

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2018

CORAM :

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

S.A.No.134 of 2018  
and  
C.M.P.No.3188 of 2018

1. Nagammal  
2. Krishnasami  
3. Manoharan  
4. Raja ... Appellants/Plaintiffs 2-5

versus

1. Ganesan  
2. Oor Gounder, Ponnusamy  
3. R. Narayansamy  
4. P. Narayanan  
5. T. Govindasami  
6. A. Murugan  
7. Krubanandan ... Respondents/Defendants

(The 6<sup>th</sup> respondent has remained exparte before the Lower Appellate Court. Hence, notice in the second appeal may not be necessary to the 6<sup>th</sup> respondent).

Prayer: This second appeal is filed under Section 100 of C.P.C. against the Judgment and Decree dated 17.03.2010 in A.S.No.14 of 2007 on the file of the Principal Subordinate Judge, Krishnagiri, confirming the judgment and decree in O.S.No.43 of 2001 dated 08.11.2006 on the file of the District Munsif Court, Pochampalli.

For Appellants : Mr.D.Shivakumaran

J U D G M E N T

Aggrieved by the unanimous decisions of the Courts below, the plaintiffs 2 to 5 have preferred the above appeal. The suit was filed by the plaintiffs for declaration of title to the suit property and for permanent injunction.

2. According to the plaintiffs, the suit property was originally purchased by one Murugathammal in the year 1945 from whom the first plaintiff had purchased it on 10.12.1950. From the date of purchase, the plaintiffs claimed to be in possession and enjoyment of the same by paying Tax. One Shanmugam and Saraswathi, who are the adjacent site owners,

tried to trespass into the suit property. Hence, the plaintiffs filed O.S.No.326 of 1990 against them and the suit was decreed. During the pendency of the suit, there was a survey conducted and the demarcation was wrongly done. The A, B, C & D portion of the suit property declared to be a pathway. Hence, the instant suit has been filed by the plaintiffs.

3. The fourth defendant had filed written statement and other defendants remained exparte in the suit. It is stated by him that as per the UDR survey, the property was subdivided and A, B, C & D marked portion declared to be the pathway. Suppressing the said fact the plaintiffs tried to claim more extent by filing the suit.

4. Before the Trial Court, the plaintiffs examined P.Ws.1 to 3 and marked Exs.A.1 to A.26. On the side of the defendants, D.Ws.1 and 2 were examined and Exs.B.1 to B.6 were marked. Exs.C.1 to C.3 were also marked before the trial Court.

5. After considering the documents and evidence, the Courts below had dismissed the suit. It is the findings of the Appellate Court that the plaintiffs had not produced any relevant document to establish their title about the entire extent mentioned in the sale after the sub division. Before the Trial Court, a Commissioner was also appointed to measure the property with the help of the surveyor. The said report were also not objected to by the plaintiffs. When the dispute is only with respect to measurements of the suit property, the plaintiffs should have established the same by measuring the adjacent properties also. In the absence of the same, relying on the revenue records and the survey numbers after subdivision, the plaintiffs were non-suited by the Courts below. This Court is unable to persuade itself to consider the case of the plaintiffs in the absence of any evidence on record.

6. In the absence of any question of law, much less substantial question of law, and also when there is no infirmity in the findings of the Courts below, this Court is not inclined to interfere with the judgment of the Courts below.

7. In the result, the second appeal is dismissed, confirming the Judgment and Decree dated 17.03.2010 passed by the learned Principal Subordinate Judge, Krishnagiri in A.S.No.14 of 2007 and the Judgment and Decree dated 08.11.2006 passed by the learned District Munsif, Pochampalli in

O.S.No.43 of 2001. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

rsi

To

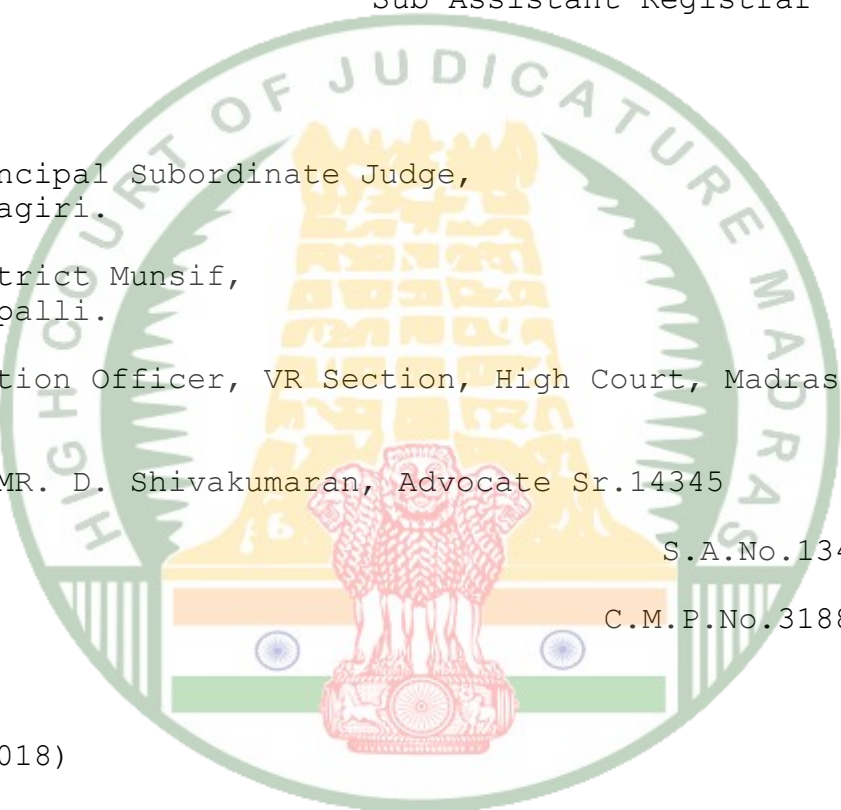
1. The Principal Subordinate Judge,  
Krishnagiri.
2. The District Munsif,  
Pochampalli.
3. The Section Officer, VR Section, High Court, Madras.  
(2-copies)
- + 1 cc to MR. D. Shivakumaran, Advocate Sr.14345

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and

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NMI (CO)  
EU(03/04/2018)

The seal of the High Court of Madras is a circular emblem. It features a central yellow temple gopuram (tower) with a red lion capital on top. Below the gopuram is a red elephant capital. The entire emblem is set against a green background with a white border. The words "HIGH COURT OF JUDICATURE MADRAS" are written in a circular path around the central emblem. At the bottom of the seal, the Sanskrit motto "सत्यमेव जयते" (Satyameva Jayate) is inscribed in Devanagari script.

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