

IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 02.12.2016
PRONOUNCED ON : 06.01.2017
CORAM
THE HONOURABLE MR. JUSTICE T.RAVINDRAN
S. A.No.316 of 2011
&
MP.No.1 of 2011

Ramasami Gounder ... Appellant/Defendant
Vs.

Chellakutty Kounder ... Respondent/Plaintiff

Second Appeal is filed under Section 100 of Civil Procedure Code, against the Judgment and decree dated 29.09.2010 made in A.S.No.4 of 2006 on the file of the Subordinate Judge, Gingee confirming the Judgment and Decree dated 31.08.2005 made in O.S.No.2 of 1995 on the file of the Additional District Munsif Court, Gingee.

For Appellant : Mr.P.Dinesh Kumar

For Respondent : Mr.R.Rajarajan

JUDGMENT

The defendant in this second appeal has impugned the Judgment and decree dated 29.09.2010 made in A.S.No.4 of 2006 on the file of the Subordinate Judge, Gingee confirming the Judgment and Decree dated 31.08.2005 made in O.S.No.2 of 1995 on the file of the Additional District Munsif Court, Gingee.

2.The suit has been laid by the plaintiff for declaration and permanent injunction. The plaintiff claims title to the suit properties based upon the Sale Deed dated 18.08.1984 executed by Perumal Mastry in his favour. The parent title Deed dated 12.12.1961 has been executed in favour of Perumal Mastry by Lakshmanan. The above said Sale Deeds have been marked as Ex.B2 and B1 respectively. Under Ex.B2, the plaintiff has purchased an extent of 0.18 cents within the specific boundaries in S.No.112/4, out of the total extent of 0.56 cents and 0.95 and ½ cent in S.No.114/1 out of the total extent of 2.87 cents within the specific boundaries. It is also pleaded by the plaintiff that the remaining extent in S.No.112/4 namely 0.37 cents has been purchased by the defendant and similarly the defendant has also purchased the remaining 1.91 acres in

S.No.114/1 and it is found that claiming title to the extent of the property purchased in the above said suit survey numbers, the defendant has laid a suit against the plaintiff in O.S.No.557 of 1994. It is found that both O.S.Nos.557 of 1994 & 2 of 1995 were jointly tried and common evidence was recorded in O.S.No.557 of 1994 on the basis of the joint memo filed by the respective parties. It is also found that both the suits were decreed. However, against the judgment and decree passed in O.S.No.557 of 1994, the plaintiff did not prefer any appeal. On the other hand, the defendant preferred the first appeal against the judgment and decree passed in O.S.No.2 of 1995. But the first Appellate Court has confirmed the judgment and decree passed in O.S.No.2 of 1995. Aggrieved over the same, the present second appeal has been preferred by the defendant.

3. Based upon the boundary recitals found in the title deeds of the plaintiff and the defendant and also based upon the clear admission made by the defendant in the suit that the suit properties are in the possession and enjoyment of the plaintiff and that the defendant has no objection to the same in any manner and considering the same, among other things, the Courts below have rightly found that the plaintiff has title to the suit properties and that the suit properties are in the possession and enjoyment of the plaintiff. Accordingly, the Courts below have upheld the plaintiff's case.

4. No doubt in the written statement, the defendant has taken a plea that the entire extent in the suit survey numbers belongs to him. However, as adverted to earlier, he has during the course of evidence admitted the purchase of the suit properties by the plaintiff under Ex.B2 and also put forth no objection to the same and also admitted that it is only the plaintiff, who is in the possession and enjoyment of the suit properties as such. Therefore, having admitted the title deed of the plaintiff and also admitted that it is only the plaintiff, who is in the possession and enjoyment of the suit properties, the defendant cannot now turn around and say that he is the owner of the entire extent of the suit survey numbers. If that be so nothing prevented the defendant from placing his proof to claim title to the entire extent in the suit survey numbers. On the other hand, other than making a vague plea that he is entitled to entire extent in the suit survey numbers, the defendant has not endeavoured to place any material to establish the same. On the other hand, he has given a go bye to his above said defence and admitted that the plaintiff has purchased the suit properties under Ex.B2 and the same are in his possession and enjoyment and he has no objection to the same.

5. Further as seen by the Courts below, even the boundary recitals as found in the title deeds of the plaintiff and the defendant disclosed that both are enjoying their respective

extents purchased in the suit survey numbers under their respective title deeds. Accordingly, the trial court has decreed the suits filed both by the plaintiff and the defendant.

6. During the course of appeal, it appears that the defendant has taken out an application under Order 41, Rule 27 to permit him to mark a document of title said to have been executed in favour of his father in respect of the suit properties. The same was forcibly resisted by the plaintiff. Accordingly, it could be seen that the lower Appellate court has not accepted the case of the defendant in the above said IA and thereby did not entertain the reception of the additional evidence projected by him. It is not the case of the defendant in the written statement that his father had purchased the suit properties and that the same had been in his possession and enjoyment and thereafter in the possession and enjoyment of the defendant. Other than the mere pleading that the defendant has title to the entire extent in the suit survey numbers, the defendant has not shown any interest to establish his title in respect of the same but had admitted the title of the plaintiff and the plaintiff's possession and enjoyment of the suit properties and in such circumstances, the attempt of the defendant to project the additional evidence in the appeal as if his father had acquired the suit properties under the Sale deed did not find favour with the lower Appellate court and therefore the lower Appellate Court did not entertain the reception of the additional evidence.

7. The defendant's counsel contended that the lower Appellate Court has observed that though the additional document can be received, failed to entertain the same and therefore, the lower Appellate court has committed an error in not receiving the additional evidence in support of the defendant's case. However, as rightly argued by the plaintiff's counsel, the lower Appellate court had found that application filed by the defendant for the reception of the additional evidence did not conform to the legal requirements of Order 41, Rule 27 of CPC and further in the absence of any pleadings about the additional evidence in the written statement rightly rejected the reception of the additional evidence and therefore no exception could be taken to the same. The contention of the learned counsel for the plaintiff is acceptable. At the outset, the defendant has not made out a case as to why he has failed to mark the additional evidence before the trial court. It is not the case of the defendant that the additional evidence is not known to him at that point of time or could not be found or traced. The plea of the defendant that he had come to know about the title of his father in respect of the suit properties only during the course of the first appeal also cannot be accepted. The excuse is now put forth that the defendant being a rustic person and an illiterate, he was unable to place the additional evidence

before the trial court. However, the same could not be accepted in any manner. The defendant having taken a specific plea that the he has title to the suit properties, unable to establish the same and on the other hand having admitted the plaintiff's title, possession and enjoyment of the suit properties without any ambiguity cannot now be allowed to contend that he is entitled to the suit properties by virtue of the purchase of the same by his father under the additional evidence. The defendant cannot be allowed to blow hot and cold. Therefore, I do not find that the lower Appellate Court has misdirected itself in refusing to receive the additional evidence both factually and legally.

8.The appellant's counsel placed reliance upon the decisions reported in 2000(III) CTC 193(S.N. Hasan Abubucker Vs. Kottikulam St Mohideen Pallivasal Therkku Mohindeen Pallivasal, Nirvagi Muthuru Committee through its Secretary M.S.Buhari and another), 2009(4) CTC 440(K.V.Ramasamy Vs. K.V.Rahgavan and 3 others), 2012(3) CTC 160(Venkatasubramaniya Chettiar (died) Vs. Perumal Chettiar) in support his contention, that the lower Appellate Court should have accepted and received the additional evidence. However, the learned counsel for the plaintiff contended that inasmuch as the reception of the additional evidence projected by the defendant failed to conform to the legal requirements of Order 41, Rule 27 of CPC and in the absence of pleadings in the written statement vis-a-vis, additional evidence and the defendant having admitted the plaintiff's case completely, during the course of evidence both title wise and enjoyment wise and further the plaintiff's case having also been reinforced by the boundary recitals found in the title deeds of the parties concerned, the authorities relied upon by the defendant's counsel would have no application to the facts and circumstances of the case at hand.

9.In any event, the principles of law outlined in the above decisions are taken into consideration and followed as applicable to the facts and circumstances of the present case.

10.At the end, I do not find any substantial question of law is involved in this second appeal. Hence, the second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

dn

To

1.The Subordinate Court,
Gingee

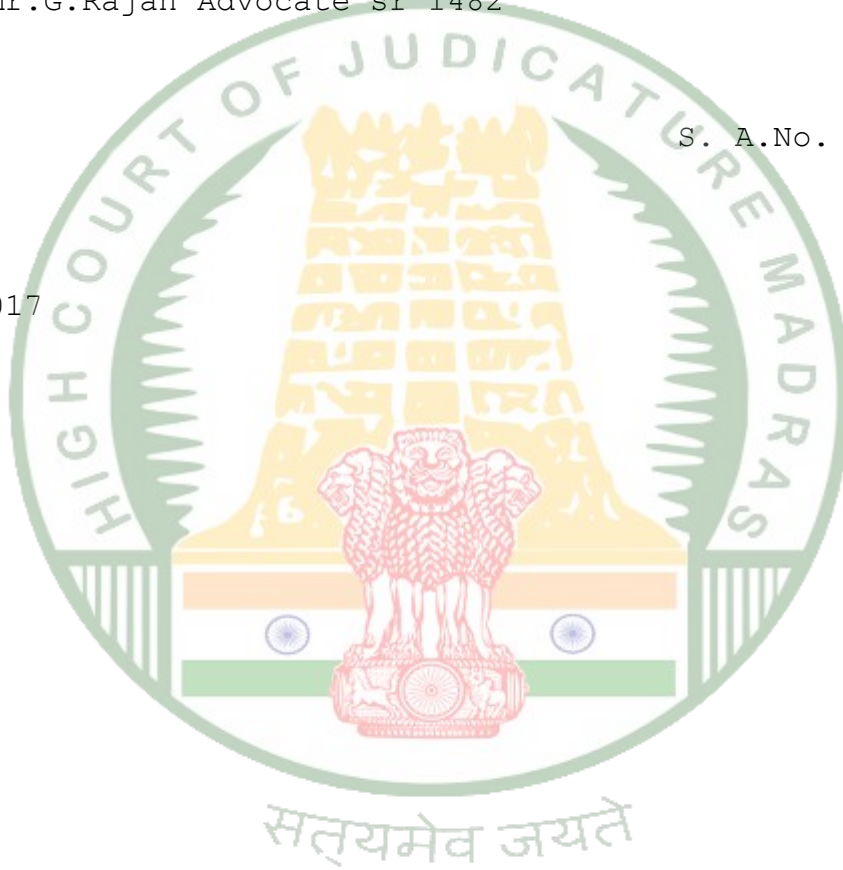
2. The Additional District Munsif Court,
Gingee

+1 cc to Mr.D.Ravichander Advocate sr 1841

+1 cc to Mr.G.Rajan Advocate sr 1482

S. A.No. 316 of 2011

rv(co)
aa31/01/2017



WEB COPY