

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.12.2018

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

S.A.No.1293 of 2000
and
C.M.P.No.12357 of 2000

Murugesu Gounder ..Appellant/1st Defendant
Versus

1.Valliammal
2.Shanmugam
3.Vennila
4.Tamilselvi
5.Chinnathambi ..Respondents/Plaintiffs/ 2nd Defendant

PRAYER:This Second Appeal has been filed under Section 100 of C.P.C., against the judgment and decree dated 15.03.2000, on the file of the learned Additional District Judge, Tiruvannamalai passed in A.S.No.20 of 1999 confirming the judgment and decree of the Court of the second Additional District Munsif, Tiruvannamalai dated 21.01.1999 passed in O.S.No.233 of 1985 and pray that the same may be set aside.

For Appellant :: Mr.C.Samivel

For R1 to R3 :: Mr.K.R.B.Dhaaranee
for Mr.T.R.Rajaraman

ORDER

The first defendant in O.S.No.233 of 1985 on the file of the second Additional District Munsif Court, Tiruvannamalai is the appellant herein.

2. The suit in O.S.No.235 of 1985 had been filed originally by Govindasamy against two defendants Murugesu Gounder and Chinnathambi. The suit was filed for declaration of title and for Permanent Injunction to protect possession. The suit property was land in Survey No.28/2-0.32 cents, re-survey No.48/2-0.13.0 hectares in Nariyamangalam village, Keezpennathur, Tiruvannamalai District.

3. The plaintiff claimed in the suit that there was a oral partition by the father of the plaintiff/defendant in the

year 1973. Subsequently, each one of them were in separate possession and enjoyment of the respective shares. The plaintiff and the second defendant have entered into an exchange deed on 21.10.1984. Subsequently, the second defendant had sold his portion to the first defendant by way of sale deed which had been marked during the trial as Exhibit B1. Under Exhibit B1, 24 1/2 cents were sold for a sum of Rs.2800/-. However, even according to the document, he had title to an extent of 10 1/2 cents only.

4. Both the trial Court and the First Appellate Court, agreed with the contention of the plaintiff and granted declaration of title and injunction. The first defendant is the appellant before this Court. It must also been mentioned that the plaintiff died and the legal representatives have been brought on record and they are respondents 1 to 4. The second defendant is the respondent No.5.

5. In view of the fact that both the Courts below have consistently and concurrently found that the plaintiffs are entitled the declaration of title, it will not be possible for this Court to interfere on the issue of fact. However, the learned counsel for the appellant stated that the suit is not maintainable, since no specific prayer had been sought to set aside Exhibit B1. As on date, Exhibit B1 is a document which has not been set aside by the Court of law. Consequently, even though the appeal is dismissed, the appellant herein as the first defendant in the suit, is at liberty to assert his title on the basis of Exhibit B1 by way of separate suit.

6. With that observations, this Second Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

//True copy//

Sub Assistant Registrar

nvi

To

1. The Additional District Judge, Tiruvannamalai

2. The second Additional District Munsif, Tiruvannamalai

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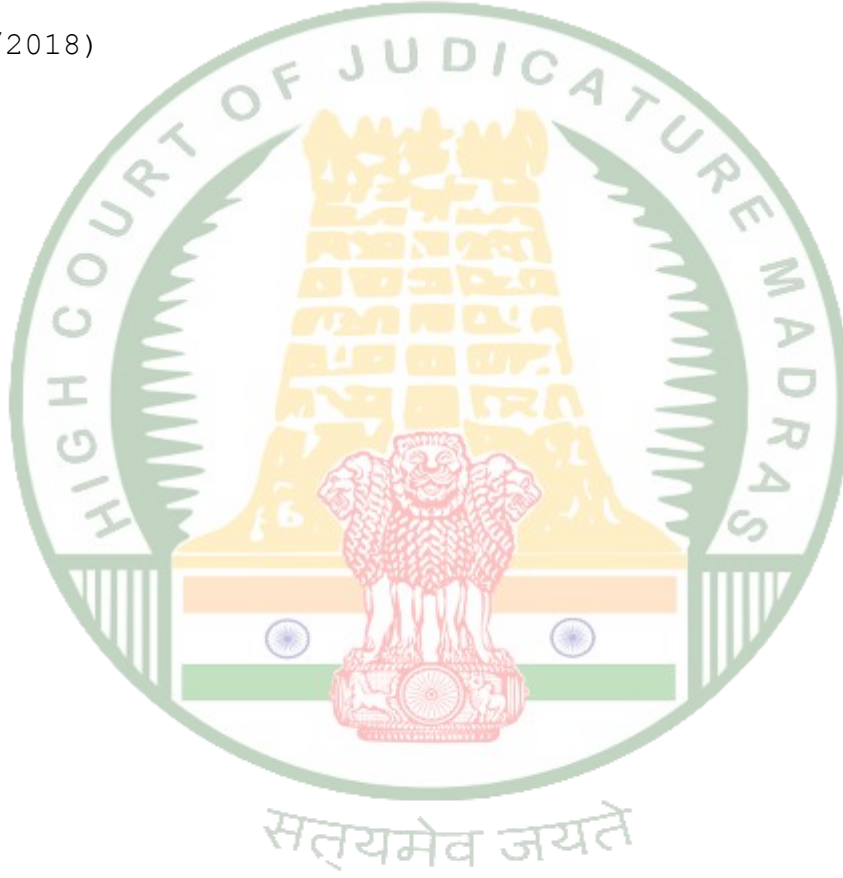
The Section Officer, VR Section, High Court, Madras-104.

+1cc to Mr.C.Samivel, Advocate SR.No.83272

S.A.No.1293 of 2000 and
C.M.P.No.12357 of 2000

RK (CO)

GMV (24/12/2018)



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