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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.548 of 2020 and
CMP Nos.11755 & 11756 of 2020

S.A.Krishnan

... Appellant/Plaintiff

Vs.

1. S.V.Munusamy
2. S.G.Jagadhalan
3. C.Mani

... Respondents/Defendants

Prayer: The Second Appeal is filed under Section 100 of the Code of Civil Procedure, against the Judgment and decree, dated 02.03.2020, made in A.S.No.125 of 2017, on the file of the Principal District Judge, Vellore in confirming the Judgment and decree in O.S.No.242 of 2001, dated 17.02.2016, on the file of the learned Additional District Munsif, Vellore.

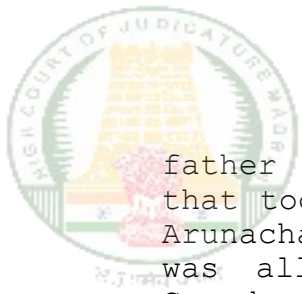
For Appellant : Mr.A.Gouthaman

J U D G M E N T

The plaintiff in O.S.No.242 of 2001 who partially succeeded in a suit for injunction, upon confirmation of the said Judgment and decree in A.S.No.125 of 2017 has come up with this second appeal.

2. The suit was laid by the plaintiff claiming that the suit property belonged to his grand father Arunachala Gounder who died leaving behind 3 sons namely Arunagiri, Chinnakuzhandai and Balakrishnan. The plaintiff would further claim that at a partition that took place between the 3 sons, the suit property was allotted to his father Arunagiri and on the death of Arunagiri, the plaintiff became the absolute owner of suit items 1 and 2 . On the strength of patta that was granted in the name of his father, the plaintiff sought a decree for permanent injunction.

3. The defendants resisted that suit contending that the suit properties originally belonged to one Perumal Gounder,



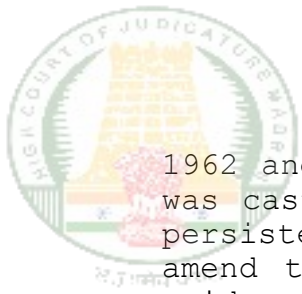
father of Arunachala Gounder who had 4 sons and at a partition that took place between them, 15.5 cents of land was allotted to Arunachala Gounder and another 15.5 cents in Survey No.211 /1 was allotted to Ramasamy Gounder. The sons of Arunachala Gounder were allotted to 5 cents each in Survey No.211/1, while the sons of Ramasamy Gounder were allotted to 7.75 cents of land in the said Survey Number. It is the further claim of the defendants that one of the sons of Arunachala Gounder namely Chinnakulandai has sold his share of 5 cents to Papammal and another son Balakrishnan sold his share of 5 cents to S.V.Munusamy, the 1st defendant. It is also claimed that the 3rd respondent had purchased an extent of 7.25 cents of land from S.G.Jagadhalan, son of Gopal, son of Ramasamy Gounder. On the above pleadings, the defendants claimed that they are also entitled to the suit item 1 and the plaintiff's suit for bare injunction is not maintainable.

4. At trial, the plaintiff was examined as PW1 and Exs.A1 to A8 were marked. The 1st defendant S.V.Munusamy was examined as DW1 and Exs.B1 to B4 were marked.

5. The trial Court upon a consideration of the evidence on record, concluded that as regards item 1 of the suit mentioned property, there is a considerable cloud on the claim of the plaintiff as the defendants have also got title under Ex.B1 dated 17.04.1967. The learned trial Judge therefore held that the plaintiff would not be entitled to injunction in respect of suit item 1. As regards suit item 2, the learned trial Judge concluded that the plaintiff has established his possession on the date of the suit and granted a decree for injunction. Aggrieved, the plaintiff filed an appeal in A.S.No.35 of 2016. The appellate Court upon a reconsideration of the evidence concurred with the findings of the trial Court and dismissed the appeal. Hence this second appeal. I have heard Mr.A.Gouthaman, learned counsel appearing for the appellant.

6. Mr.A.Gouthaman, learned counsel appearing for the appellants would vehemently contend that the Courts below were wrong in going into title to the suit properties, when the suit is only for permanent injunction. He would vehemently contend that the Courts below must have considered the relevant revenue documents which show that the possession was with the plaintiff's father for more than a statutory period and ought to have granted injunction as prayed for.

7. I am unable to countenance the submissions of the learned counsel for the appellant. The appellant being the plaintiff chose to sue for permanent injunction, the defendants filed an additional written statement denying the title of the plaintiff and claiming title under 2 registered instruments of the years



1962 and 1967. On the filing of the written statement, a cloud was cast on the title of the plaintiff. The plaintiff however, persisted with the suit for injunction, and he has not chosen to amend the prayer. Both the Courts below have considered the evidence and concluded that the plaintiff has not established that was in possession of item 1 of the suit property on the date of the suit.

8. The Court below have stated that there is a serious title dispute and therefore the plaintiff is not entitled to injunction. The learned counsel for the appellant is not justified in arguing that the courts were not justified in going in to the question of title in a suit for injunction. Once the written statement was filed raising the very serious dispute regarding title to suit item 1, the plaintiff ought to have sought for declaration of title. I therefore, see no error or perversity in the conclusions of the Courts below, when they held that the plaintiff was not in exclusive possession of the item 1 of the suit property on the date of the suit. I do not see any question of law, much less a substantial question of law to enable me to entertain the appeal. The appeal therefore fails and it is accordingly dismissed.

9. CMP No.11756 of 2020 has been filed to introduce new documents evidencing possession of date of the suit. I find these documents may not be helpful in deciding the controversy in the appeal or suit with reference to suit item 1. I do not find that the documents sought to be produced would aid the court in deciding the title of the plaintiff. Hence the miscellaneous petition is dismissed. The other miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(CS-V)

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Sub Assistant Registrar

vum

To

1.The Principal District Judge, Vellore.

2.The Additional District Munsif,
Vellore,

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



+1cc to Mr.A.Gouthaman, Advocate, S.R.No.35185

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CMP Nos.11755 & 11756 of 2020

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MP (CO)
CB (19/08/2021)