

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

S.A.NO.1008 OF 2005

1.Jagadambal
2.Balasubramaniam
3.Poongothai
4.Senthilkumar
5.Sundarambal
6.Gokilambal
7.Manimehalai
8.N.Palanisamy
9.N.Angappan
10.Kannammal

....Appellants/Respondents
2,4,5,6,9 to 14/
Defendants 2,4,5,6,9 to 14

Vs

1.Govindaraj (Died) 1st respondent/Appellant/ Plaintiff
2.Muthusamy 2nd respondent/7th respondent/
7th defendant
3.Ramaneeswari
4.Gayathri
5.Lavanya ... Respondents

(Respondents 3 to 5 are brought on record as L.Rs of the deceased

R1 viz., Govindaraj, Vide order of Court dated 12.07.2019 made in CMP.Nos.7923, 7924 & 7928/2019 in S.A.No.1008/2005)

Prayer :-

Second Appeal filed under Section 100 of the Civil Procedure Code, preferred against the judgment and decree dated 29.04.2005, passed in A.S.No.88 of 2004 on the file of the Subordinate Judge, Bhavani, Erode District, reversing the judgment and decree dated 07.10.2003 passed in O.S.No.481 of 1999 on the file of the Principal District Munsif Court, Bhavani, Erode District.

For Appellants : Mr.K.Nagarajan

For Respondents : Mr.N.Manokaran [R3 to R5]
R1 - Died

JUDGMENT

The plaintiff has filed a suit for bare injunction against the defendants, who are 19 in number, of which, defendants 1, 3 and 8 have died, pending the suit. The trial Court has dismissed the suit, whereas the first appellate Court has allowed it. All the other defendants, except the 7th defendant, has come before this Court with this appeal. Parties would be referred to by their rank before the trial Court.

2. Given the nature of the dispute and the conclusion to be arrived at which are essentially founded on the documentary evidences, this Court now narrates the facts as below, and only to the extent required:

- The suit property is described as a block of agricultural land measuring 1.02 acres in R.S.No.1034/2 and correlated to Old Survey No.569.
- Old Survey No.569 had a total extent of 10.55 acres. In this, a certain Thyagaraju Gounder and Karuppa Gounder had some shares. On 20.08.1962, they partitioned the properties, in which, both Thyagaraju Gounder and Karuppa Gounder were allotted separate plots of properties in Survey No.569.
- Under Ext.B5, partition deed, Karuppa Gounder was allotted the property described in B-schedule. The total extent allotted to him in Survey No.569 was 2.34 acres.
- Karuppa Gounder's wife was Muthayammal. The couple had three children namely Arumugam, Thirumayammal and Pavayammal. Arumugam had died leaving behind him his son Raju.
- While so, on 23.11.1973, Vide Ext.A2, Muthayammal had relinquished her share of property which Karuppa Gounder had obtained under Ext-B5. The property covered under Ext.A2 inter alia dealt with 1.25 acres in Survey No.569.
- It may have to be stated here that Pavayammal, (Karuppa Gounder's daughter) had also obtained some right in her father Karuppa Gounder's properties.

- Subsequently on 19.03.1987, Raju, Thirumayammal and Pavayammal had partitioned the property under Ext.B1. In this, Pavayammal was allotted C-schedule property. In the context of the suit, the property herein is described as one comprised in Survey No.1034/5, having an extent of 1.15 acres.
- Subsequently, on 16.07.1991, Pavayammal had executed a settlement deed in favour of her three children namely Rajeswari, Eswaran and Dhanalakshmi as concerning the property which she obtained under Ext.B1, partition deed.
- Thereafter, Rajeswari had laid O.S.No.686/1993 seeking partition of her 1/3 share. While so, Rajeswari chose to part with her 1/3 share in the suit property in favour of her brother Eswaran and relinquished her 1/3rd share to Eswaran under Ext.A6, release deed dated 16.07.1999. Thus, Eswaran became entitled to 2/3 share.
- Thereafter, both Eswaran and Dhanalakshmi had sold the suit property to the plaintiff under Ext.A1, sale deed dated 19.08.1999.

3.1 So far as the defendants are concerned, they trace their right through an entirely different branch. According to them, a certain Subramania Mudaliar and Rangasamy Mudaliar had purchased 3.40 acres in Survey No.569 under Ext.B2 sale deed dated 30.09.1943. In this, both the purchasers have half share. This Court is now concerned only with the right of Subramania Mudaliar's branch in the suit property where they said to have 1.70 acres in Survey No.569.

3.2. Essentially the entire property covered under Ext.B2 and the one obtained by Karuppa Gounder under Ext.B5, came be correlated to Survey No.569. (There appears some confusion in referring to the Re-survey number in some of the documents).

4. The trial Court has relied very heavily on certain discrepancies in the patta number to decide against the plaintiff's case for injunction, forgetting for a moment that patta is not a document to title. This appears to be rectified by the first appellate Court and granted a decree to the plaintiff. Hence the defendants have come before this Court.

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

- (1) Whether the plaintiff is entitled to bare injunction, without declaration of title, when the defendants have had better title over forty years

by virtue of Ex.B2?

- (2) Whether the Lower Appellate Court is justified in law to hold that the plaintiff is entitled to an order of injunction inspite of specific finding of the trial Court that the sale deed of plaintiff is not supported by parent documents?

6.1 Heard both the learned counsels. Before discussing the arguments advanced, it may have to be stated that the counsel for the respondents made a statement that the first respondent/plaintiff is not interested in 1.70 acres to which he was entitled to as descendants of Subramania Mudaliar, who obtained title under Ext.B2.

6.2 The only issue is in respect to certain discrepancy in understanding the resurvey plan, where the plots to which the parties are entitled to lie as an identifiable plot on ground. Here it may have to be stated that the defendants do not claim any adverse possession over the properties over which the plaintiff claims right. If Ext.B2 is reckoned, it shows that a block of land measuring 3.50 acres, which was purchased under that document, lie to east of the property of Chellappa Gounder and another's property. This Chellappa Gounder is the father of Karuppa Gounder, to whose right, the plaintiff traces his title to. The next document is the partition deed dated 24.08.1962 in Ext.B5. In this, the property in Survey No.569 which was partitioned between Karuppa Gounder and Thyagaraya Gounder is stated to lie to the south of the property of Subramania Mudaliar and Rangasamy Mudaliar. In other words, there is an agreement between both sides that the property covered under Ext.B3 which sources the title to the defendants lie to the north of that property to which the plaintiff claims title. When this plot is identifiable, then necessarily the defendants shall not trespass into the plaintiff's property.

6.3 However, there is some discrepancy in identifying the property. There is also some confusion regarding the re-survey number to which it relates. Survey No.569 is seen correlated partly to R.S.No.1034/2 and partly in R.S.No.1034/5. The only problem is whether the property covered under Ext.B5 lies in R.S.No.1034/2 or R.S.No.1034/5. It is matter for identifying the property on ground, and it does not involve much on title. This has to be decided only separately, and if necessary, through the survey officials or through a suit for demarcation.

7. For the present, this Court does not find any merit, and the appeal is dismissed and the judgment and decree dated 29.04.2005, passed in A.S.No.88 of 2004 on the file of the Subordinate Judge, Bhavani, Erode District, is hereby confirmed. No costs.

Sd/-
Assistant Registrar(CCC)

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Sub Assistant Registrar
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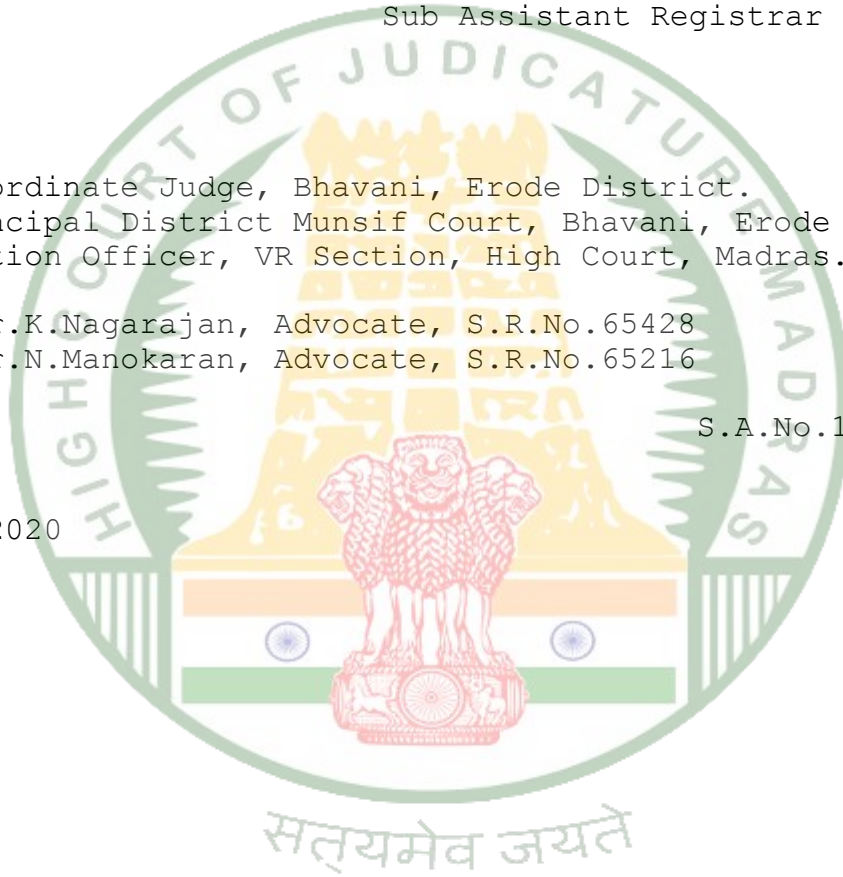
To:

- 1.The Subordinate Judge, Bhavani, Erode District.
- 2.The Principal District Munsif Court, Bhavani, Erode District.
- 3.The Section Officer, VR Section, High Court, Madras.

+1cc to Mr.K.Nagarajan, Advocate, S.R.No.65428
+1cc to Mr.N.Manokaran, Advocate, S.R.No.65216

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RP(CO)
CS/13/02/2020



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