



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date: 31.08.2020

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THE HONOURABLE MR.JUSTICE N.SESHASAYEE

S.A(MD)No.481 of 2015
& MP(MD) .No.3 of 2015
& C.M.P(MD) .No.10522 of 2018

K.Maruthasamy : Appellant/Appellant/Cross Objector/
Plaintiff

Vs

1. P.Krishnan
2. K.Magudeeswari : Respondents/Respondents/
Respondents in Cross Objectors/Defendants

PRAYER: Second Appeal is filed under Section 100 of C.P.C, against the Judgment and Decree dated 28.04.2014 passed in A.S.No.56 of 2007 and Cross Appeal in A.S.No.56 of 2007 on the file of Subordinate Judge, Palani confirming the judgment and decree dated 21.04.2007 passed in O.S.No.231 of 1999 & Counter Claim on the file of District Munsif Court, Palani.

For Appellant : Mr.M.P.Senthil
For Respondents : Mr.R.Vijayakumar

J U D G M E N T

The plaintiff in O.S.No.231 of 1999 is the appellant herein. He had laid a suit for declaration of title and for a certain relief of injunction. The suit property is a narrow strip of land measuring 60 feet x 2.5 feet. In the said suit, the defendants had filed a counter claim seeking a declaration for the same property. The suit was dismissed and the counter claim was decreed. Since the decree was drafted by the trial Court incorporating both the decretal portion of the suit and the counter claim in a single document, it appears that the plaintiff has preferred a single appeal in A.S.No.56 of 2007. This Court was informed that the plaintiff had paid two Court fee, one pertaining to the decree passed in the suit and another pertaining to the decree allowing the counter claim.



2.The first Appellate Court concurred with the findings of the trial Court and confirmed the decrees passed by the trial Court. Hence, this second appeal.

3.The brief facts are;

- A certain Ramanathan Chettiyar owned a piece of property and from him one Valliammal had purchased 3120 sq.ft. in T.S.No.23/1A and 1B, under Ext.A.5, Sale deed dated 13.07.1960. Out of this, Valliammal had settled the western 872 Sq.ft. in favour of her daughter Ponnammal under Ext.B.2, settlement deed dated 26.10.1967. Out of the rest, Valliammal had executed two sale deeds, both even dated ie., 22.10.1997 under Ext.B.3 and Ext.B.4. Ext.B.3 covered northern 581 Sq.ft., whereas, Ext.B.4 covered the southern 1260 Sq.ft. Thereafter, the plaintiff had purchased the suit property, which as already indicated, is a narrow strip of land measuring 60 feet East-West by 2.5 feet North-South under Ext.A.2, Sale deed dated 02.03.1998.

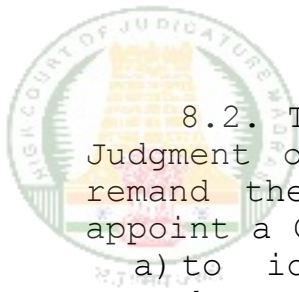
4.The entire property covered by Ext.A.5, sale deed was on the north and the property purchased by the defendants from Valliammal is on the south.

5.In terms of Ext.B.3 and Ext.B.4, sale deeds the defendant's property is on the north as well as in the south of the property which Valliammal had purchased under Ext.A.5. If 3102 Sq.ft property was actually available on lie under Ext.A.5, then, after all the alienation that Valliammal had made, the balance extent that should be available is 381 sq.ft. Out of this, the plaintiff claims that he had purchased 150 Sq.ft.

6.In the course of argument, the learned counsel for the respondents submitted that even though Valliammal is said to have purchased 3,120 Sq.ft under Ext.A.5, on lie, the same is not likely to be available. This apart, both sides claim title to a certain narrow strip of 150 Sq.ft. whose dimensions are already mentioned and this land has not been identified on lie.

7.A Commissioner has been appointed by the trial Court, but, he had filed his report only on the physical features of the property. This Court is of the strong view that if the disputed property is identified on lie with the aid of a Taluk/Firka Surveyor, it would be of considerable advantage to decide a) whether the property actually exist; b) and if so, to who it belong to?

8.1. While both the counsel are keen to project the case on a preponderance of probability of their respective cases, based on the document, this Court is of the firm view that in all matters where the identification of the disputed property is in dispute, it is absolutely essential to have the advantage of a Commissioner's report and the identification of the property.



8.2. Therefore, this Court chooses to set aside the decree and Judgment of the first Appellate Court in A.S.No.56 of 2007 and remand the matter back to the first Appellate Court for it to appoint a Commissioner for the following purposes;

- a) to identify the property first in terms of Ext.A.5 and demarcate the extent;
- b) thereafter, to plot the properties covered under Ext.B.2, Ext.B.3 and Ext.B.4
- c) and finally, after plotting the properties covered under Ext.B.2, Ext.B.3 and Ext.B.4, to plot the properties covered under Ext.A.2.

9. Both parties are directed to appear, either personally or through their counsel, before the Subordinate Court, Palani on 05.10.2020. The appellant is directed to move a petition before the Subordinate Court, Palani to appoint a Commissioner for the purposes indicated above. Any incidental aspects that requires to be looked into by the Commissioner can also be added by the first Appellate Court after hearing the parties. The Batta to the Commissioner will be shared equally by both parties. Lastly, the Commissioner to be appointed by the First Appellate Court should be someone who has reasonable practice on the Civil side and regular in appearance before the court.

10. Once the Commissioner's report is filed, both sides are entitled to file their objections and they are also entitled to produce additional evidence if necessary to arrive at a final conclusion to the on-going dispute.

11. In the result, this Second Appeal is allowed and the Judgment and Decree dated 28.04.2014 passed in A.S.No.56 of 2007 and Cross Appeal in A.S.No.56 of 2007 on the file of Subordinate Judge, Palani confirming the judgment and decree dated 21.04.2007 passed in O.S.No.231 of 1999 & Counter Claim on the file of District Munsif Court, Palani is set aside and the matter is remanded back to the Subordinate Court, Palani for fresh consideration of the matter. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar (CS)

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To

1.The Subordinate Judge,
Palani.

2.The District Munsif,
Palani.

3. The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai. (2)

+1CC to Mr.M.P.SENTHIL, Advocate (SR-15493[F] dated 01/09/2020)

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and
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CS(15.09.2020) 4P 6C