

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	09/12/2019
Delivered on	10/12/2019

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

S.A.No.319 of 2014

1.Sampangi

2.Shantha . Appellants/ Appellants/ Defendants

Versus

1.G.B.Umesh,

2.G.R.Sunandamma ... Respondents/ Respondents/Plaintiffs

Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 31.10.2013 in A.S.No.1 of 2013 on the file of Subordinate Judge at Hosur, in confirming the judgment and decree dated 04.01.2013 in O.S.No.6 of 2008, on the file of District Munsif cum Judicial Magistrate at Denkanikottai.

For Appellants : Mr.V.Raghavachari

For Respondents : Mr.P.Mani

JUDGMENT

This Second Appeal is directed against the judgment and decree of the Sub Court, Hosur passed in A.S.No.1 of 2013, confirming the judgment and decree of the District Munsif-cum-Judicial Magistrate at Denkanikottai in O.S.No.6 of 2008.

2. The defendants are the appellants. The respondents herein as plaintiffs filed O.S.No.6 of 2008 for declaration of their title to the suit property and for permanent injunction.

3. According to the plaintiffs, the suit property is classified as Gramanatham land in the revenue records and it was originally belonged to Aa.Choodappa, and by a registered partition deed, dated 01.09.1958, the property was partitioned between Aa.Choodappa and his sons viz., G.C.Basuvaraj and Arale Nanjundappa. The suit property and the other properties were allotted to Arale Nanjundappa and after his demise, it was devolved on his wife Gowramma and her daughters G.N.Sylaza and G.N.Sujatha. As such, they were in possession and enjoyment of the same.

4. The plaintiffs would claim that on 06.07.1980, the legal heirs of Arale Nanundappa sold the property to the

plaintiffs. Since then, they have been in possession and enjoyment of the property. It is the case of the plaintiffs that the defendants are strangers and they without any right over the property proclaim themselves as they got right in the suit property and also filed a false complaint with the Police. Hence, on 20.12.2007, the plaintiffs issued a notice and thereafter filed the suit.

5. The defendants contested the suit by filing a written statement contending that the partition deed dated 01.09.1958 and the sale deed, dated 06.07.1980 are fraudulent documents and the plaintiffs did not get any title over the suit property. It is further stated that the first defendant is the native of Gumlapuram Village, though he got properties in the Village, but he did not have a house site on his own and hence, he applied to the Government for house site patta and the suit property was allotted to the second defendant and a patta was also issued.

6. Before the trial Court, on behalf of the plaintiffs, PWs.1 to 3 were examined and Exs.A1 to A6 were marked and on the side of the defendants, two witnesses were examined as D.W.1 and D.W.2 and Exs.C1 to C6 have been marked.

7. After analyzing the oral and documentary evidence, the trial Court decreed the suit. Aggrieved over the same, the defendants preferred an Appeal. The Appellate Court confirmed the finding of the trial Court. Challenging the same, the present appeal.

8. Mr.V.Raghavachari, learned counsel for the appellants would submit that even though the appellate Court came to the right conclusion that Ex.B1 patta is genuine and the appellants have not produced any records to show that the Old Survey No.2 has been changed as New Survey Nos.113, erred in decreeing the suit. It is further contended that admittedly, the suit property is a gramamatham and in recognition of the possession of the defendants, Ex.B1 patta was issued and that the plaintiffs claimed title over the property on the basis of a registered partition deed and sale deed, which had taken place long ago.

9. Per contra Mr.P.Mani, learned counsel for the respondents 1 and 2 would contend that it is true that the plaintiffs have not produced any records to correlate the Old Survey No.2 is New Survey Nos.113, but the Courts below have rightly compared the boundaries of the properties and held both are same. It is further submitted that the defendants claim title over the property based on Ex.B1, but the Courts below have rightly rejected the same on valid reasons and hence, no interference is required in this matter.

the materials available on record.

11. In the matter on hand, the plaintiffs claim right over the property on the basis of Ex.A1 partition deed dated 01.09.1958 and Ex.A2 sale deed dated 06.07.1980. The case of the plaintiffs is that their vendor Gowramma, after effecting sale deed in the year 1980 also filed a Writ Petition in W.P.No.2038 of 1982, challenging the registration of the sale deed, dated 06.07.1980. However, the Writ Petition was dismissed on 23.09.1988 and the order was confirmed in Writ Appeal No.373 of 1989 on 23.01.1995. Ex.A6-house tax receipt was marked to show that the plaintiffs are in possession of the suit properties.

12. It is relevant to note that Ex.A3-legal notice dated 20.12.2007 was issued stating that the plaintiffs are the title holders and the defendants are strangers to the suit property. Ex.A4 shows that the notice was received by the defendants on 24.12.2007, admittedly no reply was given by the defendants disputing the case of the plaintiffs. That apart, D.W.2-Village Administrative Officer has given evidence stating that there is a sub division upto S.No.113/27 and there is no sub division as S.No.113/28 in Gumlapuram Village. It is relevant to note that the original Ex.B1 was withheld, but a colour xerox of Ex.B1 was produced.

13. It is not out of place to mention that Ex.B1 was issued not recognizing the possession of the defendants, but it was issued on the application made by the first defendant. In the written statement itself, the defendants have stated that the first defendant owns other properties in the Village, but he does not have house site in his name. Further, he stated that as per the conditions imposed in the patta, he has not constructed any house. It is the case of the plaintiffs that the defendants are husband and wife. The first defendant is working as Constable in the State of Karnataka, while the second defendant is working as Nurse in Karnataka Government Hospital. The statement of the plaintiffs has not been seriously disputed in the written statement by the defendants. The plaint averments show that the plaintiffs own lands in the Village. It is to be seen that landless poor alone are entitled for free house site patta, this Court is unable to understand as to how the defendants were granted Ex.B1 patta, even assuming it is genuine. Both the Courts, in my view, rightly, have arrived at finding on proper appreciation of evidence and I find no ground to interfere with the concurrent finding of the Courts below.

14. In fine, the Second Appeal fails and the same is dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar(CS)

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Sub Assistant Registrar

r n s

To

1. The Subordinate Judge,
Hosur.

2. The District Munsif cum Judicial Magistrate
Denkanikottai.

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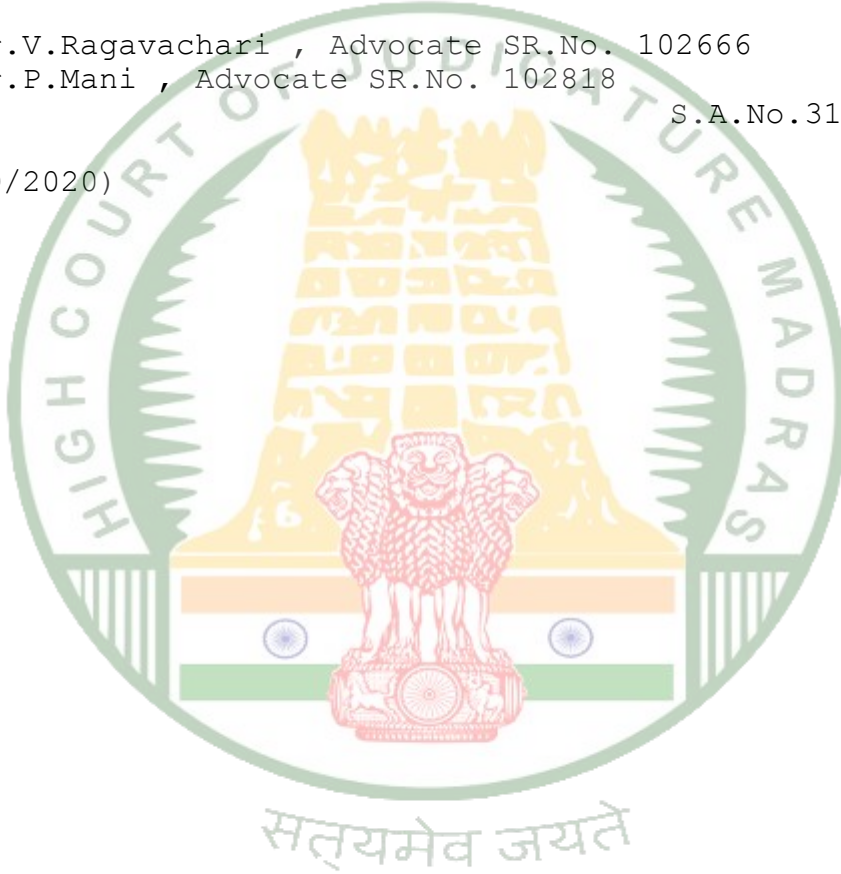
The Section Officer, VR Section, High Court, Madras.

+1cc to Mr.V.Ragavachari , Advocate SR.No. 102666

+1cc to Mr.P.Mani , Advocate SR.No. 102818

S.A.No.319 of 2014

A.SK(11/09/2020)



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