



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 18.02.2015

CORAM:

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.45 of 2015 and
M.P.No.1 of 2015

R.Prakash

.. Appellant/Plaintiff

-Vs-

1.V.Chinnadurai
2.Kuppusamy

3.The Sub Registrar, Sub-Registrar Office
Joint II, having office at
Thiruppadiripuliyur,
Cuddalore - 607 002.

.. Respondents/Defendants

SECOND APPEAL filed under Section 100 of Code of Civil Procedure against the judgment and decree of the learned II Additional Subordinate Judge, Cuddalore dated 05.11.2013 and passed in A.S.No.78 of 2011 confirming the judgement and decree of the learned Principal District Munsif, Cuddalore dated 08.12.2010 and passed in O.S.No.51 of 2007.

For Appellant

: Mr.R.Gururaj

J U D G M E N T

The plaintiff in O.S.No.51 of 2007 on the file of the learned Principal District Munsif, Cuddalore is the appellant herein. The said suit was filed for declaration of title and for permanent injunction against the defendants 1 and 2 from in any manner interfering with his alleged peaceful possession and enjoyment of the suit property; for permanent injunction against the third defendant from registering any sale deed executed by the first defendant in respect of the suit properties and also for permanent injunction to restrain the second defendant from interfering with his peaceful possession and enjoyment of the fifth Item of the suit properties. The learned Principal District Munsif, by decree and judgement dated 08.12.2010 dismissed the suit. As against the same, the appellant filed an appeal in A.S.No.78 of 2011 on the file of the learned II Additional Subordinate Judge, Cuddalore. The said appeal was dismissed on 05.11.2013 thereby confirming the decree and judgement



of the trial Court. Challenging the same, the appellant is before this Court with this second appeal.

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

3.There are seven items of properties described in the suit schedule. According to the plaintiff, the suit properties and other properties were originally owned by one Mr.Veerapa Padayachi. Mr.Veerapa Padayachi had 5 cents of land in his name. Mr.Ramar, the father of the plaintiff is one of the sons of Mr.Veerapa Padayachi. The first defendant is another son of Mr.Veerapa Padayachi. Mr.Veerapa Padayachi died intestate. Thereafter, all his five sons divided the joint family properties by means of oral partition. In the said oral partition, the suit properties were allotted to the father of the plaintiff as his share. Since, the plaintiff's father was then unmarried, the suit properties were entrusted to first defendant for the purpose of management. The plaintiff's father got married in the year 1979 and it took two years for him to settle down in his life. Thereafter, in the year 1981, according to the plaintiff, his father and the first defendant divided their respective shares and the said division was evidenced by means of an un-registered partition deed dated 15.07.1981. The original document was deposited by the plaintiff's father with the Central Bank of India in connection with a loan. Therefore, the plaintiff was in possession only with a xerox copy of the said unregistered partition deed dated 15.07.1981. From the date of partition namely, 15.07.1981, according to the plaintiff, his father was in exclusive possession and enjoyment of the suit properties. After his demise, he has been in possession and enjoyment of the suit properties. During his life time, his father had also executed lease in respect of some of the properties in the name of third parties. Thus, according to the plaintiff, the first defendant has got no right whatsoever over the suit properties. Since, the first defendant was disputing the title of the plaintiff, the plaintiff was forced to file the present suit for the above reliefs.

4.In the written statement, the first defendant admitted the relationship between the parties. But, according to the him, an oral partition was taken place in the year 1969 itself. Even at that time, all the 5 sons of Mr.Veerapa Padayachi were adults. Some of the separate properties of the first defendant were also put into the joint family hotchpot and they were also divided by means of oral partition. In the said partition, the suit Item No.6 was allotted to the first defendant. In the year 1972, he mortgaged the said property with the Land Development Bank, Cuddalore. At that time, since, there was no documentary proof to prove the oral partition which took place in the year 1969 itself, the Bank Authorities wanted statements from



the joint family members admitting the execution of oral partition and no objection for grant of loan to the first defendant. In that, all the members of the family including the plaintiff's father gave statement admitting the oral partition which took place in the year 1969 itself. In that mortgage, the suit Item No.6 was also one of the items. It is the further contention that Item Nos.1 to 5 and 7 of the suit properties were all purchased by the first defendant out of his own funds that too after the above oral partition of the year 1969.

5. According to the first defendant, even after the said oral partition of the year 1969, there was no joint family status and therefore, the suit properties are not liable for partition. It was also contended that so far as the unregistered partition deed of the year 1969 is concerned, it is a fraudulent document secured by Mr. Ramar, the father of the plaintiff by undue influence and by coercion. Hence, according to the first defendant, the said document is not valid. Thus, according to the first defendant, he is the absolute owner of all the items of the suit properties and therefore, the plaintiff has got no title for the same at all.

6. Based on the above pleadings, the trial Court framed appropriate issues. On the side of the plaintiff, he was examined as P.W.1 and as many as 33 documents were exhibited. On the side of the defendants, the first defendant was examined as D.W.1 and as many as 21 documents were exhibited. Having considered the above, the trial Court dismissed the suit which was also confirmed by the First Appellate Court. That is how the appellant is before this Court with this second appeal.

7. From the records, it could be seen that the third defendant remained exparte all through. In this second appeal, it is contended that the Courts below were not right in dismissing the suit without considering Ex.A.1. According to the learned counsel, though Ex.A.1 is a xerox copy of the original unregistered partition deed, it is admissible in evidence as a secondary evidence, since, the primary evidence namely the original unregistered partition deed was with the Bank. The learned counsel would further submit that when there is no denial of Ex.A.1 in the written statement filed by the first defendant, the Courts below had no reason to discard Ex.A.1. The learned counsel would further submit that during the First Appeal, the appellant has filed additional documents namely, Adangal, Extracts for the Fasli for the years 1404 to 1414 and 1415, 1417 and 1418 and also kist receipts as well as the settlement deeds dated 14.08.2009 and 12.02.2009. The learned counsel would further submit that the First Appellate Court has not even considered these documents. The learned counsel would further submit that the Courts below were under the mistaken impression that patta under Ex.A.25 standing in the name of the plaintiff would not go to prove the title. The learned counsel would further submit that since, all these



properties are ancestral properties, the patta under Ex.A.25 should be treated as a valid document to prove the title though the same is not a monument of right.

8.The learned counsel for the appellant would further submit that there was an alternative prayer made in the plaint that the plaintiff had perfected his title by way of adverse possession. But, the Courts below have not considered the said issue in a proper perspective manner. Hence, according to the appellant/plaintiff the decree and judgement of the trial Court and the First Appellate Court deserves to be interfered with by this Court.

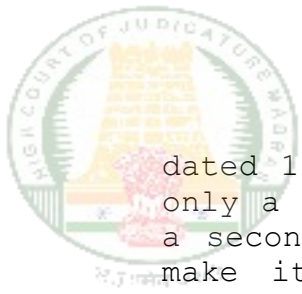
9.I have considered the above submissions.

10.At the outset, I should say that I find that there is no question of law much less a substantial question of law warranting admission of this second appeal. My reasons are as follows:-

(i)In the plaint, it is categorically stated that all the suit properties (7 Items) originally belonged to Mr.Veerapa Padayachi. It is also tacitly stated in paragraph No.1 of the plaint that in the oral partition which took place after the demise of Mr.Veerapa Padayachi all these properties were allotted to the father of the plaintiff. It is not the case of the plaintiff at all anywhere in the plaint that all the suit properties except Item No.6 were all purchased out of the joint family income. But, at the same time, such a plea is now taken during the course of argument. From the records, it is seen that except Item No.6 all the other items of the suit properties were all purchased after the year 1969. When there is no plea in the plaint that all the items of the suit properties except item No.6, were all purchased out of the joint family properties, in my considered opinion, no weightage could be given to Ex.A.1. Even assuming that the said document is admissible in evidence, this runs contrary to the case of the plaintiff.

(ii)According to the first defendant, Item No.6 alone was subject to partition in the year 1969. After that, the rest of the properties were all purchased out of his own funds. When there is no joint family status even according to the plaintiff, after oral partition which took place after the demise of Mr.Veerapa Padayachi, the purchases made by the first defendant cannot be treated as joint family properties at all as there was no joint family status after the said oral partition.

(iii)It is an admitted case of the plaintiff in the plaint that there was oral partition in the year 1969. I do not understand as to what was the need for executing a fresh partition deed between the father of the plaintiff and the first defendant after the demise of Mr.Veerapa Padayachi. The Courts below have held that Ex.A.1 dated



dated 15.07.1981 is not at all admissible in evidence because, it is only a xerox copy. Though, a xerox copy is admissible in evidence as a secondary evidence when the primary evidence is not available, to make it admissible, the requirement of Section 65 of the Indian Evidence Act ought to be satisfied. In this case, the plaintiff has failed to do so. Therefore, in my considered opinion, the Courts below were right in rejecting Ex.A.1.

(iv) Apart from that, Ex.A.1 is stated to be a partition deed. In the written statement, it is stated that in the year 1981, the plaintiff's father and first defendant divided their properties and the division is evidenced by means of unregistered partition deed dated 15.07.1981. Obviously, the said partition deed is Ex.A.1, when the plaintiff himself states that it is an unregistered document, the said document is not admissible in evidence for want of registration and for want of stamp duty because, it is by this deed, the partition is stated to have been effected. On this score also, the Courts below were right in rejecting the plea of the plaintiff.

(v) But, the contention of the learned counsel for the appellant is that the said document (Ex.A.1) should have been used at least for collateral purpose. But, it is obvious that under Ex.A.1, the plaintiff claims title. Thus, he attempts to establish title only under Ex.A.1. Thus, in my considered opinion, Ex.A.1 is not sought to be used for any collateral purpose but, it is sought to be used only for main purpose to establish title. Therefore, the Courts below were right in rejecting Ex.A.1. If Ex.A.1 goes, absolutely, there is not material available on record to hold that the plaintiff has got title over the suit properties.

(vi) The next submission of the learned counsel for the appellant is that Ex.A.25 is the patta issued in the name of the father of the plaintiff and one Mr. Chinnadurai. Similarly, the adangal extract has been produced as additional evidence before the First Appellate Court. All these documents would go to show that the plaintiff's father has got title. In this regard, I have to state that patta cannot be treated as monument of title. It can be used only as a supporting document to prove title. In this case, all the properties except Item No.6, stand in the name of the first defendant. Thus, when the sale deeds are in the name of the first defendant, when there is no document transferring title from the first defendant to the plaintiff, the present attempt of the plaintiff to use Ex.A.25 to establish his title, is only to treat the same as monument of title. In view of all the above, the Courts below were right in rejecting the said contention.



(vii) The learned counsel for the appellant would further submit that the alternative plea made by the plaintiff that the plaintiff has perfected his title by adverse possession has got no basis. The Courts below have held that there is no evidence that the plaintiff is in possession of the property. If only, there is a finding that the plaintiff is in possession of the property, then comes the further question comes as to whether the said possession is adverse to the interest of the owner. These questions do not arise in this case because, the plaintiff has not proved his possession at all. Thus, the plaintiff has failed to prove the alternative plea also. Thus, in my considered opinion, the Courts below were right in declining to declare that the plaintiff has got title over the suit property.

(viii) As I have already narrated, the entire argument of the learned counsel for the appellant centres around the factual aspects of the matter. He is not in a position to raise any question of law much less a substantial question of law warranting admission of this second appeal. Thus, I find that there is no merit in the second appeal.

11. In the result the second appeal fails and accordingly, the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

jbm
To

1. The II Additional Subordinate Judge,
Cuddalore.

2. The Principal District Munsif,
Cuddalore.

1 cc to Mr. R. Gunraj, Advocate, SR.No.8880/15

S.A.No.45 of 2015

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