

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.11.2019

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.1095 of 2019
and
CMP.No.23847 of 2019

Govindaraji alias Govindasamy Gounder
Rep.by his Power agent G.Muthu Krishnan
...Appellant/Plaintiff

Vs.

Imperial Granites Private Limited,
Rep. by its Director S.R.Asaithambi,
No.76, Cathedral Road,
Chennai - 86.
Rep. by its power agent Venkataramani.
...Respondent/Defendant

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the decree and judgment dated 07.03.2019 in A.S.No.3 of 2017 on the file of Sub Judge, Gingee, Villupuram District reversing the decree and judgment dated 23.12.2016 passed in O.S.No.137 of 2008 on the file of the Additional District Munisf, Gingee, Villupuram District.

For Appellant : Mr.E.P.Sennianguiri

J U D G M E N T

The plaintiff in O.S.No.137 of 2008, whose suit for declaration that he is the owner of the suit schedule 'B' property, for recovery of possession and for damages, though decreed by the trial court, upon its reversal by the lower appellate court has come up with this Second Appeal.

2. According to the plaintiff, an extent of 1 acre 25 cents in S.No.22/2 was allotted to the plaintiff at a partition that took place between him and his brother Narayanasamy. Thereafter, at a partition between the plaintiff and his sons an extent of 1 acre 2 cents was allotted to his sons retaining an

extent of 23 cents with himself.

3. The defendant who had purchased the said extent of 1 acre 2 cents from his sons had annexed the extent of 23 cents along with the land purchased by it from the sons and has been enjoying the same. Hence, the plaintiff had come up with the above suit for declaration and recovery of possession.

4. The suit was resisted by the defendant contending that the plaintiff had not retained any land in S.No.22/2 at the partition between him and his sons. The recitals in the partition deed between him and his sons was also relied upon by the defendant to non-suit the plaintiff.

5. At trial, the power agent of the plaintiff (his son) was examined as PW1 and one Kuppusamy was examined as PW2. Ex.A1 to Ex.A5 were marked. One Venkataramani was examined as DW1 on the side of the defendant and Ex.B1 to Ex.B5 were marked.

6. The trial court on a mathematical calculation concluded that the plaintiff having been allotted 1 acre 25 cents at the partition between him and his brother under Ex.A1 dated 25.01.1979 was possessed of an extent of 23 cents in S.No.22/2, inasmuch as the partition deed between him and his sons, dated 06.05.1998 marked as Ex.A2, dealt with only 1 acre 2 cents. Finding that the defendant has purchased only an extent of 1 acre 2 cents from sons of the plaintiff, the trial court decreed the suit. Aggrieved the defendant preferred an appeal in A.S.No.3 of 2017.

7. The lower appellate court on a re-consideration of the evidence found that though 1 acre 25 cents was allotted to the plaintiff under the partition that took place between him and his brother under Ex.A1 dated 25.11.1979, there is nothing to show that the plaintiff was in possession of the 1 acre 25 cents. The lower appellate court also took note of the recitals in the partition deed dated 06.05.1998 between the plaintiff and his sons which clearly demonstrated that the plaintiff had no land in S.No.22/2 after the partition dated 06.05.1998.

8. The lower appellate court also found that in the said partition dated 06.05.1998, the plaintiff was not allotted any immovable property, but he was paid a sum of Rs.5,000/- towards his share. The lower appellate court also referred to the certified copy of the plaint in O.S.No.162 of 2013 which was marked as Ex.B5, wherein, the plaintiff had admitted that the defendants have sold the entire property allotted to them under the partition and there was no patta land available after the

said partition in S.No.22/2 belonging to the family of the plaintiff.

9. In view of the said recitals and the admission of PW1 in his evidence to the effect that no document has been produced to show that Narayanasamy, the brother of the plaintiff or the father of the plaintiff was entitled to 2 acre 50 cents in S.No.22/2. The lower appellate court reversed the judgment and decree of the trial court and dismissed the suit. Aggrieved the plaintiff has come up with this Second Appeal.

10. I have heard Mr.E.P.Senniagiri, learned counsel appearing for the appellant.

11. The learned counsel for the appellant would vehemently contend that once it is found that the plaintiff was entitled to 1 acre 25 cents under the partition dated 25.01.1979, the lower appellate court was not right in concluding that the plaintiff was not the owner of the property. No doubt, the partition deed dated 25.01.1979 allots an extent of 1 acre 25 cents to the plaintiff. But at a partition between the plaintiff and his sons on 06.05.1998, the family had dealt with only an extent of 1 acre 2 cents in S.No.22/2. The partition deed also very clearly states that no land is allotted to the plaintiff under the said partition deed. It also does not say that some property is kept in common at the time of the partition that took place in 1998. Apart from that the plaintiff as PW1 has specifically admitted that he has not produced any document to show that the plaintiff's family was entitled to 2 acre 50 cents in S.No.22/2 which was partitioned between him and his brother at 1 acre 25 cents each.

12. In the light of the said factual conclusions which cannot be termed as perverse, I do not think that there is any question of law, much less a substantial question of law in order to enable me to entertain this appeal. Hence, the Second Appeal fails and is accordingly dismissed without being admitted. No costs. Consequently, the connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (ADI-MDU)

//True Copy//

Sub Assistant Registrar

dsa

To

1. The Subordinate Judge,
Gingee, Villupuram District.

2. The Additional District Munisf,
Gingee, Villupuram District.

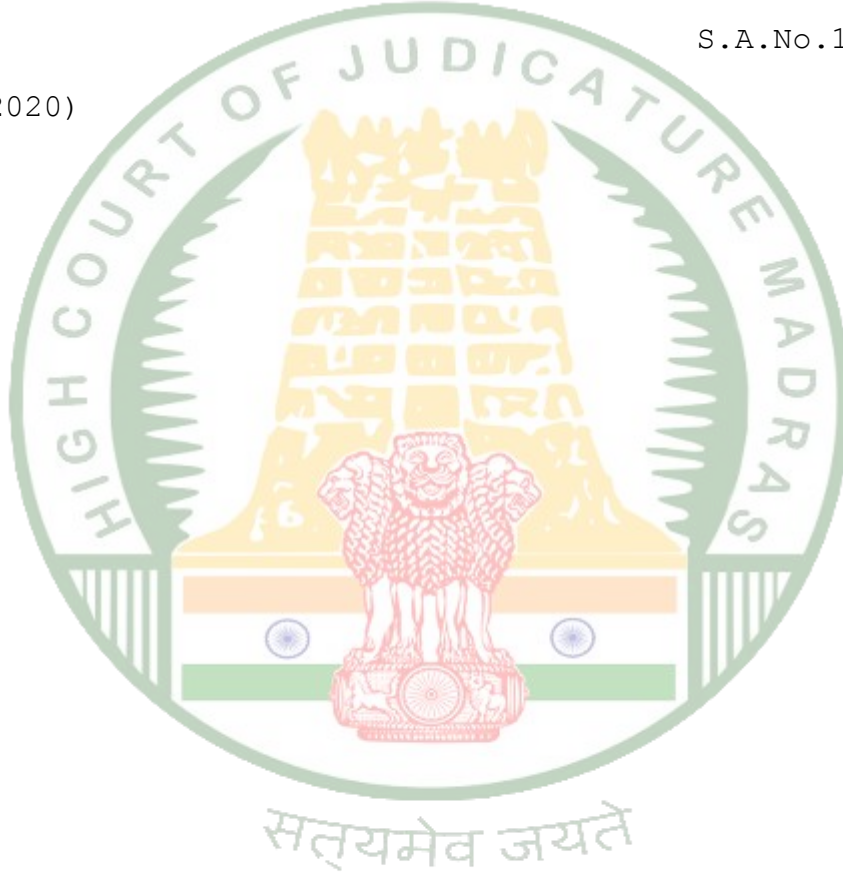
Copy to:

The Section Officer, V.R. Section,
High Court of Madras, Chennai 600 104.

+lcc to Mr.E.P.Senniyangiri, Advocate SR.94448

S.A.No.1095 of 2019

EV(CO)
CB(04/09/2020)



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