

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.12.2018

CORAM : THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

S.A.No.1425 of 2011
and M.P.No.1 of 2011

1.Sadasivam
2.Tamil Selvam
3.Balakrishnan
4.Velayudham

.. Appellants /Respondents/Defendants

Vs

1.Ramalingam
2.Rajamanickam

.. Respondents/Appellants/Plaintiffs

Prayer : Second Appeal filed under Section 100 of CPC against the judgment and decree dated 05.08.2010 in A.S.No.14 of 2002 on the file of Subordinate Court, Virudhachalam, challenging that portion of the judgment allowing the appeal in part, by reversing in part, the judgment and decree dated 20.12.2001 in O.S.No.868 of 1991 on the file of the Principal District Munsif Court, Virudhachalam.

For Appellants : Mr.D.Shivakumaran

For Respondents : No Appearance

JUDGMENT

The defendants in O.S.No.868 of 1991 has come forward with the present appeal. Parties would be referred to by their ranks before the trial Court.

2. The respondents/plaintiffs have laid the suit for declaration of title and for recovery of possession over two items of suit properties. The trial Court has dismissed the suit. Challenging the said decree, the plaintiffs have moved the first Appellate Court in A.S.No.14 of 2002. The Principal Sub Court, Virudhachalam, the first Appellate Court in the instant case, has partly allowed the appeal, in that, it confirmed at the decree of the trial Court vis-a-vis Item No.2 and partly allowed the suit, vis-a-vis Item No.1. This appeal concerns itself with Item No.1 in the plaint.

3. The suit property described in Item No.1 is a plot of 23 cents in Survey No.3/20 of Mudapalli Village in Virudhachalam Taluk. Admittedly, this property originally belonged to the

ancestors of the plaintiffs, namely, Ayyakannu Padayachi. Under Ext.B-1, sale deed dated 07.01.1926, Ayyakannu Padayachi had sold 11½ cents, out of 23 cents in the said property. By successive transfer, the property finally came in the hands of one Krishnasamy Padayachi, from whom the defendants' father Rasaakannu Padayachi has purchased the property under Ext.B-2, sale deed dated 14.05.1960. In the Updating Register, the defendants were assigned with a greater right than they are entitled to under Ext.B2. Hence, the suit was laid.

4. In the written statement, the defendants have claimed title to 15 cents out of 23 cents in Survey No.3/20 and whole of Item No.2.

5.1 The trial Court has held that the defendants were entitled to 12.5 cents in Item No.1 and found that the plaintiffs are not entitled to any relief, whatsoever and dismissed the suit in entirety. Aggrieved by the said decree, the plaintiffs have preferred the first appeal in A.S.No.14 of 2002 on the file of Principal Sub Court, Virudhachalam.

5.2 Before the first Appellate Court, the contest was essentially on the point whether the plaintiffs were entitled to Item No.2 and Item No.1, and in deciding that, the Appellate Court has confirmed the findings of the trial Court as regards Item No.2 and dismissed the suit. Regarding Item No.1, the first Appellate Court has relied on Ext.B-2, sale deed under which, the defendants claim title and had found that the defendants are only entitled to 11.5 cents.

6. This appeal is not yet admitted and notice was ordered to the respondents/plaintiffs. The respondents have not entered appearance.

7. Heard the learned counsel for the appellants and he would argue that the 11.5 cents is what the defendants' father had purchased under Ext.B-2 and this is the fact which even the plaintiffs have admitted. The cause of action in the suit, however is not founded on the title of the defendants, but on certain errors said to have crept in, in the UDR scheme. Here, the first Appellate Court has essentially relied on the extent as stated in Ext.B-2, which is same as the one in Ext.B-1, sale deed, but, it does not go to investigate whether the patta allotted under UDR scheme is correct.

8. The Village A-Register which has been prepared after the UDR scheme, is marked as Ext-B-10, and it shows that Survey No.3/20 has been sub-divided into 3/20B and 3/20D, of which, the defendants' father has been granted patta in 3/20B for one are

and in 3/20D for 0.05.0 h.

9.1 Here, it has to be stated that in the suit property, defendants claim 15 cents and he traces 11½ cents to Ext.B2, sale deed, and remaining 3½ cents to an oral sale deed from plaintiffs' ancestors. Both the Courts have concurrently found that the plaintiffs have not proved their title to this 2½ cents, which they claim to have purchased under oral sale. Now, in the context of sub-division made in the UDR, Survey No.3/20B, inasmuch as it deals only with one ares (which is equivalent to about 2.47 cents), the 2.5 cents that the defendants claim under oral deed must be considered as relating to this. This leaves the other Survey No.3/20B. Ext.B-10 shows that this has an extent of 5.0 ares, which equivalent to 12.35 cents, and this is little over 0.85 cents than what is stated in Ext.B2. This apart, if the judgment of the first Appellate Court is perused, it shows that Survey No.3/20A was seen to have been registered in the name of Anjalai Ammal and plaintiffs have title only to Survey No.3/20C.

9.2. Now the plaintiffs have not appeared before this Court nor have filed any cross-objection. Since the appellants contest is all about their right over 12.5 cents under Ext.B2, the nearest that he will be entitled to property in Survey No.3/20D. Inasmuch as the plaintiffs are the architects of the suit, in order to establish their title, they have not taken out a commission covering the entire property, more specifically the actual extent comprised in Survey No.3/20D. Since the property is an agricultural property and the extent differs very marginally, and since the plaintiffs have created a situation where this Court has to decide the issue after seven years, this Court holds that the appellants would be entitled to property in Survey No.3/20D. Accordingly, the plaintiffs would not be entitled to any extent in Survey No.3/20D. Since, no substantial questions of law has been framed and since the issues involved only require a re-statement of the facts and re-declaration of rights of the defendants which have been already made, nothing survives in this appeal.

10. In the result, this appeal is dismissed, subject to what is stated in paragraph 9.2 above. Consequently connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(CCC)

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Sub Assistant Registrar

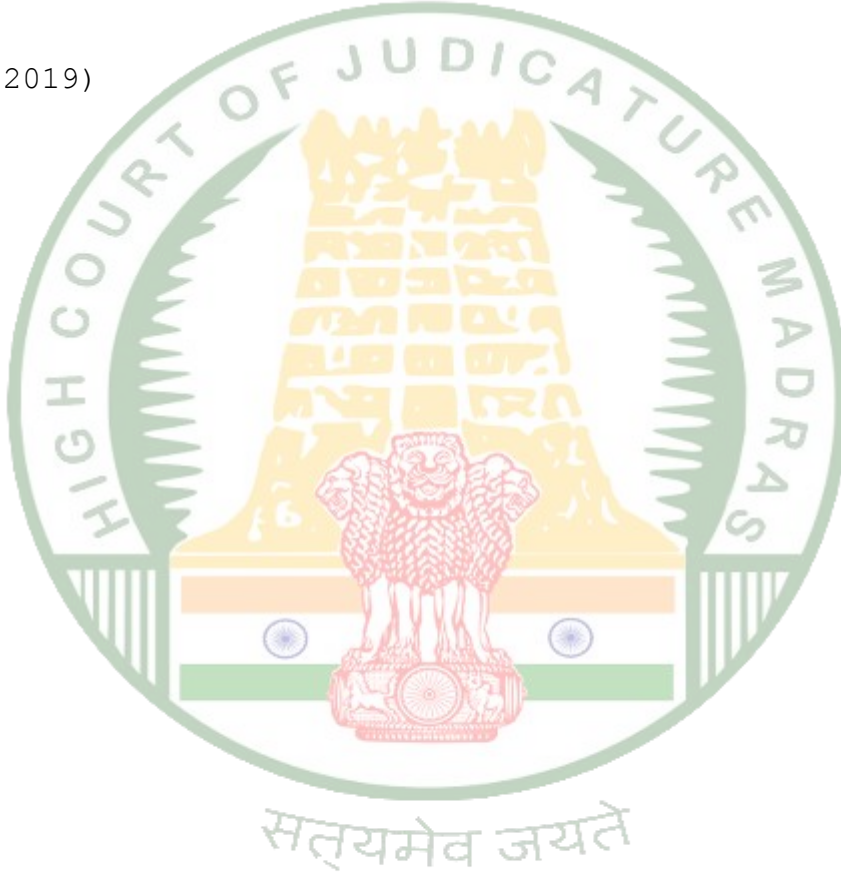
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To:

1. The Sub Court, Virudhachalam.
 2. The Principal District Munsif Court, Virudhachalam.
 3. The Section Officer, VR Section, High Court, Madras.
- +lcc to Mr.D.Shivakumaran, Advocate SR.No.85261

S.A.No.1425 of 2011

KS (CO)
GMY (29/04/2019)



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