

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.11.2016
PRONOUNCED ON: 27.01.2017

CORAM :

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.288 of 2011

&

M.P.No.1 of 2011

1. Chinnappan
2. Kamatchi @ Sivakami ..Appellants/Appellants/
Plaintiffs

Vs.

1. Govindasamy
2. Chinnathambi
3. Murugesan ..Respondents/Respondents/
Defendants

Prayer:- This Memorandum of Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 30.11.2010 passed in A.S.No.20 of 2010 on the file of the Principal Sub Court, Tiruvannamalai, Tiruvannamalai District, confirming the judgment and decree dated 01.04.2010 passed in O.S.No.32 of 2007 on the file of the Additional District Munsif Court, Chengam.

For Appellants : Mr.R.Krishna Prasad
For Respondents : Mr.S.Ambikabathi

J U D G M E N T

The plaintiffs have preferred this second appeal challenging the Judgment and decree dated 30.11.2010 passed in A.S.No.20 of 2010 on the file of the Principal Sub Court, Tiruvannamalai, Tiruvannamalai District, confirming the judgment and decree dated 01.04.2010 passed in O.S.No.32 of 2007 on the file of the Additional District Munsif Court, Chengam.

2.The suit has been laid by the plaintiffs for declaration and permanent injunction. The suit has been laid for 0.19 cents in respect of S.No.69/2. According to the plaintiffs, the suit property originally belonged to three brothers namely, Kutti Gounder, Mottaiy Gounder and Ayyavu Gounder. Kutti Gounder was the grandfather of the defendants. Now according to the plaintiffs Mottaiy Gounder sold his properties in favour of Kutti Gounder and Ayyavu Gounder. Further according to the plaintiffs, the first plaintiff has

purchased the suit property and other properties from the successors -in- interest of Kutti Gounder and Ayyavu Gounder under the Sale Deed dated 19.07.1994 and thus the first plaintiff's case is that he derives title to the suit property under Ex.A1. The above case of the plaintiffs is disputed and according to the defendants, it is only Kutti Gounder, who had purchased the properties belonging to Mottaiy Gounder and therefore, it is alleged that the first plaintiff cannot base his claim or title to the suit property under the Sale Deed dated 19.07.1994.

3.Both the Courts have found that the plaintiffs have miserably failed to establish that Mottaiy Gounder had sold his properties to Kutti Gounder and Ayyavu Gounder. If that be so, as rightly found by the Courts below, necessary document of title, evidencing the same, would have been produced. On the other hand, on the side of the defendants, the document dated 21.02.1922, a sale deed in favour of Kutti Gounder had been marked. It is the sale deed executed by Mottaiy Gounder in favour of Kutti Gounder in respect of the properties owned by him. Therefore, it could be seen that as found by the Courts below Mottaiy Gounder had sold his properties only in favour of Kutti Gounder and not to Ayyavu Gounder. The Courts below have found that the successors- in- interest of Kutti Gounder also include PW2, Manickam. It is found that under the Sale Deed dated 19.07.1994, Manickam had also sold an extent in favour of the first plaintiff.

4.Taking into consideration the above mentioned evidence adduced by the respective parties, both the Courts below have found that the plaintiffs have failed to establish their title to the suit properties as described in the plaint namely for 0.19 cents and found that under the Sale Deed dated 19.07.1994, the first plaintiff at the best would be entitled to claim title only to 4 cents and therefore directed the first plaintiff to work out his remedies by filing the suit for partition and thereby dismissed the suit.

5.The main point that is urged by the learned counsel for the appellants is that the Courts below having held that the plaintiffs are entitled to four cents of land based upon the evidence adduced by the parties, at least should have granted the relief of permanent injunction in respect of the above said 4 cents and hence they have been necessitated to prefer the second appeal.

6.The Courts below have found that inasmuch as the heirs of Kutti Gounder have not effected partition of their properties, it could not be ascertained as to what share each heir would be entitled to. Further, the Courts below have also in the right perspective analysed the revenue records produced on the side of the plaintiffs and found that they cannot be fully relied upon to hold that the plaintiffs are in possession of 4 cents to which they are found to be entitled

in the suit survey number. Nothing has been pointed out by the learned counsel for the plaintiffs to hold that the Courts below have misdirected themselves in rejecting the revenue records produced by the plaintiffs to negative their claim of joint possession. It is not the case of the plaintiffs in the plaint that they are in joint possession of the suit property along with the heirs of Kutti Gounder.

7.As found earlier, the Courts below have directed the plaintiffs to work out their remedy by filing the suit for partition in respect of 4 cents. Such being the position, it is found that no substantial question of law is involved in this second appeal.

8.The learned counsel for the appellants in support of his case has relied upon the following decisions reported in (2009) 15 SCC 747(Jai Singh and Others Vs. Gurmej Singh), (2013) 5 SCC 218(Nasib Kaur and Others Vs. Colonel Surat Singh(deceased) through LRs and Others), 1996 SCC OnLine P & H 971(New Bharat Chemical Industry Vs. Om Prakash) and Vol.XXII Lahore Series(Sukh Dev Vs. Parsi, Kanshi and Others).

9.As rightly pointed out by the learned counsel for the respondents, the above said decisions did not apply to the facts and circumstances of the case at hand.

10.Be that as it may, the principles of law outlined in the above said decisions are taken into consideration and followed as applicable to the facts and circumstances of the case at hand.

11.At the end, sans any substantial question of law being involved in this second appeal, accordingly, the second appeal fails and is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Sub Court, Tiruvannamalai.

2. The Additional District Munsif Court, Chengam.

1 cc to M/s. Sarvabhauman Associates, Advocate Sr.4945

S.A.No.288 of 2011

GJ(CO)

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