

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 06.08.2019

CORAM:

The Hon'ble Mr.Justice N.Seshasayee

S.A.No.1963 of 2004

and

C.M.P.No.16067 of 2004

Mrs.Manimegalai (died)

2.S.Malliga

3.Kanchana

4.B.Palani

5.B.Pannerselvam

6.B.Chinnasamy

7.G.Amutha

8.B.Satheeshkumar

9.R.Rajakumari

10.R.Rajamaruthi Devi

11.R.Dhanesh Sri Chiranjeeve

12.R.Vel Vignesh Maruthi

13.R.Ganesh Vel Maruthi

...Appellants ie.,LRs of

1st defendant]

1st defendant in Trial Court

[Appellants 2 to 13 brought on record
as LRS of the deceased sole appellant
Viz., Manimegalai Vide order of Court
dated 01/07/2019 made in CMP.No.3864,
3868 and 3870/2019 in SA.No.1963/2004 (NSSJ)]

Vs.

1.Mr.A.G.Balaji

2.Mrs.E.Vasantha

3.Mr.E.Manoharan

4.Mrs.Dhara ammal

5.Mr.M.Asokan

...Respondents]Plaintiffs 1 to 3 and
defendants 3,2 in Trial Court

Prayer:- Second Appeals filed under Section 100 of Civil Procedure Code against the Judgment and Decree in A.S.No.15 of 1999 dated 28-01-2004, on the file of the Subordinate Judge, Arni dismissing the appeal filed by the appellant and thereby confirming the Judgment and Decree in O.S.No.143 of 1996 dated 25-01-1999 on the file of the Principal District Munsif, Arni.

For Appellants : Mr.P.Seshadri
For Respondents : Mr.V.Raghavachari for RR1 to 3
R4 - No appearance
R5 - died

JUDGMENT

The first defendant is the appellant herein. She suffered a decree successively before the Courts below in a suit laid by the respondents 1 to 3/plaintiffs for declaration of title and for recovery of possession. Parties would be referred to by their rank before the trial Court.

2.The brief facts are;

- Certain Annamalai Mudaliar and Sundaresan had derived title to a plot of 22 cents in Sy.No.B/5-85 of Arni Town, under a decree of the Court dated 30.04.1986 in O.S.No.17 of 1983. A copy of the decree is marked as Ext.A.3. Subsequently, both of them sold their respective half share in the entire extent of 22 cents to the plaintiffs Vide separate sale deeds marked Ext.A.1 and Ext.A.2, both dated 27.04.1987.
- The plaintiffs' allegation is that the defendants have encroached into a plot measuring 54 feet x 26 feet about the north-western corner of their plot of 22 cents, and has laid the suit for declaration of title over, and recovery of possession of this plot.
- The first defendant has contended that she has purchased the suit property under Ext.B5, dated 10.06.1974 and disputed the plaintiffs' title to the suit property.

3.The trial Court has appointed a Commissioner, according to whose report, the first defendant has put up a construction over an extent of 20 feet x 27 feet, and has also put up some thatched shed to the east of the said portion of the property. During trial, both sides produced oral and documentary evidence, some of which are already referred to above. So far as the title deed of the first defendant is concerned, it is traced from Ext.B.1 to Ext.B.4, which are dated from 1949 to 1969. On appreciating the evidence before it, the trial Court found that the first defendant had plotted her plot of land that she had purchased under Ext.B.5, within the property of the plaintiffs, and accordingly decreed the suit. This came to be confirmed by the first Appellate Court. Hence, the first defendant is before this Court.

4.This appeal is admitted on the following substantial questions of law;

Whether the Courts below have right in decreeing the suit on the basis of the Commissioner report Exhibits C-5 and C-6 contrary to the relief claimed in the plaint?

5.Heard both sides. On hearing the learned counsel on both sides and on perusing the documents, one fact that emerged with least ambiguity is that the plaintiffs' property is comprised in T.S.No.85 whereas, the defendant has purchased a plot measuring 1.5 cents in T.S.No.79. While neither side claim title over any portion of the land in survey number over which the other has right, the only point that requires to be ascertained is if the first defendant has wrongly identified the property that she had purchased in T.S.No.79 in T.S.No.85, wherein the plaintiffs have their property. Here, both the Courts below have concurrently held that the first defendant has wrongly identified the property within the plot of the plaintiffs and have granted a decree in favour of the plaintiffs.

6. The only other point that now requires to be considered is if the first Appellate Court has entertained any perversity while appreciating the evidence before it. Here, it must be held that the Commissioner has taken the assistance of the Taluk Surveyor, who has plotted the survey field to identify both the survey field namely T.S.No.79 and T.S.No.85 and has clearly located the house which the first defendant has put up within the property of the plaintiff. Even though the first defendant appears to have filed objections to the Commissioner's report, the Commissioner was not cross-examined to impeach the veracity of the report that he had filed.

7. Inasmuch as the valiant efforts of the learned counsel for the appellants could not bring to the notice of the Court that the concurrent findings of the Courts below are erroneous in law, this Court does not find a reason to interfere with the same.

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8. Accordingly, the appeal is dismissed and the Judgment and Decree passed in A.S.No.15 of 1999, dated 28.01.2004 confirming the Judgment and Decree passed in O.S.No.143 of 1996, dated 25.01.1999 on the file of the Principal District Munsif, Arni is upheld. No costs. Consequently, the connected civil miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

tsg

To:

- 1.The Subordinate Court, Arni.
- 2.The Principal District Munsif Court,
Arni.

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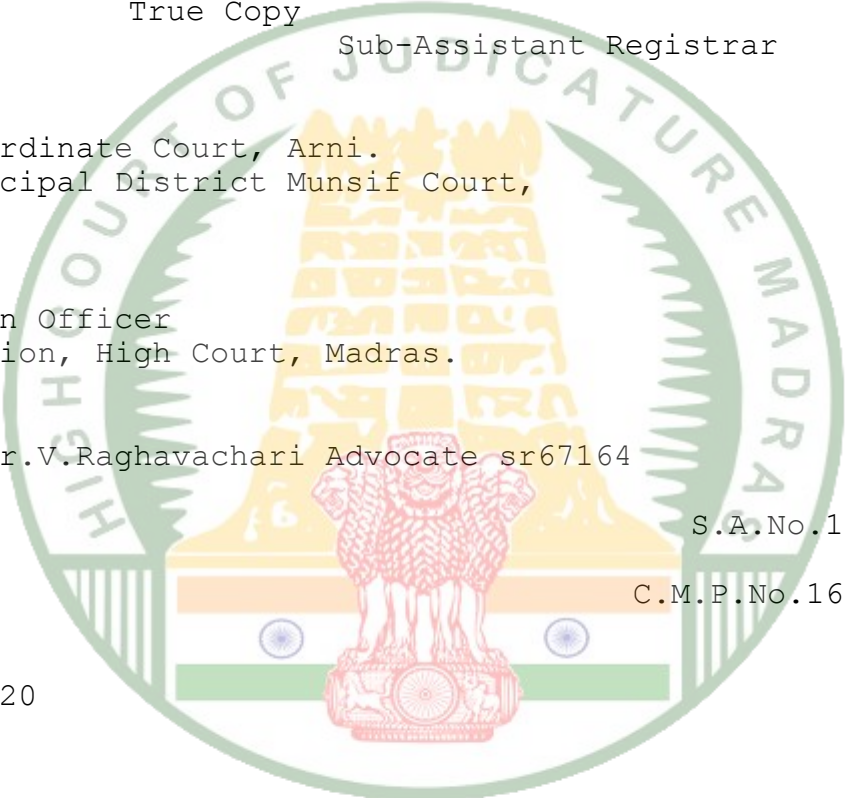
The Section Officer

VR Section, High Court, Madras.

+1 cc to Mr.V.Raghavachari Advocate sr67164

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aa01/06/2020



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