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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.04.2022

CORAM :

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

S.A.NO.584 OF 2012

AND

M.P.NO.1 OF 2012

1.Dhandapani Kounder

2.Padbanabhan ...Appellants / Appellants / Defendants

Vs

Senthilkumar ...Respondent / Respondent / Plaintiff

PRAYER : Second Appeal filed under Section 100 of C.P.C., against the Judgment and Decree dated 27.02.2012 in A.S.No.19 of 2011 on the file of Sub-Court, Panruti, confirming the judgment and decree dated 12.09.2011 in in O.S.No.43 of 2007 on the file of District Munsif, Panruti.

For Appellants : Mr.V.Raghavachari

For Respondent : Mr.C.Harish
Amicus Curaie

JUDGMENT

The defendants are the appellants in this Second Appeal.

2. The respondent / plaintiff filed a suit seeking for the relief of declaration of title and for the consequential relief of permanent injunction restraining the defendants from in any manner interfering with the possession and enjoyment of the suit property.

3. The case of the plaintiff is that the suit property, which has a larger extent of 0.33 cents out of 4.28 Acres was allotted through Ex.A.1 as a life estate in favour of Ranganayagi Ammal and the vested remainder was given in favour of her two sons Annamalai Gounder and Dhandapani Gounder. The further case of the plaintiff is that they were owning agricultural lands on the South of the suit property and it is only through the suit property, they used to take the cart and cattle to their agricultural lands. Hence it was decided to



purchase the suit property in order to use it as cart track. Accordingly, on 25.03.1982, under Ex.A.2 document, the father of the plaintiff purchased 16½ cents from Annamalai Gounder who was one of the vested remainder. According to the plaintiff, Ranganayagi Ammal and the other vested remainder Dhandapani Gounder were also aware about the sale deed executed in favour of the father of the plaintiff. The plaintiff claims that the possession of 16½ cents was also handed over to the father of the plaintiff.

4. The grievance of the plaintiff is that the said Annamalai Gounder along with his mother Ranganayagi Ammal executed a registered release deed dated 25.10.1982, marked as Ex.A.3 for the entire 33 cents in favour of Dhandapani Gounder. Thus, Dhandapani Gounder was projected as if he has the entire right and title over the 33 cents of land. The said Dhandapani Gounder sold 16½ cents out of the 33 cents in favour of one Kothandapani through a registered sale deed dated 06.06.1988, marked as Ex.A.4. Thereafter, the said Dhandapani Gounder once again sold the entire extent of 33 cents through a registered sale deed dated 31.01.2007, marked as Ex.A.5, in favour of the second defendant. It is alleged by the plaintiff that these transactions were made only to cause harassment to the plaintiff and to create a cloud over his title in the suit property. In the meantime, the father of the plaintiff executed a registered settlement deed dated 04.12.2006 in favour of the plaintiff, marked as Ex.A.6. Thereby, the plaintiff is claiming title over 16½ cents.

5. The plaintiff, in order to confirm his title over the 16½ cents and in order to safeguard his possession of the suit property, filed the suit seeking for the relief of declaration of title and permanent injunction.

6. The second defendant filed a written statement. He took a stand that Dhandapani Gounder had sold the entire 33 cents in his favour through a registered sale deed dated 31.01.2007, thereby he has become the absolute owner of the property. The second defendant also disputed the sale deed executed by Annamalai Gounder on 25.03.1982 in favour of the father of the plaintiff. The second defendant also questioned the nature of relief that was sought for by the plaintiff and according to the second defendant, at the best, the plaintiff can only seek for the relief of partition and not for the relief of declaration of title and permanent injunction. Accordingly, the second defendant sought for the dismissal of the suit.

7. Both the Courts below, on considering the facts and circumstances of the case and after appreciating the oral and documentary evidence, concurrently held in favour of the



plaintiff and decreed the suit as prayed for. Aggrieved by the same, the defendants have filed this Second Appeal.

8. When the Second Appeal was admitted, the following substantial questions of law were framed by this Court for consideration.

“(a) Whether both the Courts below failed to recognise the fact that the title claimed by the plaintiff pertains to the undivided half share in the total extent of 33 cents and hence the relief as sought for in the suit cannot be granted in favour of the plaintiff?

(b) Whether both the Courts below properly appreciated the validity of the Sale Deed Ex.A.2 which was the primary document through which the plaintiff was claiming title to the suit property?

(c) Whether the findings rendered by the Courts below can be termed as perverse due to improper appreciation of the oral and documentary evidence?”

9. Heard Mr.V.Raghavachari, learned counsel for the appellants and Mr.C.Harish, learned counsel for the respondent, who was appointed as Amicus Curiae by this Court. This Court also carefully considered the materials available on record and the findings rendered by both the Courts below.

10. It is an undisputed fact that the suit property formed part of a larger extent of property measuring 33 cents out of 4.28 Acres. This property was partitioned between Ranganayagi Ammal and her sons Annamalai Gounder and Dhandapani Gounder under a registered partition deed dated 20.11.1978. As per this partition deed, life interest was given in favour of Ranganayagi Ammal and the vested remainder was equally given in favour of her two sons Annamalai Gounder and Dhandapani Gounder.

11. One of the vested remainder viz., Annamalai Gounder sold 16½ cents in favour of the father of the plaintiff through a registered sale deed dated 25.03.1982. Even from the recitals found in the sale deed, it is seen that the undivided share of Annamalai Gounder alone was conveyed in favour of the father of the plaintiff. This sale deed has not been questioned and it remains in force till date. Therefore, both the Courts were perfectly right in holding that the father of the plaintiff became entitled for 16½ cents in the suit property. The father of the plaintiff thereafter executed a registered settlement deed in favour of the plaintiff on 04.12.2006 and thus the right and title over 16½ cents vested in favour of the plaintiff.



12. The above said Annamalai Gounder, after having sold 16½ cents to which he was entitled under the partition deed, seems to have executed a registered release deed along with his mother for the entire 33 cents in favour of Dhandapani Gounder through Ex.A.3. This document cannot be sustained insofar as Annamalai Gounder is concerned since he had already sold 16½ cents to which he was entitled and there was nothing left for him to settle in favour of Dhandapani Gounder. Therefore, this document at the best can only have an effect of the life interest of Ranganayagi Ammal being settled in favour of the other vested remainder Dhandapani Gounder.

13. The above said Dhandapani Gounder seems to have executed a registered sale deed on 06.06.1988 in favour of Kothandapani and thereby conveyed 16½ cents in his favour. It is stated that the said Kothandapani never took possession of the property. After the demise of his mother on 19.12.2006, the said Dhandapani Gounder has once again executed a registered sale deed dated 13.01.2007 in favour of the second defendant for the entire 33 cents. The said Dhandapani Gounder at the best can only deal with 16½ cents which got vested in his favour as a vested remainder under the partition deed. He did not have the right to deal with the entire 33 cents since the plaintiff had already become the owner of 16½ cents out of 33 cents by virtue of the registered sale deed dated 25.03.1982 and the registered settlement deed dated 04.12.2006.

14. In view of the above finding, this Court does not find any ground to interfere with the relief granted by both the Courts below with regard to the title of the plaintiff to an extent of 16½ cents.

15. Even assuming that there were no transactions in favour of third parties and Ranganayagi Ammal had died on 19.12.2006, the vested remainder viz., her sons Annamalai Gounder and Dhandapani Gounder could have divided the property equally among themselves and allotted 16½ cents to each dividing it by metes and bounds. Under such circumstances, there was no question of Annamalai Gounder handing over possession of 16½ cents in favour of the father of the plaintiff when he executed the sale deed dated 25.03.1982. The same is also clear from the recitals of this sale deed which specifically refers to the undivided share of Annamalai Gounder. At the best, the plaintiff can only be treated to be a co-owner of the property along with the defendants. Till the property is divided by metes and bounds, the relief of permanent injunction cannot be granted as against another co-owner. Both the Courts below failed to take note of this crucial fact and erred in granting the relief of permanent injunction in favour of the plaintiff.



16. In view of the above discussion, this Court holds that the plaintiff can only claim for the undivided share of 16½ cents and he must have sought for the relief of partition and for allotment of half share in the suit property. The relief of permanent injunction sought for by the plaintiff is unsustainable. To that extent, the relief of permanent injunction granted by both the Courts below is liable to be interfered by this Court. The first and second substantial questions of law are answered accordingly.

17. Insofar as the findings rendered by both the Courts below is concerned, it suffers from perversity only to the extent of granting the relief of permanent injunction in favour of the plaintiff. The plaintiff ought to have sought for the relief of partition and allotment of 16½ cents out of the total extent of 33 cents in the suit property. The third substantial question of law is answered accordingly.

18. The only other issue that requires the consideration of this Court is as to whether the relief sought for by the plaintiff can be moulded by taking resort to Order VII Rule 7 of C.P.C. The learned Amicus Curiae relied upon the judgment of the Hon'ble Supreme Court in "Rajendra Tiwary -Vs- Basudeo Prasad and Another" reported in (2002) 1 S.C.C.90, and the learned counsel for the appellants relied upon the judgments in "Natarajan -Vs- R.Muthukrishnan" reported in 2001 (4) C.T.C.513 and "Angammal and 2 Others -Vs- Komara Gounder and 2 others" reported in "2002 (1) C.T.C.472. It was submitted that this Court can always mould the relief and grant a lesser relief.

19. To properly understand the scope of moulding the relief and granting a lesser relief, the relevant portions in "Natarajan -Vs- R.Muthukrishnan" reported in 2001 (4) C.T.C.513 is extracted hereunder.

12. With respect, I am not able to accept the view taken by the learned Judge in the abovesaid decision, in view of the decision of the Apex Court in the decision in B.R. Ramabhadriah v. Secy., F. & A. Deptt., A.P., . While dealing with the power of the court to grant smaller relief that may be found to be entitled in law, it has been held therein as follows:

"5. It is true that the writ petition contained a prayer for the quashing of the gradation list in so far as it related to the inter se ranking of the petitioner vis-a-vis respondents Nos. 3 to 8 and the petitioner (appellant) had also sought the issuance of a writ of mandamus directing respondents Nos. 1 and 2 to forbear from



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implementing or acting upon the said gradation list. But, subsequent to the institution of the writ petition, the Central Government had re-fixed the ranks of respondents Nos. 1, 4, 5, 7 and 8 (Telangana Officers) and placed them below the appellant thereby redressing the grievance of the appellant in so far as it pertained to the ranking of the aforesaid respondents. It therefore became unnecessary for the appellant to pursue his claim for relief with respect to the ranks assigned to those five respondents. It was under those circumstances, that the appellant submitted before the learned single Judge of the High Court, at the time of final hearing of the writ petition, that he was pressing the writ petition only in so far as it related to his claim for seniority over the 6th respondent. We fail to see how the fact that the appellant had sought in the writ petition the issuance of a writ of mandamus directing respondents 1 and 2 to forbear from implementing or acting upon the provisional gradation list will operate to preclude him from seeking a lesser relief, namely, the quashing of the list only in so far as it pertains to the fixation of the inter se seniority between himself and the 6th respondent. The material facts and circumstances had undergone a substantial change subsequent to the filing of the original petition and it was in consequence thereof that it had become unnecessary for the petitioner to pursue his original prayer for the grant of a larger relief. Besides ignoring this crucial aspect, the Division Bench of the High Court has also lost sight of the well established principle that in an action where a party has prayed for a larger relief it is always open to the court to grant him any smaller relief that he may be found to be entitled in law and thereby render substantial justice. The Court can undoubtedly take note of changed circumstances and suitably hold the relief to be granted to the party concerned in order to mete out justice in the case. As far as possible the anxiety and endeavour of the Court should be to remedy an injustice



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when it is brought to its notice rather than deny relief to an aggrieved party on purely technical and narrow procedural grounds. We do not, therefore, find it possible to uphold the view expressed by the Division Bench of the High Court that since the writ petition was not pressed in so far as it related to the officers belonging to the Telengana region the question of inter se seniority between the writ petitioner and the 8th respondent should not have been considered by the single Judge and the writ petition should have seen dismissed.

6. Accordingly, we set aside the judgment of the Division Bench and remand the writ appeal to the High Court for fresh disposal in accordance with law. The parties will bear the irrespective costs in this appeal.

13. While considering the scope of Order 7, Rule 7 of Civil Procedure Code, 1908, the Apex Court in the decision in Hindalco Industries Ltd. v. Union of India, has held as follows;-

"6. It is seen that the appellant sought for declaratory relief that the rates being charged are 'wholly unjust and unreasonable' and for a direction to the railways to charge 'reasonable rates' on the basis of actual distance of 568 km together with other consequential relief. It is to be remembered that the relief otherwise cognisable by Civil Court of competent jurisdiction under Section 9 of the CPC has been, statutorily conferred on the Tribunal with powers of a Civil Court to decide the claims under the Act. Order 7, Rule 7, CPC provides that every plaint shall state specifically the relief which the plaintiff claims either simply or in the alternative, and it shall not be necessary to ask for general or other relief which may always be given as the Court may 'think just' to the same extent as if it had been asked for, and the same rule shall apply to any relief claimed by the defendant in his written statement. Order 2, Rule 2 enjoins to claim the relief in respect of a cause of action and under Clause 3 of Order 2, Rule 2, if he omits to seek the relief, except with



the leave of the court, he shall be precluded thereafter for any relief so omitted."

14. So, under Order 7, Rule 7 of the Code, an equitable relief has to be granted, in such cases, to the parties concerned. It is only to avoid unnecessary multiplicity of suits in case where relief can be granted in the facts and circumstances of particular case even if not so restrictly pleaded or a relief sought for on such facts. The objection now raised by the learned counsel appearing for the appellant is that the lower appellate court could not have declared that the suit wall is a common wall as the plaintiff is claiming only absolute right. When the Court is able to come to such a conclusion on the basis of the evidence available on record, the Court should not drive the plaintiff to file any other suit without deciding the same in the present suit. In view of the abovesaid fact, the submission of the learned counsel appearing for the appellant that the conclusion of the lower appellate court that the lower appellate court has no jurisdiction to come to the conclusion that the suit wall is a common wall cannot be sustained."

20. In the present case, the plaintiff has sought for the larger relief of declaration of title and permanent injunction. This Court after concurring with the findings of both the Courts below has held that the plaintiff will be entitled for 16½ cents out of the total 33 cents in the suit property. Insofar as the possession over the suit property is concerned, it has to be necessarily divided by metes and bounds and 16½ cents must be allotted in favour of the plaintiff. Considering the larger relief sought for in this case, this Court is inclined to mould the relief and grant the lesser relief of partition by passing a preliminary decree in favour of the plaintiff holding that he will be entitled for half share viz., 16½ cents out of the total extent of 33 cents in the suit property. The actual allotment of 16½ cents in favour of the plaintiff can take place by permitting the plaintiff to file an application for final decree and the Trial Court can divide the property by metes and bounds and allot the 16½ cents in favour of the plaintiff.

21. In the result, the Second Appeal is partly allowed and the judgment and decree passed by both the Courts below is modified in the following manner.

- (a) There shall be a declaration declaring that the plaintiff / respondent herein has the right and title over 16½ cents out of 33 cents in the suit property by virtue of the registered sale deed



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dated 25.03.1982 and the release deed dated 04.12.2006.

- (b) There shall be a preliminary decree in favour of the plaintiff allotting half share viz., 16½ cents out of 33 cents in the suit property, and
- (c) Considering the facts and circumstances of the case, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

22. This Court places its appreciation for the able assistance rendered by Mr.C.Harish, learned Amicus Curiae appointed by this Court.

Sd/-
Assistant Registrar(CS-II)

// True Copy //

Sub Assistant Registrar

KST

To

- 1.The Subordinate Judge,
Sub Court, Panruti.
- 2.The District Munsif,
Panruti.

Copy To

The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.V.Raghavachari, Advocate Sr.No.26250

S.A.No.584 of 2012

SS(CO)
RVM(18/05/2022)