



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.04.2015

CORAM:

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THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR

S.A.(MD).No.228 of 2014 and M.P.(MD).No.1 of 2014

Sathayee(died)

1.Dharmalingam

2.Annapooranam

3.Meenal

.. Appellants/Appellants/LRs of Sole Defendant/
Defendants 2-4(Proposed)

Vs.

Thiruvayee

.. Respondent/Respondent/Plaintiff

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree dated 19.03.2010 passed in A.S.No.142 of 2007 by the Sub-Court, Sivagangai as confirmed by the judgment and decree dated 09.10.2006 passed in O.S.No.92 of 2005 by the District Munsif Court, Sivagangai.

For Appellants:: Mr.G.Prabhu Rajadurai

For Respondent:: Mr.S.Srinivasa Raghavan

J U D G M E N T

Before admission, this second appeal had been referred for Mediation. On receipt of a failure report, the matter has been listed under the caption "Adjourned Admission".

2.Heard the arguments advanced by Mr.G.Prabhu Rajadurai, on behalf of the appellants and also Mr.S.Srinivasa Raghavan, on behalf of the respondent, who had taken notice in the SR stage itself.

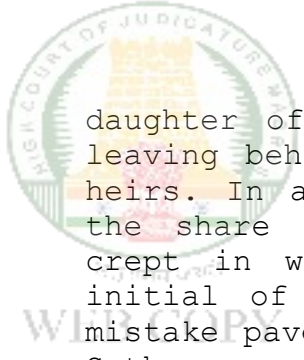
3.The defendants in the original suit, who suffered a decree as prayed for by the plaintiff, which was confirmed by the lower Appellate Court, are before this Court with this second appeal preferred under Section 100 of the Code of Civil Procedure.

4.The suit was filed by the respondent Thiruvayee against the deceased first appellant Sathayee for a declaration that the suit property absolutely belonged to her and for a permanent injunction restraining the deceased first appellant/sole defendant from interfering with her peaceful possession and enjoyment of the same. On the death of Sathayee, her legal heirs viz., Dharmalingam, Annapoornam and Meenal, had been arrayed as appellants 2 to 4 herein.

5.The claim was made on the basis of the following contentions:

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

The suit property originally belonged to one A.Meenakshi, the mother of the respondent herein. The respondent herein is the only



daughter of the said Meenakshi and she had two sons. A Meenakshi died leaving behind her the respondent and two of her brothers as her legal heirs. In a family partition, the suit property came to be allotted to the share of the respondent herein/Plaintiff. However, a mistake had crept in when updated re-survey was conducted by wrongly noting the initial of the above said Meenakshi as 'U' instead of 'A'. The said mistake paved the way for the mutation of revenue record in the name of Sathayee, wife of Poovalingam. Based on the said mistaken entry in the UDR Survey, the deceased first appellant/sole defendant Sathayee attempted to disturb the possession and enjoyment of the respondent/plaintiff in respect of the suit property, thereby forcing her to file a suit for declaration and injunction.

6.The suit was resisted by the deceased first appellant/sole defendant contending that Arasappa Konar conveyed the property to his second wife Meenakshi; that the said transfer was questioned by Poovalinga Konar, son of Arasappa Konar born through his first wife; that however based on the transfer made by Arasappa Konar in favour of Meenakshi, patta was transferred in the name of Meenakshi; that at the instance of Poovallinga Konar a panchayat was held in which it was decided that Meenakshi, who was without any issue, should be allowed to enjoy the property till her life time and thus, she was enjoying the suit property; that during the final days of Meenakshi, there was nobody except the deceased first appellant/sole defendant to look after her and reciprocating the service rendered by her, the above said Meenakshi orally gifted the suit property to the deceased first appellant/sole defendant and therefore, the deceased first appellant/sole defendant became entitled to the suit property.

7.The trial Court as well as the lower Appellate Court, on the facts of the case and the evidence adduced on both sides, came to the conclusion that the derivation of the title from Meenakshi claimed by Sathayee, the deceased first appellant/sole defendant was not proved. Accordingly, they rendered a concurrent finding that the respondent herein/plaintiff, being the daughter of Meenakshi and having pleaded and produced evidence to the effect that in a partition between herself and her brothers, the suit property came to be allotted to her and that it was she who was in possession and enjoyment of the same all along. Accordingly, the relief sought for by the respondent herein/plaintiff was sustained and a decree as prayed for was granted by the trial Court dated 09.10.2006 in O.S.No.92 of 2005 and the same was confirmed by the Appellate Court viz., Sub-Court, Sivagangai by decree dated 19.03.2010 in A.S.No.142 of 2007. As against the confirming decree of the above said Appellate Court, the present Second Appeal has been preferred.

8.A parties filing a second appeal shall preciously formulate the substantial questions of law involved in the second appeal and incorporate the same in the grounds of second appeal with a distinct heading (Section 100 of C.P.C).

9.In the case on hand, three questions have been formulated by the appellants and shown as the substantial questions of law involved in the second appeal. They are:-



1. Whether the Courts below are correct in law in declaring the plaintiff as the owner of the suit property based on the entries in the revenue record?

2. Whether the Courts below are correct in law in declaring the plaintiff as the owner of the suit property without impleading the brother and sister of the plaintiff as parties, particularly when the suit property alleged stood in the name of their mother?

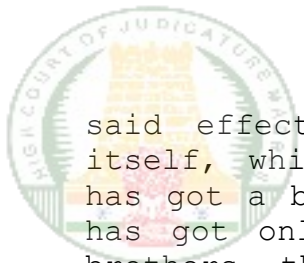
3. Whether the Courts below are correct in law in relying on the revenue entry in the name of the mother of the plaintiff, in the absence of any plea as to how the plaintiff's mother acquired the said property?

The scope of the above said questions in the light of the pleadings of the parties and the judgments rendered by the Courts below are considered by this Court. Upon such consideration, this Court fails to find any reason to accept any one of the said questions to be a substantial question of law that arises in the second appeal.

10. The first question has been formulated in a casual manner, only for the purpose of incorporating the question in the grounds of second appeal. No doubt, the respondent herein/plaintiff has not produced any other document by which her mother acquired the property, excepting the revenue records showing that patta had been issued in her name and kist has been paid in her name. In the absence of any other record produced by the opposite party to show that they have got a better title, there is nothing wrong in relying on the revenue records and the kist receipts to hold that the claim of the respondent herein/plaintiff stands establish as the issues in civil cases are decided not on the principle of proof beyond reasonable doubt, but on preponderance of probabilities.

11. Moreover, the failure to produce any title deeds, other than the revenue record, seems insignificant in this case, in the light of the fact that the title of the mother of the plaintiff has been admitted by the deceased first appellant/sole defendant, insofar as she claimed that she got the property by way of oral gift from Meenakshi, the mother of the respondent herein/plaintiff. When such unequivocal admission has been made by the deceased first appellant/sole defendant, the declaration of the title of the respondent/plaintiff based on such admission, cannot be found fault with. The admission is fortified by a contention made by the sole defendant that in any event, she had perfected title by adverse possession. The Courts below have, on proper appreciation and re-appreciation of evidence, rendered a concurrent finding that the plea of adverse possession parallel to the plea of derivative title could not be sustained and on facts also, the plea of adverse possession has not been substantiated.

12. The second question projected as a substantial question of law is one made without there being any pleading. The appellants want to contend that the non-impleadment of the alleged brother and sister of the plaintiff has made the suit bad for non-joinder of necessary parties. of necessary parties should have been specifically pleaded and there is not even a semblance of pleading found in the written statement of the deceased first appellant/defendant to the above



said effect. Further, there is an apparent mistake in the question itself, which proceeds on the assumption that the respondent/plaintiff has got a brother and a sister, whereas as per the plaint pleadings she has got only two brothers and in a partition between herself and the brothers, the suit property was allotted to her. When such is the clear plea, in the absence of any controversy with her brothers, it is unnecessary that the brothers of the plaintiff should be made a party to a suit in which, the plaintiff claims the relief against a third party viz., the deceased first appellant/defendant.

13.The said question also has been framed in total ignorance of the defence plea. There is a specific plea made in the written statement to the effect that the mother of the plaintiff viz., Meenakshi did not have any issue to support her and hence she had to depend on the deceased first appellant/sole defendant in her last days. In Paragraph No.4 of the written statement, a specific plea of absence of issue has been made. This Court deems it appropriate to reproduce the same in the vernacular: "kPdhl;rpf;F thhpR vJt[kpy;yhjhy;". In view of the same also, the second question cannot be recognized as a substantial question of law that arises in the second appeal.

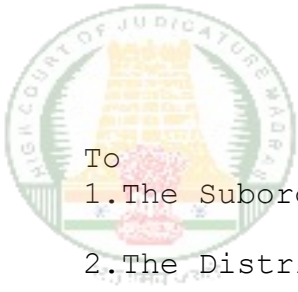
14.The third question is nothing but, a different version of the first question. What the appellants want to contend is that the respondent/plaintiff, who approached the trial Court and filed a suit for declaration, ought to have pleaded how and from whom her mother got the property, apart from the revenue entries. At the risk of repetition, this Court points out that when the title of the mother of the respondent/plaintiff has been admitted by the sole defendant(deceased first appellant), it is immaterial whether the plaintiff has or has not chosen to narrate how her mother got the property. The plea of adverse possession will also amount to an admission of the title not only the mother of the respondent/ plaintiff but also of the plaintiff.

15.All the discussions made above will make it clear that none of the questions projected by the appellants can be accepted to be a substantial question of law that arises in the second appeal. Apart from those questions, no other question has been projected, even during the arguments on behalf of the appellants, as a substantial question of law involved in the second appeal. This Court also after perusing the pleadings of the parties and the judgments of the Courts below, is of the view that no substantial question of law arises for decision in the second appeal. Both the Courts below, on proper appreciation of evidence and on proper application of principles of law, rendered a concurrent finding in favour of the respondent/plaintiff and this Court finds no reason to interfere with the same in exercise of its power under Section 100 of C.P.C.

16.In the result, the second appeal fails and the same is dismissed. However, there shall be no order as to cost. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CO)

/True copy/



To

1.The Subordinate Judge, Sivagangai.

2.The District Munsif, Sivagangai.

+1cc to MR.G.PRABHU RAJADURAI, ADVOCATE IN SR : 17492

+1cc to MR.S.SRINIVASA RAGHAVAN, ADVOCATE IN SR : 17329

Ns

SR/AMF : 19.05.2015 : 5p/5c

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