

IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 21.11.2016
PRONOUNCED ON : 28 .11.2016
CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN
S. A.Nos.297 to 300 of 2011

S.A.No.297 of 2011

Sakthivel

.. Appellant/Plaintiff

Vs.

1. Ramasamy
2.Vasantha
3.Velmurugan

4.Samidurai
5.Kolanchi

6.Manjamuthu
7.Tamilarasi

8.Kolanchiappan, (Minor)
represented by his next friend Manjan

9.Palaniammal
10.Kolanchiammal

11.Kolanchiammal
12.Thulasiammal

13.Anajalaiaammal
14.Kalian

15.Kolanchivel (minor)

rep. By his next friend Manjamuthu ... Respondents/Defendants
1 to 7 & 9 to 16

S.A.No.298 of 2011

Thirumurgan @ Velmurugan

सत्यमेव जयते

Appellant/4th Defendant

Vs.

1.Ramasamy
2.Sakthivel
3.Vasantha

4.Manjamuthu
5.Kolanjiappan

6.Minor Kolanjivel

rep.by next friend Manjamuthu,

Respondents/Defendants1 to 3
and Plaintiffs

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S.A.No.299 of 2011

Ramasamy

.. Appellant/Plaintiff

Vs.

1.Kolanchi
2.Manjamuthu
3.Tamilarasi
4.Palaniammal
5.Nallamuthu
6.Kolanchiammal
7.Thulasiammal
8.Anjalaiaammal
9.Kalian

.. Respondents/
Defendants 1 to 3 and 5 to 10

S.A.No.300 of 2011

Ramasamy

.. Appellant/1st Defendant

Vs.

1.Manjamuthu
2.Kolanjiappan
3.Minor Kolanjivel
rep.by next friend Manjamuthu
4.Sakthivel
5.Vasantha
6.Thirumurugan @ Velmurugan

.. Respondents/Plaintiff and
Defendants 2 to 4

PRAYER IN S.A.No.297 of 2011:

Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree made in A.S.No.24 of 2006 on the file of the Principal Subordinate Judge, Vridhachalam, dated 29.01.2010 as confirmed by the Judgment and decree made in O.S.No.56 of 1997 on the file of the 2nd Additional District Munsif Court, Vridhachalam, dated.29.04.2005.

PRAYER IN S.A.No.298 of 2011:

Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree made in A.S.No.3 of 2009 on the file of the Principal Subordinate Judge, Vridhachalam, dated 29.01.2010 as confirmed by the Judgment and decree made in O.S.No.472 of 1997 on the file of the 2nd Additional District Munsif Court, Vridhachalam, dated.29.04.2005.

PRAYER IN S.A.No.299 of 2011:

Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree made in A.S.No.22 of 2006 on the file of the Principal Subordinate Judge, Vridhachalam, dated 29.01.2010 as confirmed by the Judgment and decree made in O.S.No.314 of 2004 on the file of the 2nd Additional District Munsif Court, Vridhachalam, dated.29.04.2005.

PRAYER IN S.A.No.300 of 2011:

Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree made in A.S.No.23 of 2006 on the file of the Principal Subordinate Judge, Vridhachalam, dated 29.01.2010 as confirmed by the Judgment and decree made in O.S.No.472 of 1997 on the file of the 2nd Additional District Munsif Court, Vridhachalam, dated.29.04.2005.

For Appellants in : Mr.K.Sathiskumar
S.A.Nos.297 & 298/2011

For Appellants in : Mr.P.Mahalakshmi
S.A.Nos.299 & 300/2011

For Respondents : Mr.T.L.Thirumalaisamy
in all S.As

JUDGMENT

S.A.No.297 of 2011

Challenge in this second appeal is made by the plaintiff against the judgement and decree dated 29.01.2010 made in A.S.No.24 of 2006 on the file of the Principal Subordinate Court, Virdhachalam confirming the judgment and decree dated 29.04.2005 made in O.S.No.56 of 1997 on the file of the 2nd Second Additional District Munsif Court, Virdhachalam.

S.A.No.298 of 2011

Challenge in this second appeal is made by the 4th defendnat against the judgment and decree dated 29.01.2010 made in A.S.No.3 of 2006 on the file of the Principal Subordinate Court, Virdhachalam, confirming the judgement and decree dated 29.04.2005 made in O.S.No.472 of 1997 on the file of the 2nd Additional District Munsif Court, Vridhachalam.

S.A.No.299 of 2011

Challenge in this second appeal made by the plaintiff against the judgement and decree dated 29.01.2010 made in A.S.No.22 of 2006 on the file of the Principal Subordinate Court, Vridhachalam, confirming the judgment and decree dated 29.04.2005 made in O.S.No.314 of 2004 on the file of the 2nd Additional District Munsif Court, Vridhachalam.

S.A.No.300 of 2011

Challenge in this second appeal is made by the first defendant against the judgement and decree dated 29.01.2010 made in A.S.No.23 of 2006 on the file of the Principal Subordinate Court, Vridhachalam, confirming the judgment and decree dated 29.04.2005 made in O.S.No.472 of 1997 on the file of the 2nd Additional District Munsif Court, Vridhachalam, dated.29.04.2005.

2. That the total extent of 1.88 acres in survey No.66/4 in Sirunesalur Village originally belonged to Aanai is not disputed. That Manchaan, Arumugam and Ramasamy are the sons of Aanai is also not disputed. It is also admitted that Manchaan, Arumugam and Ramasamy had partitioned the above said property belonging to Aanai amongst themselves. The share allotted to them respectively in the above said partition is the issue that is involved in the matter for consideration.

3. The appellant Ramasamy, in second appeal No.299 of 2011, laid a suit for declaration of title and permanent injunction in respect of the suit property comprised in O.S.No.314 of 2004. The appellant Sakthivel, in Second appeal No.297 of 2011, who is the son of Ramasamy, the appellant, in second appeal No.299 of 2011, laid a suit for partition claiming half share in the suit property comprised in O.S.No.56 of 1997.

4. Their main case is that in the above mentioned partition effected amongst the sons of Aanai, the southern share measuring 63 ½ cents was allotted to Ramasamy. The same is disputed. According to the contesting parties, Ramasamy was allotted only the northern share, the southern share was allotted to the eldest son Manchaan and the middle share was allotted to Arumugam. It is stated that as per the village custom, the southern share is usually allotted to the eldest son. That fact is also found to be acceptable on seeing sale deed marked as Ex.X1. The Courts below have found that Ramasamy had alienated northern portion measuring 62 ½ cents allotted to him under the partition to one Veeramuthu under the sale deed dated 09.06.1967. That PW4 Palanivelu's father Manjamuthu has attested the sale deed is also noted. Therefore, on seeing the

alienation made by Ramasamy of his northern share allotted to him under Ex.X1, it has been held by the courts below that in the partition effected amongst the sons of Aanai, as rightly put forth by the contesting parties, Ramasamy had been allotted only the northern portion, which he had, in the year 1967 itself, alienated to Veeramuthu. The kist receipts in the name of Veeramuthu are marked as Ex.B5, Patta in the name of his son Kolanji as Ex.B6, Kist receipts filed by Kolanji as Ex.B7 and cultivation Adangal as Ex.B8. Therefore, the claim made by Ramasamy that he has been allotted the southern portion in the partition, as such, cannot be readily accepted.

5. However, the appellant Ramasamy has based his claim for the southern portion of the property comprised in O.S.No.314 of 2004, on the footing that he has been issued patta and also, paid kist receipts, which have been marked as Exs.A1 to 12. However, the Courts below have rightly rejected the above said documents holding that when it has been found that Ramasamy had been allotted only the northern portion out of the total extent and when the same had already been sold by Ramasamy under Ex.X1, his claim to the southern portion of the total extent under Ex.A1 patta cannot at all be countenanced in the eyes of law. As rightly held by the Courts below, patta cannot be construed as title document. Equally, the kist receipts marked as Ex.A2 to A12 also would not advance the case of the appellant Ramasamy. As rightly found by the courts below, the patta mentioned in the kist receipts also pertain to various other survey numbers. Therefore, it could not be correlated that the said kist receipts pertain only to the suit property comprised in O.S.No.314 of 2004 and thereby, we cannot uphold the case of the appellant Ramasamy. Therefore, the plea of the appellant Ramasamy that the courts below have erred in dismissing his suit, as such, cannot at all be accepted in any manner.

6. The appellant Sakthivel, son of Ramasamy has claimed partition in the southern portion on the basis that his father had been allotted the southern portion in the total extent of 1.88 acres in survey No.66/4. When it has been found that Ramasamy had been allotted only the northern portion out of total extent and the same has also been alienated by him in the year 1967 itself under Ex.X1, the claim of the appellant Sakthivel for partition of the property comprised in O.S.No.56 of 1997 cannot be sustained in law. Therefore, the courts below have rightly rejected the claim of the appellant Sakthivel for seeking partition in respect of the suit property comprised in O.S.No.56 of 1997.

7. O.S.No.472 of 1997 has been laid by Manjamuthu and his sons for declaration and permanent injunction. According to

them, the first item of the suit properties belonged to Manjamuthu and the second item of the suit properties belonged to his minor sons and inasmuch as the defendants therein had without authority interfered with their possession and enjoyment, they had been necessitated to lay the above said suit.

8. As found by the courts below, the properties, to which Manjamuthu and his sons claim title is the portion allotted to Manchaan under the oral partition effected amongst him and his brothers. The courts below have also noted and found that Manchaan had been allotted the southern portion in the total extent of 1.88 acres in survey No.66/4. It could be seen from Ex.B10, the sale deed dated 13.05.1966 that Manchaan during his life time on his behalf and on behalf of his son Thirumurugan had alienated 0.36 cents out of 0.63 cents to one Vadivelu. Therefore, it could be seen that Manchaan's legal heirs viz., Vasantha, daughter-in-law of Manchaan (D3 in O.S.No.472 of 1997) and his grand son Thirumugugan @ Velumurugan (D4 in O.S.No.472/1997) and the other son Samidurai would be entitled only to the remaining 27 cents in the southern portion. It is also found by the courts below that Vadivelu, pursuant to his purchase under Ex.B10, had also obtained patta for the purchased property, which has been marked as Ex.B11 and that, he has paid kist for the same could also be evidenced from the kist receipt marked as Ex.B12.

9. Now, according to the contesting parties, in particular, the plaintiffs in O.S.No.472 of 1997, Vasantha, daughter-in-law of Manchaan, who is the third defendant in O.S.No.472 of 1997 had, on her behalf and on behalf of her minor son executed a sale deed in favour of Manjamuthu, the first plaintiff in O.S.No.472 of 1997 conveying 14 cents and the registered sale deed dated 18.07.1989 has been marked as Ex.B14. It could also be seen that Manchaan's, another son Samidurai had alienated the remaining 13 cents to the minor sons of Manjamuthu viz., the plaintiffs 2 & 3 in O.S.No.472 of 1997 under the sale deed dated 13.09.1994, which has been marked as Ex.B15. Therefore, the courts below have found that Manchaan legal heirs had alienated the share inherited by them in the southern portion to the plaintiffs in O.S.No.472 of 1997 under Exs. B14 & 15 and that pursuant to the same, the properties purchased were enjoyed by Manjamuthu which could also be evidenced from the kist receipts marked as Ex.B17 & 18.

10. The facts discussed above would go to show that inasmuch as the sons of Aanai viz., Ramasamy and Maanchan and their legal heirs had already alienated their share allotted to them, the claim now made by Ramasamy, Sakthivel and Thirumurugan in respect of the properties in survey No.66/4, as such cannot be

accepted.

11. Therefore, it could be seen that the courts below have rightly approached the issue in the correct perspective and on a sound appreciation of law found that the appellants failed to establish their title over the suit properties comprised in the respective suits.

12. The counsel for the appellant Thiru Murugan would contend that the sale executed by his mother binding his share in the property to which he is entitled to Manchamuthu is invalid and further, his mother had not obtained the sanction from the Court to alienate his share and therefore, the sale deed in favour of Manchamuthu under the document dated 18.07.1989 is not valid.

13. However, the above contention cannot be readily accepted. As rightly argued by the respondent counsel, the sale deed dated 18.07.1989 marked as Ex.B14 has, so far, not been challenged by the appellant Thirumurugan. In such circumstances, it could be seen that when the appellant Thirumurugan had not chosen to challenge the sale deed in the manner known to law and within the period of time allowed by the law of limitation, it could be seen that it is too late for him to contend that alienation made by his mother in favour of Manchamuthu would not be binding on him. In this connection, the learned counsel for the appellant also placed reliance on the decision reported in 2013 6 CTC 775, (Saroj Vs. Sunder Singh & Ors). The counsel for the respondent would contend that the above decision is not applicable to the facts and circumstances of the present case. Be that as it may, the principles of law enunciated in the above said decision are taken into consideration and followed as applicable to the facts and circumstances of the present case.

14. It is also contended by the respondents counsel that the other son Arumugam had also along with his two sons viz., Murugesan and Muthukaruppan had alienated his share in the suit survey number to Manchamuthu's minor son Kolanchiappan under the sale deed dated 03.06.1989, which has been marked as Ex.B16.

15. In the light of the above discussions, it could be seen that as rightly argued by the respondents counsel, the three sons, either on their own or after their demise, their legal heirs, had disposed of the shares allotted to them under the oral partition. It could thus be seen that the legal heirs of Aanaai, as such, cannot claim title to the extent of any property comprised in Survey No.66/4. In such circumstances, the Courts below have correctly negatived the claim of title to the properties by the appellants herein and upheld the title of the

Manchamuthu and his sons as claimed by them in O.S.No.472 of 1997.

16. No material has been projected by the appellants to warrant any interference to the findings and conclusion of the courts below in negating their claims.

At the end, no substantial question of law is found to be involved in the second appeals. Resultantly, all the second appeals are dismissed. No costs.

-s/d-

Assistant Registrar(ARCCC)

True Copy

Sub-Assistant Registrar

sms

To

1. The Principal Subordinate Court,
Vridhachalam.
2. The 2nd Additional District Munsif Court,
Vridhachalam.

+1 cc to M/s.K.Sathish kumar Advocate sr 69327

+2 ccs to M/s.P.Mahalakshmi Advocate sr 69920,69406

S. A.No.297 to 300 of 2011

rj(co)
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