

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2018

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

S.A.No.103 of 2015
and M.P.No.1 of 2015

N.Ramaswamy ...Appellant/Plaintiff

Vs

M.Saravanan Respondent/Defendant

Prayer :- Second Appeal is filed under Section 100 of C.P.C. against the Judgment and Decree made in A.S.No.51 of 2012 on the file of The Sub Court, Mannargudi dated 08.10.2014 modifying the Judgment and Decree made in O.S.No.130 of 2011 on the file of The District Munsif Court, Mannargudi dated 18.06.2012.

For Appellant : Mr.K.A.Ravindran
for Mr.S.Thiruvengadasamy
For Respondent : Mr.T. Munirathinam Naidu
Senior Counsel
for P.T.Ramadevi

J U D G M E N T

Heard the learned counsel for the appellant and the learned Senior counsel for the respondent. Against the reversing Judgment, this second appeal has been preferred by the plaintiff who has laid the suit for bare injunction alleging that the respondent herein, who is the absolute owners of the land at survey No.52/1 and 51/1, had attempted to encroach upon his land more particularly the land which falls under the survey No.52/2A to an extent of 1 acre 22 cents. Though the Trial Court has found in favour of the plaintiff, the Appellate Court has partly allowed the appeal preferred by the defendant / respondent wherein the injunction granted in respect of survey No.52/2A has been reversed and in respect of other items shown in the suit schedule, the injunction in favour of the plaintiff was confirmed.

2. Now, the short point canvassed by both the learned counsels is that the title and extend of the other party in respect of survey No.52/2A is not clear and proper. The parent document does not properly carry the exact extent and the boundary in respect of survey No.52/2A.

3. More particularly, the learned counsel for the respondent / defendant attack the title deed of the plaintiff on the ground that originally it was 65 2/3 cents in survey No.52/2, purchased by one Anjalai Ammal under Ex.B.1, thereafter Anjalai Ammal and her husband Kasinathan settled the property in survey No.52/2, 65 2/3 cents along with other properties to Soundararajan under Ex.B.4. From Soundararajan plaintiff has purchased 1.22 acres in survey No.52/2 (old), survey No.52/2A (New) thus, all of a sudden 65 2/3 cents enlarged into 1 acre 22 cents under the sale deed executed in favour of the plaintiff which is marked as Ex.A.1.

4. On perusal of the title deeds of the respective party, this Court could find that in old survey No.52, the total extent of land is about 2 acres 60 cent which has been enjoyed by three brothers namely Uthirapathi, Mathiyazhagan and Sivanandam. Both plaintiff and the defendant base their title acquired through Mathiyazhagan and Sivanandam respectively. It is the case of the defendant that they have title for 70 cents of land which fall under survey Nos.52/1, and 8 cents of land in survey No.52/2 which renumbered as new survey No.52/2A more than that there is no claim by the defendant / respondent. While so, excluding this 8 cents in survey No.52/2 renumbered as new survey No.52/2A for the remaining portion of the land, the plaintiffs are entitled for injunction relief. However, the Lower Appellate Court has declined in toto the relief of injunction sought in respect of entire survey No.52/2 renumbered as 52/2A.

5. Therefore, this Court is inclined to modify the Judgment and decree of the first Appellate Court to the effect that the appellant herein shall be entitled for the relief of permanent injunction in respect of item No.2 of the suit 'A' schedule property, and entire extent of item No.1 in survey No.52/2A excluding 8 cents which falls under new survey No.52/2A purchased by the respondent / defendant under sale deed dated 11.07.2017 marked as EX.B.6.

6. Accordingly this Second Appeal in S.A.No.103 of 2015 is partly allowed. Except 8 cents out of 1 acre 22 cents New survey No.52/2A shown as item No.1 in the suit schedule, for the remain land in item No.1 and 0.1 cent in item No.2 the relief of permanent injunction is granted. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

To

1.The Sub Judge,
Mannargudi.

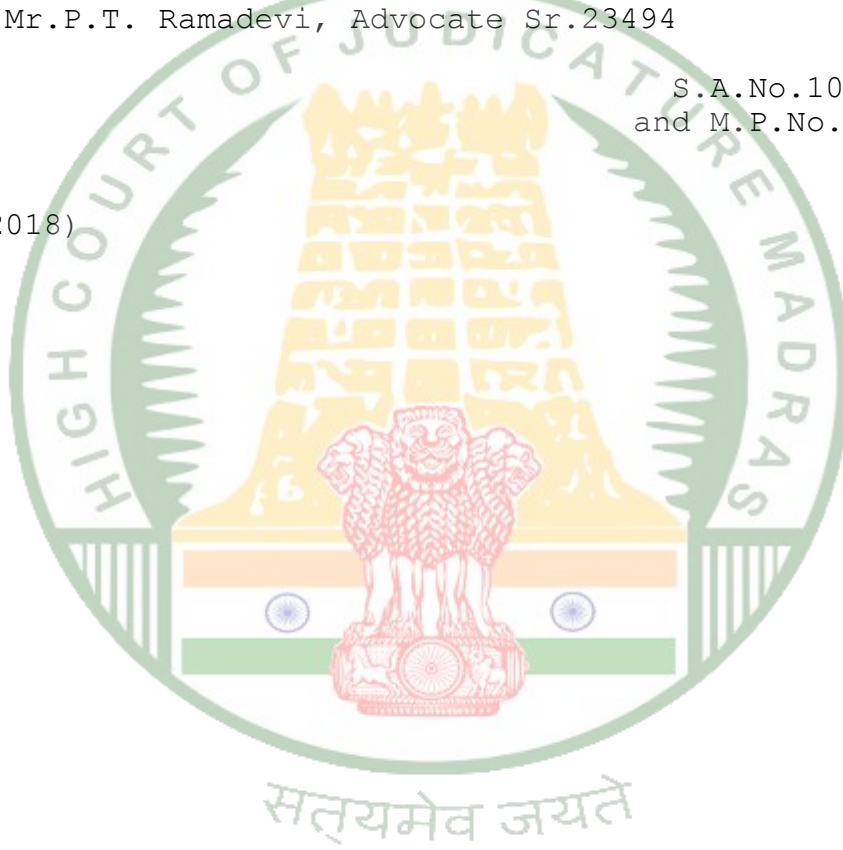
2.The District Munsif,
Mannargudi.

+ 1 cc to Mr.K.A. Ravindran, Advocate Sr.23292

+ 1 cc to Mr.P.T. Ramadevi, Advocate Sr.23494

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TM(CO)
EU(19/04/2018)



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