

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.09.2016

CORAM

THE HON'BLE MR. JUSTICE K. RAVICHANDRABAABU

SECOND APPEAL No.1533 of 2010

and

M.P.No.1 of 2010

S.Kuppa Bai

.. Appellant

Vs

1.Smt.Saraswathy
2.Adikesava Naidu
3.Tharabai
4.Gopala Krishnan
5.Balaji
6.Malarkodi
7.D.Srinivasan

.. Respondents

Appeal filed under Section 100 of the Code of Civil Procedure, 1908 against the Judgment and Decree dated 30.4.2010 made in A.S.No.48 of 2008 by the Additional Subordinate Judge, Chengalpattu, confirming the Judgment and Decree dated 17.9.2007 in O.S.No.291 of 1999 passed by the District Munsif, Chengalpattu.

For appellant : Mr.R.Thiagarajan

For respondents: Mr.S.Parthasarathy,
Senior Counsel
for M/s.A.Muthuraman

JUDGMENT

The appellant is the plaintiff in a suit for declaration of her right and title to the suit property and for delivery of possession of the same.

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

The suit property was jointly purchased by the plaintiff's father, Kuppaswamy Naidu and his elder brother Ramaswamy Naidu under two registered Sale Deeds dated 4.11.1930 and 14.9.1935. She is the only legal heir of her parents. Her paternal uncle, viz., P.Ramaswamy Naidu died in the year 1979 and his wife, Pankajammal died in the year 1984 leaving no

issues for them to inherit the property left by the said Ramaswamy Naidu. The plaintiff, apart from having right over the half share of the suit property as the legal heir of Kuppuswamy Naidu, is also entitled for the remaining half share, as the reversioner of the said Ramaswamy Naidu and Pankajammal. Her maternal uncle, viz., the first defendant managed the suit properties, as the plaintiff and her family members were residing elsewhere. When she wanted to raise a loan in the year 1999 and approached the Village Administrative Officer for grant of Patta, she came to know about a Settlement Deed dated 16.3.1985 executed by the first defendant in favour of the second defendant. The defendants are not having any right or title over any suit property.

3. During the pendency of the suit, the first defendant died and the second defendant being the wife of the first defendant contested the suit by filing a written statement. It is her contention that Ramaswamy Naidu, viz., paternal uncle of the plaintiff, orally gifted the said property to her husband, viz., the first defendant about 65 years back and from that time onwards, the first defendant was in possession and enjoyment of the suit property till he executed a registered Settlement Deed dated 16.8.1995 in favour of the second defendant. She further contended that the second defendant is in possession and enjoyment of the suit property in pursuance of such settlement also by prescribing title through adverse possession, since the plaintiff having known about the Settlement Deed executed by the first defendant in favour of the second defendant as early as in the year 1985, has not chosen to challenge the same and dispute the possession of the second defendant at any point of time.

4. Before the Trial Court, the plaintiff examined herself as PW.1 and other independent witnesses as PW.2 and PW.3 and marked Exs.A.1 to A.26 in support of her case. The defendants marked Exs.B.1 to B.31 in support of their case and also examined two independent witnesses as DW.1 and DW.2. The Trial Court, after considering the rival pleadings of the parties and the evidence let in by them, came to the conclusion that the plaintiff being the legal heir of Kuppuswamy Naidu is entitled to half share in the suit property. However, insofar as the remaining half share claimed by the plaintiff as the reversioner of the said Ramaswamy Naidu and Pankajammal is concerned, the Trial Court rejected the said claim mainly by holding that the defendants have perfected title through adverse possession.

5. Challenging the Judgment and Decree of the Trial Court, the plaintiff filed an appeal before the First Appellate Court, while the defendants filed Cross-Appeal in respect of half share granted in favour of the plaintiff. The Appellate

Court by its Judgment and Decree confirmed the finding of the Trial Court, thereby, dismissing the Appeal as well as the Cross-Appeal.

6. Challenging the concurrent findings rendered by both the Courts below, insofar as the rejection of the plaintiff's claim in respect of remaining half share as the reversioner, the present Second Appeal is filed by the plaintiff. However, the defendants have not chosen to file any Cross-Appeal before this Court challenging the concurrent findings rendered by both the Courts below granting half share to the plaintiff in her capacity as the legal heir of her father Kuppuswamy Naidu.

7. This Court, while admitting the Second Appeal, raised the following substantial questions of law:-

(i) When the appellant Mrs.S.Kuppa Bai is, admittedly, the daughter of Kuppuswamy Naidu, and that Ramaswamy Naidu is his brother, whether the Courts below are right in ignoring the rights of devolution of the property on the appellant under Section 8 (3) and 15(b) of the Hindu Succession Act?

(ii) Whether the Courts below are right in ignoring the rights of the appellant and directing her to file a separate suit in respect of her undivided half share and seek for possession, contrary to the principles of sections 8(3) and 15(b) of the Hindu Succession Act?

(iii) Whether a person who has pleaded oral gift is entitled to plead adverse possession as against the true owner when the statements are mutually contradictory and destructive in nature?

8. When the matter was taken up for final disposal today, the learned counsel for the appellant apart from making his submissions on the questions of law already framed, has also raised another substantial question of law as follows:-

"Whether the Judgment and Decree of the Appellate Court is in accordance with the procedure contemplated under the provisions of Code of Civil Procedure, as the Appellate Court failed to advert to various issues framed by the Trial Court and answer the same by appreciation of the facts and

circumstances as well as evidence let in by the parties?"

Therefore, he submitted that the Judgment of the Appellate Court cannot be sustained as the same is bereft of material discussions and findings on the facts and circumstances.

9. Mr.S.Parthasarathy, learned Senior Counsel, appearing for the contesting respondents, submitted that the Appellate Court has only confirmed the findings of the Trial Court and therefore, there is no need for a detailed discussion of facts and circumstances. Even though he submitted so, in all fairness, the learned Senior Counsel admitted that the Appellate Court should have ventured to discuss the facts and evidence and given findings, as it is a fact finding, Court as well.

10. Heard both sides.

11. It is not in dispute that the Appellate Court has confirmed the findings of the Trial Court without proper discussion of facts and circumstances and appreciation of evidence. Therefore, this Court, at this stage, is not inclined to go into the merits of the matter and give a finding as to whether the concurrent finding by the Courts below rendered against the appellant, is correct or not. Needless to say that the Appellate Court being the final fact finding Court, is bound to go into the rival contention of the parties and frame the points for determination and decide the same by thorough discussion of facts and circumstances as well as evidence let in by the parties. In this case, it has not been done so.

12. True, the Appellate Court has only confirmed the findings of the Trial Court. But, at the same time, for making such confirmation, the Appellate Court has to give its own independent reasoning as to how it is justified in confirming the findings of the Trial Court. Application of mind must be apparently available and evident on the very reading of the judgment. Perusal of the judgment passed by the Appellate Court would show that no such discussion has taken place. On the other hand, it is seen that the Appellate Court has passed a very cryptic Judgment, which in my view cannot be sustained. Hence, without expressing any view on the merits of the matter, this Court is of the view that the matter has to be remitted back to the Appellate Court for fresh consideration.

13. Accordingly, the Appeal is allowed only on the ground that the Judgment passed by the Appellate Court is not in consonance with the procedure contemplated under the Code of Civil Procedure. Consequently, the Judgment and Decree passed by the Appellate Court is set aside.

14. The matter is remitted back to the Appellate Court for fresh consideration of the facts and circumstances of the case and pass judgment on merits and in accordance with law. Both the parties are at liberty to make their submissions before the Appellate Court. Upon hearing both the parties, the Appellate Court shall decide the Appeal within a period of 60 days from the date of receipt of a copy of this Judgment. No order as to costs. Connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

asvm

Copy to:

- 1.The Additional Subordinate Judge,
Chengalpattu.
2. The District Munsif, Chengalpattu.

+2ccs to Mr.R. Thiagarajan, Advocate, S.R.No.53671
+1cc to Mr.A. Muthuraman, Advocate, S.R.No.53720

KS(CO)
EU(26/10/2016)

S.A.No.1533 of 2010
and
M.P.No.1 of 2010

सत्यमेव जयते

WEB COPY