

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09 / 07 / 2018

DELIVERED ON : 06 / 03 / 2020

CORAM:

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

SECOND APPEAL NO.129 OF 2008

1.Ambalavanan

2.Vetri @ Arumugham ... Appellants 1 & 2/Respondents 1 & 2 /
Plaintiffs 1 & 2

Vs.

1.Saravanan

2.Senthilvelan

3.The Government of Tamil Nadu

Rep. by the Collector of Cuddalore
Having office at Collector's Office
Cuddalore - 1.

4.The Assistant Director

Survey and Land Records
Having Office at District Survey
Cuddalore.

5.The Tahsildar

Cuddalore

Having Office at Taluk Office Premises

Cuddalore.

...Respondents 3 to 5/Respondents 3 to 5/
Defendants 1 to 3

PRAYER: Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree dated 07.09.2007 passed in A.S.No.3 of 2007 on the file of the 2nd Additional Subordinate Judge, Cuddalore, reversing the judgment and decree dated 18.09.2006 passed in O.S.No.2 of 2005 on the file of the Additional District Munsif, Cuddalore, to set aside the same.

For Appellants : Mr.R.Muralidharan

For Respondents: Mr.S.K.Raghunathan
1 and 2

For Respondents
3 to 5 :

Mr.T.M.Pappiah
Special Government Pleader

J U D G M E N T

Aggrieved over the judgment and decree passed in A.S.No.3 of 2007 dated 07.09.2007 by the learned Second Additional Subordinate Judge, Cuddalore, reversing the judgment and decree dated 18.09.2006 passed in O.S.No.2 of 2005 by the learned Additional District Munsif, Cuddalore, the present Second Appeal has been preferred.

2. The appellants are the plaintiffs; respondents 1 and 2 are the defendants 4 and 5; and respondents 3 to 5 are defendants 1 to 3 in the suit filed for declaration and mandatory injunction. For the sake of convenience, they are called as per their rankings in the suit.

3. The case of the plaintiffs is that the suit properties originally belonged to one Nallambalam Pillai, who is the grandfather of the plaintiffs and the defendants 4 and 5. He executed a WILL dated 12.05.1977 in favour of his grandsons, namely, the plaintiffs and the defendants 4 and 5. The said Nallambalam Pillai died in the year 1982. As such, the plaintiffs and the defendants 4 and 5 have become the owners of the suit properties in equal moiety. The properties were not divided between the legatees by metes and bounds, however, they were enjoying it according to their convenience.

4. While the matter stood thus, the second defendant, namely, the Assistant Director, Survey and Land Records, Cuddalore, without issuing any notice, conducted resurvey and allotted new town survey numbers in respect of the suit property situated in T.S.No.18 measuring an extent of 1 Acre 56 cents. The plaintiffs are entitled to 0.78 cents and the defendants 4 and 5 are entitled to 0.78 cents. However, in the resurvey proceedings, lesser extent has been recorded towards the share of plaintiffs due to wrong measurement. The plaintiffs made a request for resurvey, but it was rejected. Since the survey was not done in accordance with the procedure laid down in the Tamil Nadu Survey and Boundaries Act, 1923 [ACT VIII OF 1923) (shortly "the Act") the plaintiffs filed the above suit for a declaration to declare the resurvey conducted by the second defendant as illegal, unlawful and ultravires and for mandatory injunction to measure the suit properties according to the documents produced by the plaintiffs, in the presence of defendants 4 and 5.

5. Defendants 1 to 3, the Government officials, remained exparte. The fifth defendant filed a written statement and the same was adopted by the fourth defendant.

6. According to defendants 4 and 5, the properties were actually divided in the year 1982 immediately after the death of Nallambalam Pillai. Northern portion was allotted to the plaintiffs and southern portion was allotted to defendants 4 and 5. In the year 1985, a resurvey was conducted and the property was sub-divided into S.Nos.962/1 and 962/2 and separate pattas were issued to the parties. Ever since they are in continuous and uninterrupted possession and enjoyment of the suit properties. They are enjoying as per the sub division and therefore, the enjoyment is adverse to the interest of anyone and therefore, they are entitled to title by adverse possession as they are enjoying the separate possession exclusively to the knowledge of the plaintiffs from the year 1982.

7. On the basis of the pleadings, the Trial Court framed the following issues:

"1. Whether the plaintiffs and defendants 4 and 5 are divided by virtue of the WILL dated 12.5.77 itself or whether the properties under the Will are still to be divided?

2. Whether the resurvey proceedings are illegal, unlawful and ultravires?

3. Whether the suit claim is barred by limitation?

4. Whether the plaintiffs are entitled to the reliefs as prayed for in the plaint?

5. To what relief plaintiffs are entitled to? "

8. On the basis of the admission made by the defendants 4 and 5 that the plaintiffs and the defendants 4 and 5 are entitled to equal share of 0.78 cents and that no notice was given, the Trial Court had decreed the suit in favour of the plaintiffs. On the issue of limitation, the Trial Court, relying on the decision in V.M.S. KANDASWAMY NADAR VS. THE PROVINCE OF MADRAS THROUGH THE DISTRICT COLLECTOR OF RAMNAD AT MADURAI AND ANOTHER [1952 (1) MLJ 804] that resurvey conducted without notice contemplated under Sections 9, 11, 13 and 14 of the Madras Survey and Boundaries Act (VIII of 1923) will not be binding on the parties, has held that since both the parties have not produced any specific order regarding resurvey, the suit is not barred by limitation.

9. On appeal, the Lower Appellate Court, framed appropriate points for consideration and reversed the findings of the Trial Court on the ground that the plaintiffs themselves admitted that the property was in separate possession and enjoyment of both the parties from the year 1977 and that the plaintiffs have not measured the exact extent of property enjoyed by respective parties and they do not have knowledge

about the extent under their possession and for not establishing that the resurvey conducted was in violation of the procedures through relevant records and proper witnesses and dismissed the suit. Aggrieved over the same, the plaintiffs have preferred the above Second Appeal.

10. This Court admitted the Second Appeal, on the following substantial questions of law:-

" 1) Whether the 1st Appellate Court is right in holding that the suit is barred by limitation in spite of non compliance of the mandatory provisions contained in Sections 9, 11, 13 and 14 of Tamil Nadu Survey and Boundaries Act (VIII of 1923 before effecting resurvey?

2) Whether the 1st Appellate Court is right in holding that the re-survey is proper in the absence of notice to the plaintiffs before inspecting the property? "

11. I have considered the rival submissions.

12. The admitted facts in the above case remains that one Nallambalam Pillai was the original owner of the suit properties. He executed a WILL on 12.05.1977 and he died in the year 1982. After his demise, the WILL came into force and the plaintiffs and the defendants 4 and 5 have become the owners of the property in equal shares. The suit property is situated in T.S.No.18 measuring an extent of 1 Acre 56 Cents. It is admitted by both the parties that equal share was allotted to both of them viz., 0.78 cents. Northern portion was allotted to the plaintiffs and southern portion was allotted to the defendants. The dispute arose when the plaintiffs came to know of the resurvey proceedings in the year 2004, vide Ex.A3, when the second defendant had communicated the plaintiffs that resurvey can be done only as per the Town Survey Register and not on the basis of individual documents.

13. It is admitted by the defendants that they have not given any request for surveying the lands. From Ex.A3 - letter issued by the second defendant, it can be inferred that the plaintiffs have given a request to measure the property as per the documents and it was negatived. The said letter was given on 12.07.2004. Taking this as a date of knowledge, the plaintiffs have filed the above suit for declaration and injunction. Now, it has to be analysed as to whether the resurvey proceedings are illegal as such whether the suit is maintainable or barred by limitation or not?.

14. The first plaintiff examined himself as P.W.1. It is clearly admitted by him that both the parties are enjoying the properties separately from the year 1977. It is not in

dispute that the northern portion of the property was allotted to the plaintiffs and the southern portion was allotted to the defendants 4 and 5. In fact, according to P.W.1 evidence, the plaintiffs themselves were paying the property tax for the entire property from the beginning, but feign ignorance as to the extent of enjoyment before and after sub-division. The plaintiffs also feign ignorance only in respect of sub division in spite of paying tax continuously for the divided portions. The sub division had taken place in and around 1985. Even though the plaintiffs claim that the recovery proceedings is illegal since no notice was given to them, while conducting the same, they have not filed any documentary evidence to show the period during which resurvey proceedings was conducted by the defendants 1 to 3. It is also admitted by them that they have issued a notice to the defendants 1 to 3 for wrongly sub dividing the property. Further, they have admitted that the defendants are enjoying the property by building bunds on the four sides. It is clearly admitted by the plaintiffs that they have not measured the property physically, but came to know of in equal division and shortage only when that the Surveyor orally informed them that they are enjoying only 74 Cents, whereas, the defendants 4 and 5 are enjoying 82 Cents.

15. From the above narrated facts, it is very clear that the plaintiffs were not sure of the extent, which was under their possession and extent of land under possession and enjoyment of the defendants 4 and 5 even after sub-division in the year 1985. Except P.W.1, the other two witnesses examined by them, would go to depose that the plaintiffs are in possession of the property as per the WILL. But no witnesses were examined to prove that no notification or publication was given during the survey proceedings nor no notice was given to owners of properties having dispute over boundaries nor through documents that they were allotted lesser extent and that the defendants 4 and 5 were given larger extent. Even during the cross examination of the defendants' witnesses, it is not elucidated that the defendants 4 and 5 are in possession of excess extent by virtue of this sub division.

16. In the absence of any record to show the period of resurvey and procedure adopted by defendants 1 to 3 is illegal, it cannot be said that it was conducted without notice to them and in violation of procedures under Sections 9, 11, 13 and 14 of the Act. The plaintiffs failed to summon the official witnesses, who have conducted resurvey to prove the case. But, on the other hand, the defendants 4 and 5 have given clear evidence that resurvey was conducted in the year 1985 and that they continued to enjoy the southern portion of the property from the year 1977 as admitted by P.W.1 in his cross examination. Therefore, the contention of the defendants 4 and 5

that if at all the plaintiffs are aggrieved, they should have filed a suit for recovery of possession and the present proceedings is not sustainable, as the same is barred by limitation has force.

17. The learned counsel for the appellants would rely on the following judgments in support of his contention:

(i) Judgment of this Court in V.M.S.KANDASAMY NADAR VS. PROVINCE OF MADRAS [1953 AIR (MADRAS) 391]

(ii) Judgment of this Court in ARULMIGU VISWEWARASWAMI AND VEERARAGHAVA PERUMAL TEMPLES TIRUPPUR VS. R.V.E. VENKATACHALA GOUNDER AND ANOTHER [1996 (II) CTC 199]

(iii) Judgment of this Court in KAMMAVAR SANGAM VS. MANI JANAGARAJAN [1999 (3) LW 727]

(iv) Judgment of the Hon'ble Supreme Court in BORAMMA VS. KRISHNA GOWDA AND OTHERS [2000 (9) SCC 214]

(v) Judgment of this Court in M.E.A.MOHAMED ALI AND OTHERS VS. THE DISTRICT REVENUE OFFICER, RAMNAD COLLECTORATE AND OTHERS [2005 (2) LW 196].

18. This Court in Arulmigu Viswewaraswami's case (Cited supra) and M.E.A.Mohamed Ali's case (cited supra) has held that the revenue records will not create or extinguish title nor do they have any presumptive value and the title cannot be proved by placing reliance on Municipal Extracts and Tax Receipts. It is true that the title cannot be decided on the basis of revenue records. It is also true to state that the defendants have categorically admitted that as per the WILL, the plaintiffs and defendants 4 and 5 are entitled to equal share of 0.78 Cents. By sub division, the title of the plaintiffs is not taken away. In fact, the defendants 4 and 5 claims adverse possession over the portion allotted to them under sub division. In that event, the recourse open to the plaintiffs is only to file a suit for recovery of possession and to establish their title in the manner known to law.

19. Secondly, the Hon'ble Supreme Court in Boramma's case (cited) has held that the evidence of the parties shall be appreciated as a whole and it cannot be appreciated in piecemeal by extracting isolated answers. But the reading of the evidence of P.W.1 and D.W.1 as a whole clearly shows that the factum of possession is admitted by both the parties and the dispute is with regard to extent allotted during sub-division. The plaintiffs have failed to plead the exact date of survey, date

of order of sub-division and date of knowledge despite his evidence he has been continuously paying taxes to the entire extent of the suit property. Thus, he has failed to prove the cause of action to file the suit.

20. This Court in V.M.S.Kandasamy Nadar's case (cited supra) has held that any survey conducted without following the procedure and particularly without giving notice to the parties, will not bind the parties, who have not received the notice is concerned, the very conduct of survey itself is not proved by the plaintiffs and therefore, they cannot claim that it was conducted without notice. In the absence of any evidence that no notice was served on them alone, while a town survey was conducted for the entire area, the judgments relied on by the learned counsel for the appellants is not applicable to the case on hand.

21. In so far as the conduct of resurvey without notice is concerned, as per Section 11 of the Act, appeal is provided to the prescribed officer under Section 11(1) of the Act. The limitation period for preferring the appeal is thirty days. Against the order passed by the Appellate Authority, second appeal is provided under Section 12-A(1) of the Act and the limitation period for filing the second appeal is sixty days. Against which, suo motu revision is provided under Section 12-B of the Act, by the Director of Survey and Settlement. As per Section 13 of the Act, resurvey of any land or boundary, shall be notified in the District Gazette. Against the notification issued under Section 13 of the Act, civil suit can be filed under Section 14 of the Act, within a period of three years.

22. From the above, it is clear that the plaintiffs, if aggrieved, should prefer an appeal or second appeal and thereafter, they should have filed a suit within three years. In the instant case, the plaintiffs have come out with a vague statement that they came to know of the resurvey only in the year 2004.

23. Of course, the plaintiffs are entitled to agitate the matter from the date of their knowledge. But for that, they should establish that the resurvey was illegally conducted without notice in violation of Sections 9, 11, 13 and 14 of the Act. Then only they will get any cause of action to agitate the matter. Even assuming that they have established the fact, they have avenues of two appeals. Since the plaintiffs have not come out with a clear date of the resurvey proceedings conducted pursuant to Section 5 of the Act, since they failed to examine the official witnesses with regard to notification published in

the District Gazette as provided under Section 13 of the Act and since the plaintiffs have failed to prove that no notice was served or that no publication was made by the official respondents through independent witnesses, it cannot be held that notice was not at all served during resurvey proceedings.

24. The Lower Appellate Court has found through cross examination of P.W.1 that the defendants 4 and 5 are enjoying the property by putting up boundaries around it at least from the year 1982. In the absence of any proof that resurvey was conducted only in the year 2004, the statement made by the defendants 4 and 5 shall be taken into account. As per Section 14 of the Act, suit should have been filed within three years from the date of notification under Section 13 of the Act. But the suit came to be filed on a vague pleading on 30.12.2004 after a lapse of about 15 years. Accordingly, the findings of the Lower Appellate Court that the suit is barred by limitation is correct and valid. In view of the discussions made above, the questions of law are answered against the appellants.

25. In the result, the Second Appeal is dismissed. No costs.

Sd/-

Assistant Registrar (ADI MDU)

//True copy//

Sub Assistant Registrar

TK

To

1. The Second Additional Subordinate Judge
Second Additional Subordinate Court
Cuddalore,

2. The Additional District Munsif
Additional District Munsif Court
Cuddalore.

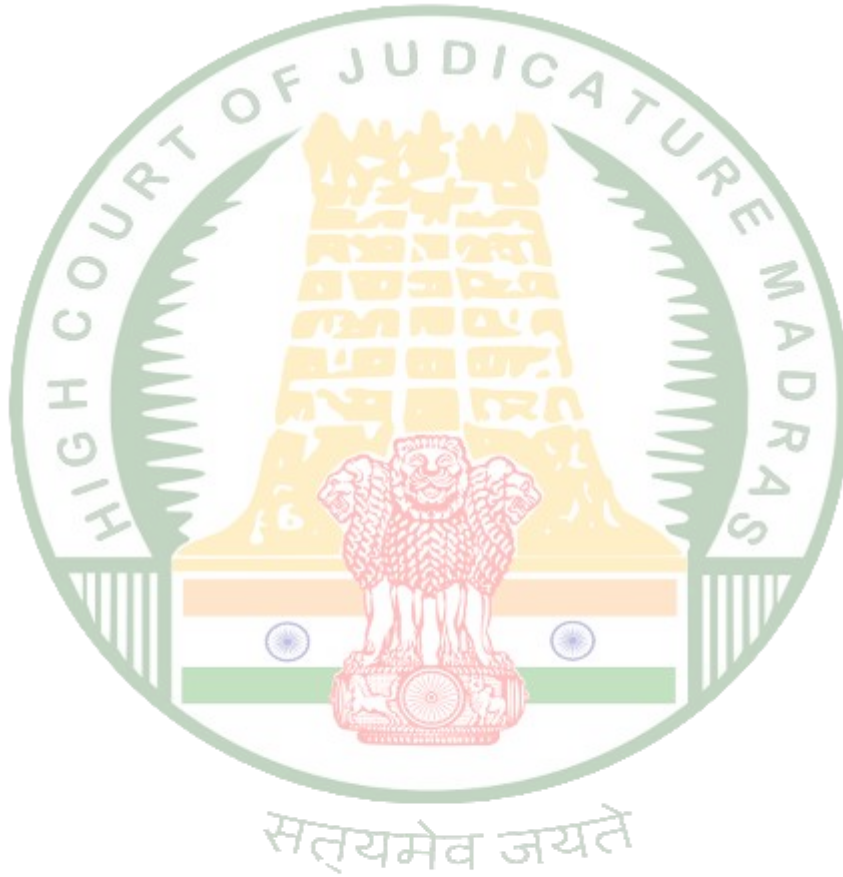
Copy To
The Section Officer,
VR Section, High Court, Madras

+1cc to Mr.S.K.Raghunathan, Advocate SR.No.20760

+2cc to Mr.R.Muralidharan, Advocate SR.No.20277

SECOND APPEAL NO.129 OF 2008

PVS (CO)
GMY (01/10/2020)



WEB COPY