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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

S.A.NO.325 OF 2016

&

C.M.P.NO.6086 OF 2016

1.S.A.Sengoda Gounder (died)

2.Ramasundaram

3.Madhaiyan

4.Ayyannan

5.Sundariammal

W/o Late S.A.Sengoda Gounder

(5<sup>th</sup> appellant brought as legal heir of

A1 vide Court order dated 01.07.2021 made in

C.M.P.No.1300/2017 in S.A.No.325 of 2016)

...Appellants / Plaintiffs

Vs.

1.Madhaiyan

2.Murugesan

3.Thangaraj

4.Narayanan

...Respondents / Defendants

PRAYER : The Second Appeal has been filed under Section 100 of the Civil Procedure Code to set aside the decree and judgment dated 14.10.2015 made in A.S.No.31 of 2014 on the file of the learned Sub Court, Bhavani confirming the judgment and decree dated 28.02.2014 made in O.S.No.128 of 2012 on the file of the learned Principal District Munsif Court, Bhavani

For Appellants : Mr.N.Manokaran

For Respondents : Mr.S.Kaithamalai Kumaran

J U D G M E N T

Aggrieved over the concurrent findings of the Court below, the unsuccessful plaintiffs have preferred the above Second Appeal. The Second Appeal was admitted on the following substantial questions of law:



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Heard. This Second Appeal is admitted on the following substantial questions of law:

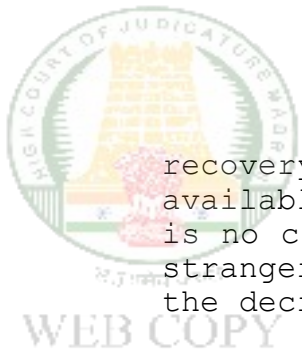
a. Whether the Courts below erred in dismissing the suit for declaration and permanent injunction in respect of the entire extent covered under Ex.A1 to Ex.A4 and Ex.A16, in the absence of any dispute or denial of title over the suit properties at the instance of the defendants?

b. Whether the Courts below are correct in law, in dismissing the suit on the ground of insignificant variation in the extent stated in the suit schedule and the title deeds marked as Ex.A1 to Ex.A6, Ex.A4, revenue records marked as Ex.A8 to Ex.A11 and the Commissioner's Report and plan marked as Ex.C1 to Ex.C3, particularly in the absence of any dispute as to the identity of the suit properties?

c. Whether the judgments of the Courts below are perverse for dismissing the suit in its entirety by viewing the variations in the extent conveyed and the extent available on land, especially when the Courts are empowered to grant lessor relief in exercise of the powers under Order 7 Rule 7 and Sec.151 CPC?

2. The short facts leading to the suit are as follows:

According to the plaintiffs they derived title to the properties in Old Survey No.18 by virtue of Exs.A1 to A4. The respondents/defendants were attempting to trespass the same and therefore they filed a suit for declaration and injunction. During the pendency of the suit, the plaintiffs filed an application for appointment of Advocate Commissioner and the Advocate Commissioner after inspection filed a report along with plan on 06.08.2012 which were marked as Exs.C.1 to C.3. The Trial Court after going through the elaborate evidence arrived at a finding that what is available in the old survey number was given Re-survey No.699/1 to 8 shows that there are only 9.43 and ½ acres on ground. The Trial Court has further found that the plaintiffs have filed O.S.No.1484 of 1974 against one Parasurama Gounder and got a decree of title and also filed O.S.No.243 of 1999 against the Government in which also they obtained a decree. Even after having obtained a declaration of title in the previous rounds of litigation they are not entitled to maintain a third round of litigation with regard to declaration of title. Further, Trial Court has categorically found that the Commissioner has filed the report on 06.08.2012 itself showing some encroachment in the property. In spite of the same, the plaintiffs have not taken any steps for amending the plaint for



recovery of possession and continued the suit as per the available pleadings. Therefore, the suit was dismissed as there is no clarity in the extent of properties and relief against the strangers. On appeal, the Lower Appellate Court also confirmed the decree passed by the Trial Court.

3. According to the appellants/plaintiffs as per Exs.A1 to A4 and A.16, they have clearly proved their title to an extent of 9.26 acres. When they have proved their title, denial of relief of declaration is not sustainable. Further when the defendants do not claim any title there is no dispute as to the identity of the suit property, in view of the report of the Commissioner filed as Exs.C1 to C3. Taking that into consideration, the Trial Court ought to have granted the relief. Even otherwise under Or.7, R.7 r/w Sec.151 of C.P.C the Trial Court must have granted the relief exercising the inherent powers. Therefore, the decree and judgment passed by the Court below is liable to be set aside.

4. I have considered the submissions.

5. As found by the Court below the corresponding Re-survey number for old S.No.18 is R.S.No.699/1 to 8. As per the Government records what is available in R.S.No.699/1 to 8 is 9.43 1/2 acres. Whereas the plaint schedule shows the extent of land in R.S.No.699/1 to 8 as 9.74 acres. There is no explanation on the side of the plaintiffs to the excess land claimed by them. Even though the plaintiffs claim 0.54 cents as per Ex.A.16, there is absolutely no pleading. Therefore, as per the available extent, the Trial Court had proceeded and disposed of the suit. It is already noted that as per O.S.No.1484/1974 and O.S.No.243/1999 the title to the property as per Exs.A1 to A4 and A16 were already declared in favour of the plaintiffs. The defendants herein do not also claim any title against the plaintiffs and therefore no further declaratory relief be granted. Secondly, the Commissioner's report was came to be filed as early as on 2012, but the plaintiffs have proceeded to contest the case against four individuals for the relief of injunction and they have not chosen to amend the relief into recovery of possession or delivery of possession. It is to be noted that the suit was filed against four individuals with the cause of action that they are attempting to trespass into the suit. Whereas the Commissioner's report comes with a finding that there exists a platform of a temple. If it is so, there is no description or pleading that these four defendants are representing the temple or the property was encroached by the temple. In the absence of any clear pleading for specific relief, the Court cannot mould or grant relief in favour of the plaintiffs. The plaintiffs should have been vigilant in asking for a specific relief. It is also not the case of the plaintiffs



that the encroachment by the defendants were admitted in the written statement. On the other hand it leads to other factual disputes of existence of a school and temple in the excess extent beyond R.S.No.699/1 to 8. In such circumstances, the Court below has rightly dismissed the suit for want of proper description of the property and identification of the property. Therefore, it is very clear that as claimed by the appellants/plaintiffs in the suit, the total extent of land available is not 9.76 acres but 9.43½ acres only in R.S.No.699/1 to 8. Secondly, the property is not clearly described and that it is not filed against proper persons for appropriate relief. In that event, the claim of the plaintiffs that the relief should have been granted against the Commissioner's report cannot be granted as the encroachment was allegedly made by the temple and not by these individuals.

6. Therefore, in the suit against the strangers the Court cannot mould the relief or grant the relief under Or.7 R.7 C.P.C. The further contention that the Trial Court should have granted the relief of declaration is concerned, it has already been granted by two decrees of the Civil Court, therefore the repeated declaration is unwarranted. For these reasons, all the three questions of law framed during the admission of the Second Appeal is answered in negative. The Second Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar

// True Copy //

Sub Assistant Registrar

kpr

To

1.The Sub Judge,  
Bhavani

2.The Principal District Munsif,  
Bhavani

+1cc to Mr.N.Manokaran, Advocate Sr.No.39198

+1cc to Mr.S.Kaithamalai Kumaran, Advocate Sr.No.39484

S.A.No.325 of 2016 &  
C.M.P.No.6086 of 2016

SSI(CO)  
RVM(30/05/2022)