



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.12.2019

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN

S.A. (MD) No.611 of 2019

and

C.M.P. (MD) No.12308 of 2019

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Palanisamy .. Appellant / appellant / plaintiff

vs.

1.The District Collector,
O/o The District Collectorate,
Dindigul.

2.The Tahsildar,
O/o.The Tahsildar,
Palani.

3.The Chairman,
Tamil Nadu Boothan Board,
O/o.the Commissioner of Land Administration,
Ezhilagam, Cheppakam, Chennai-5.

4.M.Rajkumar

5.Ramayammal

6.Muruganantham

7.Eswari

8.Sivagami

... Respondents/Respondents/Defendants

PRAYER: This Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 05.09.2019 passed in A.S.No.19 of 2018 on the file of the Sub Court, Palani confirming the judgment and decree dated 18.01.2018 passed in O.S.No.167 of 2010 on the file of the District Munsif, Palani.

For Appellant : Mr.S.Rajasekar

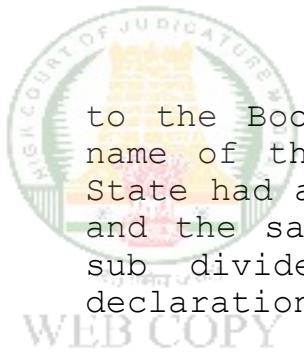
For RR1 to R3 : Mr.N.Shanmugaselvam

Additional Government Pleader

JUDGMENT

The plaintiff in O.S.No.167 of 2010, who failed in his attempt to get a decree for declaration and injunction in respect of five acres of land situated in Survey No.154/1C and 154/2 of Andipatti Village, Palani Taluk, has come up with this appeal.

2. According to the plaintiff, the larger extent of land in Survey No.154/2 belonged to the family of the fourth defendant. The fourth defendant's father had donated an extent of 8.08.5 hectares



to the Boomithan Board and the said land stood registered in the name of the Tamil Nadu State Boomithan Board. Claiming that the State had assigned five acres of land to the father of the plaintiff and the said land situated in Survey No.154/2, which has now been sub divided into 154/2 and 154/1C, the plaintiff would seek declaration of his title and permanent injunction.

3. The suit was resisted by the defendants contending that the suit is bad for non joinder of necessary parties. It was claimed that the plaintiff's father Mayavan had left behind him other heirs and in the absence of those heirs, the plaintiff cannot seek declaration of his title to the property. It was the further contention of the defendants that it is true that an extent of 8.08.5 hectares in Survey No.154/2 was gifted by the fourth defendant's father to the Boomithan Board and an extent of 5 acres out of that larger area was assigned to the plaintiff's father. The assignment was only in survey No.154/2 and it was not subdivided into 154/2 and 154/1C as claimed by the plaintiff. The defendants would further claim that 154/1C measures to an extent of 3 hectares and patta for the same stands in the name of the Pappampatti High School, represented by its Managing Director.

4. It was also claimed that the plaintiff's father did not comply with the conditions on assignment and it is open to the third defendant to revoke the same. On the written statement being filed, the plaintiff took steps to implead other heirs, namely Ramaiyammal, second wife of the plaintiff's father and her children as defendants 5 to 8. Further, during the evidence, the plaintiff would admit that he has got four sisters and they have not been impleaded. The plaintiff had alleged that he is instituting the suit on behalf of his sisters and brother. The defendants 5 to 8 filed written statement contending that they are entitled to a share in five acres of land that was assigned to Mayavan, plaintiff's father, by Boomithan Board.

5. The Courts below on consideration of evidence on record concluded that the plaintiff has not established the subdivision as claimed by him. The Courts below also found that the patta for survey No.154/1C is in the name of Pappampatti High School represented by its Managing Director, namely the fourth defendant. It is also found that the suit filed by the plaintiff without impleading his other sisters and brother is bad for non joinder of necessary parties. The plaint was also faulted for non production of any evidence to show that the land in survey No.154/2 was sub divided and a portion of the land in survey No.151/2 was assigned survey No.154/1C. On the above findings, the Courts below dismissed the suit. Aggrieved, the plaintiff has come up with this second appeal.

6. I have heard Mr.S.Rajasekar, learned counsel for the



7. The learned counsel for the appellant vehemently contended that the Courts below were not right in dismissing the suit on the ground that the plaintiff had not impleaded other legal heirs. According to him, he had made a statement in the plaint to the effect that he is instituting the suit on behalf of other heirs. Even assuming such statement is sufficient and the same will enable the Court to declare the title of the plaintiff on behalf of the legal heirs of Mayavan, on the merits of the claim, I find that the findings of the Courts below regarding correlation are based on evidence.

8. The Courts below have found that the plaintiff was not able to substantiate his claim that the portion of the land in Survey No.154/2 has been assigned new survey No.154/1C. It is also seen from the records that the request of the plaintiff for grant of patta for Survey No.154/1C has been rejected by the Tahsildar. The plaintiff has not chosen to challenge the same. It is open to the plaintiff to establish the title dehors revenue records. In the absence of any evidence to show that sub division took place as alleged by the plaintiff and the portion of the land in Survey No.154/2 was assigned in Survey No.154/1C, the Courts below were right in negating the claim of the plaintiff.

9. Despite best efforts, the learned counsel for the appellant is unable to show that the findings of the Courts below are perverse. In the absence of any perversity, I do not think that I can interfere with such concurrent factual finding sitting under Section 100 of Civil Procedure Code. I do not find any question of law much less a substantial question of law in order to enable me to entertain this appeal. Accordingly, this second appeal is dismissed without being admitted. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-III)

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Sub Assistant Registrar(CS)

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To

1.The Subordinate Judge, Palani.

2.The District Munsif, Palani.



+1 CC to M/s.T.LAJAPATHIROY, Advocate (SR-105896[F] dated 19/12/2019)

+1 CC to M/s.SPL.GP (SR-106034[F] dated 19/12/2019)

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