

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2015

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.1051 of 2015

Ramasamy

... Appellant/Plaintiff

Vs.

1.Arul Kumar

2.The Sub Registrar,
Nambiyur,
Gobichettipalayam Taluk,
Erode District.

3.Thayammal

4.Shakunthala ... Respondents/Defendants

Prayer:- This second appeal has been filed under Section 100 C.P.C., against the judgment and decree dated 07.03.2015 in A.S.No.24 of 2014 by the learned Subordinate Judge, Gobichettipalayam.

For Appellant : Mr.R.Vijayan

JUDGEMENT

The plaintiff in O.S.No.29 of 2009 on the file of the learned District Munsif, Gobichettipalayam is the appellant herein. The respondents are the defendants in the suit. The said suit was filed for declaration of title and for permanent injunction to restrain the defendants from alienating the suit property to the third parties. The trial Court by decree and judgment dated 04.08.2014 dismissed the suit. As against the same, the appellant filed an appeal in A.S.No.24 of 2014 on the file of the learned Subordinate Judge, Gobichettipalayam. By decree and judgment dated 07.03.2015, the First Appellate Court dismissed the appeal thereby confirming the decree and judgment of the trial Court. Challenging the same, the plaintiff/appellant is before this Court with this second appeal.

2.The case of the plaintiff is as follows:-

One, Mr. Lakshmana Asari was the absolute owner of the total extent of 14 ½ cents of the land comprised in S.No.789/2 at Elathur Village, Gobichettipalayam Taluk. It was originally a

natham land. Mr.Lakshmana Asari died in the year 1940, intestate, leaving behind his three sons by name Mr.Muthusamy, Mr.Rajamani and Mr.Ramasamy (the plaintiff). At the time of the death of Mr.Lakshmana Asari, Mr.Muthusamy, Mr.Rajamani and Mr.Ramasamy were 15 years 13 years and 7 years old respectively. Mr.Muthusamy, after attaining majority, was in the management of the joint family consisting of his two brothers. Patta for the suit property was issued by the Government in the name of Mr.Muthusamy. According to the plaintiff, though, patta was issued in the name of Mr.Muthusamy, he did not have independent title because, the suit property was originally owned by Mr.Lakshmana Asari, in which, all his three sons have equal share. Mr.Muthusamy died leaving behind his daughter Mrs.Sakunthala (4th defendant in the suit). The first defendant is the son of the fourth defendant. During his life time, Mr.Muthusamy had sold 3 cents out of 14 ½ cents to a third party. In the year 2009, since Mrs.Thayammal (third defendant) and Mrs.Sakunthala (fourth defendant) were making arrangements to settle the remaining 11 ½ cents to the first defendant who is the grand son of Mrs.Thayammal and son of Mrs Sakunthala, the plaintiff and his brother Mr.Rajamani have entered into a partition deed in which, the property measuring 2167 ½ sq.ft forming part of the above 11 ½ cents was allotted to the plaintiff. Thus, according to the plaintiff, by virtue of the said partition, he has got absolute title over the 2167 ½ sq.ft and he has been in possession and enjoyment of the same. Since, the defendants 3 and 4 were attempted to disturb his possession, according to him, he had to file the present suit for declaration of title and for injunction to restrain the defendants 1,3 and 4 from alienating the suit property to any third party.

3.The first defendant contested the suit claiming that Mr.Lakshmana Asari was not the owner of 14 ½ cents in the suit Survey No.789/2 as it is claimed by the plaintiff. As a matter of fact, the land was all along in possession and enjoyment of Mr.Muthusamy and therefore, the patta was issued by the Government in the name of Mr.Muthusamy conferring title upon him thus, Mr.Muthusamy had absolute title for the entire 14 ½ cents. He has further contended that Mr.Muthusamy sold 3 cents to a thirty party and the remaining property was all along in the possession and enjoyment of Mr.Muthusamy and after his demise, his wife, the third defendant and his daughter the fourth defendant had executed a settlement deed in favour of the first defendant who is the grand son of the third defendant and the son of the fourth defendant and thus, according to the first defendant, he is the absolute owner of the property and he has been in possession and enjoyment of the same. It is also stated that the plaintiff and Mr.Rajamani had left the suit village 50 years before and hence, they were never in possession of the suit property.

<https://hcservices.ecourts.gov.in/hcservices/>

4.Based on the above pleadings, the trial Court framed appropriate issues. On the side of the plaintiff, three

witnesses were examined and four documents were exhibited. On the side of the defendants, two witnesses were examined and as many as 22 documents were exhibited. Having considered all the above, the trial Court dismissed the suit which was confirmed by the First Appellate Court. That is how the plaintiff is before this Court with this second appeal.

5. In this second appeal, the learned counsel for the appellant would submit that the Courts below were not appreciated both oral as well as documentary evidences in their proper and perspectives. The learned counsel would further point out that the suit property was all along in possession of Mr. Lakshmana Asari until his demise in the year 1940. At that time, Mr. Muthusamy is hardly 15 years old and therefore, he did not own the property at all and he continued to be in possession as the manager of the joint family property and therefore, patta was issued in his name. Since, patta was issued in the name of Mr. Muthusamy, he cannot claim any independent title over the suit property. The Courts below have considered these evidences properly. The learned counsel for the appellant would further submit that the Courts below have held that there is no proof that Mr. Lakshmana Asari was in possession and enjoyment of the entire extent of 14 ½ cents.

6. I have considered the above submissions.

7. At the outset, I should say that there is no substantial question of law at all involved so as to admit this second appeal. Even according to the case of the plaintiff, in my considered view, the plaintiff is bound to lose the case. According to the plaintiff, Mr. Lakshmana Asari was the owner of the entire extent of 14 ½ cents. Assuming that Mr. Lakshmana Asari was the owner of 14 ½ cents. He died intestate in the year 1940. After his demise, his three sons Mr. Muthusamy, Mr. Rajamani and Mr. Ramasamy had each 1/3rd undivided share in the suit property. It is not the case of the plaintiff that there was any partition between Mr. Muthusamy and Mr. Rajamani and the plaintiff. In the absence of any such partition between these three brothers, it is not understood as to how the plaintiff can have independent title for the suit property which is a portion of the above stated 14 ½ cents.

8. The learned counsel for the appellant would submit that there was partition entered into between the plaintiff and Mr. Rajamani and in which, a portion of the suit property was allotted to the plaintiff. Assuming that there was any such partition between the plaintiff and Mr. Rajamani, that will not bind either Mr. Muthusamy or the first defendant herein. At least, for this reason, the plaintiff should fail.

9. Further, the case of the plaintiff is that Mr. Lakshmana Asari had title for the property and in that event, the plaintiff can very well file a suit for partition. At any rate, the present suit for declaration of title as though the

plaintiff had got independent title for the suit property cannot be allowed to succeed and the same is liable to be dismissed. The Courts below have correctly appreciated the same and have dismissed the suit in which, I do not find any perversity. In view of all the above, I do not find any merit in the second appeal.

10.In the result, the second appeal fails and accordingly, the same is dismissed and the decree and judgment of the First Appellate Court is hereby confirmed. There shall be no order as to cost.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

jbm

To

1.The Subordinate Judge,
Gobichettipalayam.

2.The Principal District Munsif,
Gobichettipalayam.

+1cc to Mr.R.Vijayan, Advocate, S.R.No.69212

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VD(CO)
CA(11/02/2016)

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