

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.11.2016
PRONOUNCED ON : 24.11.2016

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A.No.255 of 2011
and
M.P.No.1 of 2011

G.Boopathi ... Appellant/Plaintiff
Vs.

1.Chandrakanthi
2.A.K.Palanisamy ... Respondents/Defendants

Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 16.08.2010 passed in A.S.No.9 of 2010 on the file of the Sub Court, Gobichettipalayam confirming the judgment and decree dated 12.01.2010 passed in O.S.No.174 of 2003 before the District Munsif Court, Gobichettipalayam.

For Appellant : Mrs.R.Meenal

For 1st Respondent : Mr.M.Narayanaswamy

JUDGMENT

Challenge in this second appeal is made by the plaintiff against the judgement and decree dated 16.08.2010 passed in A.S.No.9 of 2010 on the file of the Subordinate Court, Gobichettipalayam confirming the judgment and decreed dated 12.01.2010 passed in O.S.No.174 of 2003 on the file of the District Munsif Court, Gobichettipalayam.

2. The suit has been laid for permanent injunction.

3. The case of the plaintiff, in brief, is as follows:

The first item of the suit properties belongs to the plaintiff's paternal uncle Sivalingaiah under the partition deed dated 15.07.1992. The second item of the suit properties belongs to the first defendant under the settlement deed dated 07.05.1972. The first defendant is the wife of Sivalingaiah. The plaintiff is the lessee of the suit properties, as such, the plaintiff has been paying annual lease of Rs.4,000/- to his paternal uncle Sivalingaiah based on the oral lease arrangement in respect of the first item of the suit properties. Even though the second item of the suit properties belongs to the

first defendant, she was not cultivating the same and it is only, the plaintiff's father, who has taken the same on lease and paying Rs.1000/- as annual lease and thereafter, the plaintiff has been enjoying the second item of the suit properties also as a lessee. The said Sivalingaiah died on 25.10.2002 and it was only the plaintiff, who had been maintaining his paternal uncle Sivalingaiah and on account of the same, Sivalingaiah, without any inducement, on his own and full volition, bequeathed the first item of the suit properties to the plaintiff under the Will dated 22.09.2002 giving life enjoyment to his wife over the same and thus, the plaintiff is entitled to obtain the first item of the suit properties, after the death of the first defendant. After the death of Sivalingaiah, the plaintiff was paying the lease amount as above mentioned in respect of both properties to the first defendant. As per the terms of Will, the first defendant is not entitled to alienate the first item of the suit properties. While so, the plaintiff understands that the first defendant has alienated the second item of the suit properties to the second defendant. Even if the above sale is true, it would not affect the lease right of the plaintiff in respect of the second item of the suit properties and the same would be binding on the second defendant. On account of the enmity developed recently, the defendants are making arrangements and interfering with the plaintiff's possession and enjoyment of the suit properties and the defendants are not entitled to do so. Hence, the suit.

4. The case of the defendants, in brief, is as follows:

The suit is not maintainable either in law or on facts. The title to the first item of the suit properties in favour of Sivalingaiah under the partition deed dated 25.07.1992 and the title to the second item of the suit properties in favour of the first defendant under the settlement deed dated 07.05.1992 are admitted. The other allegations put forth by the plaintiff in the plaint are disputed. The plaintiff has not been cultivating the suit properties as a lessee as claimed in the plaint. It is false to state that the plaintiff's father and thereafter, the plaintiff has been enjoying the suit properties respectively and in respect of the suit properties, the plaintiff has been paying annual lease as claimed in the plaint. It is further false to state that Sivalingaiah had executed a Will bequeathing the first item of the suit properties in favour of the plaintiff, after giving life enjoyment to the first defendant. The plaintiff has never been in possession and enjoyment of the suit properties in any manner. It is only the first defendant, who had been in possession and enjoyment of the suit properties. The Will dated 22.09.2002 projected by the plaintiff is a fabricated document. The second item of the suit properties has been sold to the second defendant by the first defendant under the sale deed dated 16.07.2003 and it is only, the second defendant, who is in possession and enjoyment of the second item of the suit properties thereafter. There is no cause of the action for the suit and the suit is liable to be dismissed.

5. In support of the plaintiff's case PWs 1 and 2 were examined and Exs.A1 to 13 were marked. On the side of the defendants, DWS1 to 6 were examined and Exs.B1 to 28 were marked. Ex.X1 has been marked.

6. On a consideration of the oral and documentary evidence adduced by the respective parties, the trial Court was pleased to dismiss the suit. The first appeal preferred by the plaintiff also failed. Challenging the same, the present second appeal has been laid.

7. On the footing that the plaintiff is in possession and enjoyment of the suit properties as a lessee and inasmuch as the defendants are attempting to interfere with the plaintiff's possession and enjoyment of the suit properties, the plaintiff has come forward with the suit seeking the relief of permanent injunction.

8. That the first item of the suit properties originally belonged to the plaintiff's paternal uncle Sivalingaiah under the partition deed dated 15.07.1992 is not in dispute. Similarly, that the second item of the suit properties belongs to the first defendant under the settlement deed dated 07.05.1972 is also not in dispute. Now, according to the plaintiff, he has taken both items of the suit properties on oral lease, originally, under Sivalingaiah, in respect of the first item of the suit properties, and under the first defendant, in respect of the second item of the suit properties and paying annual lease. The above case of the plaintiff has been vehemently denied by the defendants. As regards the case of the plaintiff that he has been in possession and enjoyment of the suit properties as a lessee, as rightly found by the courts below, to establish the same, there is nil material projected on the side of the plaintiff. If really, the plaintiff has been in possession and enjoyment of the suit properties as claimed in the plaint as a lessee, to establish the same, the plaintiff would have produced necessary records, such as, lease receipts, Adangal register, Kist receipt etc., other than the ipse dixit testimony of the plaintiff, no other material has been placed before the courts below to hold that the plaintiff has been in possession and enjoyment of the suit properties as a lessee. The documents marked as Ex.A1 to 13 do not support the case of the plaintiff that he is the lessee of the suit properties. Further, no independent witness has also been examined on the side of the plaintiff to prove his case that he has been enjoying the suit properties as a lessee. That apart, even the plea of oral lease projected by the plaintiff appears to be not acceptable. The plaintiff has not mentioned in the plaint clearly as to when from he had taken the suit properties on oral lease and prior to him, when from, his father had taken the suit properties on oral lease and all those particulars are conspicuously absent in the plaint. Further, the plaintiff has

not placed any material to show that at least, he has been in possession and enjoyment of the suit properties at any point of time and in any other capacity. Such being the position, the courts below have correctly found that the plaintiff has miserably failed to establish that the suit properties are in his possession and enjoyment as a lessee or otherwise.

9. According to the plaintiff, both Sivalingaiah and the first defendant were not directly cultivating the suit properties and on the other hand, it is only the plaintiff's father and thereafter, the plaintiff, who had been engaged in the cultivation of the suit properties. However, as regards the above case of the plaintiff, as adverted to earlier, there is no proof. The case of the plaintiff, that Sivalingaiah and the first defendant are not enjoying the suit properties, has been forcibly resisted by the defendants. On the other hand, according to the defendants, it is only Sivalingaiah and the first defendant, who had been all along in possession and enjoyment of the suit properties.

10. However, the plaintiff would rely upon the judgments and decrees passed in O.S.Nos.170 & 171 of 1998 marked as Exs.A6 and 7 to contend that in the above suit, Sivalingaiah, who had made as a party along with his father, has been set ex parte and on that basis, the court should hold that it is only the plaintiff's father, who had been in possession and enjoyment of the suit properties. However, as rightly found by the trial Court, on the basis of the above said ex parte decree, it cannot be construed that Sivalingaiah had not been in possession and enjoyment of the suit properties. Further, as rightly observed by the first appellate Court, the above suit is in respect of the cart track and in such circumstances, merely because Sivalingaiah had been set ex parte in the said suit, it would not lead to the conclusion that the Sivalingaiah had not been in possession and enjoyment of the suit properties and on the other hand, it was only the plaintiff's father, who had been in possession and enjoyment of the suit properties. Therefore, Ex.A6 and 7 would not, in any manner, advance the case of the plaintiff.

11. The plaintiff has projected a Will alleged to have been executed by his paternal uncle Sivalingaiah in his favour on 22.09.2001 and the said Will has been marked as Ex.A4. The truth and validity of the Will has been seriously disputed by the defendants. However, to establish the authenticity of the Will, the plaintiff has examined one of the attestors to the Will viz. PW2 Andavar. Inasmuch as the Will has been alleged to have been fabricated, on the initiative taken by the defendants, it could be seen that the LTI found in the Will was sent for an expert opinion, to give a report about the genuineness of the same, on a comparison of the LTI of Sivalingaiah. Accordingly, it could be seen that the LTI found in the Will was subjected to expert's scrutiny and in this connection, the expert has given his

opinion, which has been marked as Ex.X1. That apart, the expert has also been examined as DW6. The courts below have, in the right perspective, analysed the evidence of DW6 and also his expert opinion marked as Ex.X1 and found that, the LTI found in the Will Ex.A4 is not that of Sivalingaiah, so holding, it was observed by the Courts below that the Will in question is not a true and genuine document and it has not been executed by Sivalingaiah as claimed by the plaintiff. As rightly found by the courts below, nothing has been elicited through the mouth of DW6 to discredit his testimony or nothing has been pointed out to reject the expert opinion marked as Ex.X1 on the genuineness of the LTI of Sivalingaiah found in the Will. Therefore, the courts below have rightly discarded the evidence of PW2 and based on the evidence of DW6 and Ex.X1 had rightly come to the conclusion that Ex.A4 Will is not a true document. No exception could be taken to the above findings of the courts below in any manner.

12. Apart from the above pleas, no other valid plea has been put forth by the plaintiff to seek the relief sought for in the plaint. When it is found that the plaintiff has failed to establish that he is in possession and enjoyment of the suit properties either as a lessee or otherwise and when his case based upon the Will is found to be a false one and when the ownership of the defendants, in respect of the suit properties has been admitted and further, when the defendants have also placed adequate materials to show that it is only they, who are in possession and enjoyment of the suit properties and when it is also found that the second item of the suit properties has been sold to the second defendant by the first defendant and as such, the defendants being the true owners of the suit properties and also, in possession and enjoyment of the same, the plaintiff, as rightly found by the courts below, would not be entitled to seek the relief of permanent injunction as against the true owners, in respect of the suit properties.

In the light of the above discussions, nothing survives in this second appeal. No substantial question of law is involved in this second appeal and therefore, the second appeal is dismissed as devoid of merits. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

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Sub Assistant Registrar

sms

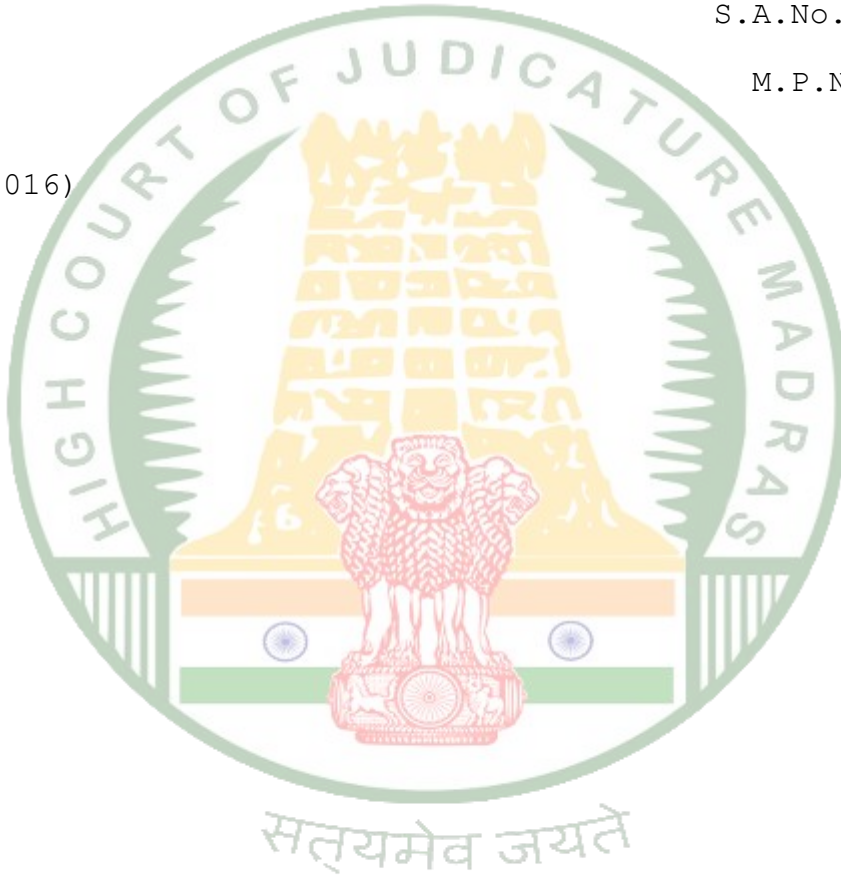
To

1. The Subordinate Judge,
Gobichettipalayam.
2. The District Munsif,
Gobichettipalayam.

+lcc to Mr.M.Narayanaswamy, Advocate, S.R.No.68615

S.A.No.255 of 2011
and
M.P.No.1 of 2011

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