

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.11.2016

PRONOUNCED ON : 30 .11.2016

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.471 of 2011

and

M.P.No.1 of 2011

Paramasiva Mudaliar

..

Appellant

Vs.

Thanikachalam

...

Respondent

Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 16.11.2010 and made in A.S.No.36 of 2008 on the file of the II Additional Subordinate Judge, Villupuram, confirming the judgment and decree dated 22.09.2005 and made in O.S.No.161 of 2004 on the of I Additional District Munsif, Tirukoilur.

For Appellant

: Mr.G.Arul Murugan

For Respondent
Balakrishnan

: Mrs.P.Kavitha

JUDGMENT

Challenge in this second appeal is made by the 6th defendant against the judgment and decree dated 16.11.2010 made in A.S.No.36 of 2008 on the file of the II Additional Subordinate Court, Villupuram, confirming the judgment and decree dated 22.09.2005 made in O.S.No.161 of 2004 on the file of the First Additional District Munsif, Thirukovilur.

2. The suit has been laid by the plaintiff for declaration, possession, mesne profits and damages.

3. The issues involved between the parties in respect of the suit property disclose that this is the 4th round of litigation between the plaintiff's family and the contesting parties in respect of the suit property. The plaintiff, Ramalingam and Aiyamperumal are brothers and the sons of Veerappa Mudaliyar. The suit property forms part of the joint family properties belonging to Veerappa Mudhaliyar and his three sons. It appears that one Ramalingam Mudhaliyar and the defendants 5 to 8 filed a suit against the plaintiff and his brothers and Veerappa Mudaliyar in respect of the suit property seeking the relief of declaration and possession in O.S.No.728 of 1970 and the

suit was decreed. The appeal in A.S.No.485 of 1973 and the Second Appeal in S.A.No.1758 of 1974 also went against the plaintiff's family. This could be seen from the suit register extract copy marked as Ex.A14.

4. Secondly, it could be seen that the plaintiff's brother Ramalingam and Aiyam perumal had filed a suit in O.S.No.87 of 1977 seeking for declaration that judgment and decree in O.S.No.728 of 1970 is null and void. The above suit came to be decreed. The contesting parties preferred the appeal in A.S.No.123 of 1978 and the appeal ended in their favour. Challenging the same, the plaintiff's brothers preferred the second appeal in S.A.No.846 of 1976 and the second appeal was allowed and thereby, the judgment and decree passed in O.S.No.87 of 1977 was confirmed. Then resultant position is that the judgment and decree passed in O.S.No.728 of 1970 has been finally declared to be null and void.

5. The defendants 1 to 4 are the legal heirs of Ramalingam, who was one of the plaintiffs in O.S.No.728 of 1970. Thirdly, it appears that the defendants 1 to 8 herein, pending the second appeal in S.A.No.846 of 1976, had taken delivery of the suit property, pursuant to the judgment and decree passed in O.S.No.728 of 1970.

Consequently, the plaintiff's brothers after the disposal of the second appeal in S.A.No.846 of 1976 declaring that the judgment and decree passed in O.S.No.728 of 1970 is null and void, applied for the restitution of the possession of the suit property from the defendants 1 to 8 in I.A.No.2388 of 1985 in O.S.No.728 of 1970. The same, after contest, was ordered in favour of the plaintiff's brothers on 11.08.1986. The CMA No.26 of 1986 preferred by the contesting parties was dismissed on 12.11.1991 and the Civil Miscellaneous second appeal preferred in AAAO.No.35 of 1992 also came to be dismissed on 16.09.1998. Therefore, it could be seen that the plaintiff's brothers were given the order to obtain the delivery of possession of the suit property.

6. Meanwhile as per the partition effected between the plaintiffs and his brothers, the suit property came to be allotted to the plaintiff and this could be evidenced from the partition deed dated 02.11.1983, which has been marked as Ex.A1. That the suit property has come to be allotted to the share of the plaintiff, as rightly found by the courts below, was also known to the contesting parties and this could be seen from the counter filed by them in I.A.No.2388 of 1985 in O.S.No.728 of 1970. Therefore, the contesting parties cannot now claim that they are unaware of the factum that the suit property

has been allotted to the plaintiff under Ex.A1 partition deed.

7. It appears that the plaintiff's brothers preferred E.P.No.38 of 2000 in O.S.No.728 of 1970 to get possession of the suit property. However, the EP came to be dismissed on 09.04.2001, in view of the endorsement made by the petitioners therein.

8. It also appears that an agreement has been entered into between D1 to D8 and the legal heirs of the plaintiff's brother Ramalingam viz., D9 to D11 in respect of the suit property and the same has been marked as Ex.B6. Now, based upon Ex.B6, it appears that the contesting parties are resisting the case of the plaintiff from seeking the reliefs now sought for in the present suit.

9. However, as rightly found by the courts below, it could be seen that Ex.B6 has been found to be an incomplete document and also not properly stamped and further a cloud of shadow has been found touching on the genuineness of the said document and therefore, disbelieving the same, the courts below have upheld the plaintiffs title and right in respect of the suit property. As rightly found by the courts below, all the parties to the agreement under Ex.B6 have not subscribed to the same. Particularly, Manvizhi, who is

the daughter of the plaintiff's brother Ramalingam, has not affixed her signature in Ex.B6. Ex.B6 is dated 07.03.2001. Further, it has not been explained as to how the legal heirs of Ramalingam would be entitled to convey any right over the suit property to the defendants 1 to 8, when the suit property had already been allotted to the share of the plaintiff under the partition deed dated 02.11.1983 marked as Ex.A1. That apart, as rightly found by the Courts below, when mesne profits, to which, the plaintiff's brothers were given a decree exceeded Rs.10,000/- the sale consideration fixed in Ex.B6 agreement at the rate of Rs.10,000/- appears to throw a great amount of suspicion and doubt in the genuineness of the said document and therefore, the courts below have also not accepted the validity of the document as such. Further, as found earlier, the Ex.B6 agreement has not been properly stamped and also, as it recites that the title had been parted by the legal heirs of Ramalingam, the same sans registration also would not be legally acceptable.

10. The attestors DW2 and 3, who had been examined, have also admitted that Ex.B6 agreement has not been signed by all the parties thereto. Therefore, it could be seen that nothing has been pointed out by the appellant to take a different view than the views

and findings of the courts below as regards the validity of the Ex.B6.

11. It is argued by the appellant counsel that inasmuch the plaintiff has not preferred the second appeal impugning the judgment passed in A.S.No.123 of 1978, the plaintiff is precluded from reaping the benefits that had accrued to the plaintiff's brothers, in view of the judgment passed in second appeal No.846 of 1976, However, the above argument does not merit acceptance.

12. The resultant position of the above second appeal would be that the Judgement and decree of the trial Court in O.S.No.87 of 1977 has been restored. In O.S.No.87 of 1977 the decree has been made declaring the judgment and decree made in O.S.No.728 of 1970 as null and void. In such circumstances, it could be seen that when the decree that had been passed in O.S.No.728 of 1970 has been declared to be null and void and the same has also been confirmed by the High Court in the Second appeal No.846 of 1976, the argument that inasmuch the plaintiff has not preferred the above mentioned second appeal, he cannot enjoy the fruits of the result of the second appeal, as such cannot be countenanced in the eyes of law.

13. Finally, the appellant counsel also placed submissions, as

regards the entitlement of the suit property, by the contesting parties in particular on the plea of adverse possession. However, the courts below have rightly disbelieved the plea put forth by the contesting parties for claiming title to the suit property on the plea of adverse possession. The courts below have found that the contesting parties have miserably failed to establish by acceptable and reliable evidence that they have prescribed title to the suit property by adverse possession on account of their long and continuous enjoyment openly and uninterruptedly exhibiting hostile attitude to the knowledge of the plaintiff and others. Therefore, the plea of limitation projected by the contesting parties also fail. When the courts below have rightly appreciated the issues of the plea of adverse possession raised between the parties in the correct manner and also, by following the principles of law in the right perspective pertaining thereto and when the same has not been established to be smacking of any error of law, it could be seen from the decision reported in **2016 (5) CTC page 862 (syeda Rahimunnisa V. Malan Bi by L.Rs. And ors)** that the concurrent findings of the courts below on the plea of adverse possession now raised by the appellant, cannot be a question of law, which could be raised in the second appeal and the same could only be deemed to be a question of fact. Therefore, the plea of adverse possession now projected in the

second appeal has to be rejected straightaway, as it does not involve any question of law.

14. In the light of the above discussions, it could be seen that the courts below have rightly upheld the plaintiff's title and his entitlement to get possession of the suit property from the contesting parties. Nothing has been projected by the appellant to warrant any interference with the findings and the conclusions of the courts below for upholding the case of the plaintiff.

In conclusion, it is found that no substantial question of law is involved in this second appeal. Resultantly, the second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

30.11.2016

Index : Yes/No
Internet: Yes/No
sms

To

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

T.RAVINDRAN,J.

sms

Pre-delivery order in
S. A.No.471 of 2011
and
M.P.No.1 of 2011

30.11.2016