

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.06.2019

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

S.A.No.594 of 2006

R.Mani

...Appellant / 4th Appellant / 5th Plaintiff

Vs

1.China Pappa
2.Sivaperumal alias Arjunan
3.Palani
4.Pachiyammal
5.Subramani
6.R.Ganesan
7.Jothi Ammal

... Respondents/
Respondents 1 to 3, Appellants 1-3 & 5 /
Defendants 1 to 3, Plaintiffs 2 to 4 & 6

Prayer :- Second Appeal filed under Section 100 of the Civil Procedure Code, preferred against the judgment and decree in A.S.No.24 of 2004 on the file of the Principal Subordinate Judge, Tiruvannamalai, dated 15.11.2005, in confirming the judgment and decree in O.S.No.467/1998 on the file of the Principal District Munsif, Tiruvannamali, dated 18.08.2003.

For Appellant : Mr.V.Raghavachari
For Respondents : Mr.S.Kaithamalai Kumaran
[R1 to R3]

JUDGMENT

The fifth plaintiff is the appellant herein. The suit is laid for declaration of title and for consequential relief of injunction. Parties would be referred to by their rank before the trial Court.

2. There are three items of suit properties of which, there was no contest regarding Item Nos.2 and 3. So far as the first item of property is concerned, it is described as comprising three separate blocks of properties and of them, there was

hardly any contest regarding block Nos.2 and 3 in Item No.1. The dispute relates essentially to block No.1 in item No.1 which has an extent of 23 cents (0.23 acres) in Survey No.177/12.

3. The trial Court granted a decree for the entire property except for block No.1 in item No.1 of the property. The plaintiffs preferred an appeal to the first appellate Court, which dismissed the appeal. Hence, the second appeal.

4. The broad facts which the plaintiffs admit are that the entire suit properties originally belonged to a certain Jaganatha Pillai and Pachiyappa Pillai. They, Vide sale deed dated 24.5.1957, marked Ext.A1, sold them to one Perumal Pillai. On 28.4.1964, under Ext.A2, sale deed, Perumal Pillai sold this property to the first plaintiff. As the first plaintiff faced some challenge to his title, he came forward with the suit. Pending suit, the first plaintiff died and his legal representatives are brought on record.

5. According to the defendants, they claim that the first plaintiff has purchased only one item measuring 23 cents in Survey No.177/12 and this constitutes block No.2 in item No.1. For item 1 the plaintiff has not got patta either. Proceeding to explain their title, the defendants would say that Survey No.177/12 had a total extent of 2.60 acres, out of which, they have purchased 2.29 acre from one Vadamalai.

6. Before the trial Court, the plaintiffs have marked documents Ext.A1 to A8 and the defendants have produced only one document Ext.B1. The trial Court has decreed the suit as indicated above.

7. This appeal was admitted on the following substantial questions of law :

1. Whether the Courts below are right in dismissing the suit in respect of Block I suit item No.1, when the plaintiffs have established their title over the portion under Ex.A1 and A2?

2. Whether the Courts below are not under an obligation to localise the suit property and in the event of any doubt, are they justified in rejecting the documents on mere surmises instead of appointing a competent advocate commissioner and a surveyor to localise it?

8. The learned counsel for the appellant/5th plaintiff would argue that the defendants stake claim solely based on Ext.B1, sale deed, but nowhere it is shown in Ext.B1 that they have purchased the property in Survey No.117/12. But the trial Court without considering the defence and the exact description

in Ext.B1, had wrongly chosen to dismiss the suit as concerning block No.1 in item No.1.

9. The learned counsel for the respondents reported no instruction and filed a memo to that effect.

10. Let the appellant's submission be assessed for its merit. It is his contention that the defendants have not purchased any property in Survey No.177/12 under Ext.B-1. A reading of Ext.B1 closely indicates that they indeed have purchased 2.29 acres in Survey No.177/12. It is true that the said Survey number is given wrongly as Survey No.177/2, but that appears to be a mistake. This is because the entire cross-examination of D.W.1, does not indicate that the defendants have not purchased the property in Survey No.177/12. Secondly, it is a case of simple arithmetic. Survey No.177/12 has a total extent of 2.60 acres. This finds reference under Ext.A2, sale deed, in favour of the plaintiff. Out of this, Ext.A2 itself deals only with two blocks of 23 cents and another 5 ½ cents in the suit property, which totals to 28.5 cents. Turning to Ext.B1, the defendants claim only 2.29 cents in the same survey number. And nowhere has the plaintiff challenged Ext-B1, sale deed. This would mean that the total extent dealt with under Ext.B1 and Ext.A2 taken together will be 2.57 acres. This would further imply that the extent that may still remain in Survey No.177/12 is a bare 2.5 cents. In this scenario, if the plaintiff has to create another block of 23 cents in block No.1, item No.1 in the suit property, where is he going to obtain 20.5 cents in Survey No.177/12. After all, at the end of the day, the burden is squarely on the plaintiff but he has not discharged it to the satisfaction of this Court.

11. In conclusion both the substantial questions of law are decided against the appellant and consequently, this appeal is dismissed, and the judgment and decree in A.S.No.24 of 2004 on the file of the Principal Subordinate Judge, Tiruvannamalai, dated 15.11.2005, in confirming the judgment and decree in O.S.No.467/1998 on the file of the Principal District Munsif, Tiruvannamali, dated 18.08.2003 is hereby confirmed. No costs.

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Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To:

1.The Principal Subordinate Judge
Tiruvannamalai.

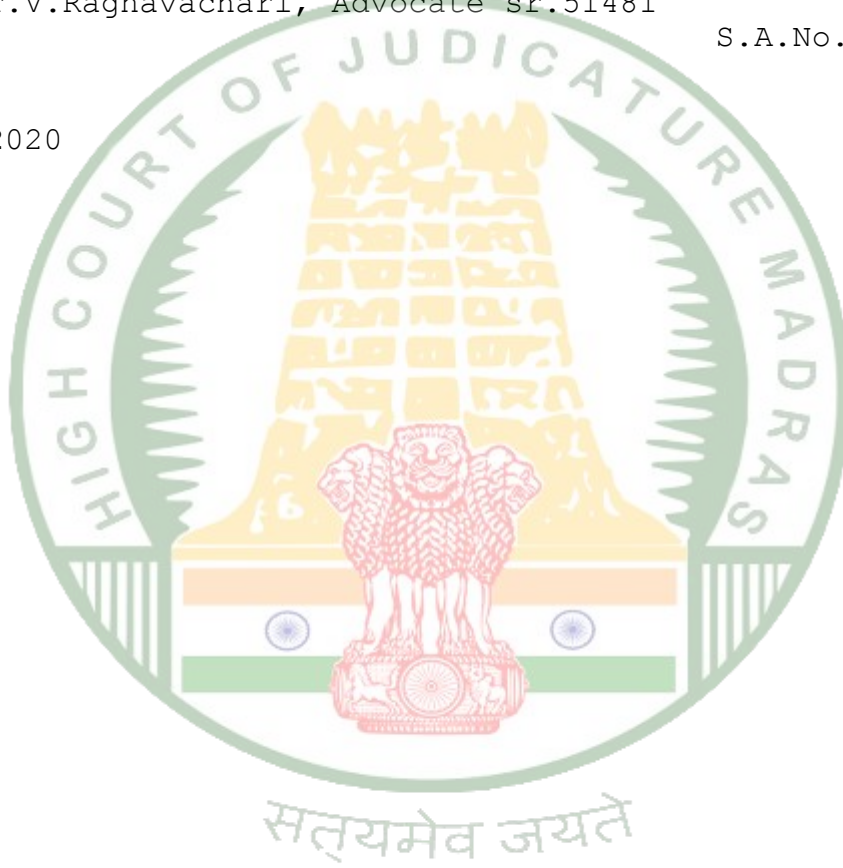
2.The Principal District Munsif
Tiruvannamalai.

3.The Section Officer
VR Section, High Court, Madras.

+1cc to Mr.V.Raghavachari, Advocate sr.51481

S.A.No.594 of 2006

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