

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 29.01.2015

CORAM:

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.345 of 2013 & M.P.No. 1 of 2013

1. Mariyayee
2. Balasubramani .. Appellants/ Defendants 1 & 2

-Vs-

1. Natarajan ..1st Respondent/ Plaintiff
2. Arunachala Gounder ..2nd respondent/ 3rd Defendant
3. Chellammal
4. Muthaiah ..3rd and 4th Respondent/ Defendants 5 & 6

SECOND APPEAL filed under Section 100 of Code of Civil Procedure against the judgment and decree dated 18.09.2012 made in A.S.No.87 of 2009 on the file of the Subordinate Judge, Namakkal confirming the judgment and decree dated 30.09.2009 made in O.S.No.1434 of 2004 on the file of the learned Additional District Munsif, Namakkal.

For Appellants : Mr.T.Dhanyakumar

For 1st Respondent : Mrs.Mythili Suresh
for M/s.Sarvabhauman Associates

J U D G M E N T

The defendants 1 and 2 in O.S.No.1434 of 2004 on the file of the learned Additional District Munsif, Namakkal are the appellants in this appeal. The first respondent in the appeal is the plaintiff and the others are the other defendants in the suit. The plaintiff had filed the said suit for declaration of title in his favour and in favour of the 6th defendant and for recovery of possession of the suit property from the defendants 1 to 5. The said suit was decreed as prayed for by the trial court by decree and judgment dated 30.09.2009. As against the same, the appellants herein filed an appeal in A.S.No.87 of 2009 on the file of the learned Subordinate Judge, Namakkal. By decree and judgment dated 18.09.2012, 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 1st respondent/plaintiff has filed a caveat in this matter and accordingly, Mrs.Mythili Suresh, learned Counsel has come on record for the 1st respondent in the Second Appeal.

3. Today, the Second Appeal has come up before me for admission. I have heard the learned Counsel for the appellants and the learned Counsel for the 1st respondent/Caveator. I have also perused the records carefully.

4. The case of the plaintiff is as follows:

The suit property was originally purchased by the father of the plaintiff by name Ramasamy under four sale deeds around the year 1965 (Ex.A.1 to Ex.A.4). By virtue of these four sale deeds, Mr.Ramasamy has become the absolute owner and he died intestate leaving behind his two sons, namely, the plaintiff and the 6th defendant. On the demise of Ramasamy, according to the plaintiff, he and the 6th defendant have inherited the property. But the same has not been so far partitioned among themselves. The defendants 1 to 5 are trespassers and therefore, they have to be evicted from the property. That is how the plaint was laid before the trial court.

5. The appellants 1 and 2 in their written statement before the trial court had stated that the suit property is their family property. According to them, the forefather of Chella Gounder was the owner of the entire extent of the suit property. Mr.Chella Gounder died leaving behind his only son Ramasamy (not that Ramasamy who is the father of the plaintiff and the 6th defendant). Mr.Ramasamy inherited the suit property and enjoyed the same during his life time. On his demise, the property was inherited by one Aanaikutty, the son of Ramasamy. Aanaikutty died leaving behind his wife, the 1st defendant/1st appellant and his son the 2nd appellant herein. The 1st appellant has executed a settlement deed in favour of the 2nd appellant and thus, the 2nd appellant is the absolute owner of the suit property, it is contended. It is also contended that earlier when an attempt was made to dispossess Mr.Balasubramani, the 2nd appellant herein by the 6th defendant Muthaiyah and others, the 1st appellant filed a suit in O.S.No.431 of 1998 before the Principal District Munsif Court, Namakkal for permanent injunction. In that suit, the 6th defendant herein Muthaiyah, who is the 1st defendant in the said suit, remained ex-parte. The suit was dismissed by the trial court. As against the same, the 1st appellant herein filed an appeal in A.S.No.439/2002 on the file of the learned Principal District Judge, Namakkal. The appeal was allowed thereby granting permanent injunction restraining the 6th defendant herein and the others from interfering with their peaceful possession and enjoyment of the suit property. Thus, according to the appellants herein, they are entitled to be in possession and therefore, they cannot be evicted.

6. I have considered the above submissions.

7. In the present suit, on the side of the appellants to prove title and possession, they have filed Ex.B.1 to Ex.B.4 which are the certified copies of the Settlement Deed executed by the 1st appellant in favour of the 2nd appellant, the certified copy of the decree in O.S.No.431 of 1998 of the Principal District Munsif Court, Namakkal, certified copy of the decree in A.S.No.439 of 2002 of the Principal District Judge, Namakkal and the certified copy of the judgment in A.S.No.439 of 2002 on the file of the Principal District Judge, Namakkal. Apart from that, there is oral evidence of the 1st appellant herein. The courts below have held that based on these documents, it cannot be held that the appellants have got even a semblance of title for the suit property.

8. A perusal of the decree and judgment of the learned Principal District Munsif, Namakkal in O.S.No.431 of 1998 would go to show that the learned District Munsif had not gone into the question of title. He left it open. The learned District Munsif finds that the appellants were in possession of the suit property. Therefore, he has granted the relief. In that suit, the 6th defendant in the present suit remained ex-parte. Therefore, the decree passed in the earlier suit for permanent injunction cannot go to conclusively even show that the defendants have got title. On the contrary, the courts below have analysed Ex.A.1 to Ex.A.4 which are the sale deeds of the years 1965, 1970 and 1971 by which Ramasamy, the father of the plaintiff and the 6th defendant had purchased the suit property. Patta has also been transferred on his name. On appreciating all these evidences, the courts below have decreed the suit as prayed for.

9. In this appeal, the learned Counsel for the appellants is not in a position to place any material to raise any question of law, more particularly, a substantial question of law so as to admit this Second Appeal. The learned Counsel for the appellants would submit that Ex.B.2 to Ex.B.4 would operate as res judicata as against the 6th defendant.

10. In my considered opinion, as rightly pointed out by the courts below, Ex.B.2 to Ex.B.4 shall not operate as res judicata because the earlier suit was only for permanent injunction whereas the present suit is for declaration of title and for recovery of possession. Apart from that, there is no substantial question of law involved in the matter.

11. The learned Counsel for the appellants would submit that it is not permissible for the plaintiff to get a decree for declaration of title on behalf of the 6th defendant who remained ex-parte in the earlier suit. For this, the learned learned Counsel

for the 1st respondent would submit that there is no bar. The learned Counsel has relied on a judgment of this Court in Ramachandran and others vs. Valliammal and others reported in 1992 (1) MLJ 188 wherein this Court has held that such a suit is maintainable. Similar view has been taken by this Court in Sowrirajan vs. Sundaram and others reported in 1998(1) CTC 247. Thus the decree and judgment granted in favour of the plaintiff in the present suit does not suffer from any legal infirmity warranting interference at the hands of this Court. Therefore, I hold that there is no substantial question of law at all in this matter warranting admission of the Second Appeal.

12. In the result, the Second Appeal fails and the same is accordingly dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

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To

1. The Additional District Munsif, Namakkal.
2. The Subordinate Judge, Namakkal.

Copy to

The Section Officer
VR Section
High Court, Madras

1 cc to M/s. Sarvabhuman Associates, Sr. 4532

VD (CO)
kk 3/3

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& M.P. No. 1 of 2013