

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 06.01.2017

Judgment Pronounced on : 03.11.2017

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEEC.M.A.Nos.57 and 58 of 2007
and CMP.Nos.1 & 1 of 2007

- 1.Nanjammal
- 2.K.S.Sivanandam
- 3.S.Devaraj
- 4.S.Kasilingam
- 5.S.Anandan
- 6.S.Ramalingam

... Appellants in both CMAs
-Vs-

- 1.K.R.Yaswanth Rao ... 1st respondent in CMA.No.57 of 2007
... Sole respondent in CMA.No.58 of 2007
- 2.Government of Tamil Nadu
Represented by the District Collector of Dharmapuri.
...2nd respondent in CMA.No.57 of 2007
- 3.The Tahsildar
Krishnagiri. ...3rd respondent in CMA.No.57 of 2007

Prayer in CMA.No.57 of 2007:- Civil Miscellaneous Appeal under Order 43 Rule 1(U) CPC against the judgment and decree of the learned Principal District Judge of Dharmapuri at Krishnagiri dated 27.01.2005 in A.S.No.38 of 2002 setting aside the judgment and decree of the learned District Munsif of Krishnagiri dated 28.6.2002 in O.S.No.299 of 1990 and remanding the suit to the trial Court.

Prayer in CMA.No.58 of 2007:- Civil Miscellaneous Appeal under Order 43 Rule 1(U) CPC against the judgment and decree of the learned Principal District Judge of Dharmapuri at Krishnagiri dated 27.01.2005 in A.S.No.39 of 2002 setting aside the judgment and decree of the learned District Munsif of Krishnagiri dated 15.03.2001 in O.S.No.75 of 1991 and remanding the suit to the trial Court.

For Appellants : Mr.NEA.Dinesh
(in both CMAs) for Mr.V.Nicholas

For Respondents :Mr.V.Raghavachari
[for R1 in CMA.No.57/2007]
[sole respondent in CMA.No.58/2007]

JUDGMENT

1. There are two prime characters: One is Yashwant Rao and the other is Subbaraya Maniager. There is one property: One comprised in S.F.No:54/6 of Nachikuppam Village, Krishnagiri Taluk having an extent of about 64 cents. Both Yashwant Rao and Subbaraya Maniager claim title to this piece of property, and trace their title to different sources. To resolve this dispute they laid independent suits against the other, *inter alia* for declaration of title. Since the plaint in one suit is the written statement in the other suit, it is better to state the respective case of the parties briefly:

2.1 **Yahswant Rao's case:** In 1919, a certain Ramachandra Rao purchased the suit property. There then took place an oral partition in his family in which the said property fell to the share of his brother Sadasiva Rao. Sadasiva Rao had two sons namely Krishnoji Rao and Vasudeva Rao and on former's death his two sons became the owners of the suit property. On 10-9-1963, Yashwant Rao, the plaintiff in O.S.No.299 of 1990 purchased the suit property from Krishnoji Rao and Vasudeva Rao. Patta was issued in the name of the plaintiff. The old patta No. is 112 and the current patta No. is 492. Plaintiff has been doing agricultural activity in the property and has also planted about 10 coconut saplings. While this being the state of affairs, Subbaraya Maniager began asserting title to the suit property. It is understood that he claims title based on a patta wrongly issued to him by the Tahsildar some time in 1983

during the UDR scheme. This was objected to by Yashwant Rao and he complained to the authorities. According to him, the Tahsildar had told Subbaraya Maniager to approach the civil court to establish his title. In this backdrop, on 30-05-1990, Subbaraya Maniager along with his men trespassed into the suit property and attempted to plough the land but his design was thwarted. Hence, ***Yashwant Rao had laid O.S.299/1990 for declaration of title and injunction against Subbaraya Maniager.***

2.2 Case of Subbaraya Maniager's case:

The suit property (which as already outlined is the same as in the earlier suit) originally belonged to one Munigan. On 22-12-1982, it was purchased by Subbaraya Maniager. Patta for the same stands in his name. While so, in *Vaikasi* (May-June), 1990, Yashwant Rao entered possession of the suit property and continues to be in possession and he laid pipeline beneath the soil. This led ***Subbaraya Maniager to file O.S.75/1991 against Yashwant Rao for declaration of title, for delivery of possession and also for mandatory injunction to remove the pipeline.***

2.3 Yashwant Rao's response to Subbaraya Maniager:

In the Written Statement in O.S.75/1991, it is pleaded that Subbaraya Maniager, though claims to have purchased the property from Munigan, it is not stated how Munigan had acquired title to the suit property. And, the sale deed under which Subbaraya Maniager claims title is a nominal one. However, earlier in his own plaint, Rao has pleaded, perhaps in anticipation, that

<http://www.judis.nic.in> Munigan has purchased a piece of property from Sadasiva Rao (father of his own vendors), but this property is in S.No:66/1 and not in 54/5.

2.4 Pleadings of the State:

In Yashwant Rao's suit, he had impleaded the Government and the Tahsildar as defendants 2 and 3. In the written statement that they have filed it is alleged that the suit property originally was a zamin property that under the Tamil Nadu Estate Abolition Act, 1948, this property had vested in the Government, and in the settlement proceedings, the suit property comprised in S.F.No:54/5 is recorded in the name of Munigan and after his sale to Subbaraya Maniager in 1982, the records were mutated to include Subbaraya Maniager as the holder.

3. During the pendency of the suits, Subbaraya Maniager died and his legal representatives were brought on record. Both the suits were tried together and evidence was recorded in O.S.299/1990 that Yashwant Rao had filed. On conclusion of trial, the learned Munsif dismissed the suit filed by Yashwant Rao and decreed the suit filed by Subbaraya Maniager.

4. Challenging the decrees passed in both the suits, yashwant Rao preferred A.S.38/2002 and A.S.39/2002. By a common judgment, the first appellate Court allowed the appeal, set aside the decrees of the court below and remanded the matter back to the trial court. The legal representatives of Subbaraya Maniager impugned the decrees of the first appellate court in these twin CMAs.

Yashwant Rao examined himself as P.W.1, one of his vendor Vasudeva Rao as

P.W.3 and has summoned certain official records more specifically Ext.A-12 SLR and marked the same through a staff of the Collectorate. The other side examined Sivanandam, one of the son of Subbaraya Maniager as D.W.1 besides two other witnesses.

5.2 From the stand point of the pleadings of the parties, it is the case of Yashwant Rao that the suit property originally belonged to one Chennappa Chetty, that under Ext.A-2, sale deed dated 29.7.1919, Chennappa Chetty sold the property to a certain Ramachandra Rao, that Ramachandra Rao had a brother named Sadasiva Rao, that on an oral partition between Ramachandra Rao and Sadasiva Rao, the suit property came to be allotted to the share of Sadasiva Rao and that under Ext.A-1, sale deed dated 10.9.1963, the suit property was sold by Sadasiva Rao's sons Krishnoji Rao and Vasudeva Rao to the plaintiff. According to Subbaraya Maniager, the property belonged to one Sangili Munigan, from whom he had purchased the property. It is important to state that he has not pleaded under what title Munigan became the owner of the property. The State, which is arrayed as the second defendant in O.S.No.299/1990 filed by Yashwant Rao has pleaded that pursuant to the abolition of estates under the Tamil Nadu Estate Abolition Act, 1948 and settlement proceedings that took thereunder, the suit property was registered in the name of Munigan.

5.3 These are the basic facts on the foundation of which the decision in the suit must be approached. The trial Court considered the materials before it and dismissed the suit filed by Yashwant Rao and decreed the suit filed by Subbaraya Maniager. Its reasoning are :

- A reading of Ext.A-2, dated 29.7.1919, does not disclose that the suit property was included in it.
- The plaintiff has summoned the production of Ext.A-12, SLR, which shows that Sangili Munigan's name has been entered in the SLR even in the year 1957, that Yeshwant Rao has purchased the property only in the year 1963 and that at no time, till the filing of the suit, Yashwant Rao has challenged the wrong entry in the SLR. Even in the UDR, only Munigan's name was included which implies Yashwant Rao has never objected to this.
- Ext.B-3 is a land tax receipt and was issued in the name of Munigan. Yashwant Rao was a Village *Karnam* and he had collected the tax and issued this.
- Yashwant Rao has not produced any documents to show that his vendors Krishnoji and Vasudeva Rao had held the suit property to convey title to him.

The trial Court appeared to have considered that there is preponderating

probability indicating that Subbaraya Maniager had better title than Yashwant Rao and accordingly arrived at the decision as indicated above.

5.4 Challenging the same, Yashwant Rao preferred two appeals against both the decrees passed in both the suits. They are A.S.No.38/2002 and A.S.No.39/2002. Allowing these appeals and remanding the matter to the trial Court, the learned District Judge, has done a commendable analysis of Ext.B-7, settlement register in paragraph No.5 of the judgment, and explained how Survey No.54 has been restructured in the settlement proceedings that took place under the Tamil Nadu Estate Abolition Act. He finds that old S.F.No.54/1, S.F.No.54/2 and S.F.No.54/3 had a combined extent of 9.43 acres and this has been divided into S.F.No.54/4 to S.F.No.54/6 under the aforesaid settlement. He also noted old Survey No.54/2 and 1.32 acres carved out of old Survey No.54/3 were clubbed together and assigned Survey No.54/1 under the settlement proceedings. He proceeds to state that old Suvey No.54/1 is divided into 3 plots of 1.18 acres, 0.64 acres and 0.34 acres and they have been respectively assigned Survey Nos.54/4, 54/5 and 54/6. He has also entered a categorical finding that inasmuch as these sub divisions have taken place only under the settlement proceedings under the Tamil Nadu Estate Abolition Act, there is no possibility of referring the suit property in Ext.A-2 sale deed dated in 1919 and thus exposed the fallacy in the reasoning of the trial Court.

5.5 In the end, the first appellate Court has directed the trial Court to undertake to correlate how the S.F.Nos. 54/1 to 54/6 that have come into

being after the settlement proceedings with the pre-existing Old Survey Nos.54/1, 54/2, 54/3 and then to decide the issues raised by the parties.

6. Challenging this order of remand passed, the heirs of Subbaraya Maniager have come forward with these CMAs.

7. The learned counsel for the appellant argued that the learned District Judge has raised the issues which even the respondent has not raised, and when the entire evidence is before the Court, it is not appropriate for the first appellate Court to remand the matter. He took this Court through the evidence available in support of it. The learned counsel for the respondent however tread along the route, the first appellate Court has travelled and justified the order of remand.

8. On weighing the rival contention, this Court primarily finds considerable merit in the Ext.B-7, SLR, relied on extensively by the first appellate court for laying the foundation for its reasoning. The said document was rightly highlighted by the learned District Judge, and it shows that S.F.No:54/1 to 3 that existed prior to the settlement had undergone a transformation in terms of survey field post settlement. Since the area underwent a transformation in terms of survey field, it is essential to ascertain where exactly the property that the rival parties contest are located. Secondly, Sangili Munigan under whom Subbaraya Maniager claims title was said to have been assigned patta under the settlement proceedings that took place pursuant to the Tamil Nadu Estate Abolition Act. This has been pleaded by the State. The proceedings of the said settlement and the patta so assigned are not part of the record, which

may also have a bearing in appreciating where the properties that both the parties claim are located. Is it a case of two parties claiming the same piece of property or is it a case of one of the parties wrongly identifying the property that he has purchased? The perusal of the evidence on record is not adequate to resolve this issue. Necessarily, this has to be investigated and to this extent the decision of the first appellate Court is sustainable. Adding to this, this Court directs the trial Court to direct the parties to make available the settlement proceedings, where under the patta has been granted to Munigan or such other document that might precisely indicate the exact property assigned to Munigan for resolving the points raised in the judgment of the first appellate Court. Parties may also be given such necessary opportunity to produce any additional evidence but only for the purpose of enabling the court to decide the points indicated and no more.

9. In the result, this Court finds no merits in both the appeals and hence they are dismissed. The trial court is resolved to dispose of the matter within a period of six months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

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03.11.2017

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Index : Yes / No

Internet : Yes / No

N.SESHASAYEE,J.,

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To:

- 1.The Principal District Judge
Dharmapuri at Krishnagiri.
- 2.The District Munsif
Krishnagiri.
- 3.The District Collector
Dharmapuri.
- 4.The Tahsildar
Krishnagiri.
- 5.The Section Officer
VR Section,
High Court, Madras.

Pre-delivery Judgment in
C.M.A.No.57 & 58 of 2007

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