



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAISWAMY

S.A. (MD) Nos.738 and 739 of 2016

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S.A. (MD) No.738 of 2016

Rosammal

.. Appellant//1st Defendant

Vs.

1.Sreedevi Amma

..1st Respondent/Plaintiff

2.Yesudhas

..2nd Respondents/2nd Defendant

Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code against the Decree and Judgment dated 13.02.2007 made in A.S.No.96 of 2005 on the file of the Subordinate Court, Kuzhithurai confirming the decree and judgment, dated 20.06.2005 made in O.S.No.681 of 1989, on the file of II Additional District Munsif Court, Kuzhithurai.

S.A. (MD) No.739 of 2016

Rosammal

.. Appellant/plaintiff

Vs.

1.Sreedevi Amma

2.Yesudhas

3. The State of Tamil Nadu,
represented by the District Collector,
Nagercoil, Kanyakumrai District.

4. The Tahsildar,
Vilavancode Taluk,
Kuzhithurai,
Kanyakumari District.

.. Respondents/Defendants

Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code against the Decree and Judgment dated 13.02.2007 made in A.S.No.97 of 2005, on the file of the Subordinate Judge, Kuzhithurai confirming the decree and judgment, dated 20.06.2005 made in O.S.No.175 of 1994, on the file of II Additional District Munsif Court, Kuzhithurai.

For Appellant
in both appeals
For Respondents
in both appeals

: Mr.P.Thiyagarajan

: Mr.K.N.Thampi
for R.2

: Mr.K.Sreekumaran Nair
for R.1

COMMON JUDGMENT

S.A.(MD)No.738 of 2016 arises against the judgment and decree passed in A.S.No.96 of 2005, on the file of the Subordinate Court, Kuzhithurai confirming the judgment and decree passed in O.S.No.681 of 1989, on the file of II Additional District Munsif Court, Kuzhithurai. The first defendant is the appellant. The first respondent is the plaintiff and the other respondents are the defendants. The plaintiff filed the suit in O.S.No.681 of 1989 for declaration, recovery of possession and for consequential injunction and for putting up a boundary.

2. S.A.(MD)No.739 of 2016 arises against the judgment and decree passed in A.S.No.97 of 2005, on the file of the Subordinate Court, Kuzhithurai confirming the judgment and decree passed in O.S.No.175 of 1994, on the file of II Additional District Munsif Court, Kuzhithurai. The plaintiff is the appellant and the respondents were defendants in the suit. The plaintiff filed the suit in O.S.No.173 of 1994 for declaration, recovery of possession and for other reliefs.

3. The trial Court as well as the lower Appellate Court disposed of both the suits and both the appeals by common judgments. Hence, the above two Second Appeals are also taken up together and disposed of by this common judgment.

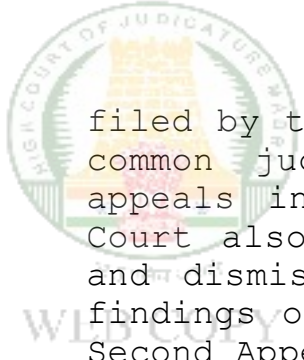
4. The common facts necessary for disposal of the Second Appeals are as follows:

(i) The plaint "A" schedule property and "B" schedule property along with other properties originally belonged to Mukkapazhanji Veedu and also Kumbampazhanji Veedu. The members of Mukkapazhanji Veedu entered into partition on 12.08.1957. At that time, the plaintiff was a minor and she was allotted to "A" schedule property along with other properties mentioned as "B" schedule. After the plaintiff became major, she took possession and having enjoyment of "A" schedule property. The "B" schedule property belongs to the first defendant. The defendants 2 and 3 are the owners of the property lying on the west and south of plaint "A" schedule property. There is no proper boundary between "A" and "B" schedule properties and lack of proper boundary causes quarrels between the parties.

(ii) The second defendant is in exclusive possession of R.S.538/1B. The respondents denied the case of the appellant. The first respondent contended that the appellant has no manner of title or possession over the suit property and is not entitled to get any relief in the suit.

<https://hcservices.ecourts.gov.in/hcservices/>

(iii) After trial, the trial Court decreed the suit filed by the first respondent in O.S.No.681 of 1989 and dismissed the suit



filed by the appellant in O.S.No.175 of 1994. Aggrieved over the common judgment of the trial Court, the appellant preferred appeals in A.S. Nos.96 and 97 of 2005 and the lower Appellate Court also confirmed the judgment and decree of the trial Court and dismissed both the appeals. Aggrieved over the concurrent findings of the Courts below, the appellants have filed the above Second Appeals.

5. Heard both sides.

6. The appellant has raised the following Substantial Questions of Law in the Second Appeals.

"A. Whether the first Appellate Court is right in dismissing the appela without considering the question of non-joinder of necessary party?

B. Whether the authorities have got jurisdiction to alter the measurement after finalization of resurvey?

C. Whether the lower appellate Court is correct to accept the alternation made in S.R.No.2429/ULC/75, dated 13.08.1975 by Assistant Settlement Officer without the notice to the necessary concerned parties?

D. Is the learned Subordinate Judge right in confirming the judgment and decree of the learned District Munsif without assigning any reasons as per Section 96 of the Civil Procedure Code?"

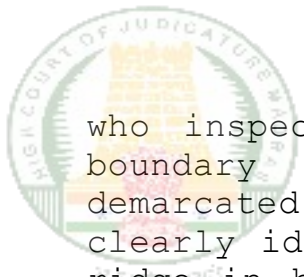
7. The appellants have also raised the following Additional Substantial Questions of Law in the Second Appeals:

"1.Whether the lower Appellate Court is right in confirming the judgment and decree of the trial Court, when it is found that the mandatory notice under Section 9(2) of the Tamil Nadu Survey and Boundaries Act, 1923 has not been served on the appellant and that there is no evidence that the notice under Section 9(2) was served on the appellant, who is adversely affected by the modification of survey entries?

2.Whether the Courts below right in deciding the suit filed for the declaration of title, solely on the basis of revenue entries, ignoring the title deeds produced to substantiate their respective claim over the suit schedule properties?

3.Is not the boundaries fixed by the Advocate Commissioner, solely on the basis of re-survey plans, legally vitiated, since the Advocate Commissioner failed to measure the suit schedule properties on the basis of title deeds of the respective parties and to fix the boundaries?"

<https://hcservices.courts.tn.nic.in/> 8. Though the appellants contended that there is no boundary fixed for "A" and "B" schedule properties and therefore, the dispute between the parties had arisen, the Advocate Commissioner



who inspected the suit property, in his report found that the boundary ridge in between the two properties are clearly demarcated as "ABCD" in Ex.C.4. The Advocate Commissioner has clearly identified the entire "A" schedule property and fixed the ridge in between the "A" and "B" schedule properties. In these circumstances, the Courts below rightly came to the conclusion that the demarcation of boundary as claimed by the plaintiff in O.S.No.175 of 1994 will not arise. D.W.1 in O.S. No.681 of 1989, who is the husband of the first defendant, admitted that the plaintiff is entitled to 74 ½ Ares of land and that the said extent is in her possession. Further D.W.1 has admitted that the re-survey plan is correct.

9. It is pertinent to note that the first respondent preferred a revision before the Assistant Settlement Officer, which is marked as EX.A.6. The first respondent has made the Assistant Collector as defendant in the suit for the purpose of issuance of patta in respect of her land. The Advocate Commissioner was also examined as witness in O.S.No.175 of 1994 and he also deposed that in S.No.538/2, there was no difference in the measurement. The Firca Surveyor was also examined as P.W.2 in O.S.No.681 of 1989 and he also supported the case of the first respondent. Taking into consideration the oral and documentary evidences, the Courts below rightly decreed the suit in O.S.No.681 of 1989 and dismissed the suit in O.S.No.175 of 1994. I do not find any error or irregularity in the concurrent findings of the Courts below.

10. In these circumstances, I do not find any ground much less any substantial question of law to interfere with the concurrent findings of the Courts below. The Second Appeals are liable to be dismissed. Accordingly, the same is dismissed. There shall be no order as to costs.

Sd/-

Assistant Registrar(C)

/True Copy/

Sub Assistant Registrar

To

1. The Subordinate Judge, Kuzhithurai.
 2. II Additional District Munsif, Kuzhithurai.
- +1cc to M/s N.Krishnaveni, Advocate, Sr No.7048
+1cc to M/s K.Sree Kumaran Nair, Advocate, Sr No.6489
+2cc to M/s K.N.Thampi, Advocate, Sr Nos.6456, 6457

MS-PM-PN/21.2.2017/4P-7c

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