



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.02.2020

CORAM :

THE HONOURABLE MR.JUSTICE **R.SUBRAMANIAN**

S.A(MD)No.217 of 2015
and M.P(MD)No.1 of 2015

1.Chithammal
2.Navaneetha Krishnan
3.Baskar
4.Elangovan ... Appellants/Appellants/Plaintiffs 2 to 5
Vs.
1.Gangadharan
2.Gangammal ... Respondents/Respondents/Defendants

PRAYER: Second Appeal filed under Section 100 of C.P.C against the judgment and decree dated 23.09.2014 passed in A.S.No.22 of 2014 on the file of the Sub Court, Sankarankovil confirming the judgment and decree dated 25.10.2013 in O.S.No.143 of 2010 on the file of the Additional District Munsif Court, Sankarankovil.

For Appellant : Mr.D.Nallathambi

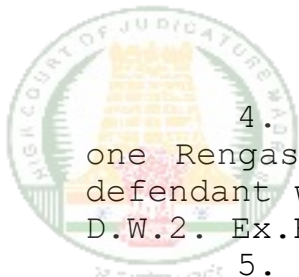
For Respondents : Mr.S.Ramesh @ Ramaiah

J U D G M E N T

The plaintiffs, in O.S.No.143 of 2010 whose suit for declaration and injunction was dismissed by the trial court upon its confirmation by the Appellate Court, have come up with this Second Appeal.

2. The plaintiff in the suit for declaration and injunction contended that he had purchased the property from its original owner Rengasamy Naicker under sale deed dated 03.08.1959. It was further contention of the plaintiff that since the land was classified as Grama Natham, larger extent was given one survey number, namely, 28, the sale deed did not contain survey number of the property. It was also claimed that being vacant land in Natham, patta was not issued to the plaintiffs. Pending suit, the original plaintiff died and his legal representatives were brought on record as the plaintiffs 2 to 5.

3. The defendants resisted the suit contending that the claim of the plaintiffs that Rengasamy Naicker was the original owner of the property is not correct. According to the defendants, the suit property belonged to one Lakshmi Ammal, who had four daughters and after the death of the said Lakshmi Ammal, the daughters and their heirs entered into partition on 15.03.1984. Under the said partition, according to the defendants, the suit property was allotted to one Alwarammal and her daughter Pollammal. The defendants purchased the suit property from Alwarammal and Pollammal under sale deed dated 06.03.2006. Therefore, according to the defendants, they are the owners of property and the plaintiffs have nothing to do with the suit property. On the said contention, the defendants sought for dismissal of the suit.



4. At trial, the third plaintiff was examined as P.W.1 and one Rengasamy was examined as P.W.2. Ex.A.1 was marked. The first defendant was examined as D.W.1 and one Balakrishnan was examined as D.W.2. Ex.B.1 to Ex.B.3 were marked.

5. A Commissioner was appointed by the trial court. He also inspected the property and filed a report. Upon consideration of the evidence on record, particularly, oral evidence of P.W.1, the learned Additional District Munsif Court, Sankarankovil, concluded that the plaintiffs have not made out the title set up by them. The trial court found that the plaintiffs have not taken efforts to correlate the suit property with the description found in Ex.A.1. As per the Commissioner's report, Natham Survey No.28 had undergone several subdivisions and various subdivision numbers have been assigned to the suit property and other properties, which originally form part of Survey No.28. The trial court faulted the plaintiffs for not even attempting to correlate the survey number of the suit property. The learned Additional District Munsif Court, Sankarankovil, further concluded that the plaintiffs have failed to establish the title pleaded by them. Oral evidence of P.W.1, where P.W.1 claimed ignorance of the boundaries of the property as well as the location of the property, was taken into account by the trial court to conclude that the plaintiffs are not entitled to the relief of declaration and injunction as prayed for.

6. Aggrieved, the plaintiffs preferred an appeal in A.S.No.22 of 2014 on the file of the Sub Court, Sankarankovil. The learned Subordinate Judge, Sankarankovil, on re-consideration of evidence on record, concurred with the findings of the trial court and dismissed the appeal. The Appellate Court also pointed out that the plaintiffs cannot succeed in the suit for declaration and injunction on the basis of the defects in the defendants' case.

7. Aggrieved, the plaintiffs have come up with this Second Appeal.

8. The following questions of law have been framed at the time of admission:

i) Whether the courts below are correct in dismissing the suit for declaration and permanent injunction by rejecting Ex.A.1 sale deed dated 03.08.1959 merely because there is no recitals of survey number of suit property and such an interpretation of Ex.A.1 Sale deed by the courts below are correct under law?

ii) Whether the approach of the courts below in dismissing the suit for title and permanent injunction filed by the appellants/plaintiffs by picking up some answers/admissions of P.W.1 is correct, when the said approach is not be a sound rule of appreciation of evidence under law?

iii) When there is no revenue documents produced by either side to the litigation, the courts below ought to have decided the *lis* by interpreting the title deeds

of the parties and whether the courts below are correct



in rejecting the case of the appellants/plaintiffs on the ground that there is no revenue documents to prove their enjoyment?

9. I have heard Mr.Nallathambi, learned counsel appearing for the appellants and Mr.S.Ramesh @ Ramaiah, learned counsel appearing for the respondents.

10. Mr.Nalla Thambi, while elaborating on the questions of law would contend that the courts below gave undue importance to non-mentioning of survey number in Ex.A.1 sale deed. According to him, even though survey number has not been given the boundary description is sufficient to identify the property and correlate the property covered by Ex.A.1 with that of the suit property. It is his further contention that the courts below misread the evidence of P.W.1 and took up certain admissions out of context when it came to the conclusion that P.W.1's evidence cannot be relied upon to prove possession of the plaintiffs. He would also point out that the defendants have also not produced any revenue records to establish their title to the suit property.

11. Contending contra, Mr.S.Ramesh @ Ramaiah, learned counsel appearing for the respondents would submit that even assuming that non-mentioning of survey number cannot be a ground to invalidate Ex.A.1 Sale deed, the plaintiffs must identify the suit property with reference to the four boundaries mentioned in Ex.A.1. He would also fault the plaintiffs for not even attempting to examine any of the owners of adjacent properties around the suit property with reference to the boundaries mentioned under Ex.A.1 Sale Deed.

12. Answering the submission of the learned counsel regarding the evidence of P.W.1, Mr.Ramesh would also draw my attention to the evidence of P.W.1 and pointed out that the courts below have not picked up bits and pieces of evidence. P.W.1 has in very clear terms admitted that he has no knowledge about the suit property.

13. He would also point out that absence of revenue records and contend that defects on the side of the defendants cannot be a ground for granting a decree for declaration and injunction in favour of the plaintiffs. He would also point out that the lower Appellate Court has very clearly observed that the plaintiffs cannot seek relief on the basis of the weakness of the defence.

14. I have considered the rival submissions.

15. Ex.A.1 does not contain survey number of the property. The four boundaries have been given except western boundary which is shown as a road. The other 3 boundaries are subject to change. Though the plaintiffs in the plaint had shown the adjacent owners also, they have not chosen to examine them to justify their claim that the suit property is the property covered by Ex.A.1 sale deed. The Commissioner's report reveals that the measurements of the suit property on ground is lesser than the measurements found in Ex.A.1 sale deed. Though it is the claim of the plaintiffs that they have been in possession of the property from the date of Ex.A.1 i.e from the year 1959, the plaintiffs are unable to produce even a scrap of paper to establish their possession. Hence, the first question of law is answered against the appellants.



16. It is common knowledge that Natham Settlement Scheme was introduced in the year 1984-1985. Pattas were issued to those persons, who are in possession of Natham land. If only the plaintiffs, were in possession of the suit land, which is admittedly classified as Grama Nahtam, the plaintiffs would have been granted patta by the Government. In the absence of any patta and in the absence of payment of taxes, the plaintiffs cannot claim title to the property by relying upon the boundary recitals in the document of the year 1959. Therefore, the second question of law is also answered against the appellants.

17. On the third question of law relating to non-production of revenue records, I find that non-production of revenue records by the defendants cannot strengthen the case of the plaintiffs. It is for the plaintiffs who claimed declarative relief to prove the title set up by them. A closer reading of evidence of P.W.1 and non-examination of adjacent owners would lead to irresistible conclusion that the plaintiffs have clearly failed to prove the title set up by them.

18. In view of the above discussion, the third question of law is also answered against the appellants/plaintiffs. In fine, this Second Appeal fails and accordingly the same is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)

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To,

1. The Subordinate Judge, Sankarankovil
2. The Additional District Munsif, Sankarankovil.

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Madurai Bench of Madras High Court, Madurai. 2 copies

+1 CC to M/s.S.RAMESH @RAMESH, Advocate (SR-5746[F]

+1 CC to M/s.D.NALLATHAMBI, Advocate (SR-5769[F] dated 12/02/2020)

S.A(MD)No.217 of 2015
and M.P(MD)No.1 of 2015
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SMA/17/03/2020/4P/7C