



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2021

CORAM

THE HONOURABLE MR. JUSTICE T. RAVINDRAN

S.A.No. 1357 of 2008

- 1.Sivakolunthu (died)
S/o. Periyannagounder
 - 2.Pappathi
W/o. Late Sivakolunthu
 - 3.Bharathamani,
D/o. Late Sivakolunthu
 - 4.S. Manickavasakan
S/o. Late Sivakolunthu
 - 5.S. Jayakanth
S/o. Late Sivakolunthu
- ...Appellants / Plaintiff

Appellants 2 to 5 brought on record as LR's of the deceased sole appellant viz. Sivakolunthu vide order of court dated 02.01.2020 made in CMP No.27339, 27334 and 27342/2019 in S.A. No.1357/2008.

Vs.

- 1.The State of Tamil Nadu
Rep. by its District Collector
Erode.
 - 2.The Tahsildar
Bhavani Taluk
Bhavani, Erode District
 - 3.C. Jagadeesan
S/o. Chinnasamy
- ...Respondents / Respondents

Prayer : Second Appeal filed under Section 100 of the Civil Procedure Code praying to set aside the judgment and decree



dated 18.04.2007 made in A.S. No.7 of 2006 on the file of the Additional District Court/Fast Track Court No.IV, Bhavani, confirming the judgment and decree dated 28.09.2004 made in O.S. No.504 of 2004 on the file of the second Additional District Munsif Court, Bhavani.

For Appellants : Mr. N. Manokaran
For Respondents
For R1 & R2 : Mr. N. Manikandan
Government Advocate(CS)
For R3 : Mr. A. Sundaravadhanan

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 18.04.2007 passed in A.S. No.7 of 2006 on the file of the Additional District Court/Fast Track Court No.IV, Bhavani, confirming the judgment and decree dated 28.09.2004 passed in O.S. No.504 of 2004 on the file of the Second Additional District Munsif Court, Bhavani.

2. For the sake of convenience, the parties are referred to as per their rankings in the trial court.

3. The plaintiff in O.S. No.504 of 2004 is the appellant in the second appeal.

4. The suit has been laid by the plaintiff seeking the relief of declaration of his title in respect of R.S. No.394/5, 0.00.73 hectare and R.S. No.394/7, 0.03.30 hectare and for the relief of permanent injunction with reference to R.S.No.394/7 and for the relief of Mandatory injunction.

5. In support of the plaintiff's case, P.W.1 was examined and Exs. A1 to A8 were marked. On the side of the defendants, D.Ws. 1 and 2 were examined and Exs.B1 to B11 were marked. Exs. C1 and C2 were also marked.

6. The courts below, on an appreciation of the materials placed on record, both oral and documentary, and the submissions put forth by the respective parties, were pleased to uphold the declaration of the plaintiff's title qua R.S. No.394/5 0.00.73 hectare and rejected the relief sought for by him in respect of



WEB COPY

R.S. No.394/7 0.03.30 hectare. However, granted the relief of Mandatory Injunction sought for by the plaintiff. Aggrieved over the judgment and decree of the courts below, the present second appeal has been preferred by the plaintiff.

7. From the materials placed on record, it is found that the plaintiff, at the first instance, has claimed the title to the property comprised in R.S. No.394/7 based on the patta said to have been issued in his favour. Subsequently, he has amended the plaint and also put forth that he has obtained the title to the abovesaid property by way of the sale deed dated 17.12.1969 marked as Ex.A4. As rightly pointed out by the courts below, under Ex.B10 petition submitted by the plaintiff to the Bhavani Revenue Tahsildar, the plaintiff would claim that he has acquired the title to R.S. No.394/7 both by way of purchase as well as ancestrally. Therefore, as rightly concluded by the courts below, the plaintiff is not sure as to how he had acquired and claiming the right to the property comprised in 394/7. During the course of evidence, the plaintiff would claim that the property comprised in R.S. No.394/7 had been allotted to his mother in the partition deed effected between Muthu Gounder and his mother on 07.04.1959. On the other hand, the plaintiff would claim title to the entire extent comprised in R.S. No.394/7 0.03.30 hectare. The property comprised in R.S. No.394/7 is natham land. There is no dispute with reference to the same. From the materials projected on record, it is found that R.S. No.394/7 has been sub divided and the property in the possession of the defendants had been sub divided as 394/7A and 7B and they had been granted separate pattas with reference to the properties in their possession and enjoyment. Now according to the plaintiff, without serving notice on him, the defendants have effected the patta in their names by way of re-survey proceedings.

8. Be that as it may, as rightly held by the courts below when the plaintiff has come forward with the various pleas, as to how he had acquired the title to the entire extent of the property comprised in R.S. No.394/7, it is for the plaintiff to establish his claim over the same as put forth by him. The plaintiff has not established his entitlement to claim the title to the entire extent in R.S. No.394/7 based on the patta, particularly when the material placed on record go to show that R.S.No.394/7 had been sub divided and the defendants have also



WEB COPY

been granted patta in respect of R.S. No.394/7A and 7B. In the abovesaid circumstances, it has to be seen whether the plaintiff has established his claim of title to the entire extent in R.S. No.394/7 based on the title deed projected by him.

9. As above pointed out, the plaintiff claims title to the property comprised in R.S. No.394/7 based on Ex.A4 sale deed. The parent title deed dated 27.11.1969 of his vendor Marappa Gounder has been marked as Ex.A3. However, as rightly held by the courts below, considering the description of the property comprised in Exs.A3 and A4, the properties described in the abovesaid two sale deeds are found to be totally inconsistent to each other. Therefore, it is highly doubtful whether the same property conveyed under Ex.A3 had been conveyed by Marappa Gounder in favour of the plaintiff under Ex.A4 sale deed. With reference to the abovesaid inconsistencies qua the properties comprised in Exs.A3 and A4, no proper explanation is forthcoming on the part of the plaintiff. When the description of the properties in the abovesaid two sale deeds differ both in extent, boundaries and when there is no acceptable material projected on the part of the plaintiff to clear the doubts, the claim of the plaintiff that he is entitled to claim the entire extent comprised in R.S. No.394/7 based on the patta, as such, cannot be accepted and rightly disbelieved by the courts below. Particularly, when R.S. No.394/7 had been subsequently subdivided and the defendants have also been granted pattas in respect of the same and when the alleged title deeds projected by the plaintiff do not evidence his claim of title to the entire extent in R.S. No.394/7 and moreover, when the plaintiff has not described R.S. No.394/7 in a clear manner in the plaint schedule, particularly not mentioned the boundaries within which the said property is comprised, the courts below are justified in not granting the relief of declaration and permanent injunction in favour of the plaintiff qua R.S. No.394/7. Particularly the plaintiff having failed to establish his claim of title to the entire extent comprised in the abovesaid land and possession thereof and in such view of the matter, the courts below are found to be justified in declining the relief of declaration and permanent injunction sought for by the plaintiff in respect of R.S. No.394/7.

10. Considering the abovesaid factors, no substantial question of law, as such, is found to be involved in the second



appeal. Resultantly, the second appeal is dismissed. No costs. Consequently, connected miscellaneous petition, if any, is closed.

WEB COPY

Sd/-
Assistant Registrar

// True Copy //

Sub Assistant Registrar

bga

To

1.The Additional District Judge,
Fast Track Court No.IV,
Bhavani

2.The Second Additional District Munsif,
Bhavani.

+1cc to Mr.N.Manokaran, Advocate SR.No.1555

S.A.No.1357 of 2008

CNR(CO)
RVM(16/09/2021)