

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.12.2018

Coram

The Honourable Ms.Justice P.T.ASHA

S.A.No.791 of 2018  
and  
C.M.P.No.22264 of 2018

1.Lakshmi  
2.Govindane  
3.Karounakaran  
4.Jamouna  
5.Aroumougame  
6.Kajendiran

...Appellants/Plaintiff

Versus

1.Thayumanavan  
2.Thamizhkathathalaivan  
3.Thamizhnithi  
4.Thavaputhalvan

...Respondents/Defendants

This Second Appeal is filed under Section 100 of C.P.C praying to set aside the judgment and decree dated 14.09.2018 passed by the learned Principal Sub Judge, Puducherry in A.S.No.50 of 2018 confirming the judgment and decree dated 26.02.2018 passed by the learned I Additional District Munsif, Puducherry in O.S.No.1414 of 2011.

For Appellant : Mr.R.Thiagarajan

For Respondents : Mr.T.P.Manoharan,  
Senior Counsel  
for Mr.K.P.Jotheeswaran

J U D G M E N T

The plaintiffs are the appellants before this Court. The plaintiffs had come forward with the suit for declaration and consequential injunction in respect of the property which is detailed hereinbelow:

"Pondicherry R.D., Bahour Sub-R.D., Nettapakkam  
Commune, Village No.58, Pandasozhanur Revenue  
Village (1) R.S.No.166/6, Cadastre No.161/1, 161/2,

161/3, 161 2/2, 161 2/1, total extent 53 Ares in which the Eastern portion measuring to an extent of 44 Kuzhi 4 Veesam.

Boundaries: South of Pondy Road; North of land owned by Malliga Sakthivel and Nehru Nagar Layout; East of land owned by Arumuga Kavundar and West of land owned by Ramapathiran."

2. It is the case of the plaintiffs that the suit property originally belong to one Govinda Counder. After the death of the said Govinda Counder and his wife Chinnammal, the suit property devolved equally on their three sons viz., Periyasamy Counder, Kumarasamy Counder and Krishnasamy Counder, who is the grandfather of the plaintiffs 2 to 6.

3. The deceased Govinda Counder owned a total extent of 66 Kuzhies and 6 Veesam. In a partition between the three sons, viz., Krishnasamy Counder, Periyasamy Counder and Kumarasamy Counder each were allotted 22 Kuzhies and 2 Veesam of landed property. The plaintiffs would contend that Kumarasamy Counder had died issueless and his share was given to his brother Krishnasamy Counder. The said Krishnasamy Counder had died on 06.03.1970, leaving behind his only son Gangadharan. Gangadharan died intestate on 22.12.1986 leaving behind the plaintiffs herein. The plaintiffs would submit that they are in possession and enjoyment of 44 Kuzhies and 4 Veesam (the suit property). It was also their case that the other brother, Periyasamy Counder had sold his share to one Sadasiva Padayatchi, the grandfather of the defendants under a sale deed dated 21.07.1951. The defendants were attempting to disturb the plaintiffs' possession and enjoyment of the suit property and therefore, the suit.

4. The defendants had filed a written statement inter alia contending that on 13.06.1961, the said Sadasiva Padayatchi had executed a donation deed in favour of his three sons viz., 1.Rathinavel Padayatchi, 2.Subramania Padayatchi & 3.Ramabathira Padayatchi and the said deed was written and registered by virtue of a registered Notarial deed of donation. The suit property was the part of the partition which was given to Ramabathira Padayatchi and he was in enjoyment of the same. The Revenue Records were also mutated in his name and on 29.10.1998, the said Ramabathira Padayatchi had died intestate leaving behind his 4 sons viz., defendants 1 to 4 and his wife, Valliammai and on 16.11.2010, they had partitioned the properties among themselves.

5. In the additional written statement filed by the defendants, they would further contend that they had purchased the property from Kumurasamy Counder's son Adimoolam and that the plaintiff was only entitled to an extent of 22 Kuzhies and

2 Veeram. After a detailed enquiry, the learned Additional District Munsif, Puducherry had dismissed the suit. Aggrieved by the same, the plaintiffs had filed a First Appeal in A.S.No.50 of 2018 on the file of the Principal Sub Court, Puducherry who had also confirmed the finding of the trial Court. The learned Subordinate Judge had also held that the plaintiffs had not let in any proof to show that the property was in their possession and also the fact as to why they alone were enjoying the share of the Kumarasamy Counder when admittedly he had another brother.

6. Mr.R.Thiagarajan, learned Senior Counsel appearing for the appellants would argue that the Courts below having held that the plaintiff is entitled to an extent of 22 Kuzhies 2 Veeram ought to have moulded the relief for declaration to that extent and ought not to have dismissed the suit in toto. He would also argue that the proceedings were pending before the Collector-cum-Appellate Authority on the ground that the properties could not be identified. The learned Senior Counsel appearing on behalf of the respondent would not agree to the grant of liberty and what would contend that both the Courts below have concurrently held against the plaintiffs and admittedly, the plaintiffs have not been able to entitled to the enjoyment of 44 Kuzhies and 4 Veeram land property.

7. Heard the learned counsels on both sides.

8. The plaintiffs have come forward with a specific case regarding the suit property. The Court cannot mould the relief and identify the property sitting in Second Appeal under Section 100 of C.P.C. The plaintiffs' right to the extent of 22 Kuzhies 2 Veeram have not been disputed by the defendants. The Courts below have also found that the plaintiffs have not been able to establish the fact that one brother had allotted his share to them and in the absence of the proof, the Courts below have been correct in dismissing the suit.

9. In the result, this Second Appeal fails and the same is dismissed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-

Assistant Registrar (CS-I)

True Copy

Sub-Assistant Registrar

mrr

To

1.The Principal Sub Judge,  
Puducherry.

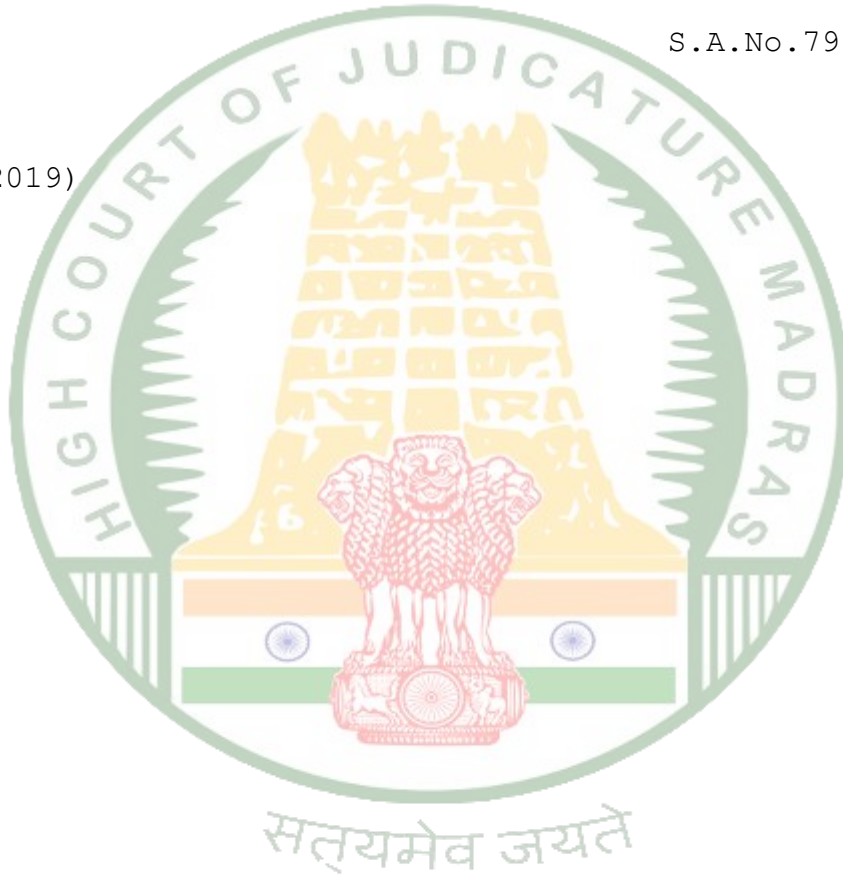
2.The I Additional District Munsif,  
Puducherry.

+1 CC to Mr.K.P.Jotheeswaran, Advocate sr 86376.

+1 CC to Mr.R.Thiagarajan, Advocate sr 86518.

S.A.No.791 of 2018

MP (CO)  
SP (27/03/2019)



WEB COPY