



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

S.A.(MD)No.57 of 2018
and
C.M.P.(MD)No.984 of 2018

Arunachala Gounder Textiles Private Limited,
Represented by its Managing Director

... Appellant / Respondent / Defendant

-Vs-

T.Arumugamkonar ... Respondent / Appellant / Plaintiff

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code, against the decree and judgment made in A.S.No.88 of 2014, dated 01.09.2017, passed by the learned Additional Subordinate Judge, Tenkasi, Tirunelveli District, reversing the judgment of learned Additional District Munsif, Tenkasi, Tirunelveli District, dated 10.10.2014, made in O.S.No.241 of 2009.

For Appellant :Mr.S.Palanivelayutham

JUDGMENT

This appeal has been filed against the decree and judgment in A.S.No.88 of 2014, dated 01.09.2017, passed by the learned Additional Subordinate Judge, Tenkasi, Tirunelveli District, reversing the judgment and decree of learned Additional District Munsif, Tenkasi, Tirunelveli District, dated 10.10.2014, made in O.S.No.241 of 2009.

2.The defendant in the suit in O.S.No.241 of 2009, is the appellant in this appeal. The respondent / plaintiff has filed a suit in O.S.No.241 of 2009, on the file of the learned Additional District Munsif, Tenkasi, Tirunelveli District, for a declaration that the suit property belongs to him and for a consequential permanent injunction restraining the respondent from interfering with the plaintiff's peaceful possession and enjoyment of the suit property. The suit property is described in the plaint as an extent of 0.59.09 Hectares equivalent to 1.46 Acres in S.No.681/3B in Keelaveeranam Village with reference to four boundaries.



3.The case of the plaintiff is that the suit property originally belonged to the two sons of one Karupppiah Konar, by name, Chinna Thirvenkada Konar and Naduthiruvankada Konar. It is stated by the plaintiff in the plaint that there was an effected oral partition and the suit property was allotted to the son of Naduthiruvankada Konar, by name, Karupppaiah, and the same was given a separate sub-division as S.No.681/3B. The plaintiff claimed to have purchased the suit property from the said Karupppaiah, son of Naduthiruvankada Konar. Stating that the defendant, who is a stranger is trying to interfere with the plaintiff's peaceful possession and enjoyment, the suit has been filed.

4.In the written statement, the appellant claimed title under a sale deed dated 03.08.2004, alleged to have been obtained from the original owners. The defendant further stated that he has made improvement over the suit property and erected a wind Mill. In the written statement, there is no specific denial about the oral partition pleaded by the plaintiff. Further, the defendant filed an additional written statement, stating that the entire property in S.No.381/3, measuring an extent of 2.96 cents was allotted to Chinna Thiruvankada Konar. It is further stated that the said Chinna Thiruvankada Konar along with his daughter sold the property in favour of one Subbiah Konar, by document dated 05.08.1970 and that the said Subbiah Konar was in enjoyment of the property, namely an extent of 1 acre 51 cents in S.No.681/3A and an extent of 49 cents out of 1 acre 51 cents in S.No.681/3B.

5.From the written statement and additional written statement, it can be seen that the defendant claimed title in respect of extent of northern 49 cents, out of the total extent of 1.46 Acres in S.No.681/3B. Hence, there is no dispute with regard to the remaining property claimed by the plaintiff in S.No.681/3B.

6.Before the trial Court, the plaintiff produced the settlement register extract, as Ex-A2, to shows that the suit property belonged to the two brothers namely, Chinna Thirvenkada Konar and Naduthirvenkada Konar. The document produced as Ex-A3, is a Patta, which would show that the property purchased by the plaintiff stood in the name of the son of Naduthirvenkada Konar, namely, the vendor of the plaintiff. The trial Court without taking note of the fact that the defendant also claimed title under Chinna Thirvenkada Konar, brother of Naduthiruvankada Konar that the original ownership is not disputed in the written statement, dismissed the suit on the ground that the plaintiff has not proved his title to the suit property. Despite the position that the plaintiff claimed his title under Naduthirvenkada Konar, and the entire property measuring an extent of 2.96 cents in S.No.381/3 was registered in the name of the two brothers, the trial Court held that the document under Ex-A3, Patta will not confer any right in favour of the plaintiff, as the plaintiff has failed to produce any title deed. Aggrieved by the



judgment and decree of the trial Court, the plaintiff has preferred an appeal in A.S.No.88 of 2004, before the Additional Sub Court, Tenkasi.

7. After analyzing pleadings and the issue arises between the parties, the appellate Court has found that the title of the plaintiff's predecessor in interest is established. As a matter of fact, the appellate Court referred to the admission of the defendants, during the cross examination, admitting the title of Chinna Thiruvengkada Konar and Naduthirvenkada Konar in respect of the entire property in S.No.381/3. It is also admitted by DW-1, the defendant, that his vendor had right in respect of the land in S.No.381/3A and that he had no right in the land in S.No.381/3B. Considering the fact that the suit property is the ancestral property of plaintiff's vendor, the lower appellate Court relied upon the settlement register extract, under Ex-A2 and the Patta, under Ex-A3 and held that the plaintiff has proved his title in respect of the suit property. The appellate Court considered all the issues in a proper perspective and reversed the findings of the trial Court and decreed the suit as prayed for, except a small modification by holding that the plaintiff is entitled only to an extent of 0.59.0 Hectare in S.No.681/3-B, instead of 0.59.09 Hectares, shown in the plaint schedule. Aggrieved over the same, the defendant has preferred the above second appeal.

8. The learned Counsel for the appellant has referred to the substantial questions of law raised in this appeal in the memorandum of grounds. The questions of law raised in this appeal are factual. Having regard to the admission of DW-1 and the findings of the lower appellate Court on proper appreciation of facts in this case, this Court does not find any substance in the substantial questions of law raised by the appellant. The learned Counsel for the appellant has not pointed out any other material to dislodge any of the findings of the lower appellate Court on merits. The judgment and decree of the appellate Court is well founded and based on proper appreciation of the pleadings and facts in entirety. Since the judgment and decree of the appellate Court is based on evidence, this Court is not inclined to entertain this appeal. As a result, this second appeal is dismissed and the judgment and decree in A.S.No.88 of 2014, dated 01.09.2017, passed by the learned Additional Subordinate Judge, Tenkasi, Tirunelveli District, reversing the judgment and decree of learned Additional District Munsif, Tenkasi, Tirunelveli District, dated 10.10.2014, made in O.S.No.241 of 2009 is confirmed. No costs. Consequently, the connected, miscellaneous petition is closed.

Sd/-

Assistant Registrar(CSIII)

/True Copy/



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1.The Additional Subordinate Judge, Tenkasi,
Tirunelveli District.

2.The Additional District Munsif, Tenkasi,
Tirunelveli District.

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

+One cc to M/s.S.Palanivelayutham, Advocate, SR.No.52404

Cmr

RL/6C/4P/KK/SAR1/6/4/2018

Judgment made in
S.A.(MD)No.57 of 2018
28.02.2018