

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 14.08.2018
DELIVERED ON 29.08.2018

C O R A M

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

Second Appeal No.826 OF 2002
and C.M.P.No.6594 of 2002

Purushothaman ... Appellant /Appellant/Plaintiff

Vs.

1. Deenadayalan
2. Sivagangai ammal
3. Subramaniam
4. Kumar
5. Karthik
6. Annapoorani
7. Kuppusamy
8. Muthulakshmi
9. Haridoss
10. Chandra
11. Rani

... Respondents/Respondents/ Defendants

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure against the decree and judgment made in A.S.No.82 of 1997 on 23.08.2000 by the Principal district Judge, Villupuram, confirming the decree and judgment dated 19.07.1996 made in O.S.No.32 of 1989 by the Subordinate Judge, Tindivanam.

For Appellant : Mr.G.Masilamani, Senior Counsel
for T.Sathiyamurthy
for M/s G.M.Mani Associates

For first Respondent : Mr.K.R.B.Dharanee
for M/s T.R.Rajaraman

For Respondents 3 to 5 : Mr.P.B.Ramanujam
R2, R6 to 11 : Set exparte

JUDGMENT

The unsuccessful plaintiff in both O.S.No.32 of 1989 on the file of the Sub Judge, Tindivanam and A.S.No.82 of 1997

on the file of the Principal District Judge, Villupuram is before this court in this second appeal. The legal heirs of the 2nd defendant and other defendants are the respondents herein.

2. The appellant/plaintiff filed the suit in O.S.No.32 of 1989 before the Sub Judge, Tindivanam for partition and separate possession of 0.69 11/12 cents in R.S.No.323/10 and also for a declaration that he is entitled to get a patta in respect of tamarind trees, described in Item No.2 of suit schedule and also for a permanent injunction restraining the respondents/defendants from interfering with his peaceful possession and enjoyment of the suit properties. He has further prayed for future mesne profits.

3. The case of the appellant/plaintiff is that he purchased 0.69 11/12 cents out of 0.94 cents from one Muthuvel, Radha Ammal, Mahalingam and others, Kothandapani, Natesa Gounder through different registered sale deeds, Ex.A1 to Ex.A8 and the remaining 0.24 cents belonged to the first defendant and 0.13 cents to the defendants 2 & 3. The properties mentioned in Ex.A1 to Ex.A8 are described as item No.1 and they are situate in R.S.323/10 of Kottakuppam Village, Vanur Taluk. The suit item No.2 is tamarind trees situate in R.S.322 of Kottakuppam Village, Vanur Taluk. According to the appellant/plaintiff, he purchased the tamarind trees (Item No.2), though it is situate in Government land and patta was also granted to him and that during 1989, the properties of the plaintiff and the defendants 1 to 3 got mixed up with each other due to rains and flood. It is also his contention that though the plaintiff requested the defendants 1 to 3 to measure out the suit item No.1, as well as their properties, they did not come forward to do the same and that the defendants 5 and 6 without any iota of right over item No.2, are attempting to disturb plaintiff's peaceful possession and enjoyment of the suit item No.2.

4. The defendants 2 & 3 in the trial court remained absent and were set exparte by the trial court and the first respondent/first defendant resisted the suit by contending that the plaintiff never had requested him to measure the suit property and that he has no objection to measure the same.

5. The respondents 3 to 5/the defendants 4 to 6 filed a written statement contending that the tamarind trees in S.No.322 (item No.2) and one tamarind tree in S.No.323/10 (Item No.1) do not belong to the plaintiff. They have also questioned the maintainability of filing of the suit by the plaintiff for partition and had further contended that the plaintiff does not have title, even in respect of suit item No.1. According to them, the entire 0.94 cents is a tamarind grove and except two trees, other items were already cut by the sharers and those two

trees also belonged to the grand father of the 4th defendant. It is their further contention that the entire extent of 0.94 cents were already partitioned by way of oral partition in their family and since 2c patta was granted to the father of the 4th defendant in respect of the item No.2, the plaintiff cannot claim any right over the same. They have therefore, prayed for the dismissal of the suit.

6. The trial court framed the following issues.

1. Whether the plaintiff has no right to file a suit for partition as alleged by the defendants 4 to 6?

2. Whether the plaintiff has no right for the relief of declaration in respect of the trees in the B schedule properties, as alleged by the defendants?

3. Whether the Court Fee paid is not correct as alleged by the 1st defendant?

4. Whether the plaintiff is entitled to get any share? If so, how much share?

5. To what relief the plaintiff is entitled ?

7. In the trial court, the plaintiff examined himself and 4 other witnesses and marked Ex.A1 to Ex.A29. The 4th defendant examined himself and two other witnesses and marked Ex.B1 to Ex.B5.

8. After full contest, the trial court dismissed the suit. Aggrieved over the decree and judgment dated 19.07.1996 passed by the learned Sub Judge, Tindivanam, the plaintiff filed the first appeal in A.S.No.82/1997 before the Principal District Judge, Villupuram, which was also dismissed vide decree and judgment dated 23.08.2000.

9. The trial court dismissed the suit on the following grounds.

a. The plaintiff has not established that the suit property is yet to be partitioned.

b. The plaintiff has not established as to how his predecessors in title became entitled to the properties conveyed through Ex.A1 to Ex.A8 to the plaintiff on various dates.

c. since 2c patta in respect of tamarind tree was issued to the 4th defendant, as evidenced by Ex.B2 and Ex.B3, the plaintiff cannot claim any right over suit item No.2.

10. The first appellate court while holding that the plaintiff is entitled to 0.69 11/12 cents (suit schedule item No.1) out of 0.94 cents had also observed that the proper course available to the plaintiff is to approach the Revenue Authorities to measure and demarcate their properties and not by filing a suit for partition, especially, when he is neither a co-sharer nor a joint purchaser with the defendants 1 to 3. It is further observed that the plaintiff atleast should have filed a suit for declaration of his title and for possession of the suit properties.

11. In the II appeal, the following substantial questions of law were raised.

1. Whether the court below is right in holding that the proper course open to the plaintiff/appellant is to approach the Revenue authorities by way of application to resurvey and to demarcate the extent of the property to which the plaintiff is entitled to, when especially the plaintiff/appellant averred and proved that he has purchased a portion of the suit properties from the co-sharers?

2. Whether the court below is right in holding that since the plaintiff had purchased the suit properties with specific boundaries, the proper remedy available to him is to approach the revenue authority?

3. Whether the court below is right in holding that a suit for partition can only be filed by the co-sharer in a joint family or co-purchasers of the property from a common seller, when especially, admittedly the suit property was purchased by the appellant/plaintiff from some of the co-sharers or through subsequent purchasers from the co-sharers?

4. Whether the court below was right in holding that the plaintiff/appellant cannot seek the relief of the partition of item -1 of the suit property against the defendants 1 to 3 after coming to conclusion that the sale executed in favour of the appellant by the other co-sharers and the subsequent purchasers from the co-sharer is valid?

12. At the outset, it may be observed that the appellant/plaintiff has purchased the suit properties with specific boundaries and therefore, the suit filed by him for

partition is not maintainable. As regards the title of the suit properties, both the courts below have analysed the evidence on record and the trial court has held that the appellant/plaintiff has not proved that his vendors had valid right to convey the properties to him (plaintiff). It is further observed that his vendors cannot convey a better title than what they had.

13. On the contrary, the first appellate court has observed that the plaintiff is entitled to 0.69 11/12 cents out of 0.94 cents (item No.1). At this juncture, it is relevant to point out that the plaintiff has not filed the suit in O.S.No.32 of 1989 on the file of the Sub Judge, Tindivanam for a declaration of his title over the suit properties and instead, he has filed the said suit for partition and separate possession in respect of item No.1.

14. Mr.Mr.G.Masilamani, Senior Counsel, appearing for T.Sathiyamurthy for M/s G.M.Mani Associates, learned counsel for the appellant would contend that a perusal of Ex.A1 to Ex.A8 would go to show that some of the boundaries are common and therefore, it cannot be alleged that the appellant/plaintiff purchased the properties with specific boundaries. This arguments advanced by the learned counsel appearing for the appellant/ plaintiff has not been pleaded in the plaint. On the contrary, it is specifically pleaded that the properties of the plaintiff and the defendants 1 to 3 got mixed up, during January 1981. Both the courts below have taken pains in going through the records to find out whether the appellant/plaintiff is entitled to 0.69 11/12 cents in S.No.323/10. The plaintiff has not filed the parent documents of Ex.A1 to Ex.A8. In any event, the suit filed by the plaintiff was not for declaration of title to the suit properties.

15. As already observed, a perusal of the sale deeds Ex.A1 to Ex.A8 shows that they are purchased properties with specific boundaries and there is no question of partitioning the Item No.1. If the appellant/plaintiff feels that his properties got mixed up with the respondents'/ defendants' properties, he should approach the Revenue Authorities to measure out the suit properties and demarcate the same. Since the appellant/plaintiff's specific contention is that he purchased 0.69 11/12 cents out of 0.94 cents with boundary descriptions, he cannot say that he purchased a portion of the suit properties from the co-sharers. Both the courts below need not have gone into the title of the plaintiff to the suit properties and since the defendants seem to have denied the title of the plaintiff over the suit properties, the plaintiff can only file a suit for declaration of his title over the suit properties. The first appellate court, without going through the parent documents of Ex.A1 to Ex.A8, should not have come to the

conclusion that the plaintiff has title and right over the suit properties. In view of all these reasons stated by me, I hold that the appeal is devoid of merits and the same is liable to be dismissed.

16. In the result, the second appeal is dismissed. No costs.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

mst

TO

1. The Principal District Judge,
Villupuram.
2. The Subordinate Judge,
Tindivanam.

+1cc to Mr.G.M.Mani Associates, Advocate, S.R.No. 59125
+1cc to Mr.P.B.Ramanujam, Advocate, S.R.No. 59150
+1cc to Mr.T.R.Rajaraman, Advocate, S.R.No. 59111

Second Appeal No.826 OF 2002
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GJ (CO)
GN (28/09/2018)

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