

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated: 28.06.2019
CORAM: The Hon'ble Mr.Justice N.Seshasayee

S.A.No.335 of 2008
and M.P.No.1 of 2008

1.Dr.K.V.Duraisamy(died)
2.D.Palani Ammal
3.Dr.D.Babu Ramesh Prabhu
4.Dr.D.Kavitha Yogini ...Appellants/Plaintiff/Lrs of Plaintiff
[Appellants 2 to 4 brought on record as LRS of the
deceased sole Appellant Vide order of Court dated
13/06/2019 made in CMP.No.11853 to 11855/2019
in SA.No.335/2008]

Vs.

Nagappa Gounder

...Respondent/Respondent/Defendant

Prayer:- Second Appeals filed under Section 100 of Civil Procedure Code against the decree and judgment dated 27.04.2007 passed by the Subordinate Judge Court at Bhavani in A.S.No.41 of 2006 affirming the decree and judgment dated 30.11.2004 passed by the Second Additional District Munsif Court, Bhavani, in O.S.No.192 of 2001.

For Appellants : Mr.R.Parthasarathy
For Respondent : Mr.C.Mouli

JUDGMENT

The plaintiff who has lost successively before the Courts below in a suit for declaration of title, has come forward with this appeal. Parties would be referred to by their rank before the trial Court.

2.After hearing the learned counsel on either side and having decided the nature of conclusion to be indicated below, this Court finds the facts to the barest minimum required for the purpose.

- On 17.11.1941, under Ext.A.3, partition deed, a certain Mannathan Chettiar had obtained a plot of land, and this is not in dispute. Shortly before that, on 05.03.1938, Mannathan Chettiar purchased a plot of land from one Meenakshiammal, under Ext.A.1, sale deed. Thereafter, he had purchased another plot of land from one Rangasamy

Chetty under Ext.A.2, dated 06.06.1941. After the Ext.A-3 partition, he purchased yet another plot of land from one Najamammal under Sale deed, dated 04.09.1956, marked Ext.A.4.

- The dispute is not as relating to the property obtained under Ex.A.3, partition deed, but, over that which are covered under Ext.A.1, Ext.A.2 and Ext.A.4, sale deeds obtained by Mannathan Chettiar.
- On 08.03.1979, under Ext.A.5, the heirs of Mannathan Chettiar had sold the entire property that Mannathan Chettiar owned under Ext.A.3, partition deed alongside Ext.A.1, Ext.A.2 and Ext.A.4, sale deeds to the plaintiff.
- As per the sale deeds, the plots purchased under Ext.A.1, Ext.A.2 and Ext.A.4 arrange themselves in a north-south pattern and the arrangement is as follows: The property purchased under Ext.A.2 forms the extreme in abutting road. To its immediate south is the plot purchased under Ext.A.1, and the southern most plot is the one covered by Ext.A.4.
- According to the plaintiff, this north-south plot covered by the aforesaid three sale deeds was converted into an pathway by Mannathan Chettiar himself to access his property in the south. At the site it is a pathway. Somewhere, about the southern 1/3rd of the said pathway, another pathway leads towards east and it is admitted as a common pathway by both sides.
- Both the plaintiff as well as the defendant have filed separate rough sketches attached to their respective pleadings, and both look substantially same, at least as concerning the said pathway.

3. The dispute is over the pathway covered under Ext.A.1, Ext.A.2 and Ext.A.4, sale deeds. It is plaintiff's case, that this pathway marked as 'F' in his rough sketch is his exclusive pathway, where as the defendant claims this as a common pathway.

4. The pleadings disclose that there were attempts by the plaintiff to measure the property to plot the boundary, and when this was done, he would allege that a small portion of the property along the eastern boundary of this pathway, on the north and marked 'D-E' in the plaintiff's sketch, actually fall within the pathway portion, whereas, the defendant contends that

it is his exclusive property, and it falls within the defendant's property. Another contention of the defendant is that the pathway shown 'C' in the plaintiff's sketch is a common pathway and not his exclusive way.

5.The defendant has purchased the property under Ext.B.6,and Ext.B.7, sale deeds, dated 10.12.1986 and 10.06.1999 respectively. Of them, Ext.B.6, sale deed, in favour of the defendant, is to the immediate east of the said lane.

6.1 In a suit for declaration of title, when the dispute is only over the pathway portion and not over the properties covered under Ext.A.3, partition deed, strangely the trial Court chose to dismiss the entire suit, and did not focus its pointed attention to the nature of dispute before it.

6.2 Turning to the pathway portion, the difficulty the trial Court felt was that in Ext.A.1, Ext.A.2 and Ext.A.4, sale deeds, the North-South and the East-West extremes are given in Cubics (Mulam). The trial Court felt helpless in converting the Cubics into feet. In fact, in paragraph 13 of its judgment it refers to the argument of the defendant, wherein, the defendant appears to have contended that either the document(Ext.A.1, Ext.A.2 and Ext.A.4) themselves should have indicated the conversion factor, or if not, conversion factor must be reckoned at 1.5 for every cubic/Mulam.

7.The appellate Court too did not strain much than to borrow the reasoning of the trial Court to non-suit the plaintiff. What simply an appointment of a Commissioner, even suo moto, by the Courts below could have done, and which they failed to do, has landed the dispute before this Court now.

8. Heard both sides and the records of the Courts below are made available for the perusal of this Court. The appeal is admitted on the following substantial questions of law now;

If the Courts below must address the dispute
and whether their judgments are perverse?

9. The learned counsel for the appellants argued that when declaration is sought for plaintiff's plot based on Ext.A.1, Ext.A.2 and Ext.A.4 followed by Ext.A.5, which is his own sale

deed from Mannathan Chettiar, the trial Court has travelled half the distance, and suddenly says that the plaintiff has not proved his title. Here the trial Court ignored the fact that in Ex.B.6, sale deed, in favour of the defendant the western boundary is given as Mannathan Chettiar's property and not as a public lane.

10. As indicated earlier, this is a case where Commissioner ought to go to measure the property as per the sale deeds of the parties, more particularly that of the plaintiff's. Therefore, this Court remands the matter back to the first Appellate Court, viz., Subordinate Court, Bhavani, the final Court of facts in our scheme of things, for the following purposes:

(a) To appoint a competent advocate of reasonable standing on the civil side, and also one who is regular to Court, for local inspection, to measure the properties of the plaintiff and the defendant with the assistance of a Taluk Surveyor.

(b) The first Appellate Court shall fix the batta payable to the Commissioner which shall be paid by the plaintiff/appellants. The appellate Court is further directed to address a letter to the District Collector through the Principal District Judge, to ensure that a Taluk Surveyor is made available for assisting the Commissioner.

(c) The parties will be granted one week time to file their objections, if any, and if the Commissioner is required to be cross examined by any of any of the parties, the same shall be done before the first Appellate Court.

(d) The entire exercise shall be completed within a period of three months from 10-07-2019.

11. Accordingly, the Second Appeal is allowed and the Judgment and Decree of the Subordinate Court, Bhavani in A.S.No.41 of 2006 affirming the decree and judgment dated 30.11.2004 passed by the Second Additional District Munsif Court, Bhavani, in O.S.No.192 of 2001 is set aside. No costs. Consequently, the

connected Miscellaneous Petition is closed. Parties are directed to appear before the Subordinate Court, Bhavani on 10.07.2019.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

tsg

To:

- 1.The Subordinate Court,
Bhavani.
- 2.The II Additional District Munsif Court,
Bhavani.

Cop to:

The Section Officer
VR Section, High Court, Madras.

+1cc to Mr.C.Mouli, Advocate sr.53804

+1cc to Mr.R.Parthasarathy, Advocate sr.54323(12/07/2019)

S.A.No.335 of 2008
and
M.P.No.1 of 2008

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