

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2017

CORAM:
THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

Second Appeal No.488 of 2011

1. Munivenkatappa (deceased)
2. Subramani
3. Manohar
4. Vanaja
5. Sarojamma
6. M.Murugesh
7. Kavitha
8. Kishorekumar
9. M.Sailaja ... Appellants

(Appellants 5 to 9 brought on record as Lrs of the deceased 1st appellant vide order of Court dated 17.02.2015 in M.P.Nos.3 & 4 of 2011 in S.A.No.488 of 2011)

Vs

1. Yasodamma
2. Ramamani ... Respondents

Second Appeal filed under Section 100 C.P.C. against the judgment and decree dated 30.04.2010 passed in A.S.No.30 of 2007 by the Subordinate Judge, Hosur, confirming the judgment and decree of the District Munsif, Hosur, dated 12.09.2007 in O.S.No.97 of 1993.

For Appellants : Mr.N.E.A.Dinesh

For 1st Respondent : Mr.R.Nalliyappan

For 2nd Respondent : No appearance

J U D G M E N T

Defendants 1, 3, 4 and 6 are appellants 1 to 4 herein. Since the 1st appellant passed away during the pendency of this appeal, his legal heirs are brought on record as appellants 5 to 9.

2. One Thimmaiah, S/o. Late Thimmarayappa filed the suit in O.S.No.97 of 1993 praying (i) to declare his right, title and interest over the suit schedule property, (ii) for a direction to the defendants to hand over the possession of the suit schedule property to him and (ii) to restrain the defendants 1

to 6 from alienating the suit properties to defendants 7 to 9 and others.

3. According to the plaintiff/Thimmaiah, the suit property originally belonged to his father Thimmarayappa of Hosur Town, who had two wives, one Kaveriamma and Goopalliamma. The said Thimmarayappa's first wife had only one son by name, Munichetty. He and his wife Nagamma died issueless. The second wife of Thimmarayappa had three sons and one daughter. Except the plaintiff/Thimmaiah, the other two sons, viz. Narayanaap, Lakshmipathy and daughter, Nanjamma died long back. On 27.08.1912, his father, Thimmarayappa and his deceased son Munichetty executed a usufructuary mortgage deed in respect of the suit property i.e. 84 cents out of 1.68 acres for a period of five years and they redeemed the said property in the year 1918 by paying the due amount to the mortgagee Ramadasappa. After the death of Thimmarayappa and his son Munichetty, the plaintiff/Thimmaiah took over possession of the schedule property and was cultivating it by engaging coolies.

4. Thereafter, one Chowdaiah Chetty @ Nethappa, father of defendants 1 to 6, obtained oral lease of the suit property in consideration of supplying four bags of Ragi every year and the said lease was extended from time to time for a few years. After the death of Chowdaiah Chetty @ Nethappa, the 1st defendant viz. Munivenkatappa was cultivating the lands, but he failed to hand over the lease mahasool due to willful default. Hence, the plaintiff requested the 1st defendant to hand over the suit property to one of his brother's daughter Anusuyamma, W/o.Srinivasa Chetty of Hosur Town, but the defendants 1 to 6 refused to hand over the same. Later, it was found that defendants 1 to 6 manipulated to get patta in their favour in respect of the suit property. In the meantime, defendants 1 to 6 attempted to alienate the schedule property to defendants 7 to 9 and others. Also, when the plaintiff and his men attempted to cultivate the land, the defendants prevented it by force on 21.03.1993. Hence, to safeguard the suit property, the plaintiff filed the said suit.

5. Denying the plaint averments, defendants 1, 2, 3, 4 and 6 filed a Written Statement before the Trial Court, wherein, they have stated that they are not aware about the mortgage deed executed in 1912 by one Thimmarayappa and Munichetty. According to them, the suit properties originally belonged to the ancestors of Chowdachetty, who died long back leaving behind his son, Ramdas Chetty. Ramdas Chetty also died leaving behind his wife Erramma and four sons, i.e. R.Chinnathimmaiah, R.Chowdiah, Ramaiah and Anjappa. As per the family oral partition, S.No.575 fell to the share of Ramaiah Chetty and Anjappa Chetty, who each are entitled to 0.84 cents. Ramaiah Chetty sold his share of

land to Anjappa Chetty under a registered Sale Deed in the year 1956. Anjappa Chetty sold his share to Chowdaiah Chetty and the other extent was sold to his mother Erramma in the year 1962. Erramma relinquished her right in favour of Chowdaiah Chetty in the year 1964.

6. It is the case of the defendants that Chowdaiah Chetty is entitled to 1.68 acres in S.No.575 and he was in possession and enjoyment of S.No.575 till his death and defendants 1 to 6, who are the legal heirs of Chowdaiah Chetty are in possession and enjoyment of the said property. Since, Chitta, Adangal and patta and all other revenue records stand in the name of Chowdaiah Chetty and the defendants and their predecessors paid kist to the suit property, the defendants claim that they are in physical possession and enjoyment of the suit properties and that the plaintiff has no right, title or possession over the same.

7. The Trial Court, on a consideration of the entire oral and documentary evidence, allowed the suit in O.S.No.97 of 1993 as prayed by the plaintiff. Aggrieved by the same, defendants 1, 3 to 6 filed an appeal in A.S.No.30 of 2007 against the plaintiff and the First Appellate Court, by a judgment dated 30.04.2010, upheld the finding of the Trial Court and dismissed the appeal. Challenging the same, the unsuccessful defendants are before this Court by way of this Second Appeal.

8. Learned counsel for the appellants contended that the Courts below failed to see that the plaintiff has not produced any document either the Death Certificate or the Legal Heir Certificate of Thimmarayappa so as to establish that he has inherited the suit property from Thimmarayappa. It is his further contention that the Courts below failed to see that the plaintiff has not proved that he is entitled to the suit property and he is in possession and enjoyment of the same, while, on the other hand, the appellants/defendants have placed a number of registered transactions which have taken place for a span of 60 years to show that the suit property belongs to defendants 1 to 6 and their predecessors in title.

9. It is also the contention of the learned counsel for the appellant that the signature in Ex.A2 does not belong to D.W.3 - Manohar and that the admitted signature alone has to be taken into account. According to him, when the signature of a witness is in dispute, the Trial Court ought not to have granted the relief in favour of the plaintiff and it is the burden on the part of the plaintiff to establish his case. He added that the First Appellate Court also erred in accepting the contention of the plaintiff in confirming the judgment and decree of the Trial Court.

10. On the other hand, learned counsel for the respondents drew the attention of this Court to a Division Bench judgment of this Court in the case of Central Bank of India vs. Antony Hardware Mart and another reported in (2006) 3 LW 58, wherein, it is held that when there is a dispute with regard to signature, the Court can compare signatures and give its finding and it is not necessary that the plaintiff should take steps to get signatures compared by an expert.

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

12. The substantial question of law that arises for consideration in this appeal is:

"Whether the First Appellate Court was right in confirming the order of the Trial Court in comparing the signatures of D.W.3 - Manohar, when it is not a comparable one?"

13. On a perusal of the material documents on record, it is seen that a Cultivation Muchalika Agreement has been entered into between Chowdappa Chetty and his sons, Subramani and Manohar, on the one hand and the plaintiff/Thimmaiya on 04.12.1982, which is marked as Ex.A2, wherein, one Manjunath and Veerabathiran have signed as witnesses. Though D.W.2 - Subramani and D.W.3 - Manohar have denied their signatures in Ex.A2, the Trial Court, on a comparison of the signature of D.W.3 - Manohar in Ex.A2 with the one affixed in his deposition of witness filed before the Court, has come to a conclusion that both signatures tally each other. Thus, the Trial Court, disbelieving the version of D.W.2 - Subramani and D.W.3 - Manohar, came to the conclusion that the defendants were cultivating the suit property only as lessees and that the suit property belongs to the plaintiff/Thimmaiya.

14. Admittedly, the plaintiff has not taken any steps to compare the signatures of D.W.3 - Manohar by engaging an expert. But, the decision of the Trial Court in comparing the signatures of D.W.3 - Manohar to ascertain the genuineness of Ex.A2, and rendering a finding that the plaintiff alone is the absolute owner of the suit property, cannot be found fault with. Since the finding has been rendered on the basis of facts and available documentary evidence, this Court finds no reason to interfere with the finding of the First Appellate Court and the Trial Court and accordingly, the same are confirmed. The substantial question of law is answered accordingly.

In fine, the Second Appeal is dismissed. No costs.
Consequently, connected M.P.No.1 of 2011 is closed.

Sd/-
Assistant Registrar(CS VIII)

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Sub Assistant Registrar

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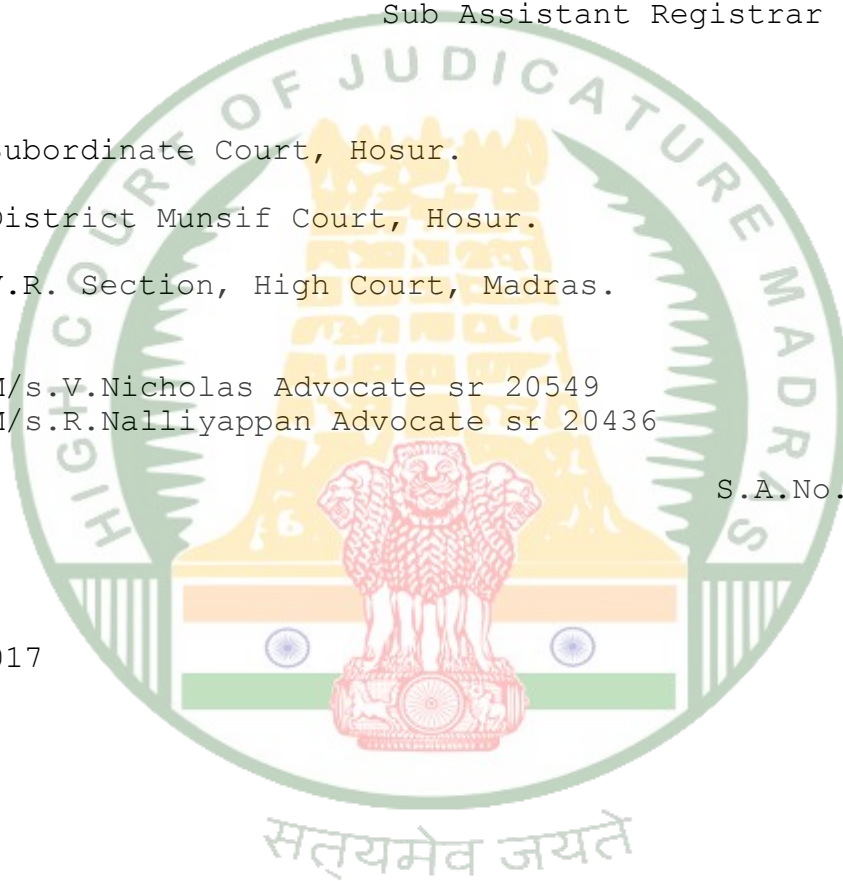
1. The Subordinate Court, Hosur.
2. The District Munsif Court, Hosur.
3. The V.R. Section, High Court, Madras.

+1 cc to M/s.V.Nicholas Advocate sr 20549

+1 cc to M/s.R.Nalliyappan Advocate sr 20436

S.A.No.488 of 2011

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