

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.06.2019

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

S.A.No.2013 of 2004

Sivanantham

...Appellant / Respondent
/ Plaintiff

Vs

1.Arivazhagan
2.Vanchinathan
Defendants

.... Respondents / Appellants /

Prayer :- Second Appeal filed under Section 100 of CPC, against the judgment and decree dated 16.6.2004 passed in A.S.No.35 of 2003 on the file of Sub Court, Panruti, reversing the judgment and decree dated 17.11.2003 passed in O.S.No.605/96 before the District Munsif Court, Panruti.

For Appellant : Ms.R.Meenal
For Respondents : Mr.R.Venkatesalu
for Usha Raman

JUDGMENT

The plaintiff, who was successful before the trial Court in a suit for declaration of title and injunction, but lost the same before the first appellate Court, has now come forward with the present appeal. Parties would be referred to by their rank before the trial Court.

2. The learned counsel for the plaintiff submitted that the suit property originally was a Natham property, that belonged to one Subramania Padaychi and Nataraja Padayachi. The suit property forms the western half of the larger extent. The plaintiff is the son of Subramania Padayachi. The defendants are the grandsons of Nataraja Padayachi through his son Krishna Boopathy. According to the plaintiff, Nataraja Padayachi had half share in the property which he had bequeathed under a Will dated 27.12.1967, executed in favour of the plaintiff. This Will came to be declared genuine in a suit laid by the plaintiff in O.S.No.574/1972 on the file of District Munsif Court, Cuddalore, which the present plaintiff and his brother had laid against Krishna Bhoopathi, the father of the present defendants.

On obtaining half share of Nataraja Padayachi's property under the aforesaid Will, and taking it along with the half share which devolved on him from his father Subramania Padayachi, the plaintiff herein claims title to the entire suit property.

3. The contention of the defendants is that the entire suit property actually belonged to Nataraja Padayachi, and after bequeathing half share therein to the plaintiff under the Will referred to above, the remaining half share devolved on his father and following him, it devolved on the defendants subsequently. Accordingly, they claim half share in the suit property.

4. The trial Court has held that the entire property belong to Subramania Padayachi with which the first Appellate Court did not agree, and dismissed the Suit.

5. This appeal is admitted on the following substantial questions of law:

- 1) Whether in law the lower appellate Court was right in brushing aside Ext.A2 patta which was issued by the competent authorities and which leads to the presumption under Section 114 of the Evidence Act Vide 2000 4 CTC 11?
- 2) Whether in law the lower appellate Court was not wrong in holding that the appellant had not prescribed for title by adverse possession?

6. Learned counsel for the appellant submitted that patta under Ex.A.2 had already been issued in favour of the appellant, and that the same cannot be ignored, since it is supported by a presumption under Section 114 Illustration (e) of the Evidence Act. This is the only document produced by both sides to establish that there is a authority who had properly gone into the question of title, before issuing issued patta.

7. The learned counsel for the respondents argued that:

- a) The plaintiff has admitted that the suit property and along with its eastern half originally belonged to Nataraja Padayachi. He brought to the notice of the Court about the suit in O.S.No.574 of 1972 which the plaintiff and his brother had laid against Krishna Boopathy for a declaration of title based on the Will executed by Nataraja Padayachi. That suit was contested by Krishna Bhoopathi, and one of the issues framed by the trial court was whether the property measuring 36' X 177' belonged to Nataraja Padayachi. This was decided in the affirmative. This finding has become final and therefore, the foundational basis for the present litigation is struck right there.

b) It is an admitted fact that Nataraja Padayachi had executed a Will and the eastern half of the aforesaid property is measuring 18' X 177''. This property, as indicated earlier, is a subject matter of O.S.No.574 of 1972. The decree in that suit is marked as Ext.A4. In the present suit, wherein the boundary description of the property covered in that suit shows that the western portion of the suit property therein is stated to have belonged to Nataraja Padayachi.

c) Even in the present suit, P.W.1 in his cross-examination has admitted that the entire property originally belonged to Nataraja Padayachi. He added that the trial court went on from pleadings that the Nataraja Padayachi's Will covered the entire extent of 36' X 177', and this error came to be rectified by the First Appellate Court when it properly construed that the area is covered by Nataraja Padayachi's Will.

8. On a careful consideration of the arguments advanced, this Court finds that the submissions made on behalf of the respondent is convincing enough to reject the arguments of the appellant's counsel. The arguments of the respondent's counsel carries the reasoning for deciding this case, and hence this court does not intend to repeat it. And, as concerning the only document which the appellant relies on is the patta, and this Court has to make a statement yet another time, rather untiringly, that patta is not a document of title.

9. Hence, this appeal is dismissed and the judgment and decree dated 16.6.2004 passed in A.S.No.35 of 2003 on the file of Sub Court, Panruti is hereby confirmed. No costs.

-s/d-

सहायक न्यायाधीश
Assistant Registrar (CSII)

True Copy

Sub-Assistant Registrar

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To:

1.The Sub Court
Panruti.

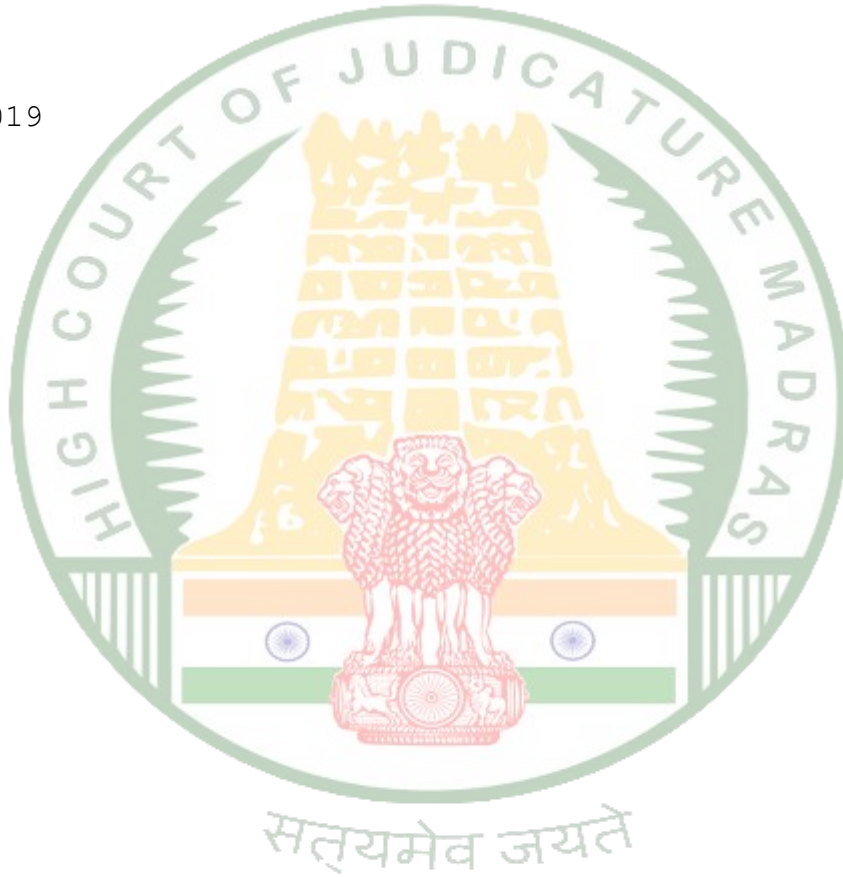
2.The District Munsif Court
Panruti.

3.The Section Officer
VR Section, High Court, Madras.+2 copies

+1 cc to M/s.R.Subramanian Advocate sr49327

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