

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 20.04.2017

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

SA.No.291/2017 & CMP No.6835/2017

Kothandan

.. Appellant / Plaintiff

Versus

Durairaj

... Respondent/Defendant

Prayer: Second Appeal filed under section 100 of the Code of Civil Procedure against the judgment and decree dated 21.12.2016 made in A.S.No.9/2015 on the file of the Subordinate Judge, Vellore, Vellore District confirming the Judgment and decree dated 22.12.2014 made in O.S.No.1004/2009 on the file of the District Munsif, Katpadi, Vellore.

For Appellant : Mr.S.Mukunth
for M/s. T.L. Thirumalaisamy

For Respondent : Mr.J.Karthikeyan

JUDGMENT

The plaintiff who lost before the Courts below, is the appellant herein.

2 The facts leading to the filing of this Second Appeal, briefly narrated, are as follows:-

[a] The appellant / plaintiff filed OS.No.236/2009 on the file of the Court of District Munsif, Vellore, against the respondent / defendant who is also his elder brother, praying for partition and for separate possession of one half of the suit property - a house bearing Old No.1/7A, New No.1/13, measuring 25' North. South and 35' East, West, Old Police Station Street, Latheri Village, Katpadi Taluk, Vellore District and also for permanent injunction restraining the defendant from in any manner interfering with the peaceful possession and enjoyment of the property. The said suit was transferred to the Court of the District Munsif, Katpadi, and renumbered as

[b] It is the case of the petitioner / appellant that he and his elder brother - respondent / defendant herein, are sons of one Natesa Mudaliar and the Schedule property was enjoyed by one Singaravelu Mudaliar about 75 years back and after his demise, their mother, namely, Kuppammal, was enjoying the property and during her life time, the appellant / plaintiff had constructed two shops measuring 14' x 10' and 10' x 10', respectively in the year 1960 and she allowed the appellant/plaintiff to occupy "A" portion of the ancestral property and the respondent / defendant was allowed to occupy "B" portion bearing Door No.1/7A [New No.1/13] by his mother and their mother died in the year 1990. The appellant/plaintiff would contend that even otherwise their mother had perfected the title by adverse possession and the appellant/plaintiff would further contend that he purchased the North of the suit property on 04.08.1975 [Ex.A5] from one Thukkaram Reddiyar and he in turn, had purchased the property under a Settlement Deed dated 12.10.1964 [Ex.A4], wherein one of the boundaries of the suit property is shown as Singaravelu Mudaliar's property. It is also the case of the plaintiff that the property are joint family in nature and the defendant / respondent appeared to have filed a suit against the tenant of the plaintiff/appellant claiming arrears and managed to get a decree deceitfully and also started denying a share in the said property and therefore, the appellant has come forward to file the suit.

[c] The defendant / respondent has filed the written statement, denying the allegations and would contend that the suit property is not the joint family or hereditary property at any point of time and originally, the suit property was natham property and it was occupied by him and he was also issued with patta and even prior to the grant of patta, he was in possession and enjoyment of the same and since the tenant had defaulted in payment of loan, he filed a suit in OS.No.736/07 on the file of the Court of the Additional District Munsif at Vellore and got a decree in his favour and thereafter, the tenant had also vacated the property. The respondent would further contend that in fact the appellant/plaintiff had trespassed into the suit property and demolished the same and he also approached the police who refused to give protection saying that there was a preliminary decree in favour of the plaintiff and would contend that since the suit property is his exclusive property, the appellant/plaintiff is not entitled to any share and prays for dismissal of the suit.

[d] The Trial Court, on a consideration of the pleadings, had framed the following issues:-

- Whether the plaintiff is entitled for partition and separate possession?
- To what other relief, the plaintiff is entitled to?

[e] During the course of trial, the plaintiff examined himself as P.W.1 and marked Exs.A1 to A9 and the defendant examined himself as DW1 and marked Exs.B1 to B32.

[f] The Trial Court, on a consideration of pleadings and on appreciation of oral and documentary evidences, had dismissed the suit vide judgment and decree dated 22.12.2014 and aggrieved by the same, the plaintiff preferred an appeal in AS.No.9/2015 on the file of the Court of Subordinate Judge, Vellore.

[g] The Lower Appellate Court, on a consideration of the Memorandum of Grounds and materials placed before it, had formulated the following points for determination:-

- Whether the Judgment and Decree passed in OS.No.1004/2009 dated 22.12.2014 by the Trial Court, is liable to be set aside or not?
- To what other relief?
-

[h] The Lower Appellate Court, on appreciation of the oral and documentary evidences, found that though the appellant / plaintiff contended the suit property is a joint family property, he did not file any documents to show as to the joint possession and enjoyment of the suit property and the documentary evidences let in by the respondent / defendant would also disclose that he has also been issued with a patta dated 30.08.1991 under Ex.B1 and also paid statutory levies and he is in possession and enjoyment of the suit property. The Lower Appellate Court further found that the relief sought for in the suit is totally inconsistent with the averments made in the plaint and citing the said reasons, has dismissed the appeal vide impugned judgment and decree dated 21.12.2016 and challenging the legality of the same, the appellant / plaintiff has preferred the present second appeal.

3 In the Memorandum of Grounds in the Second Appeal, the following Substantial Questions of law arise for consideration:

- Whether the Courts below are correct in law in dismissing the suit for partition when the appellant had prima facie

established that the suit property is an ancestral property and there is no division by metes and bounds till the filing of the present suit?

- Whether the Courts below are correct in law in holding that the suit is bad for non-joinder of necessary party when both the appellant and the respondent are not known the whereabouts of another co-parcener who had renunciation his right over the joint family property?
- Whether the Courts below are correct in law in dismissing the suit merely based on the revenue documents stands in the name of the respondent which are not title documents and further when the respondent failed to prove that the suit property is not ancestral property?
- Whether the Courts below are justified in law in dismissing the suit for partition overlooking the fact that the suit property was in occupation of the mother of the appellant and the respondent and after her demise, the property devolved on them equally thereby entitling the appellant half share in the suit property?

4 The learned counsel appearing for the appellant / plaintiff would contend that the Courts below without appreciating the oral and documentary evidences in proper perspective, had erroneously reached the conclusion that the case projected by the plaintiff/appellant differs from the pleadings and would further add that the respondent / defendant, by practicing deceit and fraud, managed to institute a suit in SC.No.12/2004 seeking arrears of rent and managed to get the decree and the property purchased by him under Ex.A5 dated 04.08.1975, which has been shown as the property belonging to Singaravelu Mudaliar and since he has established his joint possession of the suit property the Courts below ought to have allowed his claim and prays for interference.

5 Per contra, the learned counsel for the respondent / defendant has invited the attention of this Court to the findings rendered by the Courts below and would submit that on proper appreciation of oral and documentary evidences, the Courts below had rightly reached the conclusion in rejecting the case of the appellant / plaintiff and since the findings are concurrent in nature and that there are no substantial questions of law arise for consideration in this Second Appeal and prays for dismissal of the Second Appeal with cost.

6 This Court paid its best attention to the rival submissions and also perused the materials placed before it including the impugned Judgments and decree passed by the Courts

below.

7 A perusal of the plaint averment would disclose that the plaintiff / appellant and the respondent / defendant are sons of one Natesa Mudaliar and it is the case that the suit schedule property was enjoyed by one Singaravelu Mudaliar and after his demise, the mother of the plaintiff and defendant started enjoying the property and permitted the plaintiff/appellant to put up two shops and also permitted the plaintiff/appellant to occupy "A" portion of the schedule property and the respondent / defendant was allowed to occupy "B" portion of the schedule mentioned property. From the plaint averment it is not made clear that in what way Kuppammal is related to Singaravelu Mudaliar and the learned counsel on instructions, would submit that Singaravelu Mudaliar is the brother of Natesa Mudaliar.

8 Though the plaintiff / appellant would claim that his mother Kuppammal has allowed the plaintiff / appellant to occupy "A" portion of the ancestral property, no documents have been filed to evidence the handing over of the possession and occupation of the plaintiff / appellant in respect of the said property. It is the specific case of the defendant / respondent that he occupied the natham property and he was granted patta and it is not in joint possession and it is an exclusive property and in order to sustain the same, he marked Exs.B1 to B32, apart from examining himself as DW1. Ex.B1 is the patta issued by the jurisdictional Special Tahsildar ; Exs.B3 to B25 would disclose that the statutory levies paid by the respondent / defendant in respect of the schedule mentioned property and in the encumbrance marked as Exs.B26 to B28 also, his name is shown as a owner of the property. The respondent / defendant was also issued with a Planning Permission under Ex.B29 and he has also been issued with Chitta marked as Exs.B30 to B32. Except the self-serving statement of the appellant / plaintiff that the said property is in joint possession, no evidence has been adduced to probablise/substantiate the said fact. Therefore, the Courts below had rightly reached the conclusion that the appellant / plaintiff has miserably failed to probablise his case of joint possession and his entitlement for partition and separate possession. In the considered opinion of the Court, the findings rendered by the Courts below are concurrent in nature based upon proper appreciation of oral and documentary evidences. There are no substantial questions of law arise for consideration in this second appeal and whatever points urged by the plaintiff / appellant, have been answered by the Courts below.

9 In the result, the Second Appeal is dismissed, confirming the judgments and decrees passed by the Courts below. This Court, taking into consideration the relationship between the parties, is not inclined to award cost. Consequently, the connected miscellaneous petition is also dismissed.

-s/d-
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

To

- 1.The Subordinate Judge, Vellore District.
- 2.The District Munsif, Katpadi.

Copy to:

The Section Officer
VR Section, High Court,
Madras.

- +1 CC to Mr.T.L. Thirumalaisamy, Advocate sr 23813
+1 CC to Mr.J. Karthikeyan, sr 23888

SA.No.291/2017

RJ(CO)
sp/9/5

सत्यमेव जयते

WEB COPY