



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.02.2018

CORAM :

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THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

S.A.(MD).No.34 of 2018

N.Prabhaja ...Appellant/Appellant/Plaintiff

Vs.

1.T.Ramakrishnan

2.Saraswathy

3. The Taluk Surveyor,
Agasteeswaram Taluk,
Nagercoil, Nagercoil Village,
Kanyakumari District.

4. The Tahsildar,
Agasteewaram Taluk,
Nagercoil, Nagercoil Village,
Kanyakumari District.

5. The District Collector,
Kanyakumari District,
Nagercoil.

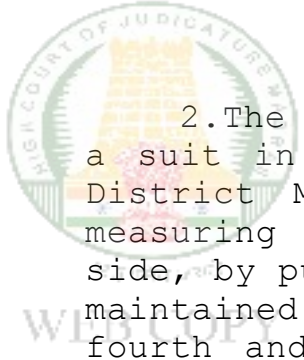
...Respondents/Respondents/Defendants

Prayer: Second Appeal filed under Section 100 of the Code of the Civil Procedure, against judgement and decree in A.S.No.52 of 2014, dated 11.08.2015 on the file of the Principal Sub Court, Nagercoil, confirming the judgment and decree in O.S.No.90 of 2012, dated 21.02.2014 on the file of the II Additional District Munsif Court, Nagercoil.

For Appellants : Mr.C.Godwin
For R2 : Mr.N.S.Ramakrishnadass
For R3 to R5 : Mr.S.Angappan,
Government Advocate

JUDGMENT

This second appeal is filed against judgement and decree in A.S.No.52 of 2014, dated 11.08.2015 on the file of the Principal Sub Court, Nagercoil, confirming the judgment and decree in O.S.No.90 of 2012, dated 21.02.2014 on the file of the II Additional District Munsif Court, Nagercoil.



2.The plaintiff is the appellant in this appeal and she filed a suit in O.S.No.90 of 2012, on the file of the II Additional District Munsif Court, Nagercoil, praying for demarcating and measuring the suit schedule property, especially on the northern side, by putting survey stones on the basis of the revenue records maintained by the third defendant, under the administration of the fourth and fifth defendant. The suit is also for consequential permanent injunction restraining the defendants 1 and 2 and their men from encroaching into or disturbing the plaintiff's peaceful possession and enjoyment of the suit property. The suit property as described in the plaint is a land, measuring an extent of 4 $\frac{1}{2}$ cents, in resurvey No.125/9.

3.The case of the plaintiff is that the plaintiff's father got the suit schedule property under a registered partition deed of the year 1972 (Document No.2683/1972). The suit was contested by the respondents mainly on the ground that the plaintiff is claiming right more than what she is entitled to under the registered partition deed. It is the specific case of the defendants that the plaintiff's father was allotted only an extent of 4 $\frac{1}{4}$ cents property and not 4 $\frac{1}{2}$ cents. The Trial Court dismissed the suit holding that the plaintiff cannot claim more than the extent her father got under the registered partition deed in the year 1972. The appellant preferred an appeal before the Principal Sub Judge, Nagercoil, in A.S.No.52 of 2014. The appellate Court also dismissed the appeal, confirming the judgment and decree of the trial Court. Aggrieved by the judgment and decree of the lower appellate Court, the appellant / plaintiff has preferred the above second appeal.

4.The learned Counsel for the appellant submitted that the Courts below ought to have granted relief at least in respect of 4 $\frac{1}{4}$ cents. The title of the plaintiff under the family partition deed in the year 1972, has been admitted by the defendants in the writ statement. The learned Counsel for the appellant has also filed an affidavit before this Court, which reads as follows:

"2.I submit that I have claimed title over 4 1/2 cent in the suit property and now I am restricting the claim over 4 1/4 cents as provided under Ex-A1, partition deed which is admitted by respondents 1 and 2 in the written statement. The official respondents filed written statement to the effect that since the respondents 1 and 2 filed objections they could not subdivide the property. The official respondents can determine and record a disputed boundary under Section 10 of the Tamil Nadu Survey and boundaries Act. Hence, this Hon'ble Court may mould the relief by granting lesser relief to the extent of 4 1/4 cents as admitted by respondents 1 and 2. My counsel has filed a memo before this Hon'ble Court for granting lesser relief as admitted by respondents 1 and 2".



5. The learned Counsel for the respondent 2, on instructions, fairly submitted that his client had admitted the title of the appellant in respect of $4\frac{1}{4}$ of cents of land in resurvey No.125/9, as per the registered partition deed of the year 1972. Hence, this Court, on the basis of admission of the defendants, is inclined to hold that the plaintiff / appellant is entitled to the relief in respect of $4\frac{1}{4}$ cents, instead $4\frac{1}{2}$, claimed before the Courts below.

6. As a result, the second appeal is partly allowed and the judgement and decree in A.S.No.52 of 2014, dated 11.08.2015 on the file of the Principal Sub Court, Nagercoil, confirming the judgment and decree in O.S.No.90 of 2012, dated 21.02.2014 on the file of the II Additional District Munsif Court, Nagercoil, is set aside and the suit in O.S.No.90 of 2012, on the file of the II Additional District Munsif, Nagercoil, is decreed in respect of an extent of $4\frac{1}{4}$ cents within the four boundaries specified in the plaint. No costs.

Sd/-
Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

1. The Principal Subordinate Judge,
Nagercoil.
2. The II Additional District Munsif,
Nagercoil.
3. The Taluk Surveyor,
Agasteeswaram Taluk,
Nagercoil, Nagercoil Village,
Kanyakumari District.
4. The Tahsildar,
Agasteewaram Taluk,
Nagercoil, Nagercoil Village,
Kanyakumari District.
5. The District Collector,
Kanyakumari District,



6. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai. (2 COPIES)

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+ 1 cc TO Mr.C.Godwin , Advocate in SR No. 48828

+ 1 cc TO Mr.N.S.Ramakrishna Dass , Advocate in SR No. 49060

cmr

AE/SV MMS/SAR1/05.06.2018/4P/10C

S.A. (MD) .No.34 of 2018
15.02.2018