order to prove the possession, the respondent/plaintiff had filed Chitta in Ex.A-1 standing in the joint names of Sala Seerangan and Sala Vadaman. Ex.A-4 and Ex.A-6 are series of Kist receipts standing in the name of Sala Thiruman for the period from 1967 to 1987. Ex.A-3 is the Kist receipts in the name of Sala Selvaraj, who is the legal heir of Sala Thiruman. Other documents produced by the respondent/plaintiff marked as Ex.A-9 to Ex.A-16.

4. The appellants/defendants claim that they have half share in the suit property and the sale by Sala Selvaraj and others have no right or title to sell the entire suit property to the respondent/plaintiff. The appellants/defendants also placed reliance on Ex.B-1 Sale Deed dated 07.09.1934.

5. Based on the above pleadings the Courts below have concurrently held that the appellants/defendants have not proved their case and the same cannot be accepted. At the time of admission the following substantial question of law was formulated for consideration:

Whether the Courts below are justified in decreeing the suit for injunction without there being any relief of declaration especially, when the defendants/appellants disputed the absolute title over the suit property on the plaintiff and claimed the co-ownership over the same?

6. The only question that has to be considered whether the respondent/plaintiff has got right over the suit property to continue to be in possession, when the defendants claim half share in the same. Ex.B-1 was not disputed by both the parties.

7. Ex.B-2 is Kist receipt, Ex.B-3 is Death certificate of Sala Vadaman, Ex.B-4 is legal heirship Certificate of Sala Vadaman. The plaintiffs have also produced Ex.A-13 dated 20.02.1957. It is the death certificate of Sala Vadaman. A comparison of Ex.A-13 and Ex.B-3 goes to show that there are lot of discrepancies in both certificates. As per Ex.B-3 Sala Vadaman died on 22.09.1949. The father's name of said Sala Vadaman is actually Sala Vellayan and the same can be found in Ex.B-1, whereas in Ex.B-3 Death Certificate, the name of the father of said Sala Vadaman is not mentioned. Therefore the Courts below have rightly come to the conclusion that the Sala Vadaman, son of Sala Vellayan from whose heirs, the plaintiffs have purchased the property and the Sala Vadaman, the father of the first defendant are two different persons. The

appellants/defendants also failed to prove their contention that the said Sala Vadaman, the father of the first defendant is one of the two purchasers found in Ex.B-1 Sale Deed. Therefore, in the absence of proving any better title over the respondent/plaintiff, the defendants cannot have any right over the property.

8. The Courts below also had incidentally given a finding with respect to the title of the suit property though the suit relief is only for bare injunction. The appellants/defendants only for the sake of denying had disputed the right of the plaintiff. They have not produced any document to show that they are also entitled to half share in the suit property. On the other hand, the respondent/plaintiff has proved that the vendors of the plaintiff had title to sell the property and they have been in continuous possession and enjoyment of the same. Therefore, having failed to establish their right over the suit property and also as found by the Courts below, there have been certain material alteration in the documents produced by the appellants/defendants. The defendants were rightly non suited by the Courts below. As the defendants also had failed to establish that they are having half share in the suit property jointly with the respondent/plaintiff and as the plaintiff has independently established that they have purchased the property under Ex.A-10, the decree granted by the Courts below in favour of the respondent/plaintiff is correct.

9. There is no reason to interfere with the same as the Trial Court as well as the Appellate Court have gone into a question of title, while deciding the rights of the parties. The question of law formulated is decided in favour of the respondent/plaintiff and the second appeal is therefore liable to be dismissed.

10. Accordingly, the second appeal is dismissed, confirming the judgment and decree dated 22.07.2011 passed by the Lower Appellate Court in A.S.No.24 of 2011. No Costs. Consequently, connected miscellaneous petitions is closed.

Sd/-
Assistant Registrar (CS-iv)

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Sub Assistant Registrar

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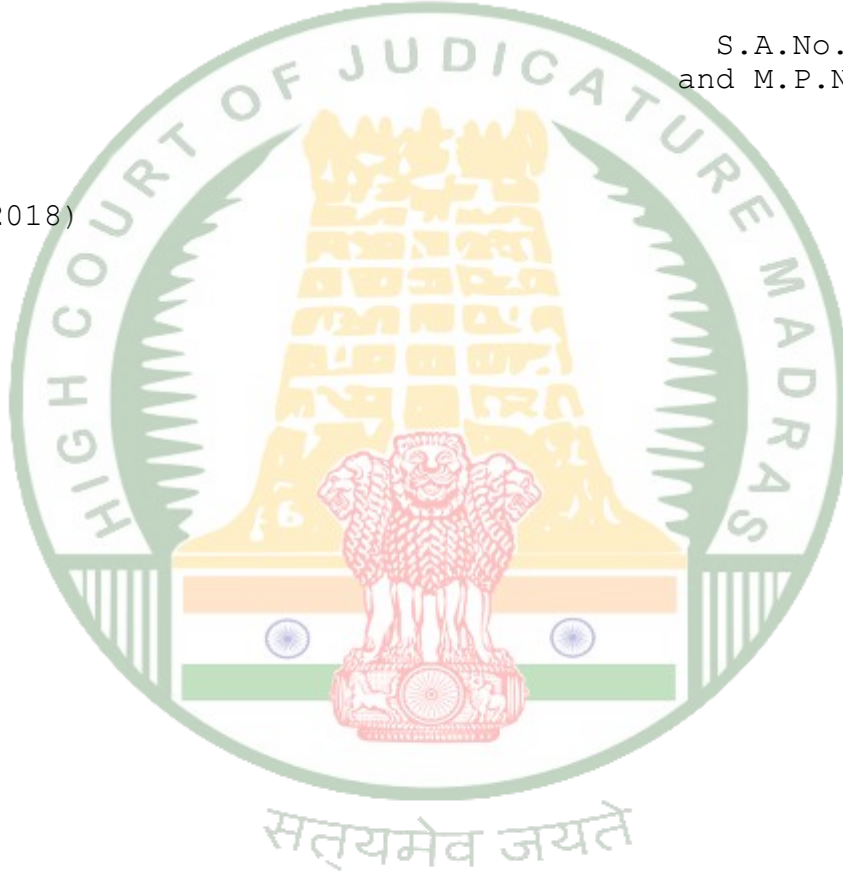
1. The Additional District Judge,
Namakkal.
2. The Principal District Munsif Judge,
Namakkal.
3. The Section Officer, V.R. Section, High Court, Madras.

+1cc to Mr.T.L.THIRUMALAIKAMY Advocate, S.R.No. 85533

+1cc to Mr.T.DHANYAKUMAR Advocate, S.R.No. 85700

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