

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.09.2019

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.960 of 2019
and
CMP.No.20436 of 2019

1.Poongodi
2.Nivetha

...Appellants/Defendants 3 & 4

Vs.

1.Selvakumar
2.Saminathan
Periyammal (Died)

...Respondents/Plaintiffs 1 & 2

3. N. Santhadevi
4. Kaladevi
5. Manonmani
6. Indivani

...Respondents 3 to 6/Defendants 2,5 to 8

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree dated 05.10.2018 made in A.S.No.19 of 2017 on the file of Subordinate Judge at Kangayam at Tiruppur District confirming the judgment and decree dated 23.02.2017 made in O.S.No.61 of 2008 on the file of District Munsif and Sessions Court, Kangayam.

For Appellants : Mr.Mukund
for M/s. Sarvabhuman Associates

J U D G M E N T

The defendants 3 and 4 who suffered a decree for declaration of title of the plaintiffs in respect of the suit properties and for recovery of possession of an extent of 37 cents shown as A B C D in the suit first item are the appellants.

2. The suit came to be filed by the respondents herein seeking the reliefs of declaration of title and recovery of possession, claiming that the suit properties were allotted to one Deivasigamani in a partition that took place on 04.04.1959.

The parents of the 2nd plaintiff viz., Kuppana Gounder and Chellammal had purchased the same from the said Deivasigamani under the sale deed dated 19.05.1997. The daughter of Kuppana Gounder and Chellammal had relinquished her interest over the suit property in favour of the 2nd plaintiff on 19.12.2007. Thus the 2nd plaintiff is the absolute owner of the suit property. Claiming that the defendants had encroached upon the extent of 37 cents in the suit property, the plaintiff had come forward with the suit for declaration of title and recovery of possession.

3. The 1st defendant died pending suit and his legal representatives were impleaded. The defendants 1, 2, 3 and 4 filed a written statement contending that the claim of ownership of Kuppana Gounder and Chellammal itself is denied. They also deny that they encroached upon the 37 cents of land in suit first item. It is also claimed that the pathway stated in the plaint was not in existence. The defendants would also further claim that the property has been in continuous possession of the 1st defendant till his death and after his life time, the other defendants are in possession. After the death of the 1st defendant, the defendants 3 and 4 have derived the suit property under a Will.

4. The courts below upon consideration of evidence on record concluded that the plaintiffs have established their title to the suit property through the partition deed dated 04.04.1959 and subsequent sale deed in favour of Kuppana Gounder and Chellammal dated 19.05.1997. The release deed executed by the daughter Palaniyammal was also marked as Ex.A2.

5. As regards the encroachment claimed, the plaintiffs relied upon the report of the Commissioner in O.S.No.15 of 2005 which was marked as Ex.A6. The commissioner in the said suit Mr.V.Ravichandran was examined as CW1. On the basis of the report of the Commissioner, the courts below had come to a conclusion that the claim that the defendants have encroached upon 37 cents of land in plaintiffs' property has been established. On the above findings, the courts below decreed the suit as prayed for. Aggrieved the defendants 3 and 4 have come forward with the Second Appeal.

6. I have heard Mr.Mukund, learned counsel appearing for the appellants.

7. Mr.Mukund would vehemently contend that the courts below were not right in relying upon the commissioner's report filed in O.S.No.15 of 2005 to conclude that there was encroachment. He would also contend that the appellants were not parties to the said suit. The courts below have found that the predecessor in interest of the defendants 3 and 4 viz., Dhandapani was party to

said suit and he has not filed objections to the Commissioner's report in the said suit. The fact that O.S.No.15 of 2005 was dismissed for default, after the death of Kuppana Gounder, the plaintiff in the said suit, was taken note of by the courts below and it was held that the said dismissal will not preclude the present plaintiffs from claiming declaration of title and recovery of possession.

8. The defendants even in the written statement have not stated as to how they became entitled to the property. They have stopped with merely denying the claim of the plaintiffs. The plaintiffs produced the sale deed by Kuppana Gounder and Chellammal as well as partition deed dated 04.04.1959, in and by which the vendor of Kuppana Gounder and Chellammal was allotted with the suit property. The revenue records viz., Patta, Property Tax Demand Notice have been filed. The defendants have not produced any evidence to dislodge the evidentiary value of the above documents that has been produced by the plaintiffs.

9. The courts below have considered the above evidence and have arrived at a conclusion that the plaintiffs have established the claim of title and also entitled to recovery of possession. The said conclusion is factual in nature. I do not think that the same could be interfered with unless it is shown to be perverse.

10. The other contention of the counsel for the appellants is that the plaintiffs have not paid proper court fee. The suit was filed in the year 2008, there was a discretion available to the plaintiffs to value the suit on the basis of kisth paid, since the suit property is agricultural land. This contention regarding improper valuation was not taken before the courts below, hence, I do not propose to allow the appellants raise this question in the second appellate stage. I do not find any question of law much less a substantial question of law in order to entertain this Second Appeal.

11. Hence, the Second Appeal is dismissed without being admitted. No costs. Consequently, the connected miscellaneous petition is also closed.

s/d-
Assistant Registrar(CS VIII)

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Sub-Assistant Registrar

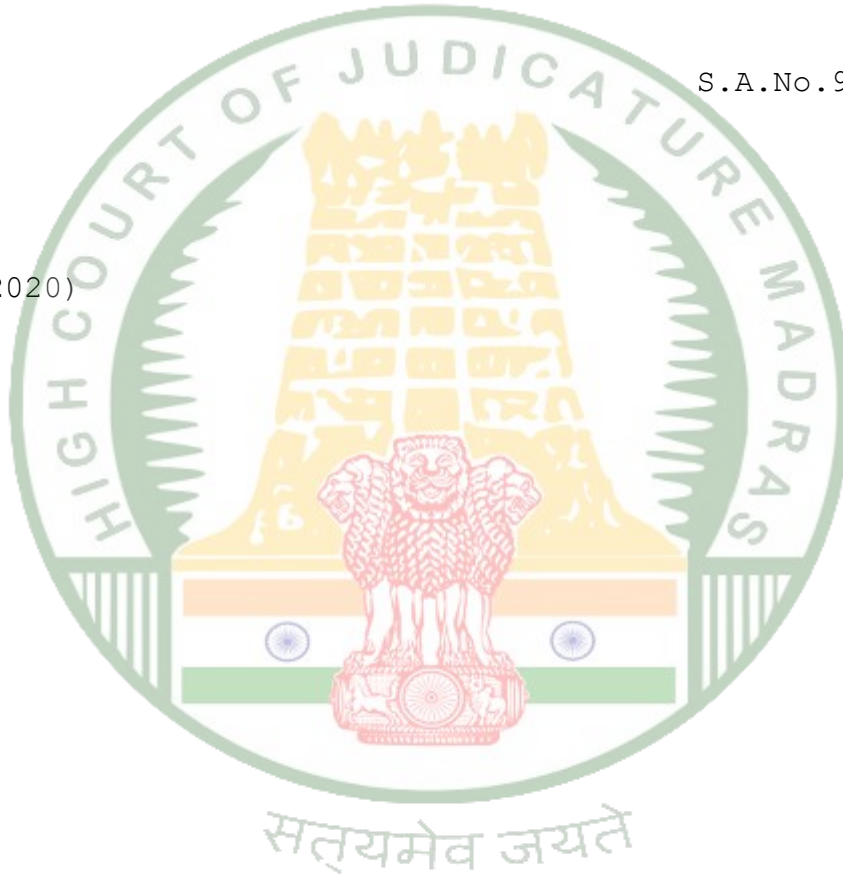
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To

1. The Subordinate Judge, Kangayam,
Tiruppur District.
2. The District Munsif,
Kangayam.

+1 CC to M/s. Sarvabhuman Associates sr 81047.

S.A.No.960 of 2019

RSI (CO)
SP(11/03/2020)



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