



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

S.A.No.1191 of 2005

1.Seerangan

2.Krishnan ...Appellants/Appellants/Defendants 1 & 2

Vs.

1.Angappa Gounder (died)

2.Ramasamy Gounder (died)

3.Mariammal

4.Shanmugham

(R3 & R4 exparte before the courts below
and hence given up)

5.Lakshmi (died)

6.Mani

(RR5 and 6 brought on record as Lrs of the deceased
R1 Viz. Angappa Gounder vide order of Court dated
09.07.2019 made in C.M.P.No.451 to 453/2009 in
S.A.No.1191of 2005)

7.Thangavel

8.Chellamuthu

9.Chinnavar

10.Selvi

(RR7 to 10 brought on record as Lrs of the deceased
R2 Viz.Ramasamy Gounder vide order of Court dated
09.07.2019 made in C.M.P.No.454 to 456/2009 in
S.A.No.1191 of 2005)

(R6 are recorded as LR of the deceased R5 viz. Lakshmi
vide order of Court dated 09.07.2019 made in
S.A.No.1191/2005 as per Memo dated 09/07/2019
are recorded) ...Respondents/Plaintiffs/Defendants 3 & 4

Prayer:- Second Appeal filed under Section 100 of C.P.C.,
against the Judgment and Decree of the learned Subordinate
Judge, Bhavani, Erode District in A.S.No.85 of 2003 dated
29.09.2004 confirming the Judgement and Decree of the Learned



Principal District Munsif of Bhavani in O.S.No.698 of 1993 dated 04.09.2001.

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For Appellants : Mr.P.Parthi Kannan
for Mr.S.Kaithamalai Kumaran

For Respondents : Mr.V.Subramanian
for Mr.M.A.Muthalakan

JUDGMENT

1. The defendants 1 and 2 are the appellants herein. The suit is laid for declaration of title and prohibitory injunction as regards A-schedule and recovery of possession as regards B-schedule property. The suit was decreed by the trial Court and the said decree came to be confirmed by the first appellate Court.

2. The suit property in A-schedule is described as a land having an extent of 2.02 acres in R.S.No.438/2B. The corresponding old survey number is 450. The case of the plaintiffs is that a certain Karuppa Gounder owned 2.60 acres in old Survey No.450, that Vide Ext.A-3, sale deed dated 13.12.1967, he sold 1.95 acres out of his holdings to one Kulandaiappa Gounder. Later Kulandaiappa Gounder entered into a sale agreement to sell the property he had purchased under Ext.A-3 with the first plaintiff and with the wife of the second plaintiff. Subsequently, he executed two separate sale deeds, marked as Ext.A-1 and Ext.A-2, both dated 26.08.1981 and sold 1/3 to the first plaintiff and 2/3 of his holdings to the second plaintiff. They alleged that the present appellants/defendants 1 and 2 have trespassed into a part of the suit property for an extent of 3.25 cents which they denote in B-schedule.

3. The case of the defendants is that after selling 1.95 acres under Ext.A-3 to Kulandaiappa Gounder, Karuppa Gounder had sold remaining 65 cents under Ext-A9 sale deed dated 17.11.1980 to the present defendants and 15 others. Subsequently, the present plaintiffs, their vendor Kulandaiappa Gounder and others laid O.S.No.1354/81 against the aforesaid Karuppa Gounder and 13 others. Of the two defendants now contesting the suit, the second defendant was arrayed as fifth defendant in O.S.No.1354/81, whereas their father Karuppa Gounder was arrayed as first defendant. That suit was laid for injunction wherein the plaintiffs herein directed their title over a combined extent of 2.02 acres.

4. The trial Court however, decreed the suit but only partly, and confined the decree of injunction only as concerning the property obtained by Kulandaiappa Gounder, which is now



marked in this suit as Ext.A-3. In other words, the trial Court has confined the decree to 1.95 acres. The plaintiffs would thereafter filed another suit in O.S.No.164/91 again seeking a decree of injunction for 2.02 acres against the same defendants and this was withdrawn, and subsequently, the present suit came to be filed.

5. The dispute went for trial and both sides adduced oral and documentary evidences and as said, both Courts concurrently held in favour of the plaintiffs.

6. The appeal is now admitted for considering the following substantial questions of law :

- a) Are the Courts below justified in decreeing the suit, holding that the plaintiffs are entitled to 2.10 acres overlooking that their vendor had admittedly had title only to an extent of 1.95 acres only?
- b) Are not the judgment and decree passed in O.S.No.1354/1981 between the same parties, in respect of the suit property would operate as res judicata?

7.1 The learned counsel for the appellants argued that it is an admitted case that Kulandaiappa Gounder had title over only 1.95 acres and that he had no title to transfer anything in excess of it in the survey number. However, he proceeded to sell a combined extent of 2.10 acres under Exts.A1 and A2 to both the plaintiffs and this is impermissible. These defendants are not concerned about the property which Kulandaiappa Gounder could legitimately transfer to the present plaintiffs, but anything transferred by him in excess which offends the right of these defendants alone is their concern.

7.2 The learned counsel would then argue that inasmuch as in O.S.No.1354/81, the Court Vide Ext.B1 judgment had limited the plaintiffs' claim to 1.95 acres. The present suit laid for reviving their claim over remaining 7 cents is an abuse of judicial process. Admittedly, B-schedule property measures only 3.25 cents which falls within the excess area of 7 cents. He submitted that the Courts below relied on the Commissioner's report and the Commissioner's report did not consider that the plaintiffs' entitlement is 1.95 acres.

8. On perusing the papers, one aspect emerged. O.S.No.1354 of 1981 was laid obviously in 1981. Ex.B1 Judgement in that case. The plaintiffs, their predecessors in title and another



were the plaintiffs in that suit, and it was laid against the same set of defendants. The pleadings as culled out in Ex.B1 Judgment, would indicate that the defendants in O.S.No.1354/1981 (substantially, same as those herein) have denied the plaintiffs' title to any extent in excess of 1.95 acres that was transferred to the plaintiff's vendor Kulandaiappa Gounder in Ex.A3. This implies that the plaintiffs were put on notice about the denial of their title to any extent in excess 1.95 acres even in the earlier suit. This suit was decided on 19.06.1990. Subsequently the plaintiffs had laid O.S.No.164 of 1991 and the same was permitted to be withdrawn on 23.06.1993, granting leave to the plaintiffs to file a fresh suit and the present suit is laid on 17.08.1993.

9. If the date of Judgment in O.S.No.164/1991 has to be reckoned as the terminus quo, then the suit for declaration ought to have been laid within three years which implies that the suit ought to have been laid by 19.06.1993, but, the present suit was laid only on 17.08.1993. It might be that the learned District Munsif Court might not have noticed Order 23 Rule 2 CPC, but Order 23 Rule 2 makes it abundantly clear that the fresh suit ought to be filed within the limitation provided for instituting a suit on the original cause of action. Here, the plaintiffs are caught on the wrong foot. The suit was admittedly laid beyond three years from the date of decree permitting withdrawal of O.S.No.164/1991. This Court, therefore considers the suit itself was laid beyond limitation.

10. Even though the limitation is not the aspect raised before the Courts below, under Sec.3 of the Limitation Act, the duty is that of the Court to ascertain if the suit is within the period of limitation.

11. This apart, even turning to merit, except certain revenue records sustaining the claim of 2.02 acres, in terms of document of title in favour of the plaintiffs, there is nothing therein to indicate that they are entitled to.

12. In conclusion, all the substantial questions of law is held in favour of the appellants, and accordingly, this second appeal is allowed, and the title of the plaintiffs is limited to 1.95 acres as provided in Ex.A3. It is made clear that the defendants 1 & 2 / appellants would not be entitled to any extent in excess of 1.95 acres, and therefore an injunction shall lie against the defendants 1 & 2 to protect their right over 1.95 acres. So far as B schedule is concerned it stands



dismissed. If however, there is any dispute over the line of demarcation between the 1.95 acres to which the plaintiffs are entitled to, and 7 cents over which their right has now been declined, it has to be resolved only in a separate suit for partition. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Subordinate Judge,
Bhavani, Erode District.
- 2.The Principal District Munsif,
Bhavani.

Copy to

The Section Officer,
V.R.Section,
High Court of Madras.

+lcc to Mr.S.Kaithamalaikumaran, Advocate Sr.65845
+lcc to Mr.M.A.Muthalakan, Advocate Sr.66759

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srg 09/03/2022