

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.06.2017

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

SA.No.304/2017 & CMP.No.7198/2017

1.Munivel
2.Saravanan

.. Appellants /Appellants
Defendants

Versus

Radhakrishnan

.. Respondent /Respondent
Plaintiff

Prayer: Second Appeal filed under section 100 of the Code of Civil Procedure against the judgment and decree dated 24.11.2017 and made in AS.No.6/2015 on the file of the Sub Court, Ranipet, Vellore District, dismissing the appeal and confirming the judgment and decree dated 30.07.2014 made in OS.NO.27/2011 on the file of the learned District Munsif cum Judicial Magistrate, Arcot, Vellore District.

For Appellants : Mr.N.A.Nissar Ahmed

JUDGMENT

The defendants who had lost before the Courts below, are the appellants herein.

2 The respondent / plaintiff has filed a suit in OS.No.27/2011 on the file of the learned District Munsif cum Judicial Magistrate, Arcot, Vellore District against the appellants / defendants seeking for the relief of permanent injunction restraining the defendants from in any manner interfering with his peaceful possession and enjoyment of "A" and "B" Schedule properties.

3 It is the case of plaintiff that the schedule mentioned property and the other property originally belong to one Murugappa Gounder, who had purchased the same under Ex.A1 - Sale Deed dated 10.04.1935 and yet another Sale Deed under Ex.A2 dated 21.02.1939 and he had four male children and after his demise, all of them had divided the joint family property under

written Muchilika under Ex.A3 dated 23.06.1967 and the daughters of [late] Murugappa Gounder were also allotted some landed properties. The brother of the respondent / plaintiff has sold his share under registered Sale Deed dated 29.11.1971 [Ex.A4] and so also the sister of the plaintiff had settled her share in favour of the plaintiff through Ex.A5 - registered Settlement Deed dated 19.11.1972. Thus, the plaintiff would claim that got three shares of the property and enjoying the same as the absolute owner and the first defendant is enjoying 2 cents of vacant land which he got through his father and another brother is enjoying 2 cents of vacant land. The plaintiff also made a claim that he purchased some properties under Exs.A6 and A7 - Sale Deeds dated 29.01.1986 and 27.05.1992 respectively and he is in possession and enjoyment of the same and paying statutory levies as evidenced under Ex.A8. According to the plaintiff, the first defendant, being his cousin brother, started interfering with his possession by digging up a foundation and also encroached the common pathway and though legal notice was sent and despite receipt and acknowledgment, the defendants continue to interfere with his possession and therefore, came forward to file the suit.

4 The defendants have filed the written statement denying the averments and also specifically denied about the partition took place as well as the written Muchilika under Ex.A3.

5 The Trial Court, based on the pleadings, framed necessary issues and during the course of trial, the respondent / plaintiff examined himself as P.W.1 and marked Exs.A1 to A15. The 1st defendant examined himself as D.W.1 and marked Ex.B1-Patta dated 10.04.1996.

6 The Trial Court, on a consideration of the pleadings, oral and documentary evidences, had decreed the suit as prayed for and aggrieved by the same, the appellants / defendants filed an appeal in AS.No.6/2015 on the file of the Sub Judge, Ranipet.

7 The Lower Appellate Court, by formulating necessary points for determination, had taken note of the fact that D.W.1 during the course of his oral testimony, had admitted about the execution of Muchilika by his father ; but however, took a stand that it was executed without his knowledge and it was also an unregistered one. The Lower Appellate Court found that the admission on the part of D.W.1 is the best piece of evidence to prove the plaintiff's case about the partition that had already taken place and that they are in separate possession for very many years and by applying the principles laid down in the decision reported 2015 [1] MWN [Civil] 528 [Rajendran [died]

and 2 others Vs. Dhanalakshmi and others], the Lower Appellate Court observed that when the first defendant admitted that the right, title and possession of the respondent / plaintiff, there is no need to seek for a formal declaration and therefore, dismissed the suit vide impugned judgment and decree dated 24.01.2017. Hence, this Second Appeal.

8 In the Memorandum of Grounds of Second Appeal, the following substantial questions of law are raised:-

[1] Whether the Courts below are right in decreeing the suit for bare permanent injunction when title is disputed?

[2] Whether the Courts below erred in not seeing that the suit is not maintainable?

[3] Whether the Courts below erred in not seeing that the respondent failed to prove exclusive title and possession and interference entitling injunction?"

9 Mr.N.A.Nissar Ahmed, learned counsel appearing for the appellants / defendants would vehemently contend that the snap answer given by DW1 during the course of his testimony cannot be treated as an admission and the Lower Appellate Court, overlooking the fact that under Ex.B1, the appellants / defendants had proved their possession, had erroneously confirmed the judgment and decree passed by the Trial Court and prays for appropriate orders.

10 This Court has carefully considered the submissions made on behalf of the learned counsel appearing for the appellants and also perused the impugned judgments passed by the Courts below.

11 The 1st appellant / 1st defendant examined himself as DW1 and during the course of his testimony, had admitted Ex.A3-written Muchilika and however, contended he was not aware of the same and since it was an unregistered one, it cannot be treated as an evidence. The Lower Appellate Court, by placing reliance upon the decision rendered by this Court reported in 2014 [4] MLJ 911 [G.Venkatesan and another Vs. P.Rajamanickam], wherein, ratio has been laid that the document in the nature of Memorandum evidencing a family arrangement entered into and prepared as a record of what had been agreed upon, in order that there are no hazy notions in future, need not be stamped or registered and held that in the light of the admission made by the 1st defendant, there is no need or necessity on the part of the respondent / plaintiff to seek a formal declaration of his title. The substantial questions of law raised in the Memorandum of Second Appeal, were already answered by the Courts

below and in the considered opinion of this Court, nothing remains to be answered in the Second Appeal. Further, this Court is of the view that the findings rendered by the Courts below are based upon proper appreciation of oral and documentary evidence and also in the light of the well settled legal principles.

12 In the result, the Second Appeal is dismissed at the admission stage, confirming the judgment and decree passed by the Courts below. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

AP

To

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

Copy to:
The Section Officer
VR Section, High Court,
Madras.

+1cc to Mr.N.A.Nissar Ahmed, Advocate, S.R.No.39358

SA.No.303/2017

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