

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 05.02.2020

Date of Verdict : 14.02.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

S.A.No.1152 of 2003

R.Jeyakumar ...Appellant/Respondent/Plaintiff

Vs.

Kaliamoorthy Padayachi ...Respondent/Appellant/Defendant

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 30.10.2002, in A.S.No.71 of 1997 on the file of the Additional District Judge cum Chief Judicial Magistrate, Cuddalore, reversing the judgment and decree dated 29.08.1997 in O.S.No.12 of 1992 on the file of the Additional District Munsif's Court, Cuddalore.

For Appellant : Ms.A.Nilaphar
For Ms.R.Meenal

For Respondent : Mr.S.K.Rakhunathan

JUDGMENT

This second appeal is directed as against the judgment and decree dated 30.10.2002, passed in A.S.No.71 of 1997 by the Additional District Judge cum Chief Judicial Magistrate, Cuddalore, reversing the judgment and the decree dated 29.08.1997 passed in O.S.No.12 of 1992 by the Additional District Munsif, Cuddalore.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial Court.

3. The case of the plaintiff in brief is as follows:

3.1. The suit is filed for declaration and permanent injunction. The plaintiff is the eldest son of Ramalinga Mudaliar. He has two younger brothers. The plaintiff's mother also is living with the plaintiff. They continued as a joint family and instituted the suit as a manager of the family. The

suit property originally belonged to one Kuppusamy Mudaliar and he purchased the same by a registered sale deed dated 03.04.1984. There was a partition in his family members by a registered partition deed dated 29.09.1923. Accordingly, the B schedule property in the partition deed was allotted to Kanagasabai Mudaliar. He was in possession and enjoyment of the suit property and also muted the revenue records in his favour and paying the tax. He has four sons and they divided the family properties by a partition deed dated 29.01.1975. In the said partition, the suit property is allotted to the share of Sadak Shara Mudaliar. Thereafter, he sold out the same to the plaintiff's father by a registered sale deed dated 03.03.1976. Since from the date of purchase, he has been in possession and enjoyment of the suit property. The property situate north of the suit property originally belonged to the defendant's father and it was purchased by the plaintiff's father on 07.09.1972. There was a dispute in respect of the property situated north to the suit property and as such the plaintiff instituted the suit in O.S.No.313 of 1990 for declaration and it was decreed in his favour. While being so, again the defendant is making claim over the suit property. Hence the suit.

4. Resisting the same, the defendant filed a written statement stating that the suit property comprised in T.S.No.1369 situate north of the AB line belonged to the defendant. He is in possession and enjoyment of the suit property for the past several decades openly, continuously and as such he has prescribed title by adverse possession also. It is false to state that the suit property was allotted to one Kanagasabai Mudaliar by a partition deed dated 29.09.1923. The suit property was allotted to the branch of Thangavelu Mudaliar in the A schedule and sold the same to one Vaithialingam on 11.08.1932. In turn, he sold out the said property in favour of one Pattammal and Govindammal on 07.12.1932. Thereafter, they also sold it in favour of one Narayanasamy on 29.05.1950. Thereafter, he also sold out the same to one Govindaraju on 05.03.1951. Again, the said Govindaraju sold out the said property in favour of one Appavu on 13.02.1951. Again, he sold out the suit property to one Narayanasamy, the father of the defendant under the registered sale deed dated 19.04.1956. The boundaries given in all the sale deeds referred above to the land comprised in T.S.No.1359 and 1358 prevail over the measurements and the survey numbers were wrongly given in the documents. After purchase of the said property, the defendant's father alone was in possession and enjoyment exclusively of the suit property. After his demise, the defendant alone is in possession and enjoyment of the entire property comprised in T.S.No.1359 exclusively. Therefore, the partition deed dated 29.01.1975 does not refer to the suit property. As such, the

plaintiff or his vendors had absolutely no title over the suit property. Therefore, the plaintiff is not entitled to seek any relief as prayed for and sought for dismissal of the suit.

5. In support of the plaintiff's case, P.W.1 to P.W.3 were examined and eighty-nine documents were marked as Ex.A.1 to Ex.A.89. On the side of the defendants, D.W.1 to D.W.2 were examined and Ex.B.1 to Ex.B.10 were marked. On considering the oral and documentary evidences adduced by the respective parties and the submission made by the learned counsel, the trial Court decreed the suit in favour of the plaintiff. Aggrieved over the judgment and decree of the trial Court, the defendant preferred an appeal suit in A.S.No.71 of 1997 before the Additional District Judge cum Chief Judicial Magistrate's Court, Cuddalore. The first appellate Court on appreciating the materials placed on records, allowed the appeal by reversing the judgement and decree passed by the trial Court. Challenging the same, the plaintiff has come forward with the present second appeal.

6. At the time of admission of the second appeal, the following substantial questions of law were framed :-

a) Whether in law the Lower Appellate Court was right in finding that the appellant's claim in the present suit was barred due to the dismissal of his earlier suit, when the two properties are entirely different and the title is traced through different roots?

b) Whether the lower Appellate Court, as the final Court of facts, was right in omitting to correlate Exs.A1 to A4 to see that the suit property was purchased under Ex.A1 by the appellant's father and that the respondent's documents admittedly showed a different survey number?

7. The learned counsel appearing for the appellant/plaintiff and the respondent/defendant are present and they are reiterated the averments set out in the plaint as well as the written statement.

8. Heard Ms.Nilaphar, learned counsel appearing for the appellant and Mr.S.K.Rakhunathan, learned counsel appearing for the respondent.

9. This Court considered the rival submissions made by the learned counsel on either side.

10. According to the plaintiff, originally the suit property was purchased by Kuppusamy Mudaliar by a registered sale deed dated 03.04.1984 which was marked as Ex.A4. By virtue of the Ex.A4 partition deed dated 29.09.1923, the family members have partitioned the property in which B schedule property in the partition deed was allotted to Kanagasabai Mudaliar. He had four sons and among their family members, they had partitioned the property by a partition deed dated 29.01.1975, in which the suit property was allotted to Sadakshara Mudaliar. Thereafter, the suit property was purchased by the father of the plaintiff on 03.03.1976. The property situated on the northern side of the suit property was also purchased by the plaintiff's father by a registered sale deed dated 07.09.1972. In this regard, there was a dispute between them and as such the plaintiff has filed a suit in O.S.No.313 of 1990 for declaration. The sale deed executed in favour of Ramalinga Mudaliar was marked as Ex.A1 and the partition deed dated 29.01.1975 was marked as Ex.A2. Therefore, no dispute about the property which was purchased by the plaintiff comprised in T.S.No.1359 admeasuring 3082 sq.ft., out of the total extent admeasuring 4242 sq.ft. situated at Ward No.3, Block No.35, Old Vandipalayam Ramaraj Mudali Lane, Thiruppapuliur Cuddalore. It is also revealed that the house of the defendant is located on the northern side of the suit property.

11. The defendant denied the fact that the suit property was allotted by way of partition deed dated 29.09.1923 as B schedule property of the said partition deed in favour of Kanagasabai which was marked as Ex.A3. Thereafter, it was allotted to Sadakshara Mudaliar and in turn, he sold out the property in favour of the plaintiff's father. In the partition deed dated 29.09.1923, there was A and B schedule property. According to the defendant, B schedule property in the partition deed is not the suit property. But both the properties combined together and purchased by the defendant's father as well as the plaintiff's father. From the defendant's father, the plaintiff's father had purchased the property by a sale deed dated 07.09.1972 which was marked as Ex.A83. There was dispute in that regard and as such the plaintiff has filed a suit in O.S.No.313 of 1990 and the judgment of the said suit was marked as Ex.A86. In the said suit, the sale deed of the suit property was marked as Ex.A2 which was marked as Ex.A1 in the present suit. At the same time, in the said partition deed, A schedule second item of the property has been purchased by Vaithiyalingam comprised in T.S.No.1359 vacant land north - south 26 feet; east to west 39-1/2 feet and on the western side, north to south - 42-1/2 feet, east to west - 30 feet, in the total extent of 4242 sq.ft which was marked as Ex.B4. Thereafter, the said property

was purchased by Pattammal and Govindammal by a registered sale deed dated 07.12.1932 which was marked as Ex.B5. In turn, they sold out the property in favour of Narayanasamy Mudaliar by a registered sale deed dated 29.05.1950 which was marked as Ex.B6. Thereafter, he sold out the said property to Govindaraju Mudaliar by a registered sale deed dated 05.03.1951 which was marked as Ex.B7. Subsequently, it was sold out to Iyyarupadiayachi and thereafter, conveyed to Narayanasamy. Those sale deed were marked as Ex.B8 and Ex.B9. The measurements in all the sale deeds mentioned as stated above. It revealed that the A schedule property was purchased by Narayanasamy Mudaliar, namely the father of the defendant on 19.04.1956 which was marked as Ex.B9. Therefore, even assuming that the suit property and the property purchased by the defendant's father property is one and the same, the total extent of the property comes around 1350 sq.ft., whereas, the property purchased by the plaintiff admeasuring 3082 sq.ft. Further, the tax receipts were marked as Ex.A6 to A82 and those tax receipts proved the possession and enjoyment of the suit property by the plaintiff and his predecessors in title of the suit schedule property. Therefore, the trial Court had rightly decreed the suit in favour of the plaintiff.

12. The first appellate Court concluded that Ex.A83 related to the property situated on the northern side of the AB line to the property comprised in T.S.No.1358 and a portion of the property in T.S.No.1359. Already, the plaintiff has filed a suit in O.S.No.313 of 1990 and the suit was decreed in favour of the plaintiff in respect of the property comprised in T.S.No.1358 alone. In the said suit, it was dismissed in respect of the portion of the property comprised in T.S.No.1359. Further, under Ex.B4 to Ex.B9 revealed the title over the suit property in favour of the defendant. As discussed above, the plaintiff has proved his case and as such the findings of the first appellate court are perverse and against the evidence on record.

13. In view of the above discussion, this Court constrains to interfere with the findings of the first appellate court as perverse and against the evidence on record. Accordingly, all the substantial questions of law formulated by this Court in this Second Appeal, at the time of admission are answered in favour of the plaintiff and against the defendant.

14. In fine, this Second Appeal is allowed and the judgment and decree dated 30.10.2002, in A.S.No.71 of 1997 on the file of the Additional District Judge cum Chief Judicial Magistrate,

Cuddalore, are hereby set aside and resultantly, the judgment and decree dated 29.08.1997 passed in O.S.No.12 of 1992 on the file of the Additional District Munsif's Court, Cuddalore, are restored. No order as to costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

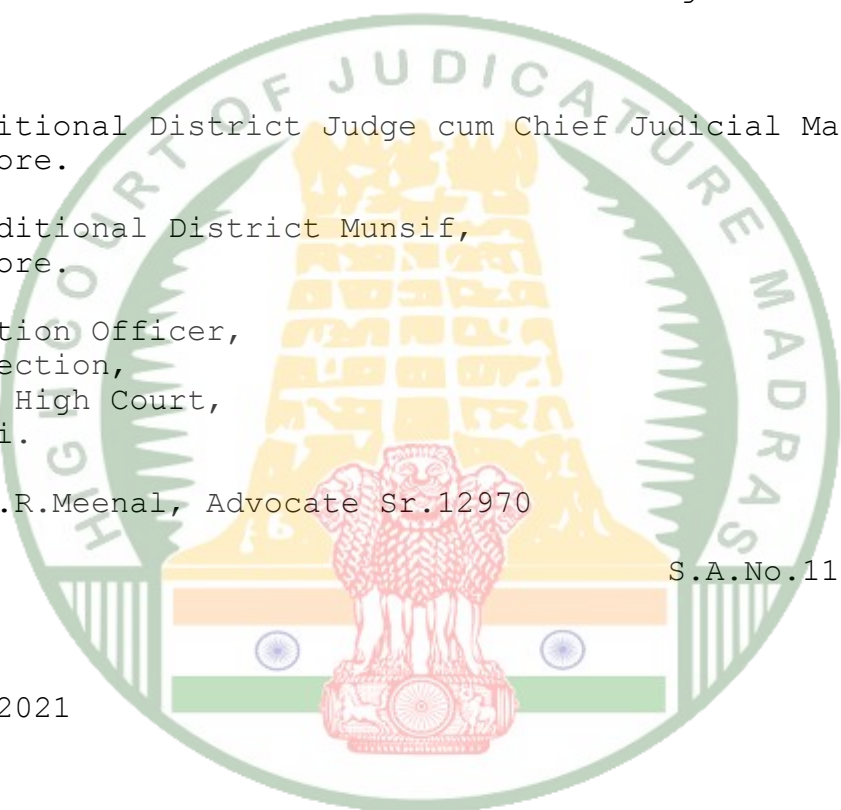
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To

1. The Additional District Judge cum Chief Judicial Magistrate, Cuddalore.
2. The Additional District Munsif, Cuddalore.
3. The Section Officer, V.R. Section, Madras High Court, Chennai.

+1cc to Ms.R.Meenal, Advocate Sr.12970

S.A.No.1152 of 2003

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The seal of the Madras High Court is a circular emblem. It features a central yellow temple gopuram (tower) with a red lion capital on top. The gopuram is set against a green background with a white border. The words "HIGHER COURT OF JUDICATURE MADRAS" are written in a circular path around the gopuram. Below the gopuram is a red lion capital with a wheel in the center. The motto "सत्यमेव जयते" is written in Devanagari script at the bottom of the seal.

सत्यमेव जयते

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