



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A.(MD)No.915 of 2010

WEB COPY

Ponmani

... Appellant / Appellant / Plaintiff

-Vs-

Rasal @ Rasalraj

... Respondent / Respondent / Defendant

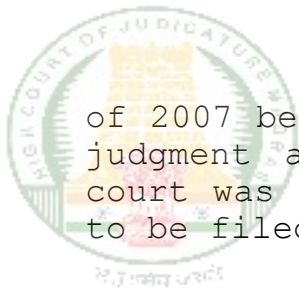
PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the Judgment and decree dated 19.07.2010 made in A.S.No.128 of 2007 on the file of the Principal Sub Court, Nagercoil, confirming the judgment and decree dated 17.08.2007 made in O.S.No.195 of 2000 on the file of the Principal District Munsif Court, Nagercoil.

For Appellant	: Mr.A.Arumugam for M/s.Ajmal Associates
For Respondent	: Mr.S.Meenakshi Sundaram Senior Counsel for Mr.C.Godwin

JUDGMENT

The plaintiff in O.S.No.195 of 2000 on the file of the Principal District Munsif Court, Nagercoil is the appellant in this second appeal.

2. The suit was filed for the relief of permanent injunction restraining the defendant and his men from disturbing the plaintiff's peaceful possession over the suit property. The defendant filed written statement controverting the plaintiff's averments. The defendant also raised counter claim for mandatory injunction directing the plaintiff to remove the encroachment committed on 10 cents of the suit property. Based on the divergent pleadings, issues were framed. The plaintiff examined himself as P.W.1 and one Murugappan was examined as P.W.2. Ex.A1 to Ex.A23 were marked. The defendant examined himself as D.W.1. Ex.B1 to Ex.B20 were marked. An Advocate Commissioner was appointed and his interim and final reports were marked as Ex.C1 to Ex.C4. After consideration of the evidence on record, the trial court by judgment and decree dated 17.08.2007 dismissed the suit as regards Survey No.489/6a but granted permanent injunction in respect of Survey No.489/6b. As regards counter claim, the trial court directed the plaintiff to remove the encroachment committed on 10 cents in Survey No.489/6a. Aggrieved by the same, the plaintiff filed A.S.No.128



of 2007 before the Principal Sub Court, Nagercoil. By the impugned judgment and decree dated 19.07.2010, the decision of the trial court was confirmed. Challenging the same, this second appeal came to be filed.

3. Heard the learned counsel appearing for the appellant and the learned senior counsel appearing for the respondent.

4. The plaintiff / appellant claims title over the suit property by virtue of the sale deed dated 21.10.1999 executed by Bhagavathiammal D/o.Boothanatha Pillai. The said Boothanatha Pillai was one of the three sons of Azhagia Padmanabha Pillai. Azhagia Padmanabha Pillai had executed a Will dated 11.01.1955 in favour of three sons. Based on the same, the partition suit was filed in O.S.No.1456 of 1984 on the file of the Additional Sub Court, Nagercoil. Preliminary decree was passed therein on 31.07.1989, while final decree came to be made on 15.06.2005. As per the preliminary decree as well as the final decree, the western portion of the property bequeathed under the said Will was allotted in favour of Sivasubramanian branch, while the middle portion was allotted to Sivathanu Pillai, while the eastern portion was allotted to Boothanatha Pillai. It is not in dispute that Sivasubramania Pillai owned properties to the north of the property covered under the said Will in his independent capacity.

5. The case of the defendant herein is that the property purchased by him from Usha @ Backiam D/o.Sivasubramania Pillai through sale deed lay to the north of the Will property. According to the learned senior counsel appearing for the respondent, the property that is referred to his northern portion in O.S.No.1456 of 1984 is actually comprised in Survey No.489/6a, whereas the property covered by Will lies in Survey No.489/6b and on its immediate western side. Unfortunately, in this case, the appellant herein failed to seek any declaratory relief. Likewise, the respondent also merely sought the counter claim of mandatory injunction without asking for any declaratory relief.

6. I have before me two options. I can negative the claims of both the parties or to render substantial justice, the matter can be remanded so that the property that is covered under the Will as well as the sale deed that originally belonged to Sivasubramania Pillai can be located with reference to the relevant survey records and Government records.

7. The learned counsel appearing for the appellant as well as the learned senior counsel appearing for the respondent, on instructions, submitted that they have no objection for remanding the matter. Of-course, the learned counsel appearing for the appellant would assert that the property covered under the Will executed by Azhagia Padmanabha Pillai pertains to 10 cents of land in Survey No.489/6A. In order to resolve the issue



finally, the matter has to be necessarily remitted. Since there is consensus between the parties, the impugned judgment and decree are set aside and the matter is remanded to the file of the trial court. The learned trial Judge is directed to appoint an Advocate Commissioner who would determine the location and lie of the property covered under Ex.B2, Ex.B4, Ex.B5 & Ex.A13. The Advocate Commissioner shall carry out the exercise of identification, location and measurements with reference to the survey and revenue records. The parties shall appear before the court below on 17.06.2022.

8. The second appeal is allowed on these terms. No cost.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To:

1.The Principal Sub Court, Nagercoil.

2.The Principal District Munsif Court, Nagercoil.

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

+1 CC to M/s.C.GODWIN, Advocate (SR-22208[F] dated 28/04/2022)

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-22863[F] dated 29/04/2022)

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