

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 27.03.2015

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.183 of 2015

Sitha Naicker

... Appellant

Vs.

1.Vengat Rangamma
2.Jayamma
3.Thulasiamma

... Respondents

Prayer:- This second appeal has been filed under Section 100 C.P.C., against the judgement and decree of the learned Subordinate Judge, Sathyamangalam, dated 30.03.2013 in A.S.No.13 of 2012 confirming the judgement and decree of the learned District Munsif, Sathyamangalam dated 12.04.2011 in O.S.No.175 of 2007.

For Appellant : Mr.P.Valliappan

For Respondents : Ms.Zeenath Begam for
Mr.T.Murugamanickam

JUDGEMENT

The plaintiff in O.S.No.175 of 2007 on the file of the learned District Munsif, Sathyamangalam, Erode District, is the appellant herein. The respondents are the defendants in the suit. The said suit was filed for declaration that the settlement deed dated 11.09.2003 executed by the father of the plaintiff Mr.Belagiri Ranga Naicker @ Belagiri Naicker under document No.600/2003 on the file of the Sub Registrar Office, Sathyamangalam is null and void and also for permanent injunction to restrain the defendants from in any manner interfering with the peaceful possession and enjoyment of the suit property.

2.The trial Court dismissed the suit by decree and judgement dated 12.04.2011. As against the same, the appellant/plaintiff filed an appeal in A.S.No.13 of 2012 on the file of the learned Subordinate Judge, Sathyamangalam. By decree and judgement dated 30.03.2013, the First Appellate Court dismissed the appeal thereby confirming the decree and judgement of the trial Court. Challenging the same, the appellant/plaintiff is before this Court with this second appeal.

3.This second appeal has come up today for admission. I have heard the learned counsel for the appellant and I have also perused the records carefully.

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

The plaintiff is the brother of the defendants. The father of the plaintiff and the defendants was one Mr.Belagiri Ranga Naicker @ Belagiri Naicker. The father of Mr.Belagiri Ranga Naicker @ Belagiri Naicker was one Mr.Sitha Naicker. According to the petitioner, the suit property was owned by Mr.Sithaiah Naicker originally. After whose demise, according to the plaintiff, his father Mr.Belagiri Ranga Naicker @ Belagiri Naicker inherited the suit property. By birth, according to the plaintiff, he and Mr.Belagiri Ranga Naicker @ Belagiri Naicker constituted a hindu co-parcenery and thus, Mr.Belagiri Ranga Naicker @ Belagiri Naicker had no absolute title for the suit property. However, claiming himself to be the absolute owner of the suit property, Mr.Belagiri Ranga Naicker @ Belagiri Naicker had executed a registered settlement deed dated 11.09.2003 in favour of the defendants. According to the plaintiff, since, the suit property is an ancestral property, Mr.Belagiri Ranga Naicker @ Belagiri Naicker and since, Mr.Belagiri Ranga Naicker @ Belagiri Naicker had no absolute title over the suit property, settlement deed dated 11.09.2003 is void. Mr.Belagiri Ranga Naicker @ Belagiri Naicker died on 12.01.2006. It is further contended by the learned counsel that the suit property is all along in possession and enjoyment of the plaintiff.

5.The defendants took their stand that the suit property is not the ancestral property of Mr.Belagiri Ranga Naicker @ Belagiri Naicker. As a matter of fact, the suit property was assigned by the Government only to Mr.Belagiri Ranga Naicker @ Belagiri Naicker and thus, it was his self acquired property. Therefore, according to the defendants, Mr.Belagiri Ranga Naicker @ Belagiri Naicker had absolute right of transfer of title for the said property to anybody at his wish. Accordingly, it is alleged that Mr.Belagiri Ranga Naicker @ Belagiri Naicker executed the settlement deed 11.09.2003, which, according to the defendants is perfectly valid. It is further stated that by virtue of the settlement deed, the defendants have become the absolute owners of the suit property and they are in possession and enjoyment of the suit property.

6.Based on the above pleadings, the trial Court framed appropriate issues. On the side of the plaintiff, three witnesses including the plaintiff were examined and on the side of the defendants, two witnesses including the first defendant were examined. As many as three documents were exhibited on the side of the plaintiff and as many as four documents were exhibited on the side of the defendants. A letter dated 16.12.2010, written by the Tahsildar to the Government Pleader was marked as Ex.C.1 and a letter dated 20.12.2010 written by the Tahsildar, Sathyamangalam to the Government Pleader was marked as Ex.C.2.

7. Having considered the above materials, the trial Court dismissed the suit and the First Appellate Court has also confirmed the same. That is how the appellant/plaintiff is before this Court with this second appeal.

8. In this second appeal, it is contended that the Courts below were not right in holding that the suit property was the self acquired property of Mr. Belagiri Ranga Naicker @ Belagiri Naicker. According to the learned counsel for the appellant/plaintiff, though, it is true that the suit property was assigned to Mr. Belagiri Ranga Naicker @ Belagiri Naicker by the Government, it cannot be construed that, it is his self acquired property. Considering the longstanding possession of the property, the family of Mr. Belagiri Ranga Naicker @ Belagiri Naicker, the Government has issued the assignment order in the name of Mr. Belagiri Ranga Naicker @ Belagiri Naicker. Thus, according to the learned counsel for the appellant, though the assignment order was in the name of Mr. Belagiri Ranga Naicker @ Belagiri Naicker, it cannot be construed that it was his self acquired property and instead, it should be construed that it was issued in the name of Mr. Belagiri Ranga Naicker @ Belagiri Naicker on behalf of the entire family. Thus, according to the learned counsel for the appellant/plaintiff, the suit property is an ancestral property. But, the Courts below have held that it is the self acquired property of Mr. Belagiri Ranga Naicker @ Belagiri Naicker. The learned counsel would further submit that D.W.1 during cross examination has admitted that the plaintiff is in possession of the suit property. But, the Courts below have not considered the said issue in its proper perspective.

9. The learned counsel for the respondents would submit that two Courts below on appreciating facts have come to the conclusion that the suit property is the self acquired property of Mr. Belagiri Ranga Naicker @ Belagiri Naicker. The learned counsel would further submit that the plaintiff has not produced any document to show that the suit property was inherited by Mr. Belagiri Ranga Naicker @ Belagiri Naicker. The learned counsel would further submit that during cross examination, D.W.1 had not at all admitted that the plaintiff was in possession and enjoyment of the suit property instead, he has stated only that the plaintiff was in a different survey number of the property adjacent to the suit property, the learned counsel contended. Thus, according to the learned counsel, the Courts below were right in disputing the above fact that the suit property is the ancestral property of Mr. Belagiri Ranga Naicker @ Belagiri Naicker. Further, according to the learned counsel, there is no question of law involved at all in this second appeal.

10. I have considered the above submissions.

11. 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. All the issues raised by the appellant/plaintiff in this second appeal are only factual

disputes. The Courts below, on appreciating evidence, have come to the conclusion that the suit property was in the hands of Mr.Belagiri Ranga Naicker @ Belagiri Naicker as his self acquired property and not as ancestral property. This finding is only on facts and hence, there is no substantial question of law involved in this second appeal so as to admit the same.

12.As rightly pointed out by the Courts below, absolutely, there is no document to show that the suit property was owned by Mr.Sithiah Naicker the father of Mr.Belagiri Ranga Naicker @ Belagiri Naicker. As per Ex.A.2, it is crystal clear that the suit property was assigned by the Government under Ex.C.2 only to Mr.Belagiri Ranga Naicker @ Belagiri Naicker. It was not issued in the name of the family and therefore, the Courts below were right in dismissing the suit on the ground that the suit property is the self acquired property of Mr.Belagiri Ranga Naicker @ Belagiri Naicker. As rightly concluded by the Courts below, I find, absolutely, there is no material even to infer that the suit property was in the hands of Mr.Belagiri Ranga Naicker @ Belagiri Naicker as his ancestral property. Thus, in my view, the Courts below were right in holding that Mr.Belagiri Ranga Naicker @ Belagiri Naicker had absolute title which he conveyed title under the settlement deed dated 11.09.2003. Therefore, there is no reason to interfere with the well considered judgements of the Courts below. The Courts below were right in holding that the settlement deed dated 11.09.2003 is valid.

13.So far as the possession is concerned, the plaintiff has not filed any document to show that he is in possession and enjoyment of the suit property. The learned counsel relies only on the admission made during cross examination of D.W.1. But, a close reading of evidence of D.W.1 would go to show that D.W.1 has not admitted that the plaintiff is in possession and enjoyment of the suit property. What all he stated is that the plaintiff is in possession of a different survey number of the property. This cannot be misread so as to say that D.W.1 is admitted that the plaintiff is in possession and enjoyment of the suit property.

14.Above all, this is also a disputed question of fact which has been resolved by the Courts below. Thus, I do not find any substantial question of law warranting admission of this second appeal. The decree and judgement of the trial Court and concluded by the First Appellate Court cannot be stated to be perverse. In view of all the above, I do not find any merit in this second appeal. The second appeal has to necessarily fail.

15.In the result, the second appeal fails and accordingly, the same is dismissed. There shall be no order as to cost.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

jbm

To

1.The Subordinate Judge,
Sathyamangalam.

2.The District Munsif,
Sathyamangalam.

1 cc to M/s. P. Valliappan, Advocate, Sr. 17875

1 cc to M/s. T. Murugamanickam, Advocate, sr. 17460

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