

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2019
CORAM

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

SECOND APPEAL NO.240 OF 2019

Pachamuthu

... Appellant/Plaintiff

Vs.

Perumal Padayachi (deceased)

1. Dhanapakiam
2. Mayavan
3. Chellammal
4. Govindan

... Respondents

(RR2 to 4 Brought on record
as LRS of Deceased sole Defendant
as per order dated 07.02.2019
made in CMP.No.16637 of 2003 in
SA.Sr.49786 of 1996)

Prayer:- This second appeal has been filed under Section 100 C.P.C., against the judgment and decree of the Principal District Judge, Salem dated 19.09.1995 in A.S.No.8/1995 confirming the judgment and decree passed dated 30.09.1994 in O.S.No.26 of 1985 on the file of Additional District Munsif, Salem.

For Appellant : Mr.P.Jagadeesan
For Respondent : Mr.K.Selvaraj for R3 & R4

JUDGEMENT

The Plaintiff, who has lost the suit before both the courts below has filed the present Second Appeal.

2. The Plaintiff has filed the Suit for declaration, and also for permanent injunction in respect of Survey No.109/1, at Mannarpalayam Village, Vazhappadi Post, Salem Taluk and District to an extent of 2.07 acres. The claim of the Plaintiff is that by virtue of a settlement deed executed in his favour, he is entitled for 2.7 acres. Whereas, the defendant, neighbouring landowners have been denying the Plaintiff's right in respect of 12 cents alone, which is in dispute in the Suit.

3. On perusal of pleadings and evidence, it could be seen

that originally, the appellant claiming right under a partition deed in Ex.A1 dated 19.02.1976, by which, an extent of 2.7 acres, has been allotted to the Plaintiff. The Trial Court has granted a decree only for 1.95 acres, holding that, the remaining 12 cents has been earmarked for cart track in another settlement deed under Ex.A2, in which, the Plaintiff is also a party. The above judgment and decree was put to challenge, the first appellate court has after perusing the entire pleadings and evidences on record, came to a conclusion that as per Ex.A2, Settlement deed, 12 cents given to the Plaintiff has been earmarked as a cart track, in which the Plaintiff is also a party, and the plaintiff cannot claim anything in the extent of 12 cents, and confirmed the judgment and decree passed by the Trial Court.

4. I have heard the submissions made by Mr.P.Jagadeesan, learned counsel appearing for the Appellant as well as Mr.A.Selvaraj, learned counsel appearing for the respondents 4 and 5 and perused the records carefully.

5. On considering the evidence both oral and documentary, both the courts have concurrently held that out of the 2.7 acres has been allotted to the Plaintiff under Ex.A1, an extent of 12 cents has been earmarked as a cart track in Ex.A2, and he is only entitled to the remaining extent of 1.95 acres, and decreed the suit partly. I find no illegality or perversity in it, and no substantial question of law arises for consideration in the present Second Appeal. Hence, the present Second Appeal stands dismissed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

rpp
To

1. The Principal District Judge,
Salem.
2. The Additional District Munsif,
Salem.

+1cc to Mr.K.Selvaraj, Advocate, S.R.No.13278

S.A.240 of 2019

VGI(CO)
CS/20/11/2019