

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	DELIVERED ON
22~03~2019	16~04~2019

CORAM :

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

S.A.Nos.1196 and 1277 of 2011

S.A.Nos.1196 of 2011

Joint Family Manager
Sangottaiyan ... Appellant/Plaintiff

Versus

Nagaraj ... Respondent/Defendant

S.A.Nos.1277 of 2011

Joint Family Manager
Sangottaiyan ... Appellant/Plaintiff

Versus

Nagaraj ... Respondent/Defendant

Second Appeal No.1196 of 2011 filed under Section 100 C.P.C. to set aside the judgment and decree passed by the Sub Judge, Sathiyamangalam dated 30.6.2011 made in A.S.No.8 of 2011 reversing the Judgment and Decree of District Munsif, Sathya mangalam dated 29.07.2010 made in O.S.No.89 of 2001.

Second Appeal No.1277 of 2011 filed under Section 100 C.P.C. to set aside the judgment and decree passed by the Sub Judge, Sathiyamangalam dated 30.6.2011 made in A.S.No.3 of 2011 confirming the Judgment and Decree of District Munsif, Sathya mangalam dated 29.07.2010 made in O.S.No.89 of 2001.

For Appellant .. Mr.S.V. Jayaraman
[in both appeals] Senior Counsel for
M/s. Ma.P. Thangavel

For Respondents .. Mr.A.V. Arun
[in both appeals]

COMMON JUDGMENT

Aggrieved over the concurrent findings of the courts below dismissing the suit filed by the Plaintiff for declaration and consequential relief, S.A.No.1277 of 2011 is filed. S.A.No.1196 of 2011 is filed against the finding of the First Appellate Court allowing the counter claim of the defendant. Since both the appeals are arising out of the same judgment, this Court is inclined to dispose of the same in a common judgment. For the sake of convenience the parties are arrayed as per their own rankings in the original suit.

2. The brief facts leading to file these Second Appeals are as under:

2.(a) The Plaintiff as joint family Manager has filed a suit originally for declaration of 'B' Schedule property about 60 cents in Survey No.101/2 and for delivery of possession and also for consequential injunction in respect of 'B' Schedule Property. Later the plaint has been amended wherein the plaintiff sought declaration in respect of the entire properties in Survey Nos.101/2, 102/2, 102/4 and 102/5. Originally it is the case of the plaintiff that his father Perumal Gounder purchased the properties under sale deed dated 19.09.1972. He has purchased 6.93 acres with the boundaries in old Survey Nos.263 and 258. The above survey numbers have been re-numbered as 101/2, 102/2, 102/4, 102/5 and 101/1. The Plaintiff's father died on 30.09.1993 leaving behind his wife Nagammal, 3 sons and 4 daughters. The Plaintiff's father was enjoying the suit property till his life time. After his life time the plaintiff is enjoying the suit property.

2.(b) The Defendant is owning property on the north of 'A' Schedule property, which is shown as 'B' schedule, which is situated higher in level. The said portion cannot be irrigated from the Plaintiff's well in S.F.No.101. Therefore, the Plaintiff has permitted the defendant to cultivate 'B' schedule property viz., 60 cents. Thereafter, he revoked the leave and licence. When the plaintiff demanded possession of the property the defendant denied the title of the property and he has also made an attempt to encroach the remaining portion of the suit property. Hence, originally the plaintiff sought declaration in respect of 60 cents in 101/2 and recovery of the same from the Defendant. Thereafter the Plaintiff has amended his entire pleadings and sought a declaration in respect of the Survey Field 101/2 in respect of 1.69 acres, 102/2 in respect of 1.3 hectares 102/4 in respect of 0.79.5 hectares and 102/5 an extent of 0.19.5 hectares.

2.(c) The Defendant denied the plaintiff contention and stated that identity of the property is not correct. In fact, in Survey No.101/2 the Defendant is in enjoyment and he has purchased the above land on 12.4.1995. In Survey No.101/2 the Plaintiff has no right whatsoever in the suit property. It is the further contention of the Defendant that the Plaintiff's father has purchased 6.93 acres vide sale deed dated 19.9.1972 in two survey numbers i.e., S.F.Nos.263 and 258. S.F.No.258 subdivided as Survey No.133/1, 133/2, 134/1,2,3 and 135/1. Therefore the Plaintiff's claim that the entire property purchased under the sale deed dated 19.9.1972 relate to Survey No.263 is not correct. It is the further contention of the defendant that in Survey No.101/1 the Plaintiff has no right in the suit property. Whereas the Defendant has purchased 7.21 acres in Survey Nos.99/3, 99/5, 101/1, 101/2 and 102/3 in the year 1995 from the predecessor in title. The defendant in his written statement also sought permanent injunction in respect of Survey Nos.99/3, 99/5, 101/1, 101/2 and 101/3 for an extent of 7.21 acres and paid necessary court fee.

3. The trial Court has framed the following issues:

1. whether the Plaintiff is entitled to Declaration?
2. Whether the plaintiff is entitled to recovery of 'B' schedule property?
3. Whether he is entitled to injunction in respect of 'C' Schedule property?
4. To what relief?

4. The trial court also framed the following Additional issue:

Whether the Defendant is entitled to counter claim as prayed for?

5. Before the trial Court P.W.1 to P.W.3 examined and Ex.A1 to A.18 marked. On the side of the Defendants D.W.1 and D.W.2 examined and Ex.B.1 to Ex.B.12 marked. On the side of the Government C.W.1 to C.W.3 were examined and Exs.C.1 to C.8 were marked. Based on the evidence and materials, the trial Court dismissed the suit filed by the Plaintiff and also rejected the counter claim filed by the defendant. The trial Court has categorically found that the Plaintiff has not established the identity of the property. The trial Court also dismissed the counter claim on the ground that the revenue records stand in the name of both sides, against which both the Plaintiff and

Defendant have filed Appeals. The first Appellate Court dismissed the appeal filed by the Plaintiff however, allowed the counter claim of the defendant, as against which the present two second appeals have been filed by the Plaintiff, one against the dismissal of the suit in respect of declaration and another in respect of allowing the counter claim.

6. The learned Senior Counsel appearing for the Appellant has vehemently contended that admittedly in the year 1972, the Plaintiff's father has purchased the property in Survey No.263 for a total extent of 6.93 acres. Whereas the Defendants claimed title on the basis of the subsequent document of the year 1995. When the vendor has already sold the property to the Plaintiff, the Defendants did not get any title in respect of the same property. Hence, according to learned senior counsel, under Section 48 of the Transfer of Property Act, later transfer will not convey title to the Respondent. Hence, submitted that the Courts below have not considered these aspects properly. Further it is the contention of the learned Senior Counsel that the dispute between the parties only in respect of Survey No.101/2. In respect of other survey numbers, there is no dispute at all. The trial court instead of granting declaration in respect of other survey numbers has totally dismissed the suit, which is not correct. Similarly, the First Appellate court granting injunction in favour of the defendant in respect of the suit property is also not correct. Admittedly, in respect of Survey No.101/2, revenue records stands in the name of both parties. Hence, granting injunction in favour of the defendant is not according to law. Hence prayed for allowing the appeals.

7. The learned counsel appearing for the respondent has submitted that admittedly as per the sale deed in the year 1972 the plaintiff's father has purchased only 6.93 acres in Survey Nos.263 and 258 and there is no details as to how much of property purchased under Survey No.263. Whereas the above survey number 263 has been sub-divided as Survey Nos.101/1, 102/2, 102/4 and 102/5 and Survey No.258 sub-divided as Survey Nos.133/1, 133/2, 134/1,2,3 and 135/1. Now, the contention of the plaintiff that an extent of 6.93 acres purchased under Ex.A.1 only in Survey No.263, cannot be countenanced. Further, in the plaint the properties have not been identified, no boundaries given. Without establishing the title to the property he cannot seek declaration. Whereas Ex.D1 clearly show that the defendant has purchased specific extent in Survey No.101/2 for 2.53 acres from the original owner with the specific boundaries. Hence, submitted that the First Appellate Court clearly found that the defendant is the owner of the properties in Survey Nos.101/2, 99/3, 99/5, 101/1 and 102/3 and granted injunction. Hence, submitted that the judgment of the First Appellate Court does not require and interference.

8. While admitting the Second Appeals the following substantial questions of law were framed:

8.(a) In S.A.No.1196 of 2011

i. Is the Lower Appellate Court correct and justified in reversing the decision the Trial Court and upholding defendantss right to the suit property?

ii. On the date of the finding of the Lower Appellate Court that both the sale deeds viz., sale deed in favour of the Plaintiff's father and sale deed in favour of defendant include S.F.No.163, erred in rejecting plaintiff's claim and upholding defendant's claim?

iii. The Lower Appellate Court failed to note that plaintiff sale being earlier in point of time than that of defendant, plaintiff is entitled to succeed and defendant's claim cannot be upheld?

iv. The Lower Appellate Court correct and justified in deciding the rights of parties even without considering or advertising to Commissioner's Report?

v. When it is found that S.F.No.263 is found or includes in the sale deeds of both plaintiff and defendant will not earlier sale prevail over the later sale?

vi. Is the Lower Appellate court correct and justified in upholding defendant's title solely on the basis of Ex.B.1 especially when it is disputed?

vii. Is the Lower Appellate Court correct and justified in rejecting plaintiff's title inspite of noting that his title deed includes S.F.No.263 merely on the ground it includes S.F.258 also especially when there is evidence to show that plaintiff is not claiming S.F.No.258 and the properties purchased as per evidence is only in S.F.No.263?

viii. Even otherwise in view of the fact that plaintiff is not claiming entire 8 and odd acres but has restricted his claim to

6 and odd acres and that S.F.No.263 is in excess of 6 Acres is not plaintiff entitled to the relief as prayed for?

8.(b) In S.A.No.1277 of 2011

i) Are the courts below correct and justified in dismissing the suit?

ii) Having noticed that the suit property is included in the sale deed dated 19.09.1972 marked as Ex.A.1 are courts below correct in and justified in dismissing the suit?

iii) In view of the amendment being allowed and the claim being restricted to 6.93 Acres and on the face of the plea that the suit properties are not covered under S.F.No.258?

iv) Admittedly when the claim of the defendant is based on the later sale deed will not the earlier sale deed prevail over the later sale deed and if so, is not plaintiff bound to succeed on the basis of prior sale deed?

v) That at any rate having noticed that in S.F.No.263 the both parties have purchased the properties and on that finding, is not plaintiff entitled to succeed on the basis of prior title deed?

vi) Having noticed that both the parties admit that in S.F.No.263 they have purchased the land on the basis of the prior title deeds is not the plaintiff entitled to succeed?

vii) Whether the courts below failed to note that on the basis of Plaintiff's claim the properties are situated in S.F.No.263 are alone, on the basis that out of property purchased in the year 19.09.1972 comprising in two S.F.namely 263 and 258 respectively, the Perumal Gounder sold the entire properties in S.F.No.258 and only the property available which Perumal Gounder on the date of suit in S.F.No.263

9. Though several substantial questions of law have framed based on the appeal memorandums, this court is of the view that the substantial questions of law to be re-framed for the disposal of these second appeals. Accordingly, the following Substantial Questions of law are re-framed:

1. Whether the Plaintiff is entitled to declaration as prayed for in the suit properties without identifying the suit properties?
2. Whether the Plaintiff is entitled for declaration contending that the extent purchased under Ex.A.1 dated 19.9.1972 only relate to old survey No.263?
3. Whether the courts below is right in decreeing the counter claim contrary to the fact that the revenue records stand in the name of both parties in respect of Survey Nos.101/2?

10. I have perused the judgments of the trial court and First Appellate Court, respective pleadings and documents also. The suit was originally filed by the Plaintiff contending that his father purchased 6.93 acres in Survey Nos.263 and 258 under Ex.A.1 sale deed dated 19.9.1972. Further, it is the contention of the Plaintiff that suit survey numbers were re-numbered as 101/2, 102/2, 102/4 102/5 and 101/1. In the original plaint the plaintiff has shown the property as 'B' Schedule and sought for declaration only in respect of 60 cents out of 1.2 hectares which is available in Survey No.101/2 and also sought recovery of possession in respect of the above 60 cents. Besides he has also sought an injunction in respect of Survey Nos.101/2, 102/2, 102/4, 102/5. It is mainly contended by the Plaintiff that 'B' Schedule property is higher in level. Therefore, the defendant was permitted to cultivate 'B' Schedule property. However, the defendant did not vacate the property and also tried to encroach the remaining suit property. Suddenly, the Plaintiff filed an amendment seeking declaration in respect of 1.69 acres in survey number 101/2 and survey No.102/2,102/4 and 102/5. By way of amendment he has totally set up a new case. Even in the amended plaint, there is no particulars whatsoever given with regard to the boundaries.

11. The evidence of plaintiff proceeded as if extent of 6.93 acres purchased under Ex.A.1 only relate to Survey Number 263 which was later re-numbered as 101/2, 102/2, 102/4 and 102/5. It is curious to note that Ex.A.1 when carefully seen in Survey Nos.263 and 258, from both the survey numbers the plaintiff's

father has purchased 6.93 acres. There is no details as to how much extent has purchased in each of the survey number. Whereas now it is the contention of the plaintiff that the entire 6.93 fall within the old survey No.263 and new Survey number as mentioned in the plaint. Absolutely there is no whisper whatsoever in his plaint with regard to the old Survey No.258, how it was re-numbered. In fact he has not stated anything about the Survey No.258. His own document Ex.A.10 makes it clear that S.F.No.258 is classified as S.F.No.134/4. It indicate that 81 Ares in the above survey number is owned by the plaintiff family. It is further curious to note that the Plaintiff has traced his title in Ex.A.1 to Ex.A.3. Ex.A.1 relate 6.93 acres together purchased in both the survey numbers viz., old survey Nos.263 and 258. Similarly, the Vendor of the plaintiff's father has originally purchased 1.67 7/2 acres in Survey No.263 and 258. Thereafter, on 5.4.1967 the vendor of Ex.A.1 purchased an extent of 5.25 acres in Survey No.263. The Plaintiff tracing title to survey number 263 based on Exs.A.1 to A.3. It is curious to note that as per Ex.A.2 and Ex.A.3 the vendor of Ex.A.1 had title only below 6 acres in survey No.263. In Ex.A.2 1.67 acres in both the survey numbers 263 and 258 have purchased. Thereafter under Ex.A.2 dated 12.07.1960 under Ex.A.3 5.4.1967 the vendor in fact did not have a absolute title for 6.93 acres in Survey No.263. Whereas Ex.P.3 dated 7.4.1976 the same vendor subsequently purchased in Survey No.263 and 264 an extent of 7.06 acres. In fact he has purchased around 3.94 acres under Ex.B.3. Ex.B.4 previous title deed in respect of Survey No.264 for an extent of 3.12 acres. Ex.B.5 is title deed relate to Survey No.263 in respect of 3.94 acres. All the title deeds relied upon the parties make it clear that though the vendor have purchased certain extent of land in Survey No.263 under Ex.A.1, the Plaintiff's father has purchased 6.93 acres in both the Survey Nos.263 and 258. What is the exact extent purchased under survey No.263 absolutely there is no evidence. Whereas specific contention of the defendants that survey number 258 also sub-divided as various survey numbers in which the plaintiff has property purchased under Ex.A.1.

12. Though the parties have filed various title deeds and sought for relief in respect of all the survey numbers, the dispute actually between the parties in respect of survey number 101/2. In respect of other survey numbers there is no dispute at all. It has been clearly noted by the trial Court and also conceded by both sides before this Court. Therefore, in the light of the above now it has to be seen whether the Plaintiff is entitled to declaration in respect of S.F.No.101/2 in respect of 1.69 acres as pleaded in the plaint. Similarly, the defendants is entitled to Permanent Injunction of the above suit property. In respect of other item mentioned in the counter

claim as well as the claim, there is no dispute between the parties. The trial court and first appellate court have discussed the entire documents and oral evidence and factually found out that the Plaintiff has not established his absolute title in Survey No.101/2. However, the First Appellate court taken into consideration of Ex.B.1 the specific extent was purchased by the defendant in Survey No.101/2 granted injunction. As already stated, the Plaintiff has not established the entire 6.93 acres purchased under Ex.A.1 in old Survey No.263. In fact 6.93 acres were purchased in two survey numbers. Having purchased the properties in the above survey numbers, now the plaintiff cannot contend that the above extent relate only one survey number, i.e., Survey No.263.

13. It is the admitted case of the parties that old survey number 263 was re-numbered as Survey Numbers 101/2, 102/2, 102/4, 102/5. Similarly Ex.A.10 also makes it clear that survey number 258 was re-numbered as some other survey numbers i.e., S.F.No.134 and others. Though the revenue records Exs.A.1 and A.2 show that S.F.No.101/1 stand in the name of on Lingaiya Gounder. The Revenue records show the Plaintiff's father name in S.F.No.101/2 in respect of 1.25 acres. Mere revenue records alone is not sufficient to prove the title. The Plaintiff himself is not able to give the correct description of the properties in the plaint. In the original plaint, it is his contention that defendant was in possession of 60 cents in Survey No.101/2, whereas, subsequently, the same was amended to the effect that he is entitled for entire 1.69 acres. When the plaintiff himself is not able to correlate the survey number, in the absence of any evidence to show that 6.93 acres purchased under Ex.A.1 only relate to the old Survey No.263, the Plaintiff has certainly not entitled to declaration.

14. The persons seeking a declaration has to prove their own case. They cannot rely upon the other side weakness. Further, the plaint is bereft of details of the properties and there is no sufficient identification of the suit properties. The boundaries are also not given. In fact such description is mandatory under Order VII Rule 3 of C.P.C. which has not been done so. Hence the findings of the courts below holding that the Plaintiff is not entitled to declaration in respect of Survey No.101/2 does not require any interference. However, the finding of the trial Court dismissing the suit in entirety is not correct. The main dispute between the parties only in respect of Survey No.101/2 for an extent of 1.69 acres as claimed in the plaint and the defendant also not disputed the plaintiff's right or interest over other survey numbers viz., 102/2, 102/4 and 102/5, around 5 acres in Survey No.102/2, 102/4 and 102/5. As there was no dispute in the above Survey Numbers by the defendants this court is of the view that instead of

driving the parties for second round of litigation relief of declaration can be granted in favour of Plaintiff in respect of Survey No.102/2, 102/4 and 102/5 for the specific extent as pleaded shown in the plaint schedule, since there is no dispute in respect of the other survey numbers. Accordingly, Courts below dismissing the suit in entirety is set aside and declaration is granted in respect of survey No.102/2, 102/4 and 102/5. However, the courts below findings of dismissing the suit in respect of survey No.101/2 in respect of 1.69 acres is hereby confirmed and Second Appeal No.1196 of 2011 is partly allowed.

15. As far as the counter claim is concerned though the trial court has negatived the plaintiff's claim, the First Appellate Court has granted injunction. It is to be noted that though Exs.B.1 to B.5 shows that the vendors have title over the properties, it is to be noted that Ex.B.8 Revenue records clearly show that the plaintiff's name and defendants names also mentioned in the Patta. Similarly, Ex.B.7 'A' Register relating to the Survey No.101/2 there also the plaintiff and defendants names mentioned. Ex.B.11 Town Survey Register also indicates that both names are present in the above aspect. Particularly survey No.101/2 Government Document Ex.A.1, RSR Register clearly shows that Ex.A.1 and Ex.A.2 both read together both plaintiff and defendants names also jointly found. Similarly in Ex.B.3 Government Document is also both the names are found and both of them are also paid tax. Since there is no dispute with regard to total extent in S.F.No.101/2 i.e, 1.25 Ares, the Patta stands in both the name, 'A' Register also both the names are found. Therefore, merely on the basis of purchase under Ex.B.1, the possession of the Plaintiff cannot be inferred in Survey No.101/2. Accordingly, injunction granted in the counter claim in respect of Survey No.101/2 by the First Appellate Court is not correct, since exclusive possession of the defendant is not established in respect of Survey No.101/2. Accordingly, the Judgment of the First Appellate court granting Permanent Injunction in respect of 101/2 is hereby set aside. Since there is no dispute in respect of other Survey numbers viz., S.F.No.99/3, 99/5, 101/1 and 102/3 the claim of the defendant and the injunction granted by the First Appellate court is confirmed. However, the injunction in respect of Survey No.101/2 is hereby set aside. Accordingly the Second Appeal No.1277 of 2011 is partly allowed. Since both parties are relying upon the title deeds and unless the identity of the parties are established, certainly there is a cloud over the property, such cloud has to be removed by the parties. Therefore, the relief sought in both the suits for declaration and injunction cannot be granted in respect of Survey No.101/2.

16. In the result, both the Second Appeals are partly allowed. The Plaintiff's suit for Declaration and Injunction decreed only in respect of Survey Nos.102/2, 102/4, 102/5 alone. The counter claim of the defendant is allowed only in respect of Survey Nos.99/3, 99/5, 101/1 and 102/3. The counter claim is rejected in respect of Survey No.101/2. Similarly, the plaintiff's relief for declaration in respect of Survey No.101/2 is dismissed. Liberty is however, granted to both the sides to file fresh suit to establish their title in respect of Survey No.101/2 alone. In the above suit both parties are at liberty to take aid of the Survey department to fix the boundaries to establish their respective title. Connected M.P.s are closed. No costs.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

ggs.

To

1. The Sub Ordinate Judge, Sathyamangalam.

2. The District Munsif, Sathyamangalam

+2 ccs to M/s.Ma.P.Thangavel, Advocate, S.R.No.38328 and 38329

+2 ccs to M/s.A.V.Arun, Advocate, S.R.No.38068, 38069

S.A.Nos.1196 and 1277 of 2011

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