

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 25.01.2019

Coram:

The Hon'ble Mr.Justice N.SATHISH KUMAR

S.A.No.80 of 2012

Marasamy ... Appellant / Plaintiff

Versus

1. Subramaniam
2. Arjunan
3. The Special Officer
Director of Rural Development
Boothan Board
Kuralagam, Chennai
4. Thavasiammal
5. Chenniyappan
6. Ammaiyammal ... Respondents / Defendants

(Respondents 4 to 6 are formal parties hence given up)

Second Appeal filed under Section 100 C.P.C. against the Judgment and Decree passed in A.S.No.4 of 2010 by the learned Sub-judge, Bhavani dated 15.3.2011 confirming the Judgment and Decree of the Learned II Additional District Munsif, Bhavani in O.S.No.878 of 2004 dated 25.11.2009.

For Appellant : Mr.V.S. Kesavan

For Respondents : No appearance [for R1 to R3]
R4-R6 - Given up

JUDGMENT

Aggrieved over the concurrent findings of the trial Court and First Appellate Court the present Second Appeal came to be filed.

2. The brief facts leading to file this Second Appeal is as follows:

2.(a) One Kali Gounder and Karuppa Gounder jointly purchased the landed property to the extent of 9.9 acres. The Plaintiff

and Defendants are the legal heirs of the said persons. During their life time the said Kali Gounder and Karuppa Gounder partitioned the properties through registered Partition Deed dated 31.10.1987. 'A' Schedule properties under the Partition Deed allotted to the Plaintiff's father Kali Gounder and 'B' Schedule properties allotted to the First and Second Defendants' father Karuppa Gounder. The Karuppa Gounder died about 20 years ago and Kali Gounder died about 1 ½ years ago from the date of filing the suit.

3. It is the case of the Plaintiff that recently he came to know about that during the resurvey, an extent of 20 cents Boodan land was included in the Plaintiff's property. Such resurvey measurement is not valid and not binding upon the Plaintiff. Hence sought for declaration over the suit property and permanent injunction restraining the Defendants 1 and 2 from trespassing the suit property. Admitting the Partition Deed, it is the contention of the Plaintiff that one Ramanujam has donated his property in F.S.No.833 to Boodan Board. Hence to keep his right, the Plaintiff claimed declaratory relief.

4. The Third Defendant filed a Written Statement stating that in the year 1956 the owners of the properties in S.F.No.833, 829, 390, 403, 137 and 686A were donated their respective properties to the Boodan Board. Similarly an extent of 1.64 ½ acres of land in S.F.No.833 was donated by Ramanuja Mudaliar to Boodan Board.

5. The trial Court dismissed the suit for declaration and the same was confirmed by First Appellate Court, against which the present Second Appeal came to be filed.

6. Learend counsel for the Appellant submitted that the main grievance of the Appellant is that some of his properties during resurvey proceedings are included in Boodan Board. The rescheduled properties are absolutely belongs to the Appellant and the survey proceedings are not valid. Hence sought for declaration.

7. On perusal of the entire materials and the findings of the trial Court and the First Appellate Court this court is of the view that both the Courts below have factually found that the Plaintiff has not correlated the Survey Numbers properly. It is to be noted that the main allegation is about the inclusion of some property during the re-survey proceedings. It is the contention of the Plaintiff that some Boodan land have been included in his property. However, absolutely there is no material in the entire plaint as to the nature, the extent of the property and survey number of the property which stand in the name of the Plaintiff. All these facts are not proved.

Without proper pleadings and details as to the nature, extent and survey number of the property, general declaration cannot be granted by the Court of law. The Plaintiff has not correlated the Survey Numbers to show some portion of his property was taken by the authorities, either before the trial court or before the First Appellate Court. Hence, this Court does not find any substantial Question of law.

8. Accordingly, the Second Appeal is dismissed. No costs. However, liberty is granted to the Plaintiff to file a fresh suit against Boodan Board to rectify the defects in the records.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

- 1) The Subordinate Judge,
Bhavani.
- 2) II Additional District Munsif,
Bhavani.

copy to: The Section Officer,
VR Section, High Court, Madras.

+1 cc to Mr.V.S.Kesavan, Advocate, S.R.No.5951

Judgment in:
S.A.No.80 of 2012

VD(CO)
SSM(17/06/2019)

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