

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2020

CORAM:

THE HONOURABLE Mr. JUSTICE G.K. ILANTHIRAIYAN

S.A. Nos. 343 & 1774 of 1998

1. Guruva Reddi (deceased)
2. Prabhakara Reddi
3. Sujatha
4. Leelavathi

...Appellants in S.A.No. 343 of
1998/Plaintiff in OS.No.189/92

(Appellants 3 & 4 are brought in
record as Legal heirs of the
deceased 1st appellant vide order of
court dated 21.11.2003 made in
C.M.P.No. 19236/98)

1. Sreenivasa Reddy
2. Rama Reddy

...Appellants in S.A.No. 1774 of 1998
/ Defendant in OS.No.189/92

Vs

1. Sreenivasa Reddy
2. Rama Reddy

...Respondents in S.A.No. 343 of 1998
/ Defendant in OS.No.189/92

1. Guruva Reddy (died)
2. Prabhakara Reddy
3. Ananda Reddy,
4. Anasuy amma
5. Sujatha

6. Leelavathi @ Neelamma
- ...Respondents in
S.A.No.1774 of 1998

(Second respondent is recorded as
Legal Heir of deceased first
respondent & respondents 3 to 6 are
brothers as the Legal Heirs of
deceased first respondent vide order
dated 08.08.2019 made in C.M.P.No. 977
of 1999 in S.A.No. 1774 of 1998)

Common Prayer :- These Second Appeals are filed under Section
100 of Civil Procedure Code against the judgment and decree of
the learned Subordinate Judge, Hosur, made in A.S.NO.11 of 1997
dated 10.11.1997 modifying the judgment and decree of the
Learned trial Court dated 19.9.1996 made in O.S.No. 189 of
1992 on the file of the District Munsif Court, Hosur.

S.No.113/2 measuring an extent of 0.06 acres was allotted to defendant's father and he had been in possession and enjoyment of the same. After his demise, the defendants are in possession and enjoyment of the property. Therefore, the entire property was allotted to the father of the defendant and the land which is adjacent to Dheshettipalli tank was allotted to the plaintiffs. Even in S.No.125/3A, the plaintiffs have given wrong boundaries for their share of property stating that S.No.125/3A is bounded by Anand Reddy's Property on eastern side, bounded by vari on northern and western side and defendant's land on southern side. Therefore, the plaintiffs had given wrong boundary in order to oust the defendants. The defendants have got 50 cents in S.No.125 on the southern side of the plaintiffs' land. Therefore, the plaintiffs have absolutely no right over the suit property comprised in S.No. 113/2 and as such they are not entitled for any relief sought for and prayed for dismissal of the suit.

5. On the side of the plaintiffs, they have examined PW1 to PW4 and marked Exs.P1 to P4. On the side of the defendants, they have examined DW1 and DW2 and marked exhibits Ex.D1. The Advocate Commissioner report and his plans were marked as Exs.C1 to C3. On perusal of the records, trial Court decreed the suit in respect of first item of the suit property comprised in S.No. 113/2 admeasuring 0.06.0 hectares and in respect of the second item of the suit property comprised in S.No. 123/3A admeasuring 1.45.5 hectares. Aggrieved by the same, the defendants filed A.S.No.11 of 1997 and the First Appellate Court, modified the Judgement and Decree passed by the trial Court, thereby decreed the suit in respect of the first item of the suit schedule property and in respect of the second item of the suit property comprised in S.No. 125/3A1 only admeasuring 3.40 acres in favour of the plaintiffs. Insofar as land admeasuring 38 cents in the suit schedule item 2 of the property comprised in S.No.125/3A2, it was dismissed. Aggrieved by the same, both the plaintiffs as well as the defendants preferred the Second Appeals before this Court. The plaintiffs preferred second appeal in S.A.No. 343 of 1998 and the defendants preferred in S.A.No. 1774 of 1998.

6. At the time of admission of the second appeals, the following substantial questions of law were framed :-
S.A.No. 343 of 1998

" i) Whether the learned Subordinate Judge was justified in ignoring the well recognised principle that where a deed sets out the extent and measurements correctly it should be given effect to and not the boundaries?

ii) Whether the appellants entitled to the extent as described and claimed in Exhibit A1?

iii) Whether the report and plan of the Commissioner, Exhibits C.1 to C3 can

be used as evidence to decide the title of the appellants? "

S.A.No. 1774 of 1998

" i) Whether the Judgement and decrees of the Courts below are justified in

the absence of any cogent and categorical evidence to establish the antecedent and independent title of the first plaintiff to the suit properties?

ii) Whether the Courts below are correct in decreeing the suit on the basis of Ex.A1 Partition Deed effected in the family of the plaintiffs, without reference to the antecedent title of the plaintiffs to the suit Properties?

iii) Whether the Judgements and Decrees of the Courts below are vitiated on account of gross failure to appreciate the evidence adduced in proper perspective and without reference to the categorical admission of PW4, the Village Administrative Officer, that the Defendants continue in possession of item - I of the Suit Properties?

iv) Whether the Courts below are correct in upholding the entitlement of the plaintiffs to an extent of 3.40 acres in Suit Survey No.125/3A, particularly when there are gross discrepancies in the description of the extent and the boundaries to the same in the plaint and more so, when the Plaintiffs had failed to identify the actual extent to which they are entitled? "

7. Heard Mr.S.Saravanakumar, learned counsel for the appellants & Mr.D.Sivakumaran, learned counsel for the respondents in S.A.No. 343 of 1998 and Mr.D.Sivakumaran, learned counsel for the appellants & Mr.S.Saravanakumar, learned counsel for the respondents in S.A.No. 1774 of 1998.

8. The suit is filed for declaration and injunction in respect of the suit property. The trial Court decreed the suit in respect of the first item of the suit schedule property and decreed the second item of the property, in so far as, admeasuring 1.45.5 hectares and in respect of remaining portion, it was dismissed. Though part of the suit property was not granted to them, the plaintiffs did not prefer any appeal. But aggrieved by the said judgement and decree, the defendants preferred an appeal suit, in which the First

Appellate Court, dismissed the appeal in so far as the decree of the first item of the suit property and in respect of the second item of the suit schedule property, reduced the extent and decreed only for the property admeasuring 3.40 acres and remaining property to the extent of 38 cents was dismissed. Therefore, both plaintiffs as well as the defendants filed these appeals.

9. The plaintiffs are father and son, the second plaintiff's grand father and defendant's grand father are brothers. According to the plaintiffs, before 40 years the first plaintiff and the father of the defendants' father partitioned their properties and accordingly, the suit schedule property was allotted to the first plaintiff. Thereafter, separate pattas were issued in favour of the first plaintiff and the father of defendants 1 & 2. In the year 1979, the patta No.3 was issued in favour of the first plaintiff in respect of the suit properties. Thereafter, on 20.09.1979, there was a partition between the plaintiffs, namely, the second plaintiff and his brother Ananda Reddy, which was marked as Ex.A1. Accordingly, the A Schedule property was allotted to the second plaintiff's brother and B schedule property was allotted to the second plaintiff.

10. On perusal of Ex.A1, it is seen that in respect of item 2 of the suit schedule property, only land admeasuring 1.45.5 hectares was allotted to the second plaintiff. Whereas in the plaint, it was mentioned as 1.53.0 hectares. They claimed the said 1.53.0 hectares through the patta (Ex.A3) in respect of the second item of the suit schedule property. Though the patta was issued, in respect of the remaining extent, namely 0.075.5 hectares, no document was marked by the plaintiffs. Therefore, the trial Court decreed the suit in respect of the first item of the suit schedule property as prayed for and in respect of the second item of the suit schedule property as per the partition deed. However, the First Appellate Court confirmed the Judgement of the trial court in so far as the first item of suit schedule property and in so far as the second item of the suit schedule property, reduced to 3.40 acres.

11. The Advocate Commissioner was directed to note down the physical features of the suit property. According to the partition deed, the plaintiff was allotted 3.59 acres and second plaintiff was allotted 1.19 acres namely, 4.78 hectares. The Advocate Commissioner filed his report and accordingly the property comprised in S.No. 125/1 allotted to Nanja Reddy and property comprised in S.No. 125/2 was allotted to Sreenivasa Reddy. The property comprised in S.No. 125/3 is situated on the north-eastern side of the property comprised in S.No. 125/1 & 125/2. The property comprised in S.No. 125/3 was divided as S.No. 125/3A1, admeasuring 3.40 acres & 125/3A2, admeasuring 0.38 cents. Therefore, the plaintiffs are entitled only for the property admeasuring 3.40 acres in the

item 2 of the suit schedule property.

12. Though the learned counsel for the defendants contended that the boundaries mentioned in the partition deed and the Commissioner's Report differs and the plaintiffs are not clear about their property and as such they are not entitled for the prayer of declaration. As rightly pointed out by the learned counsel for the plaintiffs, the boundaries are changed by transfer of property in favour of their persons and as such boundary cannot be taken in to account to measure the property. The measurement is very clear in the partition deed as well as in the Commissioner's Report. Therefore, accordingly, the First Appellate Court reduced the decree in so far as the second item of the suit schedule property.

13. Therefore, this Court does not find any valid reason to interfere with the reasons and findings rendered by the First Appellate Court (Subordinate Court, Hosur). As such, this Court is of the considered opinion that no substantial question of law is involved in these appeals. Be that as it may, all the substantial questions of law formulated by this Court are answered in favour of the plaintiffs and as against the defendants.

14. In the result, both the second appeals are dismissed and the Judgement and decree passed by the First Appellate Court in A.S.No. 11 of 1997 is confirmed. There is no order as to costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1. The Subordinate Judge,
Hosur.
2. The District Munsif Court,
Hosur.
3. The Section Officer,
V.R Section, Madras High Court.

+2ccs to Mr.D.Sivakumaran , Advocate SR.No. 4713,4714

S.A. Nos. 343 & 1774 of 1998

A.SK(03/09/2020)