



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :14.12.2017

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THE HONOURABLE MR.JUSTICE S.BASKARAN

S.A. (MD) .No.475 of 2014

and

M.P. (MD) .No.1 of 2014

Aathilingam ... Appellant/Respondent/Defendant

Vs.

S.Vaikundalekshmi ... Respondent/Appellant/Plaintiff

Prayer: This Second Appeal is filed under Section 100 of Civil Procedure Code, against the Judgment and Decree dated 06.01.2014 passed by the Principal Sub Court, Nagercoil, in A.S.No.70 of 2013, reversing the judgment and decree passed in O.S.No.409 of 2009 on the file of the II Additional District Munsif Court, Nagercoil, dated 10.07.2013.

For Appellant : Mr.R.Manimaran

For Respondent : Mr.V.Meenakshi Sundaram

JUDGMENT

Challenging the Judgment and Decree dated 06.01.2014 passed by the Principal Sub Court, Nagercoil, in A.S.No.70 of 2013, reversing the judgment and decree passed in O.S.No.409 of 2009 by the II Additional District Munsif Court, Nagercoil, dated 10.07.2013, the present second appeal has been filed. The defendant, who lost before the first appellate court is the appellant herein.

2.The parties are hereinafter referred to as they were arrayed in the trial court.

3.The respondent/plaintiff filed a suit in O.S.No.409 of 2009 on the file of the II Additional District Munsif Court, Nagercoil, against the appellant/defendant herein praying for declaration that the suit property belongs to him and to grant consequential permanent injunction restraining the appellant/defendant from interfering with peaceful possession and ~~the suit property~~ suit property. The case of the plaintiff is that the plaint schedule property is comprised in old Survey No.1027 of Marungoor Village only having 18 cents which is correlated to



resurvey No.198/12 of Marungoor village. The plaint schedule property originally belongs to Subbaiah Nadar, who is the father of the plaintiff. On 13.06.1979, Subbaiah Nadar executed a registered will in favour of the plaintiff conveying the plaint schedule property and other properties. In the year 1984, Subbaiah Nadar died. After his death, the plaint schedule property derived on plaintiff as per the registered will dated 13.06.1979. The plaintiff is in possession and enjoyment of the plaint schedule property. The plaintiff filed an injunction suit as O.S.No.1560/1985 against the present defendant Aathilingam as the defendant. The present plaint schedule property is item No.3 in the suit O.S.No.1560/1985. The present defendant as plaintiff has filed a suit in O.S.No.1130/1987 before the Additional District Munsif Court, Nagercoil and the suit was dismissed for default on 10.01.1997. The suit in O.S.No.1560/1985 was decreed on 20.10.2000. The boundaries, extent, the description and old survey number are correctly mentioned in the plaint O.S.No.1560/1985 and the resurvey number in the plaint in O.S.No.1560/1982 is wrongly mentioned as 199/11 of Marungoor village instead of resurvey No.199/12 of Marungoor village. Hence this suit.

4.On the other hand, opposing the same, the defendant filed a written statement and additional written statement contending that the original owner Subbiah Nadar never executed a registered will in favour of the plaintiff. After the death of original owner Subbiah Nadar, the plaintiff's mother and brother by name Sivakalaperumal effected an oral partition of the properties left behind and in pursuant to oral partition, all the three executed a registered sale of plaint schedule property and other properties in favour of this defendant dated 12.11.1984 and Sivakalaperumal executed another sale deed independently on 13.11.1984. In O.S.No.1560/1985, the resurvey has been wrongly described as 119/11 instead of 199/12 is denied. Resurvey No.198/11 and 198/12 are also owned by this defendant and no declaration or correction cannot be done in the village records. The plaintiff is not entitled to get any relief as asked for. Hence the defendant prays for dismissal of the suit.

5.The trial court, on perusal of the pleadings, has framed the following issues:

- "1.Whether the plaintiff is entitled to a decree of declaration as prayed for?
- 2.Whether the plaintiff entitled to a decree for consequential injunction as prayed for?
- 3.What other relief?"

6.During the course of trial, the plaintiff examined ~~Exs.A.1 to A.8~~ and produced Exs.A.1 to A.8. On the defendant side, the two witnesses were examined as D.W.1 and D.W.2 and produced Exs.B.1 to B.4.



7.The trial court, on consideration of oral and documentary evidence, found that the defendant has been in possession and enjoyment over the suit property and thus refused to grant the relief of permanent injunction to the plaintiff and accordingly, dismissed the suit.

8.Aggrrieved over the dismissal of the suit, the plaintiff preferred an appeal in A.S.No.70 of 2013 on the file of the Principal Subordinate Court, Nagercoil.

9.The first Appellate court, on perusal of the pleadings, has framed the following issues:

1.Whether the plaintiff is having right and title over the suit property?

2.Whether the suit property is properly identified?

3.Whether the resurvey No.198/12 is corrected to old survey No.1027?

4.Whether the plaintiff is entitled to get the decree of declaration and permanent injunction as asked for in the suit?

5.To what relief the appellant is entitled to?

10. The lower appellate court, on re-appreciation of oral and documentary evidence found that the plaintiff is entitled to get the decree of declaration and permanent injunction in the suit and decreed the suit as prayed for and allowed the appeal, by setting aside the judgment and decree of the trial court.

11.Aggrrieved over the judgment and decree passed by the first appellate court, the defendant has preferred the present second appeal.

12.At the time of admitting the second appeal, the following substantial questions of law have been formulated by this court for consideration:

1.Whether the 1st Appellate Court is correct in coming to the conclusion that the plaintiff discharged her burden of proof in correlating the plaint schedule property with that of the property covered under the title deed when no competent person to speak about correlation of survey numbers had been examined?

2.Whether the 1st Appellate Court is correct in coming to a conclusion that the survey number of the suit property had been wrongly described under Ex.A1 and Ex.A2 and thus insufficient and required evidence and thus 1st Appellate Court had not committed an error without any available evidence on the basis of public document?"



13.Today, when the matter is taken up for final hearing, both the counsels are present and represented that the matter has been settled between the parties and filed a joint compromise memo. Both parties were present before this court and they were identified by their respective counsel. The parties consented and stated that they have entered into a compromise and signed in the compromise memo and admitted the contents of the same. In the compromise memo, it is stated as follows:

"4.It is further submit that as per the compromise terms, the respondent herein had agreed to pass a decree that the entire plaint schedule property belongs to appellant and respondent has no right over the suit schedule property. Both parties agreed that the second appeal may be allowed by restoring the trial court judgment and decree. There will be no order as to costs. It is agreed that the respondent herein received Rs.3,00,000/- (Rupees three lakhs only) from the appellant herein in view of settlement."

14.In such circumstances, considering the fact that the matter has been settled between the parties and they have agreed that the entire suit property belongs to the appellant/defendant and the respondent is having no title or interest on the property, the same is recorded. The Joint compromise memo will form part of the judgment.

15.In view of the above compromise reached between the parties, the Second Appeal is allowed accordingly, by setting aside the judgment and decree passed by the Principal Sub Court, Nagercoil, in A.S.No.70 of 2013, dated 06.01.2014 and the judgment and decree passed in O.S.No.409 of 2009 by the II Additional District Munsif Court, Nagercoil, dated 10.07.2013 is restored. No costs.

Sd/-

Assistant Registrar (CS-III)

/True copy/

Sub Assistant Registrar

ENCL:Xerox Copy of Compromise Memo

To

1. The Principal Subordinate Judge , Nagercoil.

2.The II Additional District Munsif, Nagercoil.

+1cc to Mr.R.MANIMARAN,Advocate,SR.92892

+1cc to Mr.D.NALLATHAMBI,Advocate,SR. 92951

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