

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.11.2016

PRONOUNCED ON : 01.12.2016

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.512 of 2011

and

M.P.No.1 of 2011

G.Kannan

...
Vs.

Appellant

1.Natarajan

2.Rajee

3.Mangammal

...

Respondents

Second Appeal is filed under Section 100 of Civil Procedure Code,

against the judgment and decree made in A.S.No.20 of 2010 dated 21.12.2010 on the file of Principal Sub-court, Tindivanam confirming the judgment and decree made in O.S.No.472 of 2005 on the file of the Principal District Munsif, Tindivanam, dated 20.02.2010.

For Appellant

: Mr.D.Ravichandran

For Respondents

: Mrs.N.Mala

JUDGMENT

Challenge in this second appeal is made by the plaintiff against the judgment and decree dated 21.12.2010 made in A.S.No.20 of 2010 on the file of the Sub Court, Tindivanam, confirming the judgment and decree dated 20.02.2010 made in O.S.No.472 of 2005 on the file of the Principal District Munsif Court, Tindivanam.

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

3. The suit property has been described to be situated in Thenpasiyar Village, survey No.109/4B Hec.0.51.0 with specific measurements.

4. Now according to the plaintiff, the suit property is the ancestral property of his father Govindharaju Pillai and further, according to the plaintiff, Govindharaju Pillai effected oral partition of his properties including the suit property with his sons and it is stated that the suit property was allotted to the share of the plaintiff. Further, according to the plaintiff, in order to confirm the oral partition above made, he and his brother Radhakrishnan had

executed a registered partition deed dated 29.08.2005, wherein also, the plaintiff has been given the suit property amongst the other properties and thus, according to the plaintiff, he is in possession and enjoyment of the suit property. It is further stated that considering his possession and enjoyment of the suit property, patta has also been granted to the plaintiff. It is also stated that in the suit survey number, a portion of land has been acquired by the Railway administration for laying the Railway Track.

5. The defendants have disputed the claim of the plaintiff that the suit property is the ancestral property of the plaintiff's father Govindharaju Pillai. Further, the defendants have also stated that the plaintiff has not come forward with clean hands and in particular, the plaintiff has suppressed the partition suit laid by Venugopal Pillai, the father of Govindharaju Pillai against his sons and the plaintiff and his brother in O.S.No.313/43 and in the above said suit, the parties were allotted different shares and it is stated that the plaintiff's father Govindharaju Pillai has been allotted particular extents only in survey numbers 106/1, 106/2, 106/4 and 106/5 in all totaling 1.21 acres and he has not been allotted any share in 106/3 in specific and further according to the defendants, Ramakrishnan pillai, one of the sons of Venugopal Pillai had also purchased the shares allotted to Venugopal

pillai and Loganathan under different sale deeds and it is contended that the plaintiff taking advantage of the false entries in the revenue records is attempting to grab the property allotted to the defendants family in the above mentioned suit proceedings and also acquired by them under the sale deeds and therefore, the plaintiff suit should be dismissed.

6. Despite the above defence put forth by the defendants, the plaintiff has not placed any acceptable and reliable material to hold that the suit property as described in the plaint is the exclusive ancestral property of his father Govindharaju Pillai and further, the same has been allotted to him in the partition decree made in O.S.No.313/43. The plaintiff has not clearly mentioned as to how his father Govindharaju Pillai owned the suit property ancestrally. It has not been stated as to under what mode his father Govindharaju Pillai came to acquire the suit property. On the other hand, it is found that the plaintiff has materially suppressed the proceedings in O.S.No.313/43 laid by his grandfather for partition of the family properties and it could be seen that he has mainly projected his case based upon certain entries in the revenue records (i.e). A Register extract and Patta. Other than those documents, nothing has been projected by the plaintiff to hold that his father had owned the suit

property ancestrally and that the same had been allotted to the plaintiff's share under the partition claimed by him in the plaint.

7. Now, according to the plaintiff, there has been an oral partition effected by his father with his sons viz., the plaintiff and his brother Radhakrishnan and in that oral partition the suit property was allotted to his share. With reference to the above case, there is no acceptable and reliable evidence. Further, according to the plaintiff, the plaintiff and his brother Radhakrishnan had executed a registered partition deed dated 29.08.2005, wherein, "A" schedule property described in the document had been allotted to the plaintiff. The above said partition deed has been marked as Ex.A1. The courts below have correctly found that in the "A" schedule property described therein said to have been allotted to the plaintiff's share, only the lands situated in survey No.106/1, 106/2, 106/4 and 106/5 have been described. The plaint schedule property is conspicuously absent in the "A" schedule of Ex.A1. The courts below have found based on the "A" register extracts filed as Exs.B11 and 13 that for the old survey No.106/3, the corresponding new survey Number is 109/4B, 109/5. As found earlier, survey No.106/3 even as per Ex.A1 has not been found to be allotted to the plaintiff. As seen from the final decree proceedings passed in O.S.No.313/43, marked as Ex.A3,

it could be seen that the plaintiff's father has been allotted only particular extent of lands in survey No.106/1, 106/2, 106/4 and 106/5. In such circumstances, when neither the plaintiff's father nor the plaintiff has been shown to be allotted any extent in survey No.106/3, it does not stand to reason as to how the plaintiff could have been granted patta for the suit property describing the same as situated in new survey No.109/4B. As rightly found by the courts below, the plaintiff has laid a claim to the suit property only based upon the revenue records and nothing has been shown to hold that either in the partition suit in O.S.No.313/43 or under the partition deed Ex.A1, his father or the plaintiff as such had been allotted the suit property as described in the plaint. Further, as rightly found by the courts below, the plaintiff has not challenged the final decree proceedings in O.S.No.313/43. So, it could be seen that the same is binding upon him.

8. Even the defendants have admitted that the Railway administration had acquired lands in the area belonging to the parties for forming the Railway Track. The defendants have put forth the defence that taking advantage of the entries in the revenue records, the plaintiff is attempting to lay a claim on the property to which the defendants are entitled to both by way of partition as well as through

purchase and therefore, according to them, the plaintiff should not be granted the reliefs claimed. The defendants are the legal heir of Ramakrishnan pillai, who is the one of the sons of Venugopal Pillai. Further, the courts below have also found that Ramakrishna Pillai has also purchased an extent of 0.63 cents in survey No.106/3 under Ex.B6. The point at issue is as regards the actual extent to which the plaintiff is entitled to in the survey No.109/4B. When the plaintiff has miserably failed to establish that either his father or the plaintiff has been allotted the suit property as described in the plaint to their respective shares and when the revenue records relied upon him has been seriously challenged by the defendants, the revenue records not to be construed as documents of title and the plaintiff having failed to establish that he had obtained the revenue records to the knowledge of the defendants after due notice it could be seen that as rightly argued by the defendants' counsel, taking advantage of the entries in the revenue records, the plaintiff is attempting to lay a false claim on the suit property without any basis or title.

9. However, the plaintiff's counsel contended that the defendants have in the course of evidence admitted that the plaintiff has also been allotted certain share in the suit survey number. However, the issue is whether at all the plaintiff or his father had

been allotted any extent or the extent of 0.51.0 Hectares in survey No.109/4B as described in the plaint. When that contentious issue has not been established by the plaintiff by adducing acceptable and reliable evidence, he cannot be allowed to pick holes in the defendant's case and thereby, attempt to succeed his case without any foundation. Therefore, as rightly argued by the defendants' counsel, the decision relied on by the plaintiff counsel reported in **2003-2-L.W.501 (Susheela Ebenezer and two others V. The Tamil Nadu Industrial Investment Corporation Ltd., Pondicherry and four others)** is not applicable to the facts and circumstances of the present case. The plaintiff has to fall or stand on the strength of his own case. When according to the plaintiff, he claims title on a particular set of facts and when the projected evidence to sustain the same does not establish that he has title to the suit property and in the alternative, it is found that the plaintiff has claimed title to the suit property only on the basis of the revenue records and when the same has been seriously impugned and when admittedly the revenue records cannot be the source of title as such, it could be seen that the courts below have rightly rejected the plaintiff's case. No interference is called for in the findings and conclusions of the courts below for rejecting the plaintiff's case.

In conclusion, I do not find any substantial question of law involved in this second appeal and accordingly, the second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

01.12.2016

Index : Yes/No
Internet: Yes/No
sms

To

1. The Principal Sub-court, Tindivanam.
2. The file of the Principal District Munsif,
Tindivanam.

T.RAVINDRAN,J.

sms

Pre-delivery order in
S. A.No.512 of 2011
and
M.P.No.1 of 2011

01.12.2016