

IN THE HIGH COURT OF JUDICATURE AT MADRAS**RESERVED ON : 21.10.2016****PRONOUNCED ON : 04.11.2016****CORAM****THE HONOURABLE MR. JUSTICE T.RAVINDRAN****S. A.No. 100 of 2011****and****M.P.Nos.1 & 2 of 2011**

Jeyalakshmi

...

Appellant

Vs.

Selvaraj

...

Respondent

Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 15.12.2009 passed in A.S.No.95 of 2007 by the learned II Additional Subordinate Judge, Villupuram, reversing the judgment and decree dated 21.12.2005 passed in O.S.No.35 of 2005 by the Learned I Additional District Munsif, Tirukoilur decreeing the above suit.

For Appellant : Mr.K.Shakespeare

For Respondent : Mr.S.Gunaseelan

JUDGMENT

The plaintiff has impugned the judgement and decree dated 15.12.2009 passed in A.S.No.95 of 2007 on the file of the Second Additional Subordinate Court, Villupuram, reversing the judgement and decree dated 21.12.2005 passed in O.S.No.35 of 2005 on the file of the First Additional District Munsif Court, Thirukovilur.

2. The suit has been laid for Declaration, Recovery of Possession and Mandatory Injunction.

3. The averments in the plaint in brief are narrated as follows;

The suit property originally belonged to one Munian as his separate property and he died intestate leaving his three sons Annamalai, Kattaiyan and Chinnathambi. Chinnathambi and Kattaiyan died without any legal issues and the suit property was enjoyed by Annamalai. The said Annamalai died intestate in the year 1990 leaving behind his only son Narayanasamy as his legal heir. Narayanasamy is the husband of the plaintiff and he enjoyed the suit property. Narayanasamy executed a settlement deed in favour of the plaintiff on 21.11.1995 and from that date, the plaintiff is enjoying the suit property. While so, at the request of the defendant, the plaintiff and her husband executed a Bogyam deed in his favour in respect of the suit property on 24.11.1995, so that, he could put up a shop for a consideration of a sum of Rs.2,000/- and on that basis, the defendant put up a tiled construction in the suit property and running a shop. After the completion of the period of 5 years, the Bogyam was again extended for another three years in November, 2000 and after the expiry of the above said three years period, the plaintiff had asked the defendant to vacate the premises and as the defendant delayed, legal notice was issued, to which, the defendant sent a reply containing false

allegations. It is further stated that Munian had sold the adjacent property to Veerammal on 22.12.1945 and in that sale deed, the suit property has been described as one of the boundaries belonging to Munian. As the defendant is liable to hand over the possession to the plaintiff and he denied the title of the plaintiff over the suit property, the suit has been laid.

4. The averments contained in the written statement are as follows:

The suit is not maintainable either in law or on fact. The suit property did not belong to Munian and not enjoyed by Munian or his legal heirs as alleged by the plaintiff. The plaintiff's husband did not enjoy the suit property and not executed the settlement deed in respect of the suit property in favour of the plaintiff. It is a void document. There was no bogyam transaction between the plaintiff's husband and plaintiff on the one hand and the defendant on the other hand in respect of the suit property as alleged in the plaint. The suit property is the ancestral property of the defendant and he had put up a tiled house in the year 1994 and is running a shop therein. The plaintiff has no right over the suit property. The defendant, by his long enjoyment, has also prescribed his title to the suit property by adverse possession and hence, the suit is liable to be dismissed.

5. The plaintiff, in support of his case, examined Pws1 to 7 and marked Exs.A1 to 5. The defendant to sustain his case has examined DWs1 to 4 and marked Exs.B1 to 4. Exs.X1 to 3 were also marked.

6. On a consideration of the oral and documentary evidence adduced by the respective parties, the trial Court was pleased to decree the suit as prayed for.

7. Challenging the judgment and decree of the trial Court, the defendant preferred the first appeal and the first appellate Court, on reappraisal of the case of the parties, allowed the appeal and set aside the judgement and decree of the trial Court and consequently, dismissed the suit filed by the plaintiff. Aggrieved over the same, the present second appeal has been preferred by the plaintiff.

8. According to the case of the plaintiff, the suit property originally belonged to one Munian as his separate property. As rightly found by the lower appellate Court, it is not the case of the plaintiff that the suit property ancestrally belonged to Munian. It is the case of the plaintiff that Munian is the grandfather of the plaintiff's husband Narayanasamy. It is the further case of the plaintiff that Munian had three sons and out of them, two sons had died issueless and the remaining son Annamalai alone had enjoyed the suit property, after

Munian and after the demise of Annamalai, his only son Narayanasamy, the plaintiff's husband enjoyed the suit property and thereafter, out of love and affection, Narayanasamy had executed the settlement deed in favour of the plaintiff in respect of the suit property on 21.11.1995 and the same has been marked as Ex.A1. Therefore, the plaintiff claims title to the suit property on the basis of Ex.A1. The above case of the plaintiff for deriving title to the suit property is seriously impugned by the defendant. According to the defendant, neither Munian nor his legal heirs, including his son Annamalai and grandson Narayanasamy, the plaintiff's husband has any title, right or interest over the suit property. Such being the defence put forth by the defendant, as rightly found by the first appellate Court, the onus is completely on the shoulder of the plaintiff to establish that as alleged by her in the plaint, Munian had title to the suit property and thereafter, his legal heirs had derived title and later, the plaintiff's husband got title to the suit property from his father Annamalai and Narayanasamy had thereafter, settled the property in favour of the plaintiff. However, with reference to those aspects, no iota of evidence was produced on the side of the plaintiff to establish her case. In such view of the matter, it could be seen that as rightly found that the lower appellate Court, the plaintiff has failed to establish that either her husband Narayanasamy or his father Annamalai or Munian had any title to the suit property. The plaintiff has failed to establish her case

by producing acceptable and reliable evidence. It could be seen that the document of title relied on by the plaintiff viz. Ex.A1 would not confer any title on her in respect of the suit property, when the plaintiff has failed to establish that her husband had any valid title over the suit property or her husband's predecessor in interest had any valid title over the suit property. It could be seen that as rightly found by the lower appellate Court, the plaintiff's husband Narayanasamy had no competency in law to settle the suit property on the plaintiff under Ex.A1. Therefore, it could be seen that the settlement deed marked as Ex.A1 is not valid and would not confer any title on the plaintiff in respect of the suit property.

9. The further case of the plaintiff is that in respect of the suit property, as requested by the defendant, she and her husband had conveyed the same to the defendant on bogyam basis and on that score, the defendant has been permitted to put up a tiled construction in the suit property and run a shop and after the expiry of the bogyam period, inasmuch as the defendant refused to hand over possession of the suit property to the plaintiff, the plaintiff has been necessitated to file the suit. The above case of the plaintiff has also been seriously contested by the defendant. Despite the same, not even a shred of evidence has been placed by the plaintiff to establish that the defendant has been enjoying the suit property on the basis of bogyam

arrangement as alleged by the plaintiff in the plaint. In such view of the matter, it could be seen that as rightly found by the first appellate Court, the case of the plaintiff namely the bogyam arrangement with the defendant cannot be accepted and it could be seen that such being the case of the plaintiff, sans proof, this Court cannot confer any title on the plaintiff in respect of the suit property.

10. The further case of the plaintiff is that Munian had sold the adjacent property to one Veerammal on 22.12.1945 and in the said sale deed, the suit property has been shown as one of the boundaries as belonging to Munian and therefore, it is argued that on that basis, the Court should uphold Munian's title over the suit property as put forth by the plaintiff. In this connection, a copy of the above said sale deed has been marked as Ex.A4. The validity and Genuineness of Ex.A4 has been challenged by the defendant. Be that as it may, admittedly, the defendant is not a party to the sale deed. Therefore, it could be seen that when the document marked as Ex.A4 is not between the parties contesting the issue, no credence could be attached to Ex.A4 to hold that on the basis of the boundary recital found in the said document, the plaintiff or her predecessor in interest derive title to the suit property. Therefore, the case projected by the plaintiff to claim title to the suit property under Ex.A4 cannot be countenanced in any manner.

11. In the light of the above discussions, it could be seen that the plaintiff has miserably failed to establish her title to the suit property and also failed to establish that the defendant has been in possession and enjoyment of the suit property under her permissive occupation on bogyam arrangement.

12. On the other hand, it is the case of the defendant that he is in possession and enjoyment of the suit property on his own for several years from 1994 onwards. No doubt, the defendant would claim that the suit property belongs to him ancestrally and that, he had perfected title to the suit property by adverse possession. With reference to the above case of the defendant, it has to be hold that no acceptable material is forthcoming, however, the fact remains that the defendant is admittedly in possession of the suit property.

13. In this case, the evidence adduced would go to show that the suit property is Natham poramboku. In this connection, a perusal of the evidence of the Village Administrative Officer, who was examined as DW4 and the document marked as Exs.X1 to 3 cumulatively seen would go to show that the suit property is Natham Porambokku and belongs to the Government. Accordingly, it could be seen that the lower appellate Court has rightly come to the conclusion that the suit

property is only Natham Porambokku and it does not belong either to the plaintiff or the defendant. The above findings of the trial Court with reference to the character of the suit property as Natham Porambokku and belonging to the Government, does not call for any interference. However, the plaintiff counsel would contend that even assuming that it is Natham Porambokku, the plaintiff would be entitled to claim title over the same and in this connection, he placed reliance on the decision reported in **2012-4-L.W.759 (Rethinakumar Vs. Anbanathapuram Vagayara Dharma pagam, rep.by its Chairman, E.S.Gnanapathy and two others)**.

14. However, as rightly argued by the defendant, the above decision would not be applicable to the facts and circumstances of the case on hand. When it is found that the suit property is only Grama Natham and belonged to the Government and when according to the plaintiff, she derives title to the suit property on a particular state of facts, it could be seen that the plaintiff has to establish her case by adducing acceptable and reliable evidence with reference to the same. The plaintiff having failed to establish the same, the findings that the suit property is only Natham Porambokku and belong to the Government cannot be impugned. Further her contention that even otherwise, the suit property belongs to her, as rightly argued by the defendant's counsel, to establish the same inasmuch as the plaintiff

has failed to place any material whatsoever it has to be held that the plaintiff has no title to the suit property.

15. The plaintiff's counsel contended that the character of the suit property was not an issue between the parties in the Courts below, however, the appellate Court has gone into the issue on the basis of the evidence of DW4 and Ex.X1 to X3 and therefore, he prayed for remittance of the matter back to the Courts below for enabling the parties to adduce evidence with reference to the said issue. In this connection, he placed reliance upon the decision reported in **1950 SCR 781 : AIR 1951 SC 120 (Sarju Pershad Vs. Raja Jwaleshwari Pratap Narain Singh and others)**. However, the above contention of the plaintiff's counsel, does not deserve acceptance. The parties have gone into the issue at length as regards the character of the property and accordingly, it could be seen that they have examined VAO and also marked Exs.X1 to 3. In the light of the above situation, the lower appellate Court has also gone into the issue about the character of the suit property and found that the suit property is only Natham Porambokku belonging to the Government and neither the plaintiff nor the defendant has any title over the same. Therefore, such being the position, the request of the plaintiff's counsel to have the matter remitted back to the Courts below does not merit consideration and acceptance and it could be seen that the above said

decision relied on by the plaintiff's counsel, as rightly argued by the defendant's counsel, would not be applicable to the case on hand. Admittedly, the defendant is found to be in possession of the suit property. Therefore, if at all any one could challenge the possession of the defendant, it could only be the Government, and the plaintiff would not be competent to disturb the possession and enjoyment of the defendant in any manner. Therefore, the lis filed by the plaintiff has to fail.

In view of the above discussion, I hold that no substantial question of law is involved in this second appeal and hence the same is devoid of merits. Accordingly, the second appeal is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

04.11.2016

Index : Yes/No
Internet: Yes/No
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To

1. The II Additional Subordinate Judge,
Villupuram.
2. The Learned I Additional District Munsif,
Tirukoilur.

T.RAVINDRAN,J.

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Pre-delivery order in
S. A.No. 100 of 2011
and M.P.No.1 & 2 of 2011

04.11.2016