

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :07.08.2019

CORAM

THE HONOURABLE Ms.JUSTICE P.T.ASHA

S.A.No.290 of 2013
and M.P.No.1 of 2013

Govindarajulu Chetty

..Appellant/Defendant

-vs-

1. K.Dharmaiah Chetty
2. D.Loganathan

..Plaintiffs/Respondents

PRAYER: The Second Appeal is filed under Section 100 of CPC, against the Judgment and decree made in A.S.No.1 of 2011 dated 29.09.2011 on the file of the Subordinate Judge's Court, Tiruttani reversing the judgment and decree made in O.S.No.168 of 2007 dated 27.09.2010 on the file of the District Munsif Court, Tiruttani.

For Appellant : Mr. S.Rajendra Kumar

For Respondents : Mr. T.Dhanya Kumar

JUDGMENT

The second appeal has filed by the appellant/defendant against the judgment and decree passed by the Subordinate Judge, Tiruttani in A.S.No.1 of 2011 dated 29.09.2011 reversing the judgment and decree passed by the District Munsif Court, Tiruttani made in O.S.No.168 of 2007 dated 27.09.2010.

2. The unsuccessful defendant is the appellant before this Court. The original suit in O.S.No.168 of 2007 was filed by the plaintiffs/respondents herein on the file of the District Munsif Court, Tiruttani, for a declaration of their right, title and interest over the suit property and for granting a consequential injunction restraining the appellant/defendant from interfering with their peaceful possession and enjoyment of the suit property. The property in question, is an extent of 18 ares comprised in Survey No.223/2 and Survey No.223/3 of the Ganeshpuram Village in Tiruttani Taluk, Thiruvallur District.

3. The Plaintiffs/respondents case was that the property was their ancestral property. This was countered by the

appellant/defendant by stating that the property was purchased by the appellant/defendant under a registered sale dated 19.04.1961 and that he has been in possession and enjoyment of the same till date.

4. It was his case that in the updating Register, patta was wrongly entered in the name of the Pachaiyammal, who is the adjacent land owner, which is now being taken advantage by the plaintiffs/respondents. According to the appellant/defendant, the suit property was comprised in old Survey No.223/2 which was subdivided as 223/3 and 223/4 and he sought for the dismissal of the suit stating that the plaintiffs/respondents had no right, title or interest over the property.

5. The learned District Munsif, Tiruttani, on a detailed enquiry and after considering the evidence that was let in on either side, both the oral as well as documentary, came to the conclusion that the plaintiffs/respondents had not proved their case that the property was ancestral property.

6. The said judgment and decree was taken up on challenge by the plaintiffs/respondents to the Subordinate Judge, Tiruttani in A.S.No.1 of 2011.

7. Pending the appeal, the plaintiffs/respondents have also taken out the application for receiving the additional documents. The said application was taken up for hearing along with the main appeal and without affording an opportunity to the appellant/defendant to cross-examine the plaintiffs/respondents on these documents had permitted the plaintiffs/respondents to mark those documents as Exs.A23 and A.24 which is the SLR copy and the reply notice. It is only based on these two documents that the appellate Court had reversed the judgment and decree passed by the trial Court.

8. Considering the above, this Court is inclined to allow the appeal and remit the matter back to the Subordinate Judge, Tiruttani for fresh consideration after affording an opportunity to both parties to let in oral evidence with reference to Exs.A23 and A.24. Thereafter the learned Subordinate Judge shall proceed to decide and pass judgment. The said exercise shall be completed within a period of two months from the date of receipt of a copy of this order.

9. It is made clear that except for the oral evidence of the parties, no other documentary evidences shall be filed on either side. The Second Appeal is allowed with the above directions. The order passed by the learned Subordinate Judge,

Tiruttani in A.S.No.1 of 2011 is, liable to be set aside. The Registry is directed to return the documents to the Subordinate Judge's Court, Tiruttani. No costs. Consequently, the connected miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1. The Subordinate Judge,
Tiruttani.

2. The District Munsif,
Tiruttani.

Copy to : 1.The Section Officer, Judicial Department,
High Court of Madras, Chennai.
(for information to return the Documents
to the Subordinate Court)

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

+1 cc to M/s.T.Dhanyakumar, Advocate Sr.No. 67773

AKM/28.01.2020/3P-6C /

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