



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

S.A.No.885 of 2013
and M.P.Nos.1 & 2 of 2013

1.P.Kannammal (deceased)
2.Unnamalai
3.P.Elumalai
4.Govindamma
5.P.Masilamani
6.P.Raghu (Deceased)
7.R.Chinnathai
8.R.Suresh
9.R.Priya

...Appellants

(Appellants 2 to 6 brought on record as legal representatives of the deceased sole appellant vide order of Court dated 20.11.2013 made in M.P.Nos.2 of 2013 in S.A.No.885 of 2013)

(Appellant 7 to 9 brought on record as legal representatives of the deceased sixth petitioner viz., P.Raghu vide Court order dated 10.11.2021 made in CMP.No.12051 & 12053 of 2020 in S.A.No.883 of 2013.

Vs.

A.Mani

...Respondent

PRAYER: This Second Appeal has been filed under Section 100 of CPC against the judgment and decree made in A.S.No.49 of 2010 on the file of the Principal Sub Court, Tiruvannamalai, Tiruvannamalai District, dated 16.03.2012 confirming the judgment and decree made in O.S.No.936 of 1995, on the file of the Principal District Munsif, Tiruvannamalai, Tiruvannamalai District, dated 27.07.2010.

For Appellants : Mr.K.A.Ravindran
For Respondent : Mr.T.Dhanasekaran

JUDGMENT

The plaintiff viz., P.Kannammal (deceased) and her legal representatives are the appellants herein.



2.The Second Appeal has been filed against the judgment passed in A.S.No.49 of 2010, by the learned Judge, Principal Sub Court, Tiruvannamalai, Tiruvannamalai District, dated 16.03.2012, wherein, the learned Judge has confirmed the judgment made in O.S.No.936 of 1995, by the Principal District Munsif, Tiruvannamalai, Tiruvannamalai District, dated 27.07.2010.

3.Brief facts of the case:

(a).The deceased plaintiff has filed a suit in O.S.No.936 of 1995, before the Principal District Munsif, Tiruvannamalai, Tiruvannamalai District, for declaration of her title, injunction and recovery of possession of "B" Schedule property. The plaint proceeds on the basis that in the partition suit in O.S.No.1223 of 1970, the first plaintiff was allotted a share in Survey No. 48/9 to an extent of 1/3rd share from the total extent of 1.66 acres but the respondent/defendant had purchased 2½ cents of land from Pachiammal and Muniammal and both the vendors of the defendant are the sisters of the first plaintiff viz., Kannammal.

(b).It is alleged that the respondent/defendant had tress passed into the suit property and the same is the subject matter in O.S.No.936 of 1995 and the learned Judge, by an order dated 27.07.2010, has dismissed the said suit. Aggrieved over the same, the plaintiff has preferred an appeal suit in A.S.No.49 of 2010 before the Principal Sub Court, Tiruvannamalai, Tiruvannamalai District and by an order dated 16.03.2012, the learned Judge has dismissed the said appeal and confirmed the judgment passed in the suit in O.S.No.936 of 1995. Hence, the Second Appeal.

4.This second appeal is not admitted.

5.Heard both the learned counsels and perused the materials placed on record. The learned counsel for the respondent entered appearance.

6.After hearing both the parties, it appears that "A" Schedule property is comprising of 5 cents in Survey No.48/9C2 and out of this 2 ½ cents bounded by East of "B" Schedule property, is the subject matter for permanent injunction in respect of "B" Schedule property in Survey No. 48/9C2. The plaintiff wants recovery of possession of 2 ½ cents with specific boundaries.



7.Mr.K.A.Ravindran, learned counsel for the appellant would contend that the appellant has derived title to the suit property under the partition suit in Exs.A2 to A4 and further he would contend that both the Courts below have not properly appreciated the Commissioner's Report and mutation effected in the revenue records. According to the learned counsel for the appellant, the commissioner's report and mutation of revenue records proves the title of the appellant and both the Courts below have erred in not applying the same.

8.It appears that the suit was initially filed with different description of the suit property and as revealed from the Lower Appellate Court records, there was an amendment to the schedule of the property namely the description of the property was totally changed by the appellant. The main contention of the appellant is rest upon the entry in the revenue records and not on the basis of title. No doubt it is true that the appellant name is registered in UDR. The respondent in order to prove the title and possession to the suit property, has marked Ex.B3/Sale Deed, boundaries of the property covered under Ex.B3 belongs to the appellant. The case of the appellants/plaintiffs is solely rest upon Ex.A1/final decree proceedings in O.S.No.1223 of 1970, Ex.A2/handing over the possession receipt, Ex.A3/Rough Sketch and Ex.A4/Sale Deed executed by Muniammal and Pachiammal in favour of Mani. As per Exs.A1 & A2 lands which were marked as "A" schedule property, allotted to the appellant/plaintiff, the same is admitted in the cross examination of PW1 & PW2 assumes significance. Citing the said proceedings, based upon Ex.A3, the plaint was filed and on the Northern side, the plaintiff claims the ownership. After the cross examination there was an amendment in the suit schedule property.

9.The appellant/plaintiff was allotted "A" Schedule property and thereafter by way of amendment of pleadings, he has included the "C" schedule property, which was allotted in favour of Muniammal under the said partition deed and included that as a suit property. The documentary evidence of Exs.A1 & A2 appears to be running contrary to the oral evidence of PW1. With regard to the description of the properties and boundaries that were allotted to the vendors of the defendant is admitted by PW1 and PW2 and the same has been rightly observed by the Lower Appellate Court.

10.In the description found in Ex.B3 has been admitted. Admitted facts need not be proved as per the Section 58 of the Evidence Act. When PW1 admits as per the final decree proceedings under Ex.A2, "C" Schedule property was allotted to



the share of Muniammal, "A" Schedule property was allotted to deceased plaintiff viz., P.Kannammal & "B" Schedule property was allotted to Pachiammal and hence, when the plaintiff claims the title and recovery of "C" schedule property from the defendant. It is not necessary for the defendant to demonstrate "A" and "B" were not allotted to the plaintiff. The plaintiff has to prove his case.

11.The contention raised by the learned counsel for the appellants with regard to the mutation of revenue records to prove the title of the appellants, entry in a revenue records were not form basis of the declaration of title deed. Being a settled position of law I held that submissions made by the learned counsel for the appellant does not merit any consideration. Both the Courts below have rightly come to the conclusion and rendered a finding to the fact that the respondent/defendant is in possession of the property as per their own title and having derived the same from Ex.B3 which was purchased from the said Muniammal and Pachiammal on 22.07.1989 and hence, the concurrent finding of the Courts below as to the title and possession of the respondent/defendant appears to be just and proper, does not warrant any interference at this appellate stage. In this view of the matter, I find that no substantial questions of law has been arised for consideration in this Second Appeal.

12.Accordingly, this Second Appeal stands dismissed and the judgment and decree made in A.S.No.49 of 2010 by the Principal Sub Court, Tiruvannamalai, Tiruvannamalai District, dated 16.03.2012 confirming the judgment and decree made in O.S.No.936 of 1995, the Principal District Munsif, Tiruvannamalai, Tiruvannamalai District, dated 27.07.2010, is hereby confirmed. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

dua



To

1.The Principal Sub Court,
Tiruvannamalai, Tiruvannamalai District.

2.The Principal District Munsif,
Tiruvannamalai, Tiruvannamalai District

Copy to

The Section Officer
VR Section
High Court, Madras 104.

S.A.No.885 of 2013
and M.P.Nos.1 & 2 of 2013

SSN(CO)
SP(20/01/2022)