

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 30.11.2018

CORAM:

The Hon'ble Mr.Justice N.SESHASAYEE

S.A.No.10 of 2008

Subramaniya Pillai

... Appellant/Defendant

Vs.

1.Smt.Annammal

... 1st Respondent/Plaintiff

2.Chellammal

3.Arumugham

4.Namachivayam

5.Kanakasabai

6.Smt.Lakshmi

7.Arul

8.Smt.Kunjammal

(R2 to 8 set exparte before the Trial Court and Appellate Court. Hence, they are given up in this S.A.) ... 2nd to 8th Respondents/
3rd to 9th Defendants

Prayer:- Second Appeal filed under Section 100 of Civil Procedure Code against the Judgment and Decree in A.S.No.48 of 2005 dated 31.10.2005 on the file of the Additional Sub Judge, Nagapattinam, confirming the Judgement and Decree in O.S.No.59 of 2004 dated 10.02.2005 on the file of District Munsif, Nagapattinam.

For Appellant : Mr.K.V.Babu

For Respondents : Mr.T.K.Bhaskar for R1

: R2 to R8 - given up

JUDGMENT

1. The defendant who lost successively before the Courts below have preferred this appeal. The appeal is yet to be admitted. Notice however, was ordered and the contesting respondent had

entered appearance. Parties would be referred to by their rank before the trial court.

2. The case of the plaintiff is that the suit property originally belonged to one Venkatachalam Pillai and he had obtained the same under an Exchange Deed, dated 11.12.1929 (marked Ext.A.1), that Venkatachalam Pillai died without an issue, consequent to which, his brother Kollimalai Pillai succeeded to the said property, and on whose death, the plaintiff succeeded to the property as his daughter. The suit property is described as a plot of 12 cents in Survey No.74/16 with a tile-roofed house bearing door No.5/45A. As the plaintiff faced threat to her title from the defendant, she laid the suit for declaration of her title to the property.

3. The defendant claims right to a property that lies to the east of the suit property and it is comprised in Survey No.74/15 wherein he has a house bearing door No.5/56. As per their written statement, Survey No.74/15 has an extent of 23 cents, that this property originally belonged to one Ammini Ammal, that Ammini Ammal did not have an issue and therefore, she brought up one Uthirapathi, her nephew, as her foster son, that Uthirapathi came to inherit the property of Ammini Ammal. Subsequently, Uthirapathi married defendant's sister Saraswathi Ammal. Be that as it may, Vide Ext.A-2 sale deed dated 11.08.1971, the defendant has purchased the property comprised in Survey No.74/15 from Saraswathi Ammal. The property covered under Ext.A-2 is said to have an extent of 23 cents.

4. The matter went for trial and both sides adduced both oral and documentary evidence. The trial Court relied heavily on Ext.B-1 and B-2 and analysed Ext.B.1/Paimash Register and Ext.B.4, the re-survey register. Its analysis is tabulated as follows:

Paimash Register (Ext.B.1)		Re-Survey Register (Ext.B.3)	
Survey No.	Extent	Survey No.	Extent
77/R	8	74/16	12
77/Q	23	74/15	18

The above analysis would indicate that as per the re-survey and the register prepared around 1924, ReSurvey No.74/16 is

correlated to Paimash 77/R, and stated to have an extent of 12 cents, whereas, R.Sy.No.74/15, in which the defendant makes a claim, is seen correlated to Paimash No.77/Q. In this case, the extent in Paimash 77/Q was reduced from 23 cents to 18 cents.

5. Now, the Exchange Deed (Ext.A1) was executed subsequent to the re-survey and hence, the same deals with 12 cents. The present attempt of the defendant appears to be that by virtue of Ext.A-2 executed in the year 1971, several years after re-survey and preparation of Ext.B-4 Re-Survey Register, he wants to fall back on the extent as provided in Paimash 77/Q.

6. Under these circumstances, the trial Court has justly required the defendant to establish how Ammini Ammal, who according to the defendant was the original owner of the property in Survey No.74/15 was entitled to 23 cents. This apparently has not been done. And, inasmuch as the defendant was not able to establish that his predecessors in title were entitled to anything more than 18 cents in Survey No.74/15, the trial Court rejected the defence, and since the plaintiff claims title exclusively within the adjacent survey number in S.No:74/16 in which the defendant does not make a claim, the trial Court has justly decreed the suit. The same was confirmed by the first Appellate Court.

7. Before this Court, the learned counsel for the defendant/appellant vehemently submitted that if at all there was any error in preparing re-survey register and the Paimash Register, the trial Court ought to have held that remaining 4 to 5 cents in Paimash No.77/Q was wrongly included in Survey No.74/16. The said argument does not carry conviction since at no time, the defendant could establish that the 5 cents that differentiates the extent in Survey Nos.74/15 and 74/16, actually lie within Survey No.74/16. Even assuming that there is an error in re-survey, then the the predecessors-in-title of the defendant ought to have moved the appropriate authorities at the appropriate time. That was not done. This apart, the said 5 cents which according to the defendant/appellant ought to have been in Survey No.74/15 need not necessarily be included in Survey No.74/16 that lie in the eastern side, but may be included in any of the plots of lands on the other sides. At any rate, the claim itself is a stale claim, since what is sought to be achieved by instituting the suit in 2004 is something to do with an alleged error in resurvey and settlement that had taken place some 80 years ago.

8. To conclude, this Court finds that the efforts of the defendant appears to be over ambitious, if not adventurous, and this court finds that there exists no substantial questions of law for it to address. Consequently, this Court finds no merit in the appeal and the same is dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

msv/tsg

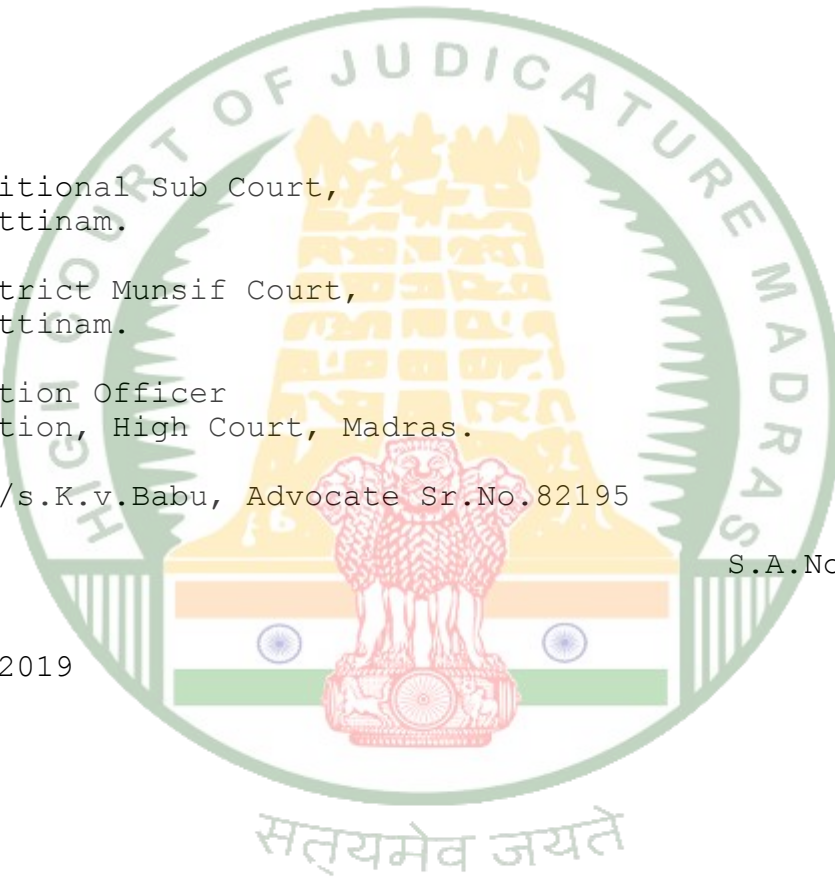
To:

1. The Additional Sub Court,
Nagapattinam.
2. The District Munsif Court,
Nagapattinam.
3. The Section Officer
VR Section, High Court, Madras.

+1 cc to M/s.K.v.Babu, Advocate Sr.No.82195

S.A.No.10 of 2008

CNR(CO)
CSL/01.03.2019



WEB COPY