

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.06.2019

CORAM

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

S.A.No.1210 of 2008
and
C.M.P.No.12927 of 2019

1. R.Kumar (Died)
2. Manga
3. Gangabai Ammal
4. Yamuna
5. K.Nithiyanandham
6. Choodamani

(Appellants 4 to 6 brought
on record as legal representatives
of the deceased 1st appellant vide
Order of Court dated 03.06.2019
made in C.M.P.No.6693 of 2017
in S.A.No.1210 of 2008 (NSSJ)

... Appellants/Appellants/Defendants

versus

1. A.R.Balaji
2. A.R.Banumathi
3. A.R.Latha
4. A.R.Meenakshi

... Respondents/Respondents/Plaintiffs 2 to 5 (LRs of the
deceased 1st Plaintiff)

Prayer: Second Appeal is filed under Section 100 of code of Civil Procedure against the decree and judgment dated 31.01.2008 in A.S.No.65 of 2006 on the file of the Additional District and Sessions Court (II Fast Track Court), Ranipet in confirming the decree and judgment dated 30.09.2005 in O.S.No.176 of 1997 on the file of the District Munsif Court, Sholinghur.

For Appellants : Mr.Sankaranarayanan
For Respondents: Mr.E.Kannadasan

JUDGMENT

A non issue, which has become an issue, has reached this Court for a resolution in this Second Appeal.

2. The admitted case is that the plaintiffs' father Dharmalinga Mudaliar had purchased a block of property under Ext.A-1 dated 11.08.1953. The property conveyed under Ext.A1 was described in two schedules, namely, A and B schedules. Subsequently, on 20.01.1956, Vide Ext.B1-sale deed, Dharmalinga Mudaliar had sold a portion of the property described as 'B' schedule to a certain Rajammal. The defendant claim under the said rajammal.

3. The property conveyed to Rajammal under Ext.B-1 is a vacant site measuring north-south 24 yards and east-west 12.5 yards. The dispute is all about identifying this plot of land on lie.

4. The trial Court decreed the suit, and the first appeal in A.S.65/2006 preferred by the defendant came to be dismissed.

5. This appeal was admitted for considering the following substantial questions of law:

1. Whether the Courts below have misconstrued and misinterpreted the documents Ex.A1 and B1?
2. Whether the Courts below have erred misinterpreting the said documents Ex.A1 and B1?
3. Whether the Courts below, having seen recitals in Ex.A1 and Ex.B1, erred in misreading the boundaries of documents?

6. Before this Court, neither the plaintiffs stake any claim to the property covered under Ext.B1, nor the defendants, who are the appellants herein, claim any right more than what is covered under Ext.B-1. The controversy is all about identifying the property covered under Ext.B-1 which deals only with a portion of property covered under Ext.A-1 sale deed. Surprisingly, neither side has applied for appointment of an Advocate Commissioner before the Courts below to fix the demarcating line and this has landed this case before this Court.

7. It is therefore imperative that a Commissioner visited the property. The appellants/defendants have filed C.M.P.No.12927 of 2019 for appointing an Advocate Commissioner for plot the property covered under Ext.B-1 on lie, with the assistance of a Taluk Surveyor. Inasmuch as neither parties show interest over the plots either retained by the plaintiffs, or the one which the defendants claim under Ext.B1 sale deed, as the case may be, for fixing the demarcating line to settle the issue a Commissioner has to go make a local inspection of the property and to file a report to indicate the demarcating line. This Court, therefore, allows the C.M.P.No.12927 of 2019 for appointing a Commissioner.

8. In the course of argument, it was also brought to the notice of this Court that the description of the western boundary appears to have been wrongly mentioned. Therefore, the plaintiffs would be at liberty to amend the plaint to match the boundary description as per Ext.A-1.

9.1 In conclusion, this Court allows this Second Appeal and set aside the judgment and decree of the Additional District and Sessions Court (II Fast Track Court), Ranipet, in A.S.65 of 2006, and remand the matter back to the trial Court. Based on the Orders of this Court in C.M.P.No.12927 of 2019, the Trial Court is directed to appoint an Advocate of some standing on the civil side and who is a regular before the Court as the Commissioner for fixing the boundaries and also for fixing the demarcating line of the property sold under Ext.B-1 in accordance with it. In the meantime, the plaintiffs have also required to amend the plaint and to facilitate the Court to pass a decree appropriately.

9.2 The Trial Court is also directed to fix the Commissioner's batta and the appellant is directed to pay the same. Advocate Commissioner shall be assisted by a qualified Taluk Surveyor for which, the Trial Court is directed to address a communication to the District Collector, Vellore through the Principal District Judge, Vellore. This is because of the suit is of the year 1997, some 22 years from now, it is imperative, the entire exercise is concluded within a period of three months from the date of receipt of a copy of this judgment.

9.3 After taking into account the Commissioner's report, the Trial Court is directed to hear both sides and decide the case appropriately. The parties are at liberty to produce any additional evidences in connection with the limited purpose involving the determination of the demarcating line between the property covered under Ext.B-1 and one covered under Ext.A-1. No costs.

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Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1. The Additional District and Sessions Judge,
(II Fast Track Court),
Ranipet.

2. The District Munsif Court,
Sholinghur.

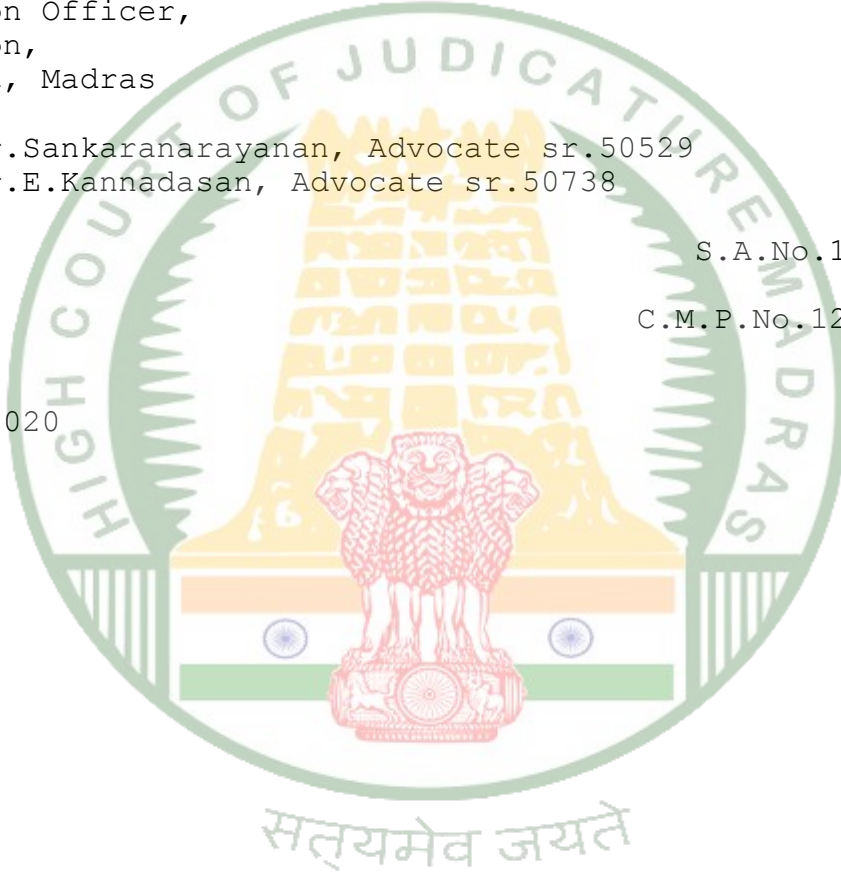
Copy to:

The Section Officer,
V.R Section,
High Court, Madras

+1cc to Mr.Sankaranarayanan, Advocate sr.50529
+1cc to Mr.E.Kannadasan, Advocate sr.50738

S.A.No.1210 of 2008
and
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mp(co)
nr 04/03/2020



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