

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.369 of 2020
and
C.M.P.No.7495 of 2020

Kaliyaperumal ...Appellant/Plaintiff

Vs.

1.Subramanian
2.Sulochana ...Respondents/Defendants

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree in A.S.No.159 of 2019 on the file of the III Additional District Judge, Cuddalore, at Virudhachalam, dated 29.11.2019 in confirming the judgment and decree in O.S.No.54 of 2011 on the file of the Additional District Munsif Court, Thitakudi, dated 20.10.2017.

For Appellant : Mr.G.Surya Narayanan

JUDGMENT

The plaintiff in the suit in O.S.No.54 of 2011, whose suit for declaration and recovery of possession of a portion of 'A' Schedule property, was dismissed by the Trial Court, upon its confirmation by the Lower Appellate Court, has come up with this Second Appeal. According to the plaintiff, the suit property originally belonged to M/s.Duraisamy, Ganesan and Dhanraj having been allotted to them at a partition and they sold the property under the sale deed, dated 12.02.1991 to one Gajalakshmi wife of Srinivasan. The said Gajalakshmi in turn had sold the property to the plaintiff on 25.10.1995 and she had also handed over the possession of the 8 cents of land to the plaintiff. Claiming that the defendants have encroached upon a portion of the property, the plaintiff has come up with the present suit.

2. The suit was resisted by the defendants contending that the claim of the plaintiff is false. According to the defendants, the suit property belonged to one Kandhan, who had three sons by name of Mookan, Murgan and Ponnann. After the death

of Kandhan, his three sons viz., Mookan, Murugan and Ponnann were enjoying the 10 cents of land, which belonged to Kandhan. At a oral partition between them, the property was divided into 3 portions and each one of them, wherein enjoyment of one such portion. Patta was also granted to them under the UDR Scheme as per their enjoyment. It is claimed that Mookan's sons viz., Duraisamy, Ganesan and Dhanraj had only a right to an extent of 3 ½ cents and nothing more. Therefore, the sale made by them to an extent of 8 cents to Gajalakshmi, who in turn sold the same to the plaintiff, would not confer any right to the plaintiff.

3. At Trial, the plaintiff was examined as PW1 and one Nedumaran was examined as PW2 and Exs.A1 to A5 were marked. The first and second defendants were examined as D.Ws.1 and 2, Exs.B1 to B3 were marked. A Commissioner was appointed and his report and plan were marked as Exs.C1 to C3.

4. Upon consideration of the evidence on record, the Trial Court found that the claim of the plaintiff that his vendor's vendors was entitled to 8 cents has not been established. The Trial Court by relying upon Exs.B1 and B3, the patta granted by the Revenue Department under the UDR Scheme, has come to the conclusion that the property originally belonged to Kandhan and it was divided between his three sons and each one of them would get 3 ½ cents. Therefore, the Trial Court concluded that his predecessors in interest of the plaintiff were not entitled to 8 cents and they could not have conveyed 8 cents in favour of Gajalakshmi, in order to enable her to convey to the plaintiff. Upon such conclusion, the learned Trial Judge dismissed the suit. Aggrieved, the plaintiff preferred an appeal in A.S.No.159 of 2019. The Appellate Court on re-appreciation of the evidence concurred with the findings of the Trial Court and dismissed the appeal. It is against the said confirming judgment, the plaintiff has come up with this Second Appeal.

5. Heard, Mr. G.Surya Narayanan, learned counsel appearing for the appellants.

6. Mr.G.Surya Narayanan, learned counsel, appearing for the appellants would vehemently contend that the Courts below were not right in dismissing the suit in its entirety. According to him, once the predecessors in interest of the plaintiff were found to be entitled to 3 ½ cents of land, the Court must have decreed the suit at least with reference to 3 ½ cents. He would also further contend that the Revenue record can only show possession and cannot demonstrate the title.

7. I have considered the submissions by the learned counsel for the appellants.

8. Admittedly, the suit property belonged to Kandhan, who had three sons. The plaintiff's claims to have purchased from one branch and the defendants belonged to the other branch. The claim of partition made by the defendants has been believed by the Courts below based on documentary evidence. On the other hand, there is no evidence to support the claim of the plaintiff that the vendors of Gajalakshmi were allotted 8 cents of land at a partition. The plaintiff is unable to produce any documents in support of the said plea.

9. In the absence of any evidence, the Courts below cannot be faulted for coming to the conclusion that the case projected by the defendants is more plausible and acceptable. The claim of the learned counsel for the appellant / plaintiff, that having found that the plaintiff's predecessor were entitled to 3 ½ cents, the Court must have granted a decree in favour of the plaintiff in respect the said 3 ½ cents, cannot be accepted for the simple reason that the plaintiff has purchased 8 cents of land and we do not know where exactly his 3 ½ cents is located. It is for the plaintiff to workout his right by initiating an appropriate proceedings to identify the share of his predecessor in the property.

10. For the foregoing reasons, I do not see any substantial questions of law arising in this appeal and the appeal therefore fails and it is accordingly dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

dna

To

1.The learned III Additional District Judge,
Cuddalore,
Virudhachalam.

2.The Additional District Munsif Court,
Thitakudi.

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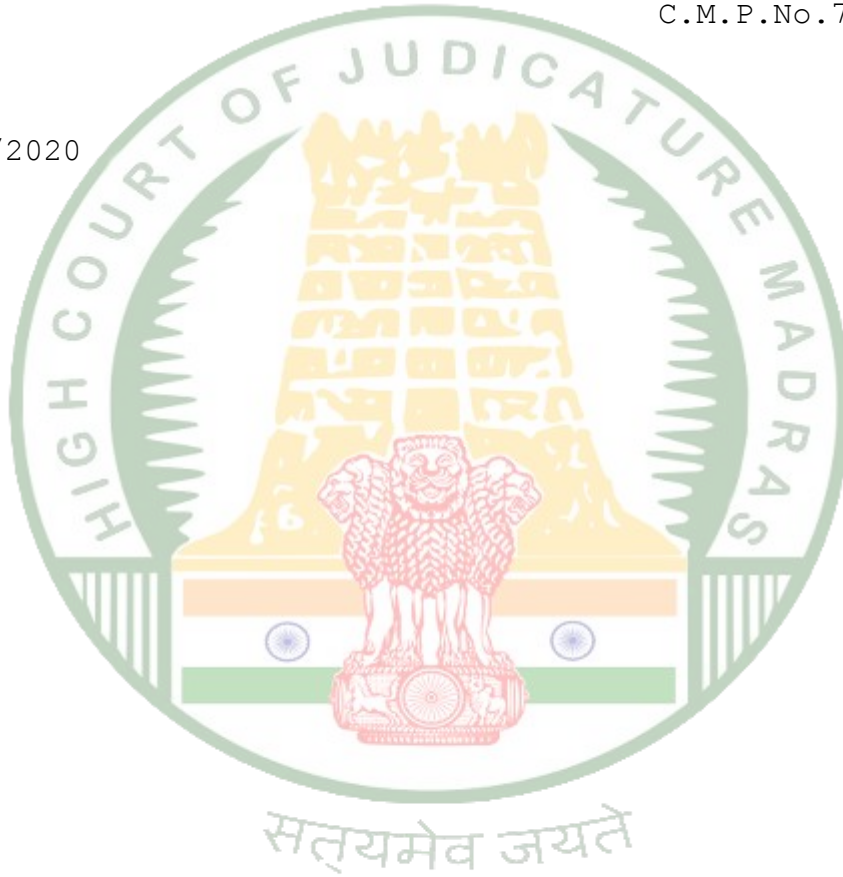
Copy to

The Section Officer,
VR Section, High Court,
Madras.

+lcc to Mr.Surya Narayanan, Advocate Sr.27100

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