

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.12.2018

CORAM

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

S.A.Nos.84 and 85 of 2008
and
M.P.No.1 of 2008

Nagammal ...Appellant in both Appeals

versus

1. Nachiappa Gounder ... Sole Respondent in S.A.No.84 of 2008
& 1st Respondent in S.A.No.85 of 2008

2. Muthu

3. The Tahsildar,
Mettur.

4. The District Collector,
Salem.

... Respondents 2 to 4 in S.A.No.85 of 2008

Prayer in both Second Appeals: Second Appeals are filed under Section 100 of code of Civil Procedure to against the decree and judgment dated 24.11.2005 passed in A.S.Nos.37 and 38 of 2005 respectively by the learned Subordinate Judge at Mettur, confirming the decree and judgment dated 23.12.2003 passed by the learned District Munsif, Mettur in O.S.Nos.182 and 116 of 1998 respectively.

For Appellant
(in both S.As.) : Mr.T.Sundar Rajan

For Respondents : Mr.A.Sundaravadhanan [R1]
(in both S.As) Mr.N.Manikandan,
Govt. Advocate [R3 & R4]
M/s.Sarvabhauvan Associates for R2

JUDGMENT

These two appeals arise out of a common judgment, dated 24.11.2005 in A.S.Nos.37 and 38 of 2005 on the file of the Subordinate Court, Mettur. The above two appeal suits were laid as against the judgment passed in O.S.No.182 of 1998 and O.S.No.116 of 1998 respectively.

2.1 The suit in O.S.No.116 of 1998, was laid by a certain Nachiappa Gounder for declaration of title and other allied reliefs. The 1st defendant in the said suit is one Muthu and the 2nd defendant is Nagammal. Subsequent to the filing of the suit, Nagammal, the 2nd defendant in O.S.No.116 of 1998 has laid O.S.No.182 of 1998 against the plaintiff in O.S.No.116 of 1998. The suit in O.S.No.182 of 1998 was laid for a bare injunction seeking to restrain the defendant from interfering with the plaintiff's peaceful possession and enjoyment of the property.

2.2 The suit property in O.S.No.182 of 1998 is one comprised in Re Sy.No.219, while that which is involved in O.S.No.116 of 1998 includes the properties in Re Sy.Nos.219 and also in 220/2. These properties are situate in Thinnapatty Village, Mettur Taluk. The suit property in O.S.No.182 of 1998 is stated to be an agricultural property having an extent of 1.75 acres said to be comprised in R.S.Nos.219, 220/1 and 220/2.

3.1 Both the suits were tried jointly and evidence was recorded in O.S.No.116 of 1998. After trial, the trial court has decreed the suit in O.S.No.116 of 1998 and dismissed the suit in O.S.No.182 of 1998. The 2nd defendant in O.S.No.116 of 1998 had preferred A.S.Nos.37 and 38 of 2005 and both the appeals came to be dismissed by a common judgment dated 24.11.2005. Aggrieved by the same, the present second appeals are filed.

3.2 For narrative convenience, parties would be referred to by their respective rank in O.S.No.116 of 1998.

4.1 The appellant herein is the 2nd defendant in O.S.No.116 of 1998. She is the daughter-in-law of one Ovakkal. The facts in this case are substantially admitted by both sides and therefore, it may not require a narration as they were in the pleadings of the parties.

4.2 The plaintiff owned a substantial extent of agricultural property in Old Survey No.1514. He along with Ovakkal had separate and independent right in the property again in S.No.1515 also. However, it appears that their properties are in separate blocks, and for convenient enjoyment, the plaintiff and

Ovakkal have jointly executed an Exchange deed Vide Ext.A1, dated 26.03.1979. Under the exchange deed, the plaintiff had parted with 61.75 cents in Old S.No.1514 to Ovakkal. The entire dispute in both the suit relates to the property in Survey No.1514.

4.3 On the very day on which Ext.A-1 Exchange deed was executed, Ovakkal and her sons Narasimman, Raju, and her daughter Chinnu had entered into a deed of partition. This partition deed is available on record as Ext.B-6. In this partition, Raju was allotted C-schedule property. In the context of the present case, it is sufficient to state that Raju was allotted 1.75 acres in Old Survey No.1514. This would imply that Ovakkal might have been entitled to about 1.13 acres in Old Survey No.1514, and after adding the extent of 61.75 cents under the above referred to Exchange deed, her right in Old Sy.No:1514 has enlarged to 1.75 acres. In this partition deed, the plaintiff is an attesting witness.

4.4 Subsequently, on 16.07.1980, under Ext.B-7, Raju had sold 1.75 acres, which he had obtained under Ext.B-6 partition deed to one Muthu. Few years later, on 16.04.1986, to be precise, under Ext.B-8 sale deed, Muthu sold 1.75 acres in Old Survey No.1514 to Raju's wife Nagammal.

4.5 The controversy appeared to have arisen during re-settlement. After considering necessary evidence, the courts below have held the respective suits in the manner indicated above.

5. At the time of admission of both the second appeals, this Court has framed the following substantial questions of law :

'1. Whether the Courts below were right in holding that the Ext.B.8 is invalid in law on the ground that it conveyed a larger extent of land than what was derived by the Vendor under Ext.B-7, without proper reading of the schedule of property in Ext.B-8?

2. Whether the Courts below were right in dismissing the suit of the Appellant in O.S.No.182 of 1998 only for the reason that the patta in favour of the Appellants was in respect of a larger extent than what she had derived under Ex.B.8 and when the suit claim of the Appellant is restricted only to the extent covered under Ex.B.8?

6.1 While substantiating the questions raised remain what they are, on hearing the learned counsel appearing for both sides, this Court found that there literally exists no dispute over the

property as was believed the parties have obtained the property either under exchange deed or under deed of partition. To clarify it, the learned counsel appearing for the plaintiff/1st respondent has made a categorical statement as instructed by his client that the plaintiff is not interested in the property of the 2nd defendant in 1.75 acres in Old Survey No.1514.

6.2 So far as the plaintiff's property is concerned, it is seen from Ext.X3 Correlation Register, that his property in Old Survey No.1514 was correlated to Re-Survey No.220/2 and his property in Old Survey No.1515 was correlated to R.S.No.219. Under Ext.A1 Exchange deed, apart from 61.75 cents, which the plaintiff has parted in favour of Ovakkal, he has also granted a right of way in Old Survey No.1514.

7. The learned counsel for the 2nd defendant / appellant would submit on the instruction by his clients that the 2nd defendant does not claim any right over the property in R.S.Nos.220/2 and 219.

8. During the course of the hearing, this Court has required the presence of parties on both sides as well as the Tahsildar, who was arrayed as 3rd defendant in O.S.No.116 of 1998. Mr.K.Arivudainambi, Tahsildar, Mettur, Salem District, appeared before this Court to assist the Court and also brought necessary plans, and explained to the Court about how the property appeared before Re-Survey and how the property appeared after Re-Survey. Both sides satisfied that they do not claim any right over the others' properties as indicated above.

9. The cause for controversy seems to have stemmed from Ext.B-8 sale deed, under which Muthu had sold 1.75 acres in Old Survey No.1514 to the 2nd defendant. By that time, Re-Survey Number had taken place and in the said sale deed, the property conveyed was mentioned as one in R.S.No.220/1 and the other survey numbers in 219 and 220/2 have been unnecessarily included in Ext.B8, which ultimately has created some confusion leading to the litigation.

10.1 In view of the fact that the 2nd defendant does not claim any right in the suit property in O.S.No.116 of 1998 (in R.S.Nos.219 and 220/2) nothing survives in the second appeal in S.A.No.85 of 2008.

10.2 Turning to S.A.No.84 of 2008, as stated earlier, the suit was laid for a bare injunction seeking to restrain the 2nd defendant from interfering with the plaintiff's peaceful possession and enjoyment of the property. The description of the suit property here appears to have been lifted from Ext.B-8 sale deed, which as mentioned earlier refers to Re-Survey No.220/1, and also Re.Sy.Nos.219 and 220/2. Since the plaintiff has

already indicated that he is not interested in 1.75 acres which the 2nd defendant had purchased from the 1st defendant in Old Survey No.1514, a wrong description in the property conveyed in Ext.B-8 could not hinder the title. Since there is no threat perception to the 2nd defendant's property, there is no cause of action for the suit.

11.1 However, the learned counsel for the 2nd defendant/appellant would now submit that in Ext.A1-exchange deed, a pathway has been earmarked and left in Old S.No.1514 and there is a dispute over the same.

11.2 Responding to that, the learned counsel for the plaintiff/1st respondent would submit that while the 2nd defendant has granted only a right of way without any transfer of title over the area earmarked for pathway under Ext.A-1, during Resurvey the entire extent constituting the pathway itself has been lifted and included in the adjacent survey number on the east in Re.Sy.No.248. He also added that with regard to pathway, the defendant has already laid another suit in O.S.No.229 of 2017 on the file of the Sub-Court, Mettur.

11.3 Since there is no dispute over the larger issue and since with regard to right of pathway in terms of Ext.A1 is now litigated in O.S.No.229 of 2017, this Court does not consider this appeal is required to be kept alive. So far as the defendant's right of pathway is concerned, she is permitted to agitate the same in the pending suit in O.S.No.229 of 2017. Whether the pathway in terms of Ext.A-1 has been taken out of Old Survey No.1514 and included in R.S.No.248 is an aspect that can be investigated by the trial court in O.S.No.229 of 2017. This Court was informed that the property in R.S.No.248 was registered in the name of one Sundarambal. Necessarily, Sundarambal must be a party in O.S.No.229 of 2017. The 2nd defendant/appellant herein is free to implead her in the said suit and can agitate her right of pathway which she now claims.

12. The learned counsel for the defendant would submit that the trial Court has held that Ext.B-8 sale deed which Muthu had executed in favour of the defendant as invalid. This however, was appeared to have been rectified by the first Appellate Court, which now has held the patta is invalid. It is evident that the trial court has overstepped when it declared Ext.B-8 as invalid and this has been rightly rectified by the First Appellate Court. However, if at all there exists any controversy in the matter of issuing patta, that is a separate issue since patta is not a document of title and the parties are free to agitate before the appropriate Revenue Authorities.

13. With the above observation, both the second appeals are

dismissed and the judgment and decree of the courts below are confirmed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VI)

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Sub Assistant Registrar

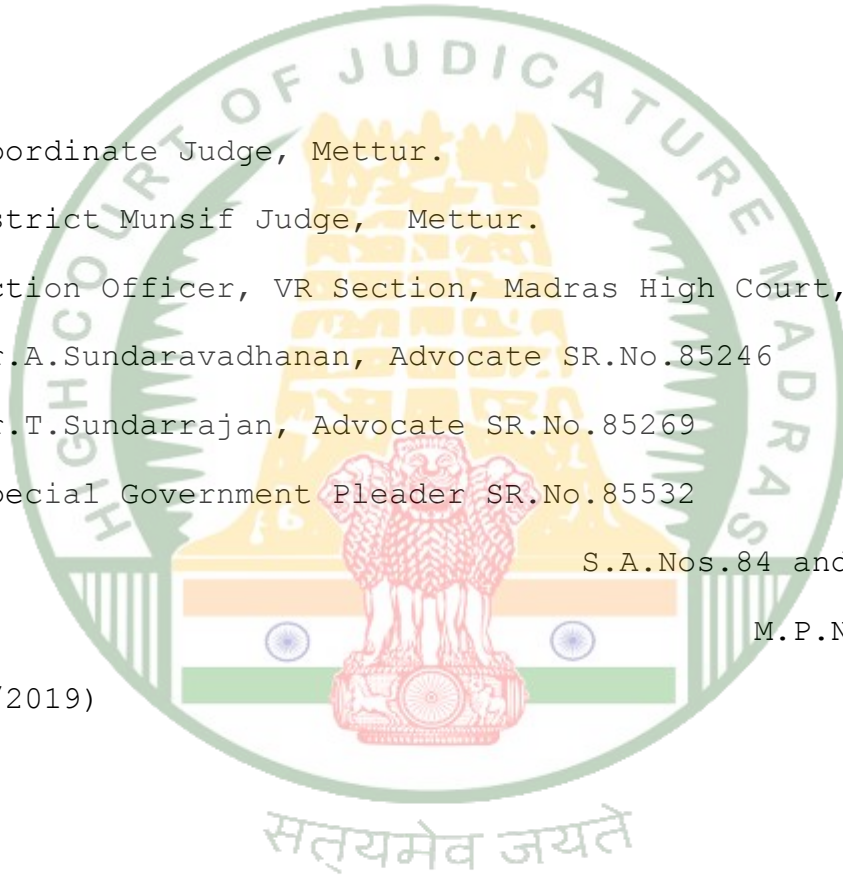
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To:

1. The Subordinate Judge, Mettur.
 2. The District Munsif Judge, Mettur.
 3. The Section Officer, VR Section, Madras High Court, Chennai.
- +1cc to Mr.A.Sundaravadhanan, Advocate SR.No.85246
+1cc to Mr.T.Sundarrajan, Advocate SR.No.85269
+1cc to Special Government Pleader SR.No.85532

S.A.Nos.84 and 85 of 2008
and
M.P.No.1 of 2008

CNR (CO)
GMY (27/03/2019)



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