

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 25.03.2015

CORAM:

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.169 of 2015

1. Pachiappan

2. Sankar

3. Ammasi

4. Nagaraj

5. Govindammal

6. Indira Gandhi .. Appellants/Appellants/Plaintiffs

-Vs-

1. Deivanai

2. Jayavel

3. Madhu ... Respondents/Respondents/Defendants

SECOND APPEAL filed under Section 100 of Code of Civil Procedure against the judgment and decree dated 04.04.2014 in A.S.No.2 of 2012 on the file of the Principal District Judge, Dharmapuri confirming the judgment and decree dated 12.12.2011 in O.S.No.24 of 2006 on the file of the Additional Subordinate Judge, Dharmapuri.

For Appellants : Mr.C.Munusamy

For Respondents : ...

J U D G M E N T

The plaintiffs in O.S.No.24 of 2006 on the file of the learned Additional Subordinate Judge, Dharmapuri are the appellants 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 in any manner interfering with their peaceful possession and enjoyment of the suit property and also to declare that the sale deed dated 29.08.2005 is null and void and not binding on the plaintiffs. The trial court, by decree and judgment dated 12.12.2011 dismissed the suit. As against the same, the plaintiffs filed an appeal before the learned Principal District

Judge, Dharmapuri. The said appeal was dismissed by the lower appellate court by decree and judgment dated 05.04.2014. As against the same, the appellants are before this Court with this Second Appeal.

2. This Second Appeal has come up before me today for admission. I have heard the learned Counsel for the appellants and I have also perused the records carefully.

3. The case of the plaintiff is as follows :

One Mr.Mondi @ Pache Gounder was the common ancestor of the first plaintiff and the defendants 2 and 3. Mr.Mondi @ Pache Gounder died many years before leaving behind his two sons by name Chinnapaiyan and Gowran as his legal heirs. Chinnapaiyan and Gowran constituted a joint family and they were enjoying the joint family properties. The 1st plaintiff is the son of the Chinnapiyan. Chinnapaiyan died, when the plaintiff was hardly 1½ years old. The 1st plaintiff's mother is one Chinnakannu and he has a sister also. The first plaintiff, his mother and his sister were enjoying the joint family properties along with Mr.Gowran. In the year 1977, there was an oral partition in which the suit property was allotted to the first plaintiff. Thus, from the date of partition, he has been in exclusive possession and enjoyment of the suit property. The defendants have got no right whatsoever and therefore, the suit is liable to be decreed.

4. The first defendant filed a written statement wherein he has stated that it is not true that Mr.Gowran and Mr.Chinnapaiyan continued to be the joint family members. As a matter of fact, according to the first defendant, 70 years before, there was oral partition between Mr.Gowran and Mr.Chinnapaiyan and as per the said oral partition, the respective sharers enjoying the property allotted in the said partition. Thus, after the above said partition, there was no joint family status between Chinnapaiyan and Gowran. It is not correct to state that in the year 1977, there was oral partition and until then, the joint family continued. So far as the suit property is concerned, it was purchased out of the earnings of Boothalan and Gowran on 07.09.1957. After the demise of Gowran, the defendants 2 and 3, who are his sons, had been enjoying the suit property. While so, the first defendant purchased the suit property from the 2nd and 3rd defendants on 29.08.05. Thus, he has been in possession and enjoyment of the suit property as an absolute owner. The 1st plaintiff has managed to obtain UDR patta in his name by suppressing the facts and now, he makes claim based on the same, it is contended.

5. Based on the above pleadings, the trial court framed appropriate issues. On the side of the plaintiff, 2 witnesses were examined and as many as 7 documents were exhibited. On the side of the defendants, 3 witnesses were examined and as many as 8 documents

were exhibited. Having considered all the above, the trial court dismissed the suit which was confirmed by the lower appellate court. That is how, the appellants are before this Court with this Second Appeal.

6. In this Second Appeal, it is contended by the learned Counsel for the appellants that the suit property though was purchased in the name of Gowran and Boothalan, the consideration was paid out of the joint family properties and therefore, this property should also be treated as a joint family property. It is further contended that in the oral partition which took place in the year 1977, the suit property was allotted to the first plaintiff. Thus, the first plaintiff is in possession and enjoyment of the same. The learned Counsel for the appellants would also submit that absolutely, there is no evidence that there was a partition between Chinnapaiyan and Gowran 70 years before. The learned Counsel for the appellants would further submit that the courts below have failed to consider the oral and documentary evidence in their proper perspective. Thus, according to the learned Counsel for the appellants, the appeal deserves to be allowed.

7. I have considered the above submissions.

8. At the outset, I find no substantial question of law involved in this Second Appeal warranting admission of the same. Admittedly, the issues raised by the learned Counsel for the appellants are all pure questions of facts which have been resolved by the courts below on appreciating the evidence. In the conclusion arrived at by the courts below, I do not find any infirmity warranting interference at the hands of this Court. First of all, there is no dispute that the suit property was purchased on 07.09.1957 jointly in the name of Boothalan and Gowran. In the year 1957, Chinnapaiyan was very much alive. But there is no reference about Chinnapaiyan, when it is alleged by the plaintiffs that the suit property was purchased on 7.9.1957 in the name of Boothalan and Gowran only out of the joint family nucleus. Therefore, the burden is heavily upon the 1st plaintiff to prove that there was a joint family nucleus. Secondly, he has to prove that there was income out of the same. Thirdly, he has to prove that the said income was surplus and fourthly, he has to prove that the said surplus income was sufficient to meet the sale consideration for the purchase of the property in the name of one of the members of the joint family.

9. In the instant case, both courts below have held that there is no evidence to show that the joint family continued in the year 1997. Absolutely, there is no evidence that there was any joint family nucleus. Absolutely, there is no evidence that there was any income for the so called joint family. Absolutely, there is no evidence that the said income is surplus. Thus, as has been rightly held by the courts below, there is no evidence at all to show that

the suit property was purchased in the name of Boothalan and Gowran in the year 1957 as a joint family property.

10. Next, it is contended that after the demise of Mr. Chinnapaiyan, the first plaintiff and Gowran continued to be the joint family members and the properties were in their possession. To prove that, there is absolutely no evidence available. It is the further case of the plaintiff that the oral partition was effected in the year 1977. But the courts below have held that absolutely, there is no evidence let in by the plaintiffs to prove the said oral partition. Had it been true that the suit property was enjoyed commonly as a joint family property in the year 1977 and that there was partition in the year 1977, the said oral partition should have been proved by letting sufficient and acceptable evidence. But, absolutely there is no evidence to that effect also.

11. Apart from that, Ex.A.4 is the sale deed executed by Gowran and Pachaiappan in favour of one Muniammal. Pachaiappan is the first plaintiff herein. In that deed, it is stated that the plaintiffs and Gowran had partitioned their properties even before the year 1976. This document is not under dispute. Going by this document, now it is not possible for the plaintiffs to say that there was partition only in the year 1977. Apart from that, absolutely there is no evidence to show that the suit property, which was purchased in the name of Gowran and Boothalan, was allotted to the share of the 1st plaintiff at any point of time. The plaintiffs have relied on Ex.A.1 dated 03.09.1985-patta issued in the name of Chinnapaiyan. The patta is not a monument of title. This is a well settled law. It is the case of the defendants that when the defendants 2 and 3 were not in the village, the first plaintiff has stealthily obtained the patta in his name by suppressing the facts. In my considered opinion, I need not go into the said question because there is no evidence to prove that the 1st plaintiff has got title for the suit property.

12. Regarding the possession also, there is no acceptable evidence available. At any rate, since the plaintiffs pray for a decree to declare their title, the burden is upon them to prove the same, in which they have miserably failed. As I have already stated, all these issues relate only to the facts and there is no question of law, much less a substantial question of law, involved warranting admission of the Second Appeal. Thus I do not find any merit in the Second Appeal.

13. In the result, the Second Appeal fails and the same is accordingly dismissed. No costs.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

1. The Additional Subordinate Judge, Dharmapuri
 2. The Principal District Judge, Dharmapuri.
- +1 cc to Mr.C.Munusamy, Advocate, SR.16587.

gj (co)
krd 29/5

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