

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.11.2016

PRONOUNCED ON: 07 .12.2016

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.254 of 2011
and
C.M.P.No.17894 of 2016

1.S.Kanimani
2.S.Kulasekaran
3.S.Parimalakannan
4.S.Thyagarajan
5.S.Thamaraiselvi

... Appellants

Vs.

1.Nandagopal Pillai
2.Natarajan
3.Varadharajan
4.Andalammal

... Respondents

Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 12.02.2010 passed in A.S.No.78 of 2007 on the file of the Learned Subordinate Judge at Kancheepuram confirming the judgment and decree dated 25.08.2007 passed in O.S.No.27 of 2003 on the file of the Learned District Munsif Court at Kancheepuram.

For Appellants : Mr.T.S.Rajamohan

For Respondent : Mr.D.S.Rajasekaran
Nos.1 & 2

For Respondent : Mr.A.Muthukumar
Nos.3 & 4

JUDGMENT

Challenge in this second appeal is made by the plaintiffs against the judgment and decree dated 12.02.2010 passed in A.S.No.78 of 2007 on the file of the Subordinate Court, Kancheepuram, confirming the judgment and decree dated 25.08.2007 passed in O.S.No.27 of 2003 on the file of the District Munsif Court, Kancheepuram.

2. The suit has been laid by the plaintiffs for declaration and permanent injunction.

3. The plaintiffs mainly base their claim to the suit property upon the partition deed dated 22.05.1953 effected between Thangavelu Pillai and his two sons viz., Duraiswamy Pillai and Kistappa Pillai. Duraiswamy Pillai is the father of Senthamarai Kannan and Senthamarai Kannan is the husband of the first plaintiff and the father of plaintiffs 2 to 5. Therefore, it could be seen that as per the plaint averments, the claim by the plaintiffs over the disputed property is based upon the above mentioned partition deed, which has been marked as Ex.A2. However, on the basis of the evidence adduced by the respective parties, both courts below have found that the first plaintiff's father-in-law Duraiswamy Pillai

had purchased the property in question only under the sale deed dated 27.04.1942 from one Jayaramapillai and the copy of the same has been marked as Ex.B15. Jayaramapillai had purchased the property from one Kistappa Pillai on 27.08.1941 and the copy of the same has been marked as Ex.B14. Therefore, it could be seen that though the plaintiffs had in the plaint, based their claim to the suit property under Ex.A2, it has been found by the courts below that only under Ex.B15, the plaintiffs would be entitled to claim title to the property, to which, they are entitled to. It has been found by the courts below that as per Ex.B15, the first plaintiff's father-in-law Duraiswamy Pillai had purchased an extent of east-west 28 3/4' and north-south 23 1/4' builded portion and backyard portion measuring 26 3/4' north-south and 25' east-west. Therefore, it could be seen that only the extent to which Duraiswamy Pillai had purchased under Ex.B15, the successor in interest would be entitled to claim. However, the courts below have found under Ex.A2, the parties had partitioned the properties comprising a larger extent and thereby, it could be seen that Duraiswamy Pillai had been allotted more extent than he is entitled to. It has not been explained by the plaintiffs as to how the father-in-law of the first plaintiff Duraiswamy would be entitled to claim more extent i.e. the suit property under Ex.A2 when in reality, a lesser extent had been purchased by him under Ex.B15. Therefore, it could be seen that

the courts below have rightly disbelieved Ex.A2 and based upon Ex.B15 and the parent document Ex.B14 came to the conclusion that the disputed property is not belonging to the plaintiff's predecessor in interest and therefore, the plaintiffs also.

4. As per the case of the defendants, they claim title to the suit properties under different title deeds. It has also been found that the entire property including the builded portion and backyard portion comprised in survey Nos.110,111 and 112 originally belonged to Kamatchi ammal, Vijayaragava pillai and Jayarama Pillai. Therefore, the parties claim title to their properties based upon their purchase from the erstwhile three owners and accordingly, the defendants claim title including the disputed property under the title deeds relied upon by them.

5. In so far as this case is concerned, as adverted to earlier, the plaintiffs mainly relied upon Ex.A2 for claiming title to the disputed property. When Ex.A2, does not indicate the legal source of title to the plaintiffs predecessor in interest to the disputed property in question and when it has been found by the courts below that as per Ex.B15, the first plaintiff's father-in-law is entitled to only a lesser extent, it does not stand to reason that as to how, the plaintiff's predecessor in interest or the plaintiffs would be

entitled to lay their hands on a larger extent than the extent to which they are actually and legally entitled to.

6. It is also the case of the plaintiffs that originally the disputed property was in the permissive possession of Muniammal and later Ranganayagi ammal. Even with reference to the above case of the plaintiffs, there is no reliable and acceptable evidence. Further, according to the plaintiffs, the first plaintiff's husband Senthamarai Kannan had rented out the disputed property to the first defendant on monthly basis. It is stated that the rent was gradually enhanced. However, with reference to the above case of the plaintiffs, there is no acceptable and cogent evidence to sustain their plea. Therefore, the case of the plaintiffs that the first defendant was in possession and enjoyment of the suit properties as a tenant as such cannot be accepted.

7. It is the further case of the plaintiffs that taking advantage of the above said position, the defendants are attempting to annex the disputed property along with the properties purchased by them. However, when it has not been established that the plaintiffs have legal title and also possession and enjoyment of the suit property in question and when it has been found that the plaintiffs are entitled only to a lesser extent under Ex.B15 and not

to the extent as mentioned in Ex.A2 and when it has been clearly found by the courts below that the plaintiffs as such are not entitled to the disputed property, it could be seen that the plaintiffs claim of title and possession and enjoyment of the suit property as such have been rightly negatived by the courts below. No ground has been made to interfere with the findings and conclusions of the courts below for rejecting the plaintiffs' case.

8. In this second appeal, the plaintiffs have filed an application for reception of additional evidence. According to the plaintiffs, on the representation dated 21.01.2003, for issuance of proper notification regarding the title of the suit property, the Special Tahsildar by his proceedings dated 17.03.2003 had issued the notification which would go to show that the plaintiffs are in possession and enjoyment of the disputed suit property. Therefore, according to the plaintiffs, the said proceedings dated 17.03.2003 should be taken as additional evidence in support of their case and accordingly, the case should be disposed of.

9. Strong resistance was put forth by the respondents for the reception of the additional evidence. It is contended that the petition laid by the plaintiffs does not conform to the valid requirements of Order 41 Rule 27 C.P.C. Further, it is stated that

even the representation stated to have been given by the plaintiffs to the Tashildar for the issuance of the notification in question is after the suit and proceedings of the Special Tahsildar is also after the institution of the suit. It is further stated that before the issuance of the above said notification, no notice was issued to the contesting parties. It is therefore stated that with a view to grab the suit property, the plaintiffs have created the notification in question with the connivance of the Government officials. Therefore, the court should not place any reliance on the said notification and dismiss the application in toto.

10. The contention of the contesting respondents seems to be acceptable. It has not been established by the plaintiffs as to how the special Tahsildar issued the notification holding that the suit property is in the possession and enjoyment of the plaintiffs that too, particularly, after the institution of the suit, wherein, the parties are at logger heads and contesting as regards the title and possession and enjoyment of the suit property in question tooth and nail. In such circumstances, as rightly argued before the issuance of the notification in question, the special Tahsildar should have issued notice to one and all concerned. However, no such notice seems to have been issued. That apart, it has not been explained by the plaintiffs as to why they had not endeavoured to obtain the

notification prior to the institution of the suit and further why they had not taken steps to file the notification in question before the courts below. Therefore, it could be seen that with a view to grab the suit property one way or the other, the plaintiffs have clandestinely obtained the notification in question and making attempts to mark the same as additional evidence in the case during the course of the second appeal.

11. However, inasmuch for the reasons aforementioned, the application does not satisfy the valid requirements of Order 41 Rule 27 C.P.C in any manner, the application does not merit acceptance.

In the light of the above discussions, I do not find any substantial question of law is involved in this second appeal. Accordingly, this second appeal is dismissed. No costs. Consequently, C.M.P.No.17894 of 2016 is dismissed.

.12.2016

Index : Yes/No
Internet:Yes/No
sms
To

1. The Subordinate Court, Kancheepuram.
2. The District Munsif Court, Kancheepuram.

T.RAVINDRAN,J.

sms

Pre-delivery order in
S. A.No.254 of 2011
and
C.M.P.No.17894 of 2016

12.2016

<http://www.judis.nic.in>