

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.02.2018

PRONOUNCED ON : 07.03.2018

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.1824 of 2003

1.Perumal @ Periya gounder

2.Chockappan Appellants/Plaintiff

Vs.

1.P.K.Palaniappan

2.Kannammal ... Respondents/Defendants

Prayer: Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree dated 29.11.2002 made in A.S.No.40 of 2000 on the file of the Sub Court, Sangagiri, confirming the judgment and decree dated 24.11.1999 made in O.S.No.187 of 1995 on the file of the District Munsif Court, Sangagiri.

For Appellants : Mr.N.Manokaran

For Respondents : No appearance
Set exparte

Vide Order dated 16.02.2018

J U D G M E N T

This second appeal is directed against the judgment and decree dated 29.11.2002 passed in A.S.No.40 of 2000 on the file of the Subordinate Court, Sangagiri confirming the judgment and decree dated 24.11.1999 passed in O.S.No.187 of 1995 on the file of the District Munsif Court, Sangagiri.

2. The parties are referred to as per the rankings in the trial court.

3. Suit for declaration and permanent injunction.

4.The case of the plaintiff in brief is that the plaintiffs are brothers and the first defendant is the husband and the

second defendant is the wife and the suit properties are the joint Hindu family properties of the plaintiffs and the suit "A" schedule property was purchased by the plaintiffs on 27.01.1982 and since then, it is only the plaintiffs, who are in possession and enjoyment of the "A" schedule property and the plaintiffs are residing in the tiled house situated in the "A" schedule property described as item 1 in the plaint schedule and the second plaintiff has constructed a terraced house described as item 2 of the plaint "A" schedule and put up a compound wall on the northern side and the work of the construction of the compound wall and the plastering of the sun shades are within the property purchased by the plaintiff, by way of the sale deed dated 27.01.1982 and the plaintiffs also own a thatched house described in the plaint "B" schedule property and the same is being enjoyed by the second plaintiff. In the oral partition, the plaint "B" schedule property was allotted to the second plaintiff as well as the house site in which the second plaintiff has constructed the said terraced house above stated and the first plaintiff was allotted item 1 of the plaint "A" schedule and thus the plaintiffs are the owners of the plaint schedule properties and the defendants do not have any manner of right, title, possession and enjoyment of the plaint schedule properties and the defendants, however are giving unnecessary troubles to the plaintiffs in the enjoyment of the plaint schedule properties and attempted to trespass into the plaint schedule properties and left with no other alternative, according to the plaintiffs, they had been necessitated to lay the suit for appropriate reliefs.

5. The case of the defendants in brief is that the suit is not maintainable either in law or on facts. It is false to state that the entire suit properties belong to the plaintiffs as put forth in the plaint and in the property purchased by the plaintiffs, by way of the sale deed dated 27.01.1982, the plaintiffs have put up construction on the northern boundary for their property in the east-west, northern side wall and the defendants are in possession of the properties situated to the north of the above said northern side east-west wall and the sale deed dated 27.01.1982 relied upon by the plaintiffs is not admitted and the measures given therein are not correct and the same is not binding on the defendants. The plaintiffs have put up sunshade on the northern side of the land belonging to the defendants and on the defendants questioning the same, the plaintiffs have laid the suit with false allegations. It is false to state that the "B" schedule property is the ancestral property of the plaintiffs. The defendants are not admitting the oral partition pleaded in the plaint. It is false to state that the defendants are strangers to the suit properties and attempted to disturb the possession and enjoyment of the plaintiffs in respect of the suit properties. The plaintiffs

are not entitled to the entire suit properties and the description has not been properly done and there is no cause of action for the suit and the suit is liable to be dismissed.

6. In the additional written statement, the defendants have pleaded that the first defendant purchased properties from Chinnan @ Muthu Gounder, Ramasamy as per document dated 25.09.1989 and from the said date, it is only the defendants who are in possession and enjoyment of the said properties by putting up sunshades etc., and during the Natham survey, colluding with the officials, the second plaintiff had got patta for more extent than what he is entitled to and the northern boundary of the plaintiffs property is the east-west Kal Kattu and the plaintiffs have clandestinely included an extent of 10 ½ feet breadth on the northern side of the east-west Kal Kattu, which is in the possession of the defendants and the defendants have moved the necessary authorities for setting aside the grant of patta in favour of the plaintiff and hence the suit is liable to be dismissed.

7. In support of the plaintiff's case, P.W.1 was examined. Exs.A1 to A7 were marked. On the side of the defendants, D.Ws.1 to 3 were examined. Exs.B1 to B4 were marked.

8. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the Courts below were pleased to dismiss the suit laid by the plaintiffs. Impugning the same, the present second appeal has been preferred.

9. At the time of admission of the second appeal, the following substantial question of law was formulated for consideration.

"In the context of Ex.A1 read with Ex.A7 the former being the sale deed and the latter being a revenue record in the form of patta in the name of the plaintiffs over the property in dispute, have not the Courts below committed an error of law in dismissing the suit without taking into account the impact of Ex.A7 in the proper perspective with reference to the rights of the plaintiffs?"

10. The plaintiffs claim title to the plaint schedule properties based upon the sale deed dated 27.01.1982 marked as Ex.A1. Though, it is found that the plaintiffs had purchased an extent of 73 feet on the east-west and 43 feet on the north-south, by way of the above said sale deed, in particular, when

the defendants have thrown a challenge to the above said sale deed contending that the plaintiffs have not acquired the extent of the properties described as in the sale deed from the vendors concerned and the defendants have also disputed the claim of the plaintiffs that they are in possession and enjoyment of the above said extent of the properties and in fact, also challenging the plaintiff's claim that the said extent had been in possession and enjoyment of the plaintiffs' vendors, in such view of the matter, it is for the plaintiffs, to primarily establish that their vendors had a valid right, title and interest in respect of the extent of the properties as described in Ex.A1 and accordingly conveyed the same to them by way of Ex.A1. However, it is found that the plaintiffs have miserably failed to establish that the above said extent of the properties as described in Ex.A1 had been in the possession and enjoyment of their vendors and by them as claimed in the plaint.

11. Materials placed on record would go to show that the plaintiffs have put up a compound wall on the northern side of the house put up by them and it is also found that the house construction had been raised by the plaintiffs without leaving any space on the southern side and it is also seen that abating the house construction they had put up the northern wall running east-west and the dispute is only with reference to the 10 ½ feet space situated to the north of the above said compound wall. It is thus found that when the plaintiffs have earmarked their portion by putting up a compound wall on the northern side and beyond that it is seen that the plaintiffs cannot lay any claim, right or interest and in such view of the matter, it is for the plaintiffs to establish that despite the construction of the compound wall on the northern side, they still own title, right and interest over the extent of 10 ½ feet land which lies to the northern side of the east-west, northern compound wall. As rightly determined by the Courts below, if really, the plaintiffs or their vendors had been in possession and enjoyment of the disputed 10 ½ feet space and if really, the plaintiffs had acquired a valid title and interest over the disputed space of 10 ½ feet by way of Ex.A1, at the time of erecting the compound wall, the plaintiffs would have put up the compound wall annexing the 10 ½ feet vacant space within their properties. On the other hand, materials placed would only go to show that just abutting the house construction, the plaintiffs had put up the compound wall and when there are no enclosures put up by the plaintiffs to show that they also exercising any right or ownership over the vacant space of 10 ½ feet lying to the northern side of the compound wall, it is seen that the plaintiffs had not openly and exclusively enjoyed the disputed 10 ½ feet space by asserting their title and as claimed by them. No owner of a property would leave a space of 10 ½ feet and put up a compound wall excluding the same and if

the plaintiffs still seek a claim of title, right or interest over the disputed space of 10 ½ feet, it is for the plaintiffs to establish the said right and as far as the same is concerned, it is seen that no acceptable and reliable material has been placed by the plaintiffs with reference to the same.

12. Materials placed further also go to show that in respect of the disputed space of 10 ½ feet, the patta had been originally granted only in favour of the defendants. It is found that challenging the same, the plaintiff had moved the revenue authorities and the revenue authorities had canceled the patta issued in favour of the defendants. It is further seen that on the basis of the said proceedings, the plaintiffs have come forward with the present suit seeking a claim of title to the plaint schedule properties in particular, the disputed 10 ½ feet space based upon Ex.A1 sale deed. It is thus found that the plaintiff has based the reliefs only upon Ex.A1 sale deed and in such view of the matter, it is found that the patta, not being a document of title, cannot be the basis for accepting the plaintiffs' title to the disputed area.

13. Pending the disposal of the suit, it is found that the defendants have preferred the appeal to the Assistant Settlement Officer impugning the cancellation of the patta granted in their favour and it is seen that the Assistant Settlement Officer had concurred with the cancellation of patta issued in favour of the defendants and the said order has come to be marked as Ex.A7. However, as rightly found by the Courts below Ex.A7 order has come to be passed pending the settlement of the dispute of title between the parties in respect of the 10 ½ feet space in the civil court. Rightly the Courts below did not take into consideration the above said order of the revenue authority passed pendente lite and as rightly determined by the Courts below, when the parties have approached the Civil forum which is the competent authority to determine the question of title, the determination of the title by the revenue authorities would not be proper and accordingly, it is found that the Courts below have rightly not placed reliance upon Ex.A7 order for accepting the plaintiffs title to the disputed area.

14. In this connection, the plaintiffs' counsel contended that subsequent events should have also been taken into consideration by the Courts below and when the revenue authorities had thought it fit not to interfere with the cancellation of the patta granted in favour of the defendants in respect of the disputed area and further according to him, even though the said order marked as Ex.A7 had come to be passed pendente lite, it is his argument that the Courts below should have placed reliance upon the said order for accepting the plaintiffs' title to the disputed area. However, as above

mentioned, the plaintiff has laid the suit, claiming title to the disputed area mainly upon Ex.A1 sale deed. When the defendants have thrown a challenge to Ex.A1 sale deed contending that neither the plaintiffs nor the predecessors in interest had been in possession and enjoyment of the extent of the properties as described in the said document and further when according to the defendants, the property lying to the north of the east-west, northern side wall of the plaintiffs has been in their possession and enjoyment, it is for the plaintiffs to establish that inclusive of the disputed 10 ½ feet space, they had acquired title by way of Ex.A1 sale deed. However, other than marking Ex.A1 sale deed, the plaintiff has not placed any parent title deeds to establish that their vendors had title to the properties concerned inclusive of the disputed 10 ½ feet space. Equally the plaintiffs have also not placed any material worth acceptance to hold that their predecessors in title and they had been in possession and enjoyment of the disputed 10 ½ feet space prior to the institution of the suit or thereafter. When it is noted that the patta in respect of the disputed area had been originally granted only in favour of the defendants and subsequently the same had come to be canceled and the said cancellation order had also been further confirmed by Ex.A7 order passed pendente lite, even then by way of the same, we cannot come to the conclusion that it is only the plaintiff, who has a valid title or interest in the disputed area. The revenue records not being the documents of title cannot be the decisive factor for upholding the title of the plaintiffs. Accordingly, it is for the plaintiffs to establish that they had acquired title to the disputed 10 ½ feet space based on Ex.A1 sale deed. However, with reference to the disputed area, the plaintiffs have failed to establish their vendors' title or their title and also the possession and enjoyment of the same by their vendors or them. It is found that based on Ex.A1, the plaintiffs cannot be held to be entitled to the disputed 10 ½ feet space lying to the north of the east-west northern compound wall.

15. The Courts below had rightly found that the plaintiff should have taken the earliest steps to identify the property in dispute i.e., should have endeavored to establish that the disputed space also falls within the properties acquired by them, by way of Ex.A1 sale deed by seeking the appointment of a Commission with the help of a surveyor. The plaintiffs, despite the challenge thrown by the defendants to their claim of title over the disputed area, did not evince interest to take out a Commission for identifying the disputed area as to whether it falls within the properties acquired by the plaintiffs by way of Ex.A1. In such view of the matter, as rightly determined by the Courts below, the plaintiffs having failed to resort to such a course, the Courts below had also rightly observed that the above aspect of the matter also would only go to show that

inasmuch the disputed area had never been in the possession and enjoyment of the plaintiffs at any point of time, the plaintiffs had not endeavored to seek the appointment of a Commission to identify the said property at the earliest point of time. Accordingly, it is seen that the first appellate court had rightly rejected the application moved by the plaintiffs, at a belated stage, for the appointment of a Commission and the first appellate court having given acceptable reasons for the same, I do not find any scope or material to interfere with the above such determination of the first appellate court in rejecting the Commission application preferred by the plaintiffs at a belated stage.

16. In the light of the above position, the argument put forth by the plaintiffs' counsel that even if the plaintiffs had failed to take out the Commission at the earliest, still the court would be competent to appoint a Commissioner suo moto and in this connection, he placed reliance upon the decision reported in 2007(1) CTC 611 [S.Palanissamy Gounder Vs. N.Palanisamy and three others]. No doubt, the court, in appropriate cases could appoint a Commission to make out a local investigation of the properties involved in the matter. However, inasmuch as the plaintiff has laid the civil action claiming title to the disputed area, by way of Ex.A.1 sale deed, it is for the plaintiffs to establish their title to the same, pursuant to the said document and when there is no material forthcoming on the side of the plaintiffs to establish that their vendors had title to the disputed area and the same had been in their possession and enjoyment at any point of time, in such view of the matter, it is found that there is no necessity on the part of the Courts below to suo motu appoint a Commission to make an inspection of the properties involved in the subject matter. The plaintiffs having failed to establish their claim of title to the disputed area cannot be allowed to fault with the approach of the Courts in not appointing a Commission to sustain their case as such. In such view of the matter, it is seen that the above decision relied upon the plaintiffs' counsel, in my considered opinion, do not apply to the facts and circumstances of the present case.

17. The plaintiffs have come forward, seeking declaration of title to the disputed area based upon Ex.A1 sale deed. The plaintiffs have miserably failed to establish that the disputed area also falls within the properties acquired by them, by way of Ex.A1 sale deed. The plaintiffs have failed to establish their predecessors in interest title, possession and enjoyment of the disputed area. The plaintiffs have also failed to establish their possession and enjoyment of the disputed area. All that the plaintiffs now rely upon is only the order of the revenue authorities marked as Ex.A7 and when Ex.A7 is found to

have coming into the existence pendente lite and when the title issue had already come to be agitated before the civil forum, which is the competent authority to determine the question of title and as seen from Ex.A7 order, the cancellation of patta issued in favour of the defendants has been confirmed on the footing that patta could not be granted in respect of the unoccupied Natham property, on that basis, it cannot be held that the plaintiff is entitled to the disputed area by way of Ex.A1. It is thus found that, as rightly determined by the Courts below, Ex.A7 order would not be in any manner decisive for upholding the claim of title over the disputed area as sought for by the plaintiffs. The plaintiffs having laid a claim of title to the disputed area, by way of Ex.A1 and failed in their approach with reference to the same and when Ex.A7 order cannot be considered as a document of title, it is seen that Ex.A7 order cannot be taken as a piece of evidence which has come to be passed subsequent to the institution of the suit by a competent authority as regards the determination of the question of title of the parties concerned in respect of the subject matter of the suit, in such view of the matter, the argument put forth by the plaintiffs' counsel that the Courts below had failed to take into consideration the above said subsequent events for granting the appropriate reliefs as such cannot be countenanced and accordingly, it is seen that the decision relied upon by the plaintiffs' counsel for the proposition that the court has got the power to take into consideration the subsequent events and mould the reliefs accordingly, on certain conditions as reported in 2002 (2) SCC 256 [Om Prakash Gupta Vs. Ranbir B. Goyal], in my considered opinion would not be applicable to the facts and circumstances of the present case. If the order marked as Ex.A7 is touching upon the question of title of the parties concerned over the disputed area issued by a competent authority and when the dispute of title as regards the disputed area had already come to be seized of by the civil court, it is seen that no reliance at all can be placed upon Ex.A7 order, as such for upholding the plaintiffs' claim of title to the disputed area. Accordingly, it is seen that the above decision, relied upon by the plaintiffs' counsel is found to be not applicable to the case at hand. Similarly, the decision relied upon by the plaintiffs' counsel reported in 2013 (3) SCC 182 [Board of Trustees of Port of Kandla Vs. Hargovind Jasraj and another] is also found to be not applicable to the facts and circumstances of the present case.

18.As rightly determined by the Courts below, the plaintiffs have not properly given the description of the suit properties in the plaint, especially seem to have suppressed the existence of the northern wall and it is seen that only during the course of cross examination, the plaintiffs have come to

accept the existence of northern compound wall put up abutting their house structure. As rightly determined by the Courts below, no prudent person would leave a vacant space of 10 ½ feet away from the compound wall without any fencing or cover as such and when from the conduct of the plaintiffs, they had demarcated their property by raising the compound wall on the northern side, their further claim that they still own 10 ½ feet space to the north of the compound wall without acceptable and reliable materials cannot be countenanced in any manner.

19. The plaintiffs' counsel contended that the defendants have failed to establish their claim of title, possession and enjoyment of the disputed area and further argued that their document having been impounded by the Courts below, the court should not have accepted the claim of title, possession and enjoyment of the defendants over the disputed area and thereby should have accepted the plaintiffs' case. However, the plaintiffs having come forward with the suit seeking necessary reliefs based upon Ex.A1 sale deed, they have to stand or fall on the strength of their own case. The plaintiffs cannot be allowed to pick holes in the defendants' version and thereby attempt to seek the reliefs sought for by them without laying any foundation for claiming the said reliefs. It is thus found that, as rightly determined by the Courts below, even assuming for the sake of arguments that the defendants have failed to establish their title as such to the disputed area, when it is noted that the plaintiffs have miserably failed to establish that either their predecessors in title or they had a valid title to the disputed area and that the disputed area had been in their possession and enjoyment right from the days of their predecessors in interest, in the light of the above position, it is seen that the Courts below are justified in negating the reliefs sought for by the plaintiffs. In the light of the above said reasonings, it is thus found that the Courts below have rightly taken into account the order of the revenue authorities marked as Ex.A7 in the right perspective and rightly determined that the said order cannot be the basis for upholding the plaintiffs' title to the disputed area and rightly determined that the patta documents cannot be considered as the documents of title and also rightly determined that the plaintiff have miserably failed to establish that they had acquired a valid title, right or interest over the disputed area by way of Ex.A1. In such view of the matter, no interference is called for in the findings and conclusions of the Courts below, which are found to be in consonance with the legal principles and not suffering from any error, mistake or infirmity. This court finds acceptance with the determination of the Courts below in rejecting the plaintiffs' case and in such view of the matter, the substantial question of law formulated in the second appeal is answered against the plaintiffs.

20. In conclusion, the second appeal fails and is

accordingly dismissed. No costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar (CS V)

//True copy//

Sub Assistant Registrar

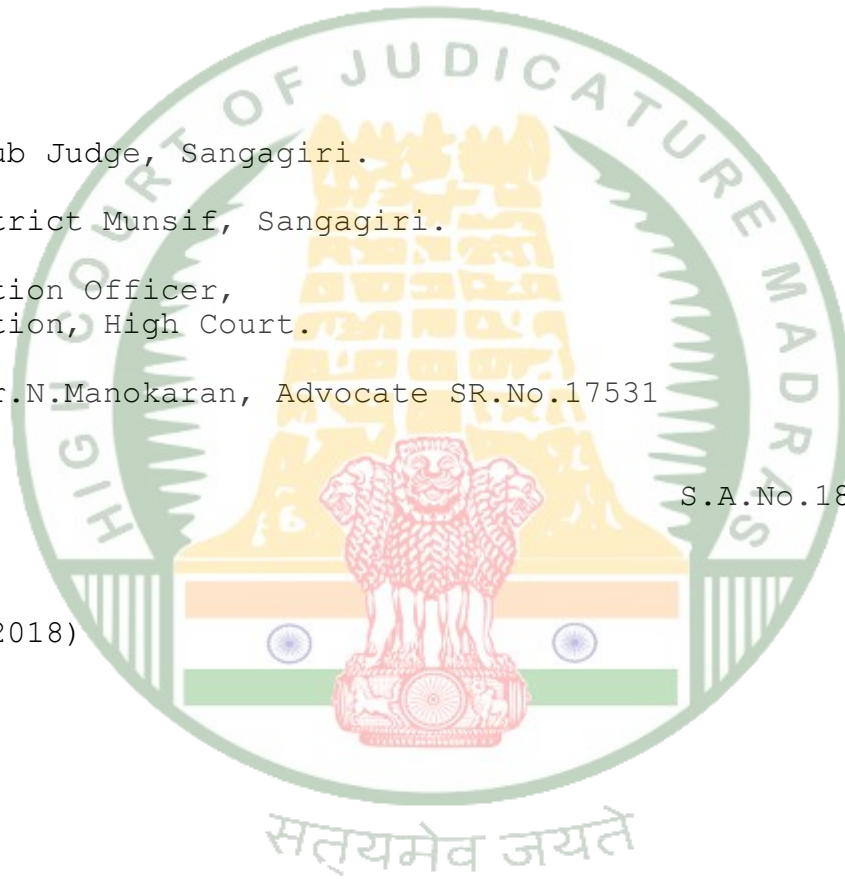
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To

1. The Sub Judge, Sangagiri.
 2. The District Munsif, Sangagiri.
 3. The Section Officer,
VR Section, High Court.
- +1cc to Mr.N.Manokaran, Advocate SR.No.17531

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NRJK (CO)
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