

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 17.12.2015

CORAM:

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.500 of 2008 and M.P.No.1 of 2008

1. Baby
2. Pushpa .. Appellants/Appellants/
Defendants 11 & 12

-Vs-

1. Velkannan ..1st Respondent/1st Respondent/
Plaintiff

2. Venkatarathinam
3. Kubendran
4. Kirupakaran
5. Padmanaban
6. Chandrasekaran
7. Gajalakshmi (deceased)
8. Kuppusamy
9. Anandhapadmanabhan
10.Sampathkumar
11.Chithra
12.Mahalakshmi
13.Ananthi

.. Respondents 2-13/
Respondents 2-13
/Defendants 1-9, 13-15

(R4 to R6 were recorded as L.Rs.
Of the deceased 7th respondent vide
order of this Court dated 17.03.2015)
made in memo presented in court
dt.12.02.2015

Notice to RR 12 & 13 d/w vide order
of court dt. 17.08.2015 made in memo.

SECOND APPEAL filed under Section 100 of Code of Civil Procedure against the judgment and decree of the Principal Subordinate Court, Mayiladuthurai, dated 10.02.2006 made in A.S.No.65 of 2005 confirming the judgment and decree of the Principal District Munsif Court, Mayiladuthurai dated 04.02.2005 made in O.S.No.229 of 2004.

For Appellants : Mr.S.Sounthar
For Respondents :
1 to 3 : Mr.R.Sunilkumar
For 6th respondent : Mr.T.Thiageswaran for
M/s.Waraon and Sairams
For respondents 5 : Mr.V.Parthiban
&8 to 10 : for M/s.Paul and Paul
For Respondents : Dispensed with
11 and 12

J U D G M E N T

The defendants 11 and 12 in O.S.No.229 of 2004 on the file of the learned Principal District Munsif, Mayiladuthurai are the appellants. The 1st respondent is the plaintiff in the suit and the others are the other defendants. The said suit was filed for partition and for allotment of 1/9th share of the plaintiff. The trial court by decree and judgment dated 04.02.2005 passed a preliminary decree for partition as prayed for. As against the same, the appellants herein/defendants 11 and 12 filed an appeal in A.S.No.65 of 2005 on the file of the learned Principal Subordinate Judge, Mayiladuthurai. By decree and judgment dated 10.02.2006, the lower appellate court dismissed the appeal thereby confirming the decree and judgment of the trial court. As against the same, the appellants are before this Court with this Second Appeal.

2. The case of the plaintiff in brief is as follows:

The suit property was originally purchased by one Kuppusamy Naidu under Ex.A.2. Kuppusamy Naidu had executed a Will in favour of his sons by name, Pakkirisamy Naidu, Sowrirajulu Naidu and Govindarajulu Naidu and there was no partition effected during his life time, so far as the suit property is concerned, though the other properties were partitioned. All the three sons of Kuppusamy Naidu died intestate. The defendants 3 to 6 are the children of Pakkirisamy Naidu. The plaintiff and the defendants 1 and 2 are the children of Sowrirajulu Naidu. The defendants 7 to 9 are the children of Govindarajulu Naidu. According to the plaintiff, the 10th defendant in the suit R.Santhanam was a tenant and he had no title for the suit property. The defendants 11 and 12 who are the appellants herein, according to the plaintiff, have got no right whatsoever over the suit property. With the above pleadings, the plaintiff filed the suit for partition.

3. The defendants 1, 2 and 5 to 9 remained ex-parte. The other defendants contested the suit. According to the appellants, the suit property was not owned by Kuppusamy Naidu at all. It is their specific case that in a court auction, the father of the 10th defendant purchased the suit property, but, in the name of Kuppusamy Naidu. Thus, though the title deed stood

in the name of Kuppusamy Naidu, the suit property belonged only to the father of the 10th defendant. The father of the 10th defendant was one Mr. Ramakrishna Naidu. Thus, according to the appellants, Ramakrishna Naidu was the absolute owner and after his death, his son, the 10th defendant had inherited the same. From the 10th defendant, the 11th defendant purchased a portion of the suit property for a valuable consideration and the 12th defendant purchased the another portion of the suit property from the 10th defendant. Thus, according to both the appellants/defendants 11 and 12, the plaintiff is not entitled for partition.

4. Based on the above pleadings, the trial court framed appropriate issues. In order to prove the case, on the side of the plaintiff, the plaintiff was examined as P.W.1 and as many as 17 documents have been exhibited. On the side of the defendants, 4 witnesses were examined and as many as 17 documents have been exhibited. Having considered all the above, the trial court passed a preliminary decree which was confirmed by the lower appellate court. That is how the appellants are before this Court with this Second Appeal.

5. On notice of motion issued by this Court, the 1st respondent/plaintiff has made appearance through his Counsel. I have heard the learned Counsel for the appellants and the learned Counsel for the respondents 1 to 3, 6, 5 and 8 to 10. I have also perused the records carefully.

6. The learned Counsel for the appellants would submit that though it is alleged by the plaintiff that the 10th defendant was a tenant of the suit property, assuming that the said fact is true, it is in evidence that the tenancy was terminated in the year 1985 under Ex.B.1 notice. But the possession of the property was not recovered from the 10th defendant within the period of limitation of 12 years. Thus, the plaintiff and the other defendants 1 to 9 have lost their title. Thus, according to the learned Counsel for the appellants, the courts below ought to have considered the said question and dismissed the suit.

7. But the learned Counsel appearing for the respondents 1 to 3 would submit that the courts below have held that Ex.B.1 has not been properly proved. He would further submit that there is no pleading that the tenancy was terminated at any point of time. The learned Counsel for the respondents 1 to 3 would also submit that there is no plea of title by adverse possession also.

8. I have considered the above submissions.

9. At the outset, I should say that there is no question of law much less a substantial question of law warranting admission of the Second Appeal. On facts, the courts below have held that the appellants have got no title for the suit property and the suit property absolutely belongs to the plaintiff and the defendants 1 to 9. In this factual finding, I do not find any perversity. Admittedly, the original sale deed stands in the name of Kuppusamy Naidu. Though it is stated by the learned Counsel for the appellants that the suit property was originally purchased by the father of the 10th defendant in a Court auction, but in the name of Kuppusamy Naidu, absolutely, there is no evidence for the same. But the records would reveal that the suit property was purchased by Kuppusamy Naidu from the father of the 10th defendant. This has been properly appreciated by the courts below. Thus, Kuppusamy Naidu, who had purchased the suit property from the father of the 10th defendant was in possession and thus, the plaintiff and the defendants 1 to 9 are entitled for a 1/9th share in the same. As rightly contended by the learned Counsel for the respondents 1 to 3, there is no plea of adverse possession and there is no plea that the tenancy was ever terminated. The courts below have held that Ex.D.1 notice has also not been proved properly because it does not even contain the signature of the party, who issued the same. There is no proof that it is ever served. From these evidences, the courts below have held that the 10th defendant had no title to convey to these appellants. Thus, the appellants have got no title for the suit property. The courts below have rightly held so. Thus, I do not find any merit at all in the Second Appeal. Further, as I have already narrated, there is no substantial question of law involved in the Second Appeal even to admit the same.

10. In the result, the Second Appeal fails and the same is accordingly dismissed. The decree and judgment of the lower appellate court is hereby confirmed. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

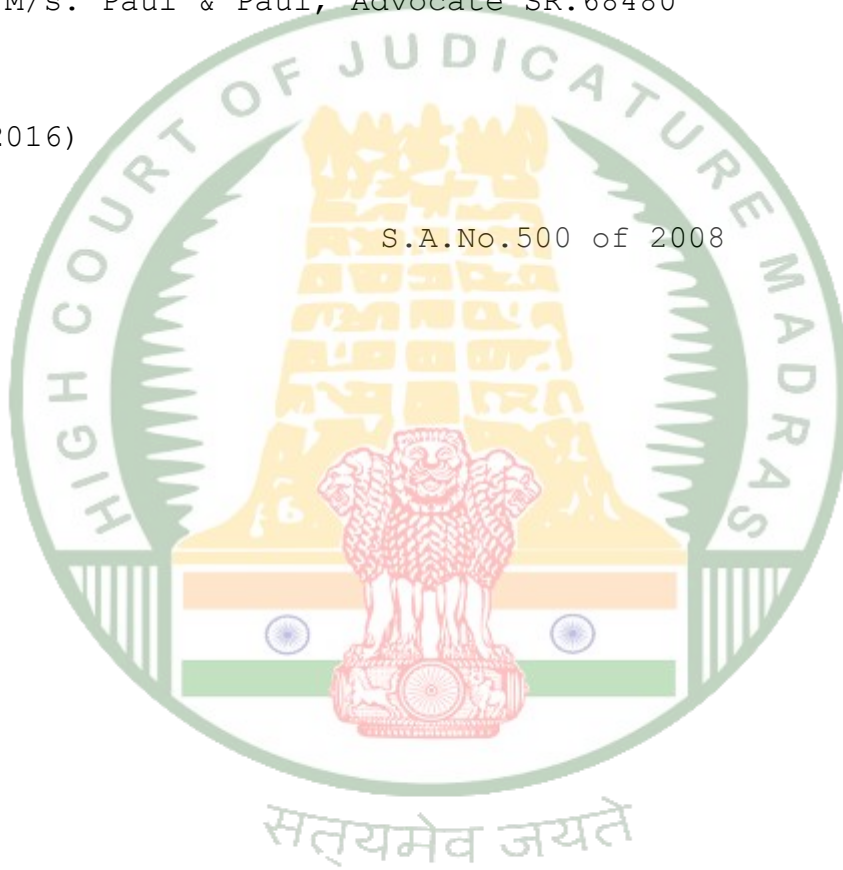
To

1. The Principal Subordinate Judge, Mayiladuthurai.
2. The Principal District Munsif, Mayiladuthurai.

+1cc to Mr.S. Sounthar, Advocate, S.R.No.68201
+1cc to Mr.R. Sunilkumr, Advocate, S.R.No.68574
+ 1 cc to M/s. Waron & Sairams, Advocate SR.68456
+ 1 cc to M/s. Paul & Paul, Advocate SR.68480

GJ(CO)
EU(15/02/2016)

S.A.No.500 of 2008



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