



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.02.2020

CORAM:

THE HONOURABLE MR. JUSTICE R. SUBRAMANIAN

S.A. (MD) No. 754 of 2016

and

C.M.P. (MD) No. 11963 of 2016

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1.S.Rajalingam (died) ...1st Appellant/Appellant/Plaintiff
2.Vasantha
3.Chitra
4.Usharani
5.Radhika ... Appellants 2 to 5/LRs of the deceased 1st
Appellant

(Appellants 2 to 5 are brought on record as legal heirs of the deceased sole appellant vide Court order dated 11.12.2019 made in C.M.P. (MD) No. 10071 to 10073 of 2019 in S.A. (MD) No. 754 of 2016)

vs.

1.Punniamoorthy
2.The Block Development Officer,
Banagal Building,
Thanjavur Town and Munsif,
Thanjavur District.
3.The State of Tamil Nadu,
Rep by District Collector,
District Collector Office,
Court Road, Thanjavur Town and Munsif,
Thanjavur District. ... Respondents/respondents
defendants

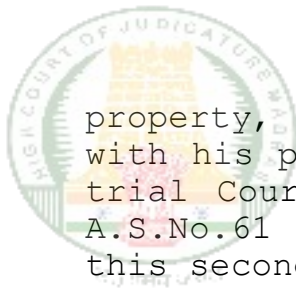
PRAYER: This Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 14.06.2013 passed in A.S.No.61 of 2012 by Principal Subordinate Judge, Thanjavur by confirming the judgment and decree of the District Munsif Court, Thiruvaiyaru passed in O.S.No.152 of 2010 dated 17.08.2012.

For Appellants : Mr.V.Sasikumar
For R1 : No Appearance
For R2 & R3 : Mr.J.Gunaseelan Muthiah
Additional Government Pleader

JUDGMENT

The plaintiff in O.S.No.152 of 2010, whose suit for declaration of his title and recovery of possession of the suit 'B' schedule

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property, for injunction restraining the defendants from interfering with his possession the suit schedule property was dismissed by the trial Court upon confirmation of the said judgment and decree, in A.S.No.61 of 2012, by the lower appellate Court, has come up with this second appeal.

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2. According to the plaintiff, the suit 'A' and 'B' schedule properties belonged to his father and measured in an extent of 5 cents. It is his further contention that, claiming that the first defendant has purchased the suit property on 21.12.1995 from Anjalai Ammal W/o. Swaminathan, the defendants have encroached upon 2 ½ cents, which is shown as suit 'B' schedule property. Therefore, the plaintiff would seek relief of declaration of his title in respect of 'B' schedule property and recovery of possession. Insofar as 'A' schedule property is concerned the plaintiff would seek decree for permanent injunction.

3. The defendants resisted the suit contending that the suit 'B' schedule property never belonged to the plaintiff or his family. According to him, he has purchased the same from one Anajalai Ammal W/o Swaminathan, who was allotted the same by the Government. It is the further case of the defendants that they have not encroached upon the property of the plaintiff. Insofar as the suit 'A' schedule property is concerned, the defendants would admit the title and the possession of the plaintiff.

4. The Courts below upon consideration of the oral and documentary evidence, concluded that the plaintiff has not established his title to the suit 'B' schedule property and the revenue documents, namely Exs.A1 and A2 produced by the plaintiff, in respect of Survey No.297/22 stands in the name of the plaintiff's father Swaminathan and the first defendant. In respect of 'A' schedule property, the lower appellate Court observed that since the defendant has not disputed the title and possession of the plaintiff, with reference to the same there was no need for grant of decree for injunction. On the said finding, the Courts below dismissed the suit. Aggrieved, the plaintiff has come up with this second appeal.

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

"1.Whether the lower appellate Court is wrong in ignoring boundary description (Ex.A2) to deny the appellant the relief of injunction regarding 'A' schedule property?

2.Whether the Courts below are correct in ignoring Exs.A1 and A2?"



6. I have heard Mr.V.Sasikumar, learned counsel for the appellant. The first respondent / contesting respondent though served has not appeared in person or through counsel duly instructed. Mr.J.Gunaseelan Muthiah, learned Additional Government Pleader, appears for the respondents 2 and 3.

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7. The learned counsel for the appellant would draw my attention to the contents of Ex.A1, Adangal to contend that though it is brought out that the new Survey No.297/22 in Ex.A1 relates to old Survey No.297/2, the Courts below were not right in concluding that Exs.A1 and A2 did not relate to the suit property.

8. Even if the said contention of the learned counsel is accepted, both Adangal and Chitta stand in the name of the plaintiff's father and the first respondent. The first respondent is claiming right only over 2 ½ cents of land out of total extent of 5 cents. In as much as he is a joint pattathar and the plaintiff has not produced any document to establish his title to the entire extent of 5 cents, I do not think that the Courts below could be faulted for negating the claim of the plaintiff regarding title to the 'B' schedule property. Therefore, the second question of law is answered against the appellant.

9. As regards the first question of law, the learned counsel would contend that inasmuch as Ex.A12, sale deed dated 21.12.1995 said to have been executed by Anchalai Ammal W/o Swaminathan in favour of the plaintiff, shows boundaries for the entire extent of 5 cents and not for 'B' Schedule alone, the Courts should have taken care to grant a decree for injunction in respect of 'A' schedule property atleast. The lower appellate Court has recorded a specific finding that the defendants are not disputing the title and possession of the plaintiff on 'A' schedule property. That being so, I do not think that the lower appellate Court could be faulted in not granting any decree in respect of 'A' schedule property. This question of law is also answered against the appellant.

10. In view of the answers given above to the questions of law framed in the second appeal, this appeal fails and it is accordingly, dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



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To

1.The Principal Subordinate Judge, Thanjavur.

2.The District Munsif , Thiruvaiyaru

3. The District Collector,
The District Collector Office,
Court Road, Thanjavur Town and Munsif,
Thanjavur District.

4. The Block Development Officer,
Banagal Building,
Thanjavur Town and Munsif,
Thanjavur District.

COPY TO

The Section Officer, (2 copies)
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.V.SASIKUMAR, Advocate (SR-7363[F] dated 20/02/2020)

S.A. (MD) No.754 of 2016

19.02.2020

VB(24.03.2020) 4P 8C