

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :02.02.2018

PRONOUNCED ON:20.02.2018

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.Nos.739 and 1820 of 2003

1.T.P.Shanmugamoorthy

2.Marappa Gounder ...Appellants/Respondents/Plaintiffs
in both appeals

Vs.

Naganaicker ...Respondent/Appellant/Defendant
in both appeals

Prayer in S.A.No.739 of 2003: Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree dated 13.07.2001 made in A.S.No.80 of 2000 on the file of the Principal Sub Court, Gobichettipalayam, reversing the judgment and decree dated 29.09.2000 made in O.S.No.284 of 1992 on the file of the District Munsif Court, Sathyamangalam.

Prayer in S.A.No.1820 of 2003: Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree dated 13.07.2001 made in A.S.No.78 of 2000 on the file of the Principal Sub Court, Gobichettipalayam, reversing the judgment and decree dated 29.09.2000 made in O.S.No.295 of 1992 on the file of the District Munsif Court, Sathyamangalam.

For Appellants : Mr.N.Manokaran

For Respondent: Mr.M.Narayanasamy

COMMON JUDGMENT

The S.A.Nos.739 of 2003 and 1820 of 2003 had been directed against the common judgment and decree dated 13.07.2001 passed in A.S.Nos.80 and 78 of 2000 on the file of the Principal Subordinate Court, Gobichettipalayam, reversing the judgment and decree dated 29.09.2000 passed in O.S.Nos.284 of 1992 and 295 of 1992 on the file of the District Munsif court, Sathyamangalam.

2. O.S.No.284 of 1992 has been laid for declaration and permanent injunction. O.S.No.295 of 1992 has been laid for declaration and permanent injunction.

3.The case of the appellants in both matters in brief is that the old survey fields 2/2 and 271/1 measuring 0.62 acres and 0.48 acres respectively belonged to one Angappa Mudaliyar and his brother Kumarsamy Mudaliyar jointly and subsequent to the death of Angappa Mudaliyar, his only son Shanmugam became the owner of the common half share in the above said old survey fields and Kumarasamy Mudaliyar had six sons and they jointly became entitled to the other common half share in the above old survey fields and in the family partition effected amongst the sons of Kumarasamy Mudaliyar, the common half share belonging to the said family was allotted to Arumugam, one of the sons of Kumarasamy Mudaliyar and accordingly, Shanmugam and Arumugam had become the owners of the above said old survey fields which were clubbed together and resurveyed as survey number 2/1 and on 19.08.1963, Arumugam and his two sons sold an extent of 5 cents of land within specific boundaries in old SF number 2/1 to one Palani Gounder by way of registered sale deed dated 19.08.1963 and Palani Gounder purchased the above said property for the purpose of digging the mud and enjoying the same as such and the said 5 cents of lands is located in the north -western corner of the survey number 2/1 and in the partition of the properties in the family of Palani Gounder, the above 5 cents of land was allotted to his son Shanmugamoorthy, by way of registered partition deed dated 20.06.1967 and subsequently Shanmugamoorthy the first appellant, on 15.06.1992, sold an extent of 2 ½ cents of land in the suit property within specific boundaries to the second appellant and accordingly the second appellant had been in possession and enjoyment of the said extent of 2 ½ cents of land and thus according to the appellants, the respondent and his predecessors in title have no right or title to the above said 5 cents of land being enjoyed by the appellants as above stated and the appellants had also dug a well in the above said property and on the other hand, the respondent with a view to grab the said property, attempted to interfere with the possession and enjoyment of the appellants, according to the appellants, laying a false claim to the said property laid a false suit against the appellants in O.S.No.284 of 1992 and as he had attempted to disturb their possession and enjoyment with reference to the said property, according to the appellants, they had been necessitated to lay the suit against the respondent in O.S.No.295 of 1992 for appropriate reliefs.

4.The case of the respondent in both matters in brief is that the respondent had purchased the property described in O.S.No.284 of 1992 from his vendors, by way of a registered sale deed dated 14.12.1987 and accordingly, he and his predecessors

in title had been in possession and enjoyment of the said property for more than 50 years and accordingly, even during the resurvey, the respondent's predecessors in title were issued the notice and the appellants do not have any right, possession and enjoyment of the said property in any manner and it is only the respondent, who has been in possession and enjoyment of the property described in his plaint inclusive of the alleged 5 cents of land to which the appellants' claim to be owning and the respondent out of the property purchased by him by way of the sale deed above mentioned, alienated an extent of 2 ½ of cents of land one Chenna Naicker, by way of a registered sale deed dated 24.10.1990 and the said extent of land is in possession and enjoyment of Chenna Naicker and inasmuch as the appellants attempted to interfere with the possession and enjoyment of the respondent in respect of his property, while digging the well, left with no other alternative, according to the respondent, he has been necessitated to lay the suit for appropriate reliefs in O.S.No.284 of 1992 and further according to him, the appellants had laid a false suit against him without any cause of action in O.S.No.295 of 1992.

5.As above seen, both suits above stated were jointly tried and common evidence was recorded in O.S.No.284 of 1992 and in support of the plaintiff/respondent's case, P.Ws.1 to 3 were examined and Exs.A1 to A7 were marked. On the side of the defendants/appellants, D.Ws.1 to 3 were examined, Exs.B1 to B5 were marked. Exs.C1 and C2 were also marked.

6. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial court was pleased to dismiss the suit laid by the respondent in O.S.No.284 of 1992 and decreed the suit as prayed for laid by the appellants in O.S.No.295 of 1992. On appeals preferred by the respondent, the first appellate court, on an appreciation of the materials placed, was pleased to set aside the judgment and decree of the trial court in both matters and accordingly, by way of allowing the appeals preferred by the respondent, decreed the suit laid by respondent in O.S.No.284 of 1992 and dismissed the suit laid by the appellants in O.S.No.295 of 1992. Aggrieved over the same, the present second appeals have been levelled.

7.At the time of admission of the second appeal the following substantial questions of law were formulated for consideration.

1.Whether the First Appellate Court erred in law and misdirected itself in granting the relief with respect to the entirety of the suit property in O.S.No.284

of 1992 in the absence of any evidence or explanation for entitlement of more extent of lands by the plaintiff/respondent when admittedly lesser extent is available to the respondent?

2. Whether the First Appellate Court erred in not taking into consideration or giving specific finding on the question whether the appellants are entitled to get the relief under Ex.B2 and B3 especially when those documents are ancient in nature?

3. Whether there was proper casting of burden of proof by the First Appellate Court?

4. Whether the judgment of the First Appellate Court is correct in law for not framing the points for consideration as per Order 41 Rule 33 of CPC more particularly in view of the Division bench judgment of this Honourable Court reported in 1996(2)LW403?

8. The materials placed on record disclose that even as per the admitted case of the appellants, the suit property involved in both matters was originally comprised in old survey fields 2/2 and 271/1 in all measuring 1.10 acres of land, according to the appellants, the said extent of land jointly belonged to Angappan and Kumarasamy.

9. However, it is found that no material as such has been placed by the appellants to show that both Angappan and Kumarasamy jointly owned the above said extent of land located in the old survey fields 2/2 and 271/1. On the other hand, the resettlement register extract placed in the matter and marked as Ex.A6 would go to show that the above said extent of land was owned by Angappan and Kaliaammal and further from the settlement account maintained by the Revenue authority marked as Ex.A7 would go to show that the above said old survey fields had been resurveyed as survey number 2/1 and the extent of land comprising therein had been shown to be belonging only to Angappan. Accordingly, it is found that the extent of 1 acre 10 cents was originally owned by Angappan and not jointly by Angappan and Kumarasamy as put forth by the appellants. Now, it is the case of the respondent that he had purchased the above said extent of land from the legal heirs of Shanmuga Mudaliyar by way of a registered sale deed dated 14.12.1987, which document has come to be marked as Ex.A1. It is admitted by the appellants that Shanmuga Mudaliyar is the only son of Angappan. Accordingly, it is seen that the legal heirs of Shanmuga

Mudaliyar, describing the above extent of land belonging to them ancestrally and in their possession and enjoyment over a long period of time, had alienated the same, in favour of the respondent, by way of Ex.A1. Accordingly, it is seen that pursuant to Ex.A1, exercising full ownership with reference to the said extent of land, it is found that the respondent had also paid Kists and the receipts are marked as Exs.A4 and A5 and the village map plan issued by the Tahsildar, Sathyamangalam has also been marked as Ex.A3. Further, the respondent has also established, that by exercising ownership over the above said extent of land, accordingly alienated the 2 ½ cents of land to one Chenna Naicker by way of Ex.A2 sale deed and therefore, it is seen that it is only the respondent who has been exercising full ownership, possession and enjoyment of the property purchased by him by way of Ex.A1 and accordingly, the same had been shown as the suit property in the suit laid by him in O.S.No.284 of 1992 after excluding the property alienated to Chenna Naicker by way of Ex.A2. It is thus found that by preponderance of probabilities, the respondent has established that he has title to the property described in O.S.No.284 of 1992 and that he is in possession and enjoyment of the same, right from the days of his predecessors in interest over a long period of time, from the documents projected by him as above discussed.

10.Now, the appellants claim title to an extent of 5 cents of land in the property to which the respondent is shown to be having title, possession and enjoyment as above discussed. At the foremost, as above seen, the appellants have not established that Kumarasamy, the brother Angappan had right in the extent of 1.10 acres of land situated in old survey fields 2/2 and 271/1. With reference to the above case of the appellants, nil material is placed on their part. Accordingly, it is found that the appellants are unable to place any proof to hold that the sons of Kumarasamy inherited the property and accordingly are unable to establish that in the family partition effected amongst the members of Kumarasamy family, the said common half share had been allotted to his son Arumugam. Such being the position, the case of the appellants that Kumarasamy, Arumugam had been in possession and enjoyment of the common half share in the old survey fields 2/2 and 271/1 measuring an extent of 1.10 acres of land, not being proved in any manner, it is found that that, accordingly the appellants are unable to establish that Shanmuga Mudaliyar, the son of Angappan and Arumugam had been enjoying the said extent of land in common. On the other hand, from Exs.A6 and A7, as earlier seen, the above said extent of land stood only in the name of Angappan and accordingly, during the resurvey of the fields in survey number 2/1, the entire extent had been mutated or settled only in favour of Angappan and not in favour of Kumarasamy and his sons. In the light of the above

position, the case of the appellants that Palani Gounder had purchased an extent of 5 cents of land from Arumugam and his sons by way of Ex.B2 and their further case that in the partition effected amongst the family members of Palani Gounder, by way of Ex.B2, the said property had been allotted to the first appellant and their further case, the first appellant had sold an extent of 2 ½ cents of land in favour of the second appellant by way of Ex.B1 sale transaction as such cannot be accepted, particularly, when it is seen that the appellants have failed to establish that Kumarasamy and Arumugam had title to the said extent of the land as above discussed and in such view of the matter, merely from Exs.B1 to B3, we cannot conclude that the appellants had acquired a valid title of an extent of 5 cents of land as projected by them. In such view of the matter, the documents marked on behalf of appellants as Exs.B4 and B5 having coming into existence after the litigation had commenced between the rival parties, it is found that the same would be no assistance to buttress the appellants' case. Accordingly, it is found that the appellants are unable to place any material to hold that their alleged predecessors in title had title to the property for which they seek right and that the said same had been in their possession and enjoyment with acceptable materials. Therefore, as rightly determined by the first appellate court, the appellants have failed to establish that they have derived a valid title to the extent of 5 cents of land comprised in O.S.No.295 of 1992 as claimed by them.

11. Accordingly, it is found that the first appellate court, on an appreciation of the materials placed on record, rightly assessed the evidence of P.Ws.2 and 3, who had been found to be engaged for the digging up of the well by the respondent in the property acquired by him, by way of Ex.A1 and finding their evidence acceptable and reliable in all aspects and also coupled with other materials placed by respondent to evidence his possession and enjoyment of the property comprised in O.S.No.284 of 1992, held that the respondent has satisfactorily established his title of possession and enjoyment of the said extent of land and the first appellate court has also rightly determined that the property had been correctly described by the respondent in O.S.No.284 of 1992 excluding the property alienated by him to Chenna Naicker under Ex.A2 and in the light of the above discussions, it is found that, on factual aspects, the first appellate court had rightly assessed the materials placed on record without any giving room for any challenge and accordingly upheld the claim of the respondent. Similarly, the first appellate court is also found to have assessed the materials placed by the appellants, particularly, the evidence of D.W3 and finding his evidence not satisfactory and useful to buttress the appellants' case, discarded his evidence and holding that the appellants have failed to establish their right, possession,

enjoyment and title of the property over which the claim right, particularly, the appellants having failed to establish their predecessors in title, right, possession, enjoyment of the said property, correctly dismissed the appellants' civil suit.

12. The determination of the controversies between the parties as above discussed and as determined by the first appellate court on the factual aspects of the matter in the correct perceptive, as rightly contended by the respondent's counsel, the second appeals are found to be not involving any substantial question of law as such and therefore on the above ground, it is found that the second appeals deserve rejection. For the reasons afore stated, it is found that, the first appellate court has rightly assessed the materials placed on record, both oral and documentary, in the correct perceptive, factually as well as legally and correctly determined that the respondent had established his valid title, possession and enjoyment of the property purchased by him by way of Ex.A1 and that the appellants have failed to establish their title, possession and enjoyment of the property over which they seek right and correctly held that the appellants cannot derive title by way of Exs.B1 to B3, holding that the appellants have failed to establish the title of their predecessors in title and correctly placing the burden of proof on the respective parties and also discussing the entire gamut of the controversies arising between the parties by formulating the main point for determination in the first appeals, it is found that the first appellate court had not contravened the provisions of Order 41 Rule 31 of the Code of Civil Procedure in any manner, as by way of the determination of the controversies between the parties by formulating the main point of determination, had not prejudiced the appellants in any manner, accordingly, the substantial questions of law formulated in the second appeals are answered against the appellants and in favour of the respondent.

13. In conclusion, the second appeals fail and are, accordingly, dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

mfa

To

1. The Principal Sub Judge, Gobichettipalayam.

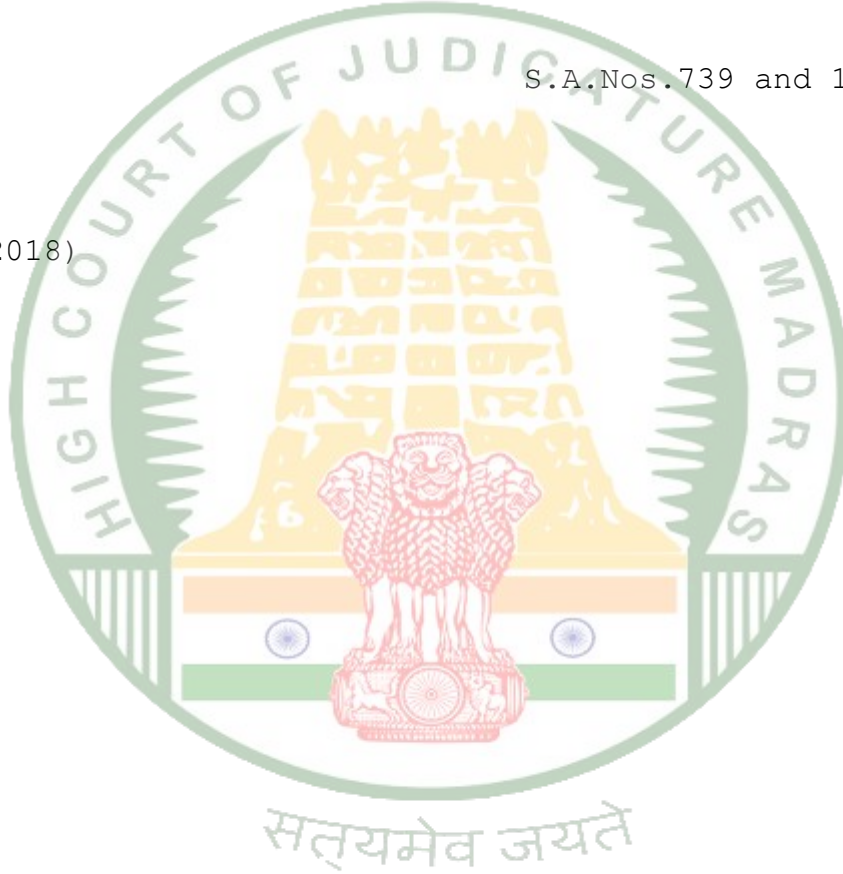
2.The District Munsif Court, Sathyamangalam.

3.The Section Officer,
VR Section, High Court.(2-copies)

+ 2 ccs to M/s. M. Narayanaswamy, Advocate Sr.13021, 13022

S.A.Nos.739 and 1820 of 2003

CNR (CO)
EU (28/03/2018)



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