

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2018

CORAM :

The HONOURABLE MS.JUSTICE P.T.ASHA

S.A.No.644 of 2018
and
C.M.P.No.19963 of 2018

1.Raveenthiran
2.Ramaiyan

..Appellants/Plaintiffs

.Vs.

1.Gomathi
2.Rajeswari

..Respondents/Defendants

Prayer: Second Appeal filed under Section 100 of Code Civil Procedure against the Judgment and Decree dated 09.08.2018 made in A.S.No. 96 of 2017 on the file of the Subordinate Judge, Jayankondam, (A.S.No.04/2017 on the file of Sub Court, Ariyalur), reversing the Judgment and Decree dated 26.10.2016 made in O.S.No.91 of 2009, on the file of the District Munsif Court, at Jayankondam.

For Appellant : Ms. M. Senthil Vadivu

J U D G M E N T

The plaintiffs are the appellants before this Court. The Second Appeal is filed challenging the Judgment and Decree dated 09.08.2018 in A.S.No.96 of 2017 on the file of the learned Subordinate Judge, Jayankondam in and by which, the learned Judge had reversed the Judgment and Decree passed by the Trial Court in O.S.No.91/2009 dated 26.10.2016.

2. The suit in O.S.No.91 of 2009 is for a bare injunction filed by the plaintiffs. The case of the plaintiffs is that the property belongs to one Samikannu by virtue of a Sale Deed dated 25.05.1939. The said Samikannu is the father of the 2nd

plaintiff and grandfather of the 1st plaintiff, through his pre-deceased son Chinnayan. The case of the plaintiffs is that in the year 1995, Samikannu died leaving behind the plaintiffs as his successors/surviving heirs, on whom the suit property had devolved .

3. The revenue authorities had erroneously transferred the patta in the name of 2nd defendant which order was challenged by the plaintiffs before the revenue authority and vide order dated 10.09.2007, the Tahsildhar Jayankondam had canceled the patta granted to the 2nd defendant. Thereafter, it is the case of the plaintiffs that the 2nd defendant started disturbing the possession of the plaintiffs contending that she had purchased the property from the 1st defendant on 25.03.2009. In these circumstances, the plaintiff was constrained to file the suit.

4. The Defendants have resisted the suit by inter alia contending that the properties in question originally belonged to one Vadamalai. Vadamalai had two sons viz., Ganapathy and Samikannu. Ganapathy had two children, a son and daughter, viz., Govindhasamy and Chinnapillai through his wife Gangaammal. After the death of Gangaammal, the property came to Govindasamy and Boopalan, son of Govindasamy, acquired the property subsequent to the death of his father. The plaintiffs are claiming the property through the second son of Samikannu, viz., Ramaiyan. It is the case of the defendants that the purchase of property in the year 1939 by Samikannu was only from and out of the income from the joint family properties. After the death of his brother Ganapathy, Samikannu was incharge of the joint family properties and on 01.05.1940, there was oral partition between Samikannu and sister-in-law Gangaammal in which the suit property was allotted to the share of Gangaammal besides other properties. On her death, the property devolved on his son Govindhasamy and after him, on his son Boopalan. It is stated that Boopalan also died and consequently, the properties went to the share of 1st defendant his sister, on 06.09.2006. The 1st defendant sold the property to 2nd respondent/2nd defendant and since then, the 2nd defendant is in possession and enjoyment of the suit property. In fact, the suit property has not been included in the partition deed dated 25.06.1981 entered into between Samikannu, his son Ramaiyan and grandson Raveenthiran on account of the fact that these properties fell to the share of Boopalan.

5. The Trial Court after considering the evidence was of the opinion that the plaintiffs were only entitled to a Decree for injunction. Challenging the said Judgment and Decree, the defendants moved A.S.No.4 of 2017 before the Sub Court,

Ariyalur, and on transfer to the file of the learned Subordinate Judge, Jayamkondam, the appeal quit came to be renumbered as A.S.No.96 of 2017 .

6. The learned Subordinate Judge, Jayamkondam, on a detail scrutiny of the evidence available on record, came to the conclusion that the plaintiffs were not entitled to a Decree for injunction and consequently, set aside the Judgment and Decree of the Trial Court and challenging the said Judgment and Decree, the plaintiffs are before this Court.

7. Heard M/s. M. Senthil Vadivu learned counsel for the appellants, who would vehemently argue that the Trial Court has considered various documents filed by the plaintiffs to show their possession of the suit property which included the Kist receipts and the patta. She would further argue that the patta stood in the name of Samikannu and therefore, the plaintiffs possession has been confirmed. She would further argue that the Appellate Court has not taken note of the various documents filed by them and had wrongly relied on the evidence of DW3 & DW4 to come to the conclusion that the plaintiffs were not possession of the suit property.

8. This Court considered the submissions made by the learned counsel for the appellants and also perused the material placed before it.

9. It is an admitted fact that Samikannu, his son [2nd plaintiff] and grandson [1st plaintiff] had entered into a partition on 25.06.1981 (Ex.P7) in respect of their properties. Interestingly, the suit property has not been included in the said Partition Deed. The natural presumption would therefore be that this property has been allotted to Gangaammal in the partition that took place wayback in the year 1940 through a partition chit which was marked by the defendants. The said document was not objected to by the plaintiff. Therefore, from the reading of that partition chit, it is clear that the suit property has fallen to the share of Gangaammal and ultimately, to the share of the 1st defendant and the patta which is granted to the 2nd defendant was canceled by the plaintiffs and the same is also the subject matter of appeal.

10. In these circumstances, considering the fact that the suit is one for bare injunction without declaration and also considering the evidence let in by the defendants to prove their possession, I find no infirmity in the Judgment and decree of the Appellate Court. The Plaintiffs have not made any question of law much less substantial question of law warranting interference of this Court.

11. In the result, the Second Appeal therefore stands dismissed, confirming the Judgment and Decree dated 09.08.2018 made in AS.No.96/2017 on the file of the Court of the Subordinate Judge, Jayankondam. No costs. Consequently, connected Miscellaneous Petition is also dismissed.

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Sd/-
Assistant Registrar(CS III)

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Sub Assistant Registrar

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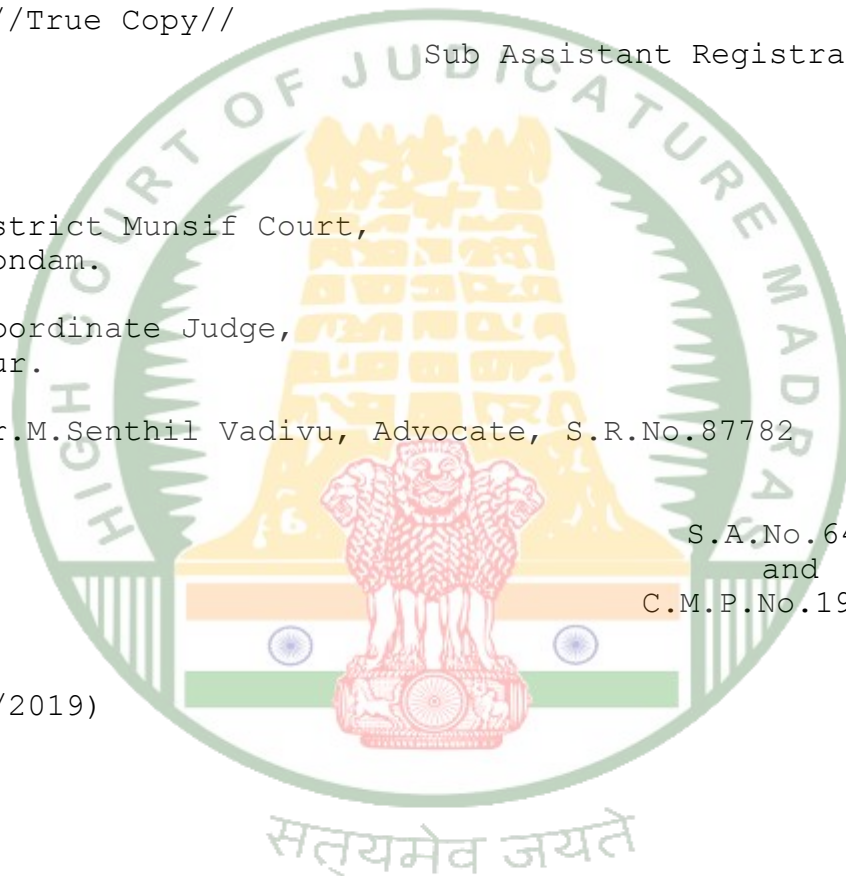
1. The District Munsif Court,
Jayankondam.

2. The Subordinate Judge,
Ariyalur.

+1cc to Mr.M.Senthil Vadivu, Advocate, S.R.No.87782

S.A.No.644 of 2018
and
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