



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.11.2016

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

Second Appeal (MD) No.778 of 2015
and
C.M.P. (MD) No.7856 of 2016

Balasubramanian

... Appellant/Appellant/Plaintiff

-Vs-.

1.Marimuthu
2.Mariappan
3.Muthumariappan
Malamuthammal (Died)
4.Kalimuthu Gounder (Died)
5.Devi
6.Minor Selvam
7.Minor Archana
8.Palaniammal
9.Thangam

... Respondents/Respondents/
Defendants

(No notice required for fourth respondent, since she already expired) (R4 to R9 recorded as the LRs of the deceased fourth defendant in momo USR No.2126/2013 dated 25.07.2013.

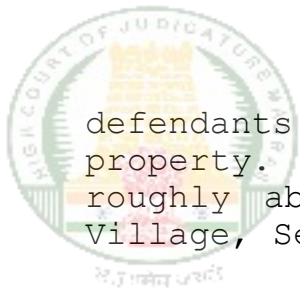
Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, praying to set aside the judgment and decree passed by the Court of the Subordinate Judge, Srivilliputhur, in A.S.No.03/2009, dated 29.09.2011 in confirming the judgment and decree passed by the Court of the Principal District Munsif, Srivilliputhur in O.S.No.128 of 2003, dated 17.10.2008 and allow this Second Appeal.

For Appellant : Mr.M.Jothi Basu
For Respondents : Mr.R.R.Kannan
1 to 3

JUDGMENT

The present second appeal has been filed by the plaintiff in O.S.No.128 of 2003 on the file of the Principal District Munsif, Srivilliputhur.

2.The suit was filed by the plaintiff for declaration of title and consequential permanent injunction in respect of the suit property. The suit is also for a mandatory injunction directing the



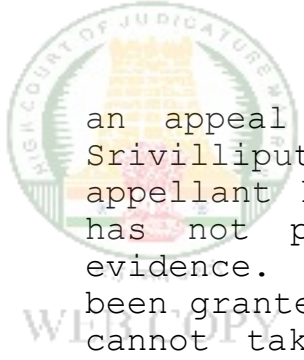
defendants to remove the temporary shed put up by them in the suit property. The suit property is only an extent of 91 square meter, roughly about 2 cents, in Natham survey No.391/59 in Mettupatti Village, Sethur Town Panchayat, Rajapalayam Taluk.

3.The case of the plaintiff is that the suit property originally belonged to his father one Palanichamy Gounder and the same was his ancestral property. The further case of the plaintiff is that the said Palanichamy Gounder died intestate leaving behind the plaintiff and his two brothers. The plaintiff further contended that there was a oral partition in his family among the legal heirs of Palanichamy Gounder in the year 1985 and that in the said oral partition, the suit property was allotted to the plaintiff.

4.The plaintiff further submitted that he was issued with patta under natham settlement on 03.05.1996 and hence, he is entitled to title to the suit property. According to the plaintiff, the suit property lies on the western side of the defendants' house. Since the defendants approached the plaintiff to put up a temporary thatched shed, for their mother, the plaintiff contended that the defendants were permitted to use the property for keeping their mother, in the year 1995. Since the permission granted to the defendants was cancelled immediately after the death of the defendants' mother in the year 2001, the defendants are not entitled to continue in possession. Since the defendants refused to hand over the land after removing the super structure, the plaintiff stated that he was constrained to file a suit for the relief.

5.The defendants contested the suit by disputing the right, title and interest of the plaintiff over the suit property. The plaint averments were specifically denied. The defendants claimed title on the basis of a registered settlement deed dated 31.07.1946 executed by one Velammal and Ponnammal, the original owners in favour of the father of the defendants one S.Subbiah Gounder. It was the further case of the defendants that there was a registered partition on 30.08.1959 whereby the suit property had been allotted to the defendants 1 to 3. Since the revenue authorities, on the appeal filed by the defendants 1 to 3, as against the patta that was issued recently to the plaintiff, directed the defendants to approach the Civil Court, the defendants 1 to 3 submitted that the patta granted in favour of the plaintiff is not final and determinative of title in favour of the plaintiff.

6.The trial Court though found that the documents filed by the defendants are not pertaining to the suit property, further held that the plaintiff who is liable to discharge the burden has not proved his case of title or enjoyment. The patta that was relied upon by the plaintiff was not accepted as a document of title. Hence, the trial Court dismissed the suit by holding that the plaintiff has not proved his title or enjoyment in respect of the suit property. Aggrieved by the judgement and decree of the trial Court, dismissing the suit, the plaintiff / appellant has preferred



an appeal in A.S.No.3 of 2009 on the file of the Sub Court, Srivilliputhur. The appellate Court found that the plaintiff / appellant has not filed any other document except Ex.A1-patta and has not proved his case of title by any other corroborative evidence. The appellate Court also found that the patta must have been granted by mistake in favour of the plaintiff and the plaintiff cannot take advantage of such patta. When no supporting oral evidence was adduced by the plaintiff / appellant, the lower appellate Court found that there is no document to prove either the title or the enjoyment of the plaintiff. Considering the evidence of the plaintiff that he did not know the measurements of the suit property and that the plaintiff was not able to locate the boundary of the suit land, the case of the plaintiff in toto was rejected by the lower appellate Court. Thus, the lower appellate Court confirmed the findings of the trial Court and dismissed the appeal. As against the concurrent findings of the Courts below, the present Second Appeal has been filed by the plaintiff / appellant.

7.It is a trait proposition of law that the plaintiff has to prove his own case and he cannot fall back only on the weakness of the defendants' case. In the present case, the plaintiff himself admits that the defendant is in possession of a portion of suit property. Though he has filed the suit for permanent injunction, he is not let in any evidence to prove his possession and enjoyment. It is not possible, in exercise of jurisdiction under Section 100 C.P.C. to re-appreciate the evidence or to reverse the findings of the trial Court on the only ground that a different view is also possible.

8.The following substantial questions of law are raised in the grounds of appeal:

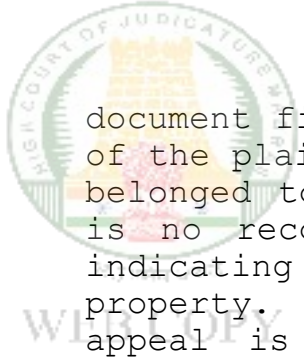
(a) *Whether Courts below are correct in respect of rejecting the document Ex.A1, patta issued by the Special Tahsildar, Rajapalayam, in favour of the plaintiff, in respect of the land which has been classified as Natham land?*

(b) *Whether Courts below are correct in respect of deciding the issue of title of the suit schedule property without considering the document Ex.A1 in which both the parties have not produced any document to prove the title?*

(c) *Whether Courts below are correct without issuing any issue in respect of Ex.B8 and whether the order passed by the Tahsildar, Rajapalayam on 07.11.2002 will not operate against the defendants under the principle of Promissory Estoppel?*

(d) *Whether first appellate Court correct in deciding the appeal even without framing issue in which it is mandatory under Order 41 Rule 27 C.P.C.?*

9.The first question of law is relating to the only

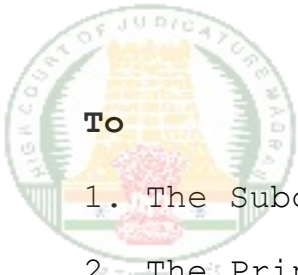


document filed by the plaintiff / appellant namely Ex.A1. The case of the plaintiff / appellant in the plaint is that the suit property belonged to his father one Palanichamy Gounder. Absolutely, there is no record or evidence produced by the plaintiff / appellant indicating that his father was ever in enjoyment of the suit property. The document Ex.A1 is seriously disputed. Even when an appeal is filed against the grant of patta in favour of the plaintiff / appellant, the revenue officials have directed the defendants 1 to 3 to approach the Civil Court. In such circumstances, the document Ex.A1 cannot be accepted as a document to conclusively prove the ownership over the land. Except this document, no other document is produced by the plaintiff / appellant to prove his possession of enjoyment. The plaintiff / appellant himself admits that the defendants were permitted to be in possession of a portion of the suit property by putting up a super structure. The fact that the defendants were only in occupation of the property by virtue of permission granted by the plaintiff / appellant is not proved by any independent evidence. The plaintiff claimed title on the basis of a partition in his family consisting his father, himself and his brother. However, no evidence was adduced to prove this partition. In such circumstances, I am not able to take a different view from the Courts below and the plaintiff / appellant cannot claim title solely based on the patta under Ex.A1 when there is a rival claim. The next question of law also falls to ground in view of the answer given on the first question. The next question is only regarding Ex.B8. The order passed by the Tahsildar, Rajapalayam, dated 07.11.2002 is not final and there is no adjudication of any issue relating to title and enjoyment in the proceedings of the Tahsildar, Rajapalayam. In such circumstances, the said order cannot be said to operate as against the defendants to claim title. The principle of promissory estoppel have been wrongly used by the plaintiff and it has no role to play in the present case. The fourth question of law has been improperly framed and it is also not sustainable. First of all, it has to be noted that the provisions of law namely Order 41 Rule 27 quoted by the plaintiff / appellant is wrong. It should be Order 41, Rule 31 C.P.C. Secondly, in this case, I find that the appellate Court has considered all the issues based on the materials produced both oral and documentary evidence. The lower appellate Court has given reasons for confirming the findings of the trial Court. In such circumstances, absolutely, I find no reason to interfere with the findings of the lower appellate Court and the second appeal is liable to be dismissed and accordingly, the same is dismissed. However, there is no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

/True Copy/



1. The Subordinate Judge, Srivilliputhur.

2. The Principal District Munsif,
Srivilliputhur.

+ 1 CC TO Mr.G.MARIMUTHU, ADVOCATE IN SR No. 66192

+ 1 CC TO Mr.R.R.KANNAN, ADVOCATE IN SR NO. 65803

SRM

TE/SKS-RR : 03/01/2017 : 5P/5C

Judgment made in
Second Appeal (MD) No.778 of 2015
and
C.M.P. (MD) No.7856 of 2016
04.11.2016