

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.10.2016

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Second Appeal No.363 of 2015

and

MP.No.1 of 2015

Natarajan ... Appellant/Plaintiff

-vs-

1. Pannerselvam

2. Ramani

3. Ramya (Minor)

rep by mother and natural guardian Ramani

4. Annadhanam

5. Jansi Rani

6. Prabhu

7. Venus

8. Sharmila

9. Balamurugan

... Respondents/Defendants

Second Appeal filed under Section 100 of C.P.C. against the Decree and Judgment passed dated 30.10.2013 passed by the Hon'ble Additional Sub-Judge, Vridhachalam in A.S.No.12/2012 confirming the Judgment and Decree passed by the Hon'ble II Additional District Munsif, Vridhachalam in O.S.No.495 of 2000 dated 28.09.2011.

For Appellant : Mr.M.Muthappan

For Respondents : Mrs.R.Meenal

J U D G M E N T

The appellant is the plaintiff. He filed the suit for declaration to declare the suit schedule properties belonged to the plaintiff absolutely and consequently to prevent the defendants from interfering with his possession and enjoyment of the same. Alternatively, the plaintiff also pleaded for recovery of possession in case, if it is found that the plaintiff is not in possession of the suit properties.

2. The suit properties consist of two schedules namely A and B schedules. A-schedule contains two items of properties, while B-schedule contains four items of properties.

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

The suit properties were originally owned by his grandfather namely Chellan, who got four sons, out of whom, one son, by name Manickam, is the father of the plaintiff. The mother of the plaintiff is the 2nd wife of said Manickam. The defendants are grandsons of Manickam, born to one Thangavelu through his 1st wife. There was an oral partition between the sons of Chellan, under which, the present suit properties were allotted to the share of Manickam. Thereafter another oral partition took place between the legal heirs of Manickam, whereby the present suit properties were allotted to the share of the plaintiff. On the other hand, the defendants disputed the oral partition alleged to have been taken place between the legal heirs of Manickam and thus contended that the plaintiff cannot have the relief of declaration in respect of the suit properties.

4. The trial Court decreed the suit in part by granting the decree in favour of the plaintiff in respect of A-schedule and 3rd item of B-schedule property. Insofar as item Nos.1 & 2 of B-schedule properties are concerned, the trial Court dismissed the suit by holding that they are the ancestral properties belonging to both the plaintiff and the defendants and therefore, the plaintiff cannot have any exclusive right or title over the same. In respect of item No. 4 of B-Schedule, the trial Court found the same as government promboke land over which the plaintiff cannot claim title.

5. The defendants do not challenge the judgment and decree of the trial Court and thus, the decree granted by the trial Court in favour of the plaintiff in respect of the above said items, namely A-schedule and 3rd item of B-schedule has become final. The plaintiff, however, filed the First Appeal before the Lower Appellate Court, aggrieved against the rejection of his claim over item Nos.1, 2 & 4 of B-schedule properties. The Appellate Court concurred with the findings of the trial Court and dismissed the appeal. Thus, the present Second Appeal is filed by the plaintiff.

6. This Court, while admitting the Second Appeal, has framed the following substantial questions of law:

"a. Whether the Courts below are correct in dismissing the suit based on the mutation of revenue records without properly considering the documents marked as Exhibits A-28 to A-30?

b. Whether the Trial Court is justified in dismissing the suit in respect of item 1 and 2 of

B-schedule properties having arrived at a conclusion that an oral partition had took place and the same are joint family properties?

c. Whether the Courts below are correct in dismissing the suit in respect of Item No.4 of B-Schedule property (Grama Natham) ignoring the exclusive possession and enjoyment of the said property by the plaintiff?

7. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents and perused the materials placed before this Court.

8. It is not in dispute that the parties are agitating only in respect of item Nos.1, 2 & 4 of B-schedule properties and that there is no quarrel about the decree granted by the Courts below in respect of other items. In other words, the respondents herein are not disputing the right or title of the plaintiff over the other items of suit schedule properties except item Nos 1, 2 & 4 of B-schedule properties.

9. On perusal of the entire facts and circumstances of the case, it is seen that the item No.4 of B-schedule property is promboke land and therefore, neither of the parties can claim right or title over the said property in any manner. Therefore, the plaintiff cannot seek any relief in respect of item No.4 of B-schedule property. Insofar as item Nos. 1 and 2 of B-schedule property are concerned, the categorical findings of the Courts below is that those properties are ancestral properties belonging to the plaintiff and the defendants. No doubt, the defendants have marked certain revenue documents namely patta etc., to prove the possession over the said properties. However, when the trial Court found that those item Nos. 1 and 2 of B-schedule properties are ancestral properties belonging to the plaintiff and the defendants, the said finding was not challenged by the defendants either by filing cross appeal or regular appeal before the First Appellate Court.

10. The plaintiff though claimed exclusive right over the properties under dispute viz., item Nos. 1 and 2 of B-schedule properties, he has not succeeded in his attempt by proving the alleged oral partition said to have taken place between the legal heirs of the said Manickam. In the absence of such partition, it goes without saying that the plaintiff cannot seek any exclusive right over those items and the Courts below have rightly rejected the claim of the plaintiff.

11. Accordingly, I find that the concurrent findings rendered by both the Courts below do not require any interference. Accordingly, the questions of law raised in this appeal are answered in the above terms and consequently the

Second Appeal is dismissed. It is made clear that the dismissal of the Second Appeal will not be a bar for the plaintiff to seek any other relief, if the plaintiff is entitled to the same in respect of item Nos.1 and 2 of B-schedule properties, in the manner known to law. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

mk
To

1. The Additional Sub-Judge, Vridhachalam
2. The Additional District Munsif No.II, Vridhachalam

+1 cc to M/s.M.Muthappan Advocate sr 58856
+1 cc to M/s.R.Meenal Advocate sr 58850

Second Appeal No.363 of 2015

rp(co)
aa21/11/2016



WEB COPY