



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 28.11.2016

C O R A M

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THE HONOURABLE MR. JUSTICE S.S.SUNDAR

Second Appeal (MD) No.620 of 2011

Krishnammal

: Appellant/Appellant/Plaintiff

Vs.

1.Sivaniammal
2.Ayyathurai @ Karuppasamy
3.Ponnuthai
4.Ramarthai
5.Mariammal
6.Ayyammal
7.Maharajan
8.Muthuraj
9.Muthuapandi
10.Chellammal

: Respondents/Respondents/Defendants

Prayer:- Second Appeal is filed under Section 100 of the Code of Civil Procedure, 1908, against the Judgment dated 07.03.2011 passed in A.S.No.12 of 2009 on the file of the Subordinate Court, Sankarankovil, thereby confirming and Decree judgment dated 04.12.2008 passed in O.S.No.275 of 2007 on the file of the Principal District Munsif Court, Sankarankovil.

For Appellant : Mr.B.Prahalad Ravi for
M/s.Hall Mark Associates
For Respondents : Mr.M.P.Senthil

J U D G M E N T

The Plaintiff is the appellant in this Second Appeal. The appellant herein filed a suit in O.S.No.275 of 2005 on the file of the Principal District Munsif Court, Sankarankovil, for declaration of title and consequential injunction restraining the defendants from interfering with his peaceful possession and enjoyment of the suit property. The suit properties consist of two items. The first item is an extent of 21 cents out of total extent of 64 cents in Survey No.172/2 in Melaneelithanallur, Maruthankinar Village, Sankarankovil Taluk, Tirunelveli District. The second item consists of the remaining 43 cents in Survey No.172/2.



2. The case of the appellant as can be read from the plaint, is as follows:

2.1. The suit schedule properties originally belong to one Koothan Son of Subban and that an extent of 21 cents was conveyed in favour of one Chellaya, the husband of the first defendant and the father of the defendants 2 to 6. Similarly, the remaining extent of 43 cents was purchased by the plaintiff by a Sale Deed dated 08.07.1969. The first item of suit schedule property namely 21 cents which was originally purchased by the first defendant's husband was sold to the plaintiff orally during the first week of May 1970 for a consideration of Rs.500/- and the possession was handed over to the plaintiff. By virtue of oral sale and the Sale Deed dated 08.07.1969, both the suit properties belong to the plaintiff. The plaintiff has obtained patta on 25.10.1985. However, the defendants are trying to interfere with the peaceful possession of the plaintiff's properties. Having regard to the fact that the plaintiff is in enjoyment of the suit property for more than 12 years continuously, openly and without any interference of any one the plaintiff has prescribed title by adverse possession.

2.2. The suit was contested by the defendants disputing the oral sale alleged to have been made by the first defendant's husband in 1970. Since the oral sale is not valid and will not convey the title in favour of the plaintiff, the defendants specifically disputed the title of the plaintiff. Since no document, to prove the enjoyment from 1972 to 1985, is produced by the plaintiff, the defendants submitted that the documents obtained by the plaintiff from the revenue department are fabricated documents. The defendant contended that the plaintiff cannot take advantage of a wrong entry in the revenue record, since patta is not a document of title as held by this Court in a number of judgments. The defendants also contended that the suit filed on the basis of the alleged oral sale and the revenue records, is not sustainable. Even though the plaintiff's case with reference to the 43 cents which is described as suit second schedule is admitted, the trial Court dismissed the suit in entirety mainly on the ground that the plaintiff has not established his title or enjoyment over the suit first schedule property and that there was no cause of action in respect of suit second schedule.

2.3. Aggrieved by the same, the appellant/plaintiff preferred an appeal in A.S.No.12 of 2009 on the file of the sub-Court, Sankarankovil and the lower appellate Court also fell in line with the trial Court and dismissed the appeal.

2.4. Aggrieved by the same, the appellant has preferred the above Second Appeal.

3. The following questions of law has been raised in the appeal in the memorandum of grounds:

"i) Whether the Decree and Judgment of the Courts below is



legally sustainable in law?

ii) Whether the Decree and Judgment of the Courts below are legally sustainable in law once the appellant/plaintiff had proved her case in all probabilities by way of Exs.A1 to A8 besides Exs.X1 to X2 documentary evidence?

iii) Whether the Decree and Judgment of the Courts below are legally sustainable on the sole ground that the Courts below are right in dismissing the case of the appellant/plaintiff in entirety even after the clear admission of the respondents/defendants in their deposition relating to the long and continuous possession of the suit properties by the appellant/plaintiff?

iv) Whether the Courts below are right in rejecting the case of the Appellant/plaintiff as against the settled principles of law possession follows title?

v) Whether the Courts below are right in dismissing the case of the Appellant/Plaintiff in entirety as the possession of the suit properties by the appellant admitted by the Respondent/Defendant?

vi) Whether the Decree and Judgment of the Courts below are legally sustainable on the sole ground that the Respondent/Defendant had failed to prove the contention the Appellant/Plaintiff under Section 110 of Indian Evidence Act?

vii) Whether the Decree and Judgment of the Courts below are vitiated on the sole ground that the Courts below are right in dismissing the case of the Appellant/Plaintiff in respect of second item of the suit property as the courts below had clearly come to the conclusion by way of oral and documentary evidences and upon admission of the respondent/defendant to the appellant's detriment?

viii) Whether the Decree and Judgment of the Courts below are vitiated on the sole ground that the courts below are right in dismissing the case of the appellant/plaintiff once comes to the conclusion that there is no dispute with regard to the second item of the suit property and possession of the Appellant/plaintiff with regard to the first item of the suit property dismissing the suit in entirety without passing the decree of declaration and permanent injunction based on the principles of "Possession follows title?"

ix) Whether the Decree and Judgment of the Courts below are vitiated on the sole ground that the courts below are right in dismissing the case



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of the Appellant/Plaintiff in entirety by placing reliance on the oral and documentary evidences filed by the Respondents/Defendants in Exs.B1 to B4 as they are not relevant documents to the suit properties?

x) Whether the Decree and Judgment of the Courts below are vitiated on the sole ground that the courts below are proceeded the case as per the Order 41 Rule 31 of C.P.C or not?

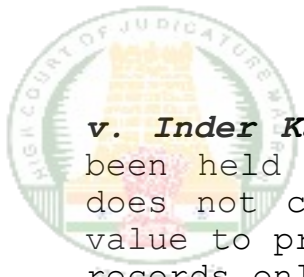
xi) Whether the Courts below are right in dismissing the case of the Appellant/Plaintiff based on her claim of oral sale without adverting to the fact and clear admission of the Respondents/Defendants relating to the long and continuous possession of the both items of the suit properties is sustainable in law or not?

xii) Whether the Courts below are right in dismissing the case of the Appellant/Plaintiff in entirety as the Appellant/Plaintiff is clearly entitled for the relief of permanent injunction as the possession of the both items of the properties are admitted by the Respondents/Defendants as per the Order 39 Rule 1 of C.P.C?"

4. Before proceeding to deal with the questions of law raised by the appellant, it is to be seen whether the plaintiff has proved his title and enjoyment so as to decree the suit as prayed for. It is not in dispute that the plaintiff has purchased only the second item of the suit properties, measuring an extent of 43 cents. It is also admitted by the plaintiff that the first item of the suit properties was purchased by the defendant's husband under Ex.A1 dated 21.04.1967.

5. However, it is contended by the plaintiff that he has orally purchased the property from the first defendant's husband in May 1970 and obtained patta for both the first and second items of suit property in the year 1985. Though the defendants did not dispute the plaintiff's title to an extent of 43 cents, the defendants have proved the title over the suit first schedule property. In the absence of any registered instrument, the claim of title by the plaintiff, placing reliance only on the oral sale is not sustainable in law. In these circumstances, the only question that is required to be considered, is as to whether the plaintiff has proved title by adverse possession?

6. In this case, except the patta, no other document was produced by the plaintiff to prove the title. It is a well settled position of law that revenue records like patta and kist receipt will not convey or confer any title in favour of the person who hold them without title. As a matter of fact, in the judgment in **Sawarni**

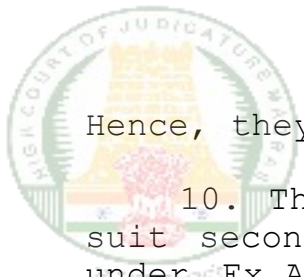


v. Inder Kaur reported in **(1996) 6 Supreme Court Cases 223**, it has been held that the mutation of properties in the revenue records does not create or extinguish title nor they have any evidentiary value to prove title. It has been further observed that the revenue records only enable the person in whose favour mutation is effected, to pay the land revenue for the land in question. Hence, the question of title in respect of any immovable property should be established *de hors* the entries in revenue records when there is a legitimate rival claim.

7. In this case, it has already been observed that the plaintiff himself admitted the title of the first defendant's husband in respect of the suit schedule properties. However, the oral sale which is invalid cannot be a document of title and there cannot be any reliance to be placed upon by the plaintiff even to get patta. Since the mutation of revenue records, namely, the patta in the year 1985 is not on the basis of any document of title, it cannot be taken as a valid entry, especially, when there is no evidence to show that the plaintiff had got the title prior to 1985. The evidence in this case clearly shows that not even a scrap of paper is produced to show the possession or enjoyment of the property by the plaintiff between 1970 and 1985. In such circumstances, it cannot be taken that the plaintiff's possession became adverse from the date of grant of patta.

8. It is also settled position of law that possession for any length of time will not give any person title, unless such possession is proved to be adverse, open and continuous against the true owner. In the present case, though the suit property is found to be an agricultural property, there is no evidence to prove cultivation. Some documents were filed by the plaintiff and the defendants to prove their respective enjoyment, however, these documents have been obtained only at the time of filing the suit.

9. In these circumstances the revenue records, namely, a copy of adangal and tax receipts filed by both sides cannot be relied upon to prove one's possession. Since the title is established by the defendants, the documents relied upon by the plaintiffs, which are very recent, cannot be relied upon to prove adverse possession as pleaded by the plaintiff in this case. The Courts below have considered the evidence and found that the plaintiff has neither proved title nor possession. Further, merely because the patta was issued in the year 1985 during UDR in favour of the plaintiff, the civil Court cannot shut its eyes to find out the true ownership over the property. When the plaintiffs title is disproved and the defendants' title is established, the presumption is that possession follows title. The Courts below on appreciation of evidence have come to the correct conclusions which are supported by reasons. The plea of adverse possession is not established. I find no reason to interfere with the concurrent findings of Courts below. The questions of law raised by the appellants are on the erroneous assumption of facts contrary to the findings of Courts below.



Hence, they are answered against the appellant.

10. Though the respondents have no dispute with regard to the suit second Schedule and the appellant has established his right under Ex.A2 dated 08.07.1969, the Courts below refused to grant relief on the ground that there was no cause of action. The respondents have fairly conceded before this Court that they do not claim any right in respect of the suit second item.

11. In such circumstances, though the lower appellate Court has negated the claim on the ground of want of cause of action, this Court in the interest of justice, hold that the plaintiff is entitled to succeed in respect of the suit second item and hence, this Second Appeal is partly allowed. While confirming the judgment and decree of the Courts below in respect of the suit first item of the suit properties, the judgment and decree in A.S.No.12 of 2009 on the file of the Sub-Judge, Sankarankovil, dated 07.03.2011, confirming the judgment of the trial Court in O.S.No.275 of 2007 on the file of the Principal District Munsif, Sankarankovil, is set aside by granting a decree in favour of the appellant in respect of the suit second schedule property. Hence, the suit in O.S.No.275 of 2007 in respect of the suit second item stand decreed as prayed for. This Second Appeal is therefore allowed in respect of second item. No costs.

Sd/-

Assistant Registrar (Writs)

/True Copy/

Sub Assistant Registrar

To

1. The Subordinate Judge,
Sankarankovil.
2. The Principal District Munsif,
Sankarankovil.

Copy To:-

The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

- + 1 CC TO M/s.B.PRAHALAD RAVI, ADVOCATE IN SR No. 74508
- + 1 CC TO Mr.M.P.SENTHIL, ADVOCATE IN SR No. 74635

GSR

TE/SS2-KSM : 19/01/2017 : 6P/6C

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