

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.12.2016

PRONOUNCED ON : 05.12.2016

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.367 of 2011

Mahalakshmi

...

Appellant

Vs.

1.Kasinathan

2.Mani

3.Devaraj

4.Pazhamalai

5.Chandrasekar

6.A/M.Viruthagireeswarar Devasthanam

by its Executive Officer,

Vridhachalam.

...

Respondents

Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 19.08.2010 made in A.S.No.20 of 2010 on the file of the Additional Subordinate Judge, Vridhachalam confirming the judgment and decree dated 02.12.2009 made in O.S.No.379 of 2005 on the file of the Principal District Munsif, Vridhachalam.

For Appellant : Mr.R.Rajesh

For Respondent : Mr.A.L.Gandhimathi
Nos. 1 to 5

For Respondent : Mr.R.Sunilkumar
No.6

JUDGMENT

Challenge in this second appeal is made by the plaintiff against the judgment and decree dated 19.08.2010 passed in A.S.No.20 of 2010 on the file of the Additional Subordinate Court, Vridhachalam confirming the judgment and decree dated 02.12.2009 passed in O.S.No.379 of 2005 on the file of the Principal District Munsif, Vridhachalam.

2. The suit has been laid by the plaintiff for declaration, permanent injunction and also for possession.

3. In short, according to the plaintiff, the suit property is the ancestral property of her grandfather Govindaraj and her grandfather had been residing in the suit property by putting a house and after him, his daughter Sornambal viz., the plaintiff's mother inherited the suit property and it is stated that patta had been granted in favour of the Sornambal and by virtue of the settlement deed executed by Sornambal in favour of the plaintiff dated 27.02.2003, the plaintiff derives title and possession of the suit property and inasmuch the defendants, without any authority and against law, attempted to interfere with the plaintiff's possession and enjoyment, she has been necessitated to lay the suit for appropriate reliefs.

4. Per contra, according to the defendants, the suit property

belonged to Vridhachalam Taluk, Vayalur Village, A/M.Ayyanar Mariyamman, Pidariyamman Temple, and used as " Nandavanam" for more than 150 years and it is also stated that the plaintiff's husband has executed documents admitting the title of the temple in respect of the suit property and therefore, the plaintiff has no title or legal possession and enjoyment of the suit property and the suit is liable to be dismissed.

5. Other than stating that the suit property belongs to her grandfather Govindaraj ancestrally, it has not been explained or established by the plaintiff as to how the suit property belonged to her grandfather ancestrally. In this connection, it is admitted by the plaintiff that there is no document whatsoever to establish that the suit property belonged to and been in possession and enjoyment of her grandfather. Even the witnesses examined on the side of the plaintiff are unable to establish and substantiate that the plaintiff's grandfather had title and legal possession and enjoyment of the suit property. Further, the case of the plaintiff that Sornambal, her mother had inherited the suit property from Govindaraj also cannot be readily accepted.

6. However, the plaintiff has pleaded that patta has been granted in favour of her mother, Sornambal. However, as rightly

argued by the defendants' counsel, patta document does not confer title. Therefore, on that basis, we cannot uphold the title of the plaintiff's mother in respect of the suit property. When the plaintiff's mother has not been shown to be having valid title in respect of the suit property and also when the plaintiff has not established that her mother had been in possession and enjoyment of the suit property legally, it could be seen that the settlement deed alleged to have been executed in favour of the plaintiff by her mother Sornambal dated 27.02.2003 has no validity and cannot be accepted in any manner. The legal competency of Sornambal to execute Ex.A2 has not been established. Therefore, it could be seen that based upon Ex.A2 settlement deed, the plaintiff's title to the suit property cannot be upheld.

7. The plaintiff has produced house tax receipts and water charges receipts, for showing her possession and enjoyment of the suit property. According to the plaintiff, she has paid house tax and water charges in respect of the house construction put up on the suit property. However, as rightly found by the courts below, based upon the commissioner's report and plan, it could be seen that there is no house structure in the suit property as such and the construction found in the suit property is incomplete and in a dilapidated condition

and no one is found to be residing in the suit property. When the same has been confronted to by the plaintiff, the plaintiff has also admitted that for the past one year, she is residing elsewhere and it is true that the house was found to be in dilapidated condition, when the commissioner inspected the suit property. In such circumstances, when there is nothing to indicate that the house tax receipts and electricity charges receipts produced by the plaintiff pertain to the suit property as such, it could be seen that the plaintiff's title, possession and enjoyment of the suit property on the basis of those documents cannot be accepted.

8. Even in the proceedings of the Municipal Commissioner of Vridhachalam Municipality marked as Ex.A18 would not be useful to confer title and uphold the plaintiff's case. Therefore, it could be seen that the plaintiff has miserably failed to establish that she has title to the suit property and been in possession and enjoyment of the suit property and entitled to recover the suit property from the defendants.

9. The Courts below have also found based upon Exs.B1 and 2 and from the evidence adduced on the side of the defendants

through DWs1 to 5 that the plaintiff's husband had accepted the title of the temple in respect of the suit property and executed Exs.B1 & 2 to offer flower, etc., to the temple deity. Therefore, it could be seen that the courts below have upheld the defendants' version and rejected the plaintiff's version in respect of the title, possession and enjoyment of the suit property.

10. No ground is made out by the plaintiff's counsel to warrant any interference to the findings of the courts below. It could be seen that the courts below have rightly appreciated the evidence on record on a correct focus as per law and disbelieved the plaintiff's case. In such view of the matter, the authorities relied upon by the appellant's counsel reported in **(2010) 8 Supreme Court Cases 423 (Shalimar Chemical Works Limited V. Surendra Oil And Dal Mills (Refineries) and others) and 2008 (1) CTC 97 (J.Naval Kishore V. D.Swarna Bhadran)** are found to be not applicable to the facts and circumstances of the case at hand.

At the end, no substantial question of law is found to be involved in this second appeal and the same is dismissed. No costs.

05.12.2016

Index : Yes/No
Internet: Yes/No
sms

To

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

T.RAVINDRAN,J.

sms

Pre-delivery order in
S. A.No.367 of 2011

05.12.2016

Pre-delievery Judgment made
in
S. A.No.367 of 2011

To
The Hon'ble Mr.Justice T.Ravindran

Most respectfully submitted
sms
(P.A.to the Hon'ble Judges)

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