

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

S.A.No. 984 of 2019

and

C.M.P.No. 21114 of 2019

1.R.Muthukrishna Counder

2.R.Krishnamurthy Counder ..Appellants/Appellants/Plaintiffs

Vs.

1.P.Govindan

2.P.Rajasekara Reddiar

3.Sivaprakasa Reddiar ...Respondents/Respondents/Defendants

Prayer: Memorandum of Second Appeal filed under Section. 100 of C.P.C. against the judgment and decree passed in A.S.No. 29 of 2018 dated 29.04.2019 on the file of the Principal District Judge, Puducherry in confirming the judgment and decree made in O.S.No. 148 of 2013 dated 10.01.2018 on the file of the Additional Sub-Ordinate Judge, Puducherry.

For Appellants : Mr. A.Thamizharasan

J U D G M E N T

The plaintiffs in O.S.No.148 of 2013 having failed in their suit for declaration and injunction before both the Courts below have come forward with this second appeal.

2. According to the plaintiffs, the suit property originally belonged to one Muthusamy Counder, son of Koneri Counder, who is the paternal great grandfather of the plaintiffs. It is also claimed that the said Muthusamy Counder purchased the property from Veerasamy Reddiar through a Notarial sale deed dated 20.09.1923. On the death of Muthusamy Counder, the property devolved on his son Krishna Counder @ Krishnasamy Counder. On the death of Krishnasamy Counder, the property devolved on his son Rajendra Counder. Upon the death of Rajendra Counder, the plaintiffs who are the sons of Rajendra Counder had inherited the same. It is also stated that Muthusamy Counder had purchased yet another property from Muthu Kumarappa Reddiar under No.56 having an extent of 8 kuzhies of which an extent of 04 kuzhies on the western side which is a plot and a garden through a Notarial sale deed dated 20.09.1923.

It is stated that the defendants 2 and 3, who have no right over the property along with their mother Chinnathai Ammal had sold the property to the first defendant under a registered sale deed dated 30.06.2004. In the said sale deed, it is claimed that there is a reference to a Notarial partition deed dated 04.12.1962 executed between Subburaya Reddiar and Lakshmi Narayana Reddiar, who are the sons of Late Muthu Kumarappa Reddiar. It is claimed that the Vendors of the first defendant namely, defendants 2 and 3 have no right over the property and the same did not belong to Muthu Kumarappa Reddiar.

3. The suit was resisted by the defendants contending that the plaintiffs have no right over the suit property. It is the contention of the defendants that the property morefully described in 'B' schedule to the suit originally belonged to one Lakshmi Narayana Reddiar, son of Muthukumarappa Reddiar. He having obtained the same under a registered partition deed dated 30.04.1951. Upon the death of Lakshmi Narayana Reddiar, the property has inherited by his daughter, Mrs.Chinnathai Ammal. The said Chinnathai Ammal along with her sons namely, defendants 2 and 3 had sold the 'B' schedule property under a registered sale deed dated 30.06.2004 to the first defendant. It is also stated that the second defendant had signed as an attesting witness to the sale deed. It is also claimed that the defendant upon his purchase in year 2004 had put up a house and has been residing there to the knowledge of the plaintiffs. Knowing fully well with the property belonged to the first defendant he having purchased the same under the sale deed dated 30.06.2004, the plaintiffs have come up with the suit claiming that the defendant is attempting to alienate the suit 'B' schedule property based on the strength of said registered sale deed.

4. The Courts below, on consideration of the evidence on record concluded that the plaintiffs have not established their title to the suit 'B' Schedule property. It was the specific case of the plaintiffs before the Courts below that they derived title to the suit property under the Notarial sale deed dated 20.09.1923. The Courts below had concluded that the Notarial sale deed dated 20.09.1923 did not contain either cadastre number or the survey numbers. The plaintiffs have miserably failed to co-relate the cadastre numbers given in the Notarial sale deed dated 20.09.1923 with that of the suit property. It is also found that the defendants had not co-related the suit 'B' schedule property to the property owned by Muthu Kumarappa Reddiar, which was in a partition allotted to Lakshmi Narayana Reddiar in the year 1951. Based on the above findings, the Courts below had concluded that the plaintiffs have not established their title. The Courts below also faulted the

plaintiffs for not having filed the suit immediately and having come to Court after 9 years in 2013. Aggrieved, the plaintiffs are on appeal.

5. I have heard Mr.A.Thamizharasan, learned counsel appearing for the appellants.

6. The learned counsel appearing for the appellants would contend that the Courts below are not right in concluding that the plaintiff has not co-related the suit 'B' schedule property with the property purchased under Ex.B2 i.e., sale deed dated 20.09.1923. The Courts below should have adverted to the fact that the defendants had not established the title of their Vendor namely, Lakshmi Narayana Reddiar. It is a settled law that it is for the plaintiffs who seek declaration to prove their title and they cannot seek a declaration on the basis of the failure of the defendants to prove title.

7. The Courts below, as of fact found that the plaintiffs have miserably failed to prove that the property covered by Ex.A1, sale deed dated 20.09.1923, which forms part of the 'B' schedule or 'A' schedule property in the suit. Once such specific factual findings have been recorded by the Courts below, I do think I can re-appreciate the evidence and come to my own conclusions sitting in second appeal. I do not see any question of law much less a substantial question of law in order to enable this Court to entertain this appeal. Therefore, this appeal fails and accordingly dismissed. Consequently, connected Civil Miscellaneous petition is closed. No costs.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

To

1.The Principal District Judge
Puducherry

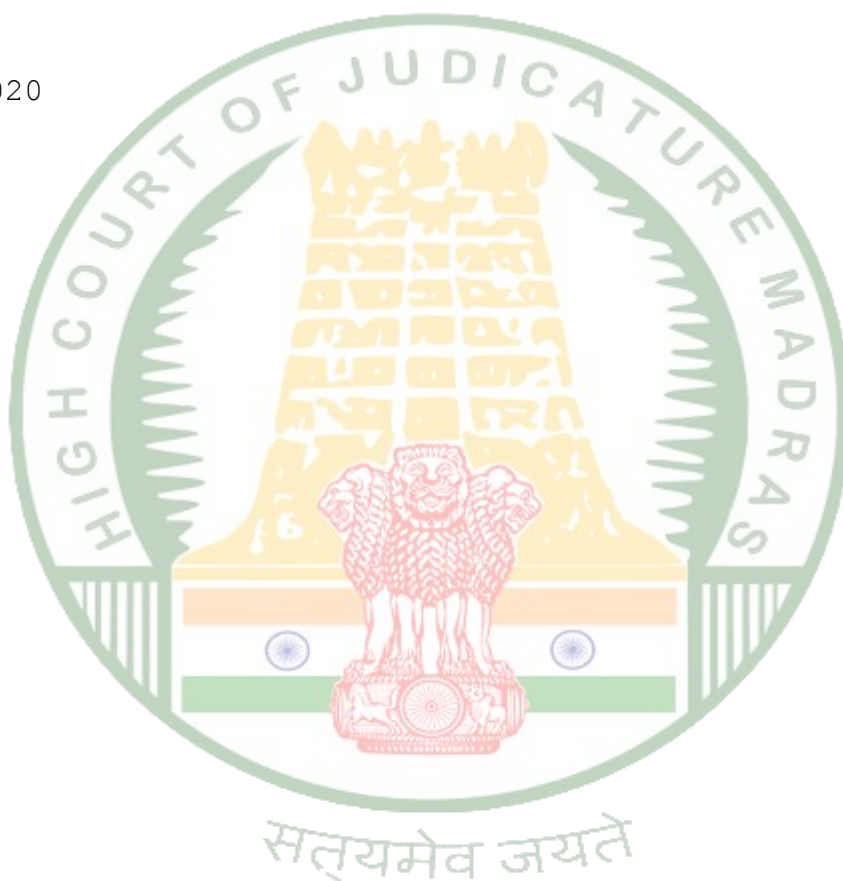
2.The Additional Subordinate Judge,
Puducherry

3.The Section Officer
VR Section High Court, Madras-104

+3 ccs to Mr.A.Thamizharasan Advocate sr83389 & 83380

S.A.No. 984 of 2019
and
C.M.P.No. 21114 of 2019

kk (co)
aa05/03/2020



WEB COPY