

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.03.2017
PRONOUNCED ON : 08.03.2017

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.787 of 2011
and
M.P.No.1 of 2011

P.Moorthy ...Appellant/Defendant

Vs.

A.Vairakkannu ...Respondent/Plaintiff

Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and Decree passed in A.S.No.1 of 2011 dated 25.03.2011 on the file of the Sub Court, Panrutti, reversing the judgment and decree passed in O.S.No.30 of 2002 dated 01.11.2010 on the file of the District Munsif Court, Panruti.

For Appellant : Mr.R.Gopalakrishnan

For Respondent : Mr.R.Gururaj

JUDGMENT

In this second appeal, the defendant has impugned the judgment and Decree passed in A.S.No.1 of 2011 dated 25.03.2011 on the file of the Sub Court, Panrutti, reversing the judgment and decree passed in O.S.No.30 of 2002 dated 01.11.2010 on the file of the District Munsif Court, Panruti.

2. The suit has been laid by the plaintiff for declaration and permanent injunction in respect of the "B" schedule property.

3. The plaintiff claims title to the "A" schedule property under Exs.A1 to 3. According to the plaintiff, originally, the "A" schedule property belonged to Porkilai Ammal under Ex.A1. A perusal of Ex.A1 would go to show that Porkilai Ammal had acquired the "A" schedule property under Ex.A1, particularly, the property measuring East - West 22 1/2' and North - South 150' in Grama Natham Survey No.28/1. It is the further case of

the plaintiff that a property acquired by Porkilai ammal was succeeded by his son Annamalai and further, according to the plaintiff, he had purchased the shares of Annamalai, his wife and three sons under the sale deed dated 17.08.1981 marked as Ex.A2 and also, further purchased the remaining share from the other son viz., Dhanapal under the sale deed dated 31.03.1994 marked as Ex.A3. Thus, according to the plaintiff, he had purchased the entire "A" schedule property under Exs.A2 and 3 and he is the owner of the "A" schedule property. The specific case of the plaintiff is that the "B" schedule property measuring East - West 2 1/2 ' and North - South 150' forms part of the "A" schedule property and he had purchased the same under Exs.A2 & 3 and the same had been purchased by Porkilai Ammal under Ex.A1.

4. Per contra, it is the case of the defendant that he had purchased the "B" schedule property under Ex.B1, the sale deed dated 05.11.1963.

5. Considering the pleadings put forth by the respective parties and also the evidence, it is noted that the dispute lies between the parties only as regards the "B" schedule property. As found from the judgment of the first appellate Court, it is noted that the first appellate Court on considering the boundary recitals found in the documents marked as Exs.A1 to 3 in a detailed manner identified that the "B" schedule property forms part of the "A" Schedule property and thus, held that it is only the plaintiff, who had acquired the "B" schedule property under Exs.A2 and 3. The determination of the first appellate Court that the "B" schedule property forms part of the "A" schedule property and that, it is only the plaintiff, who had purchased the same under Exs.A2 and 3 do not call for any interference. Equally, the first appellate Court has also found that under Ex.A1 Porkilai Ammal had purchased the "A" schedule property inclusive of the "B" schedule property and therefore, held that the legal heirs of Porkilai Ammal had the legal right to convey the "A" schedule property inclusive of the "B" schedule property to the plaintiff under Exs.A2 and 3.

6. In so far as this case is concerned, it is noted that the defendant,, during the course of his evidence, particularly, during the course of cross examination, has clearly admitted that the property owned by Porkilai Ammal under Ex.A1 lies to the West of the property purchased by him under Ex.B1. It is, therefore, seen that the property i.e. "A" schedule property purchased by Porkilai Ammal is situated to the West of the property acquired by the defendant under Ex.B1. That apart, the defendant has also admitted that it is only the plaintiff, who had put up thatched shed in the property situated to the West of his property and he has also admitted that the plaintiff is in

possession and enjoyment of the property measuring East - West 22 1/2' and North - South 175'. To cap it all, he has also admitted that he does not claim any right over the property purchased by the plaintiff and that, he has no objection whatsoever in the plaintiff enjoying the property acquired by him by way of Exs.A2 and 3 and he has also no objection in granting the decree in favour of the plaintiff, as regards the property acquired by him. Such being the clear and categorical admission of the defendant, in the course of his evidence, it could be seen that the plaintiff has not only established his legal entitlement to the "B" schedule property under Exs.A1 to 3 and also further buttressed his case through the admission extracted from the defendant.

7. In the light of the above position, when the plaintiff has clearly established that it is only he and his predecessor in interest have title to the "B" schedule property and that, the defendant's property is situated only to the East of the same and when the same is also admitted by the defendant, it could be seen that the trial Court has erred in rejecting the plaintiff's case on the footing that the plaintiff has not taken out a commission to identify the exact location and measurement of the "B" schedule property. As rightly held by the first appellate Court, when the title to the disputed property viz., the "B" schedule property has been clearly established by the plaintiff and when the same has also been admitted by the defendant, it is not required on the part of the plaintiff to further establish his case by taking out a commission.

8. In so far as the claim of the defendant that he has title to the "B" schedule property, it is noted by the first appellate Court that the defendant has not established his legal right over the "B" schedule property and also not established his possession and enjoyment of the same. On the other hand, the first appellate Court has, on the basis of the evidence adduced in the matter and on a correct appreciation of the same and also giving proper reasonings and conclusions upheld the plaintiff's case as regards the disputed "B" schedule property. No interference is called for in the judgment and decree of the first appellate Court upholding the plaintiff's case.

9. In support of his contentions, the counsel for the plaintiff placed reliance upon the decisions reported in AIR 2000 SUPREME COURT 2740 (Uttam Singh Dugal and Co.Ltd., V. Union Bank of India and others), AIR 1977 SUPREME COURT 1724 (Thiru John (in C.A.Nos.1895-1896 of 1974) V.Subramhamanyan (In C.A.No.1907 of 1974) V. The Returning Officer and others), AIR 1960 SUPREME COURT 100 (Narayan Bhagwantrao Gosavi Balajiwale V. Gopal Vinayak Gosavi and others) and AIR 1981 SUPREME COURT 2085 (Ramji Dayawala and Sons (P) Ltd., V. Invest import). The

principles of law enunciated in the above said decisions are taken into consideration and followed as applicable to the facts and circumstances of the present case.

In conclusion, no substantial question of law is found to be involved in this second appeal and accordingly, the second appeal fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

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Sub Assistant Registrar

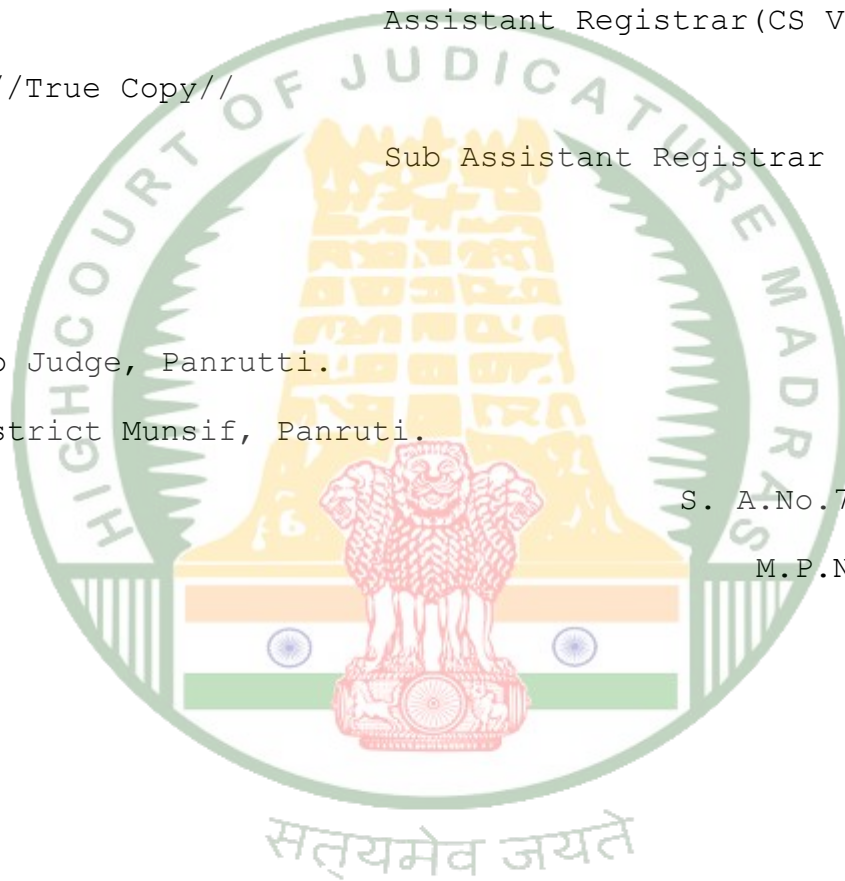
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To

1. The Sub Judge, Panrutti.
2. The District Munsif, Panruti.

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