

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.08.2017

CORAM

THE HON'BLE MR. JUSTICE R.SUBRAMANIAN

A.S.No.503 of 2010

Sakunthala ...Appellant/1st Defendant
vs.

1.C.Rajendran
2.S.Subash .. Respondents 1 & 2/Plaintiffs
3.Viswanathan
4.Palanisamy
5.Kandasamy
6.Easwaran
7.Sornathal ... Respondents 3 to 7/Defendants 2 to 6

Appeal Suit is filed under section 96 r/w. Order 41 Rule 1 & 2 of Civil Procedure Code to set aside the judgment and decree of the I Additional District Judge, Coimbatore in O.S.No.802 of 2008 dated 12.01.2010.

For Appellant : Mr.V.Ragavachari

For Respondents : Mr.C.Prakasam for R1 and R2

J U D G M E N T

The 1st defendant in O.S.No.802 of 2008 on the file of the learned Additional District judge, Coimbatore is the appellant. The said suit was filed by the respondents 1 and 2 herein as plaintiffs, seeking declaration of their title and for consequential injunction restraining the defendants therein from interfering with their peaceful possession and enjoyment of the suit property, for cancellation of final decree for partition passed in OS.No.57 of 2008 on the file of Sub-Court, Tiruppur and for costs.

2. According to the plaintiffs, the suit properties belong to the family of one Sankarappa Gounder. In a partition that took place on 23.05.1974 the said properties were allotted to one Periyasamy Gounder who was the grandson of Sankarappa Gounder. The said Periyasamy Gounder died leaving behind his wife Sornathal and son Easwaran. The mother and the son namely Sornathal and Easwaran entered into a partition on 18.08.1995 under which the suit property measuring about 3.58 acres in Survey No.150/3 of Mudhalipalayam village, Tiruppur Taluk was allotted to Sornathal. It is also contended that the

a registered sale deed dated 07.05.2007.

3. The plaintiffs would claim that the defendants 1 to 5, who are strangers to the property obtained a decree for partition in OS.No.57 of 2008 through the Lok Adalat and on the strength of the said decree, they have attempted to get their name included in the revenue records. Sensing trouble, the plaintiffs have come forward with the above suit.

4. The defendants resisted the suit, contending that Periyasamy Gounder had not derived title under the partition deed. They would claim that Sankarappa Gounder namely the grandfather of Periyasamy Gounder had purchased only 4 acres 52 cents in Survey No. 57 and 58 on 08.08.1906 under Ex.B6. The Survey No.57 correlates to new Survey No.149 and Survey No.58 correlates to new Survey No.150/1, 2 and 3.

5. According to the plaintiffs, the 6th defendant namely Sornathal had sold 4 acres 44 cents in Survey No.149 in favour of the plaintiffs herein under another sale deed dated 07.05.2007. Therefore, Sornathal was left only with 8 cents of property out of 4 acres 52 cents that was allotted in the partition. Therefore, according to the defendants, the plaintiffs would not derive any title to the extent of 3 acres 58 cents in Survey No.150/3. It is also contended that the partition deed dated 23.05.1974 will not confer any title on Periyasamy Gounder. It is the further case of the defendants that the partition was effected without title.

6. On the above pleadings, the defendants sought for dismissal of the suit. On considering the above pleadings, the learned Trial Judge namely Additional District Judge, Coimbatore framed the following issues :

1. Whether the 6th defendant did not have any lawful right to sell the suit property to the plaintiffs?
2. Whether the partition deed dated 18.08.1995 is not binding on the defendants 1 to 5?
3. Whether the plaintiffs are the absolute owners of the suit property by virtue of sale deed dated 07.05.2007?
4. Whether the plaintiffs are entitled to decree for declaration as prayed by them ?
5. Whether the plaintiffs are entitled to decree-cancelling the Final Decree for partition passed in O.S.No.57 of 2008 on 25.04.2008 on the file of Sub Court, Tiruppur?
6. Whether the plaintiffs are entitled to decree for permanent injunction as prayed by them ?
7. To what other relief, plaintiffs are entitled?

7. On the side of the plaintiffs, PW1 and PW2 were examined and Exs.A1 to A24 were marked. On the side of the defendants, Dw1 and DW2 were examined and Exs.B1 to B7 were marked.

8. Upon considering all the oral and documentary evidence, the learned Additional District Judge concluded that the plaintiffs have established the title of their vendor Sornathal and her predecessor in interest by producing cogent documentary evidence. The learned Trial Judge further found that the revenue records also established the fact that the family of the vendor of the plaintiffs have been in possession and enjoyment of the property right through. On the aforesaid findings the learned Trial Judge decreed the suit as prayed for. Aggrieved the defendants are on appeal.

9. Heard Mr.V.Ragavachari, learned counsel appearing for the appellant and Mr.C.Prakasam, learned counsel appearing for the respondents 1 and 2.

10. Mr.V.Ragavachari, learned counsel appearing for the appellant would vehemently contend that the plaintiffs have not established their title. According to the learned counsel, the documents produced in the form of various mortgage deeds between the years 1912 and 1942 could at best show the enjoyment of the property by the family of the vendor of the plaintiffs but the same would not establish title. In the absence of proof of title, there cannot be a decree for declaration of title.

11. The learned counsel would also rely upon the judgment of the Karnataka High Court in the case of Aralappa and others Vs.Jagannath and others reported in AIR 2007 KA 91. Further by Placing reliance upon Ex.B6, which is the sale deed dated 08.08.1906, Mr.V.Ragavachari, learned counsel for the appellants, would contend that what was purchased by Sankarappa Gounder was only an extent of 4.52 acres in Survey No.57 and 58 out of 22.54 acres. In the absence of any evidence to show that the remaining extent in Survey No.57 and 58 belonged to the family or to Sankarappa Gounder, the plaintiffs who claimed under the descendants of Sankarappa Gounder cannot seek declaration of title.

12. Per contra Mr.C.Prakasam, learned counsel appearing for the respondents 1 and 2 would contend that the sale deed Ex.B6 dated 08.08.1906 is not between strangers. Pointing out that Sankarappa Gounder had purchased the properties under Ex.B6 from his own brothers namely Ammasai Gounder and Kutha Gounder, the learned counsel contended that while the brothers have sold their shares alone, the remaining property that belonged to the family continued to be in enjoyment and possession of Sankarappa Gounder and such enjoyment and possession is recognized under Ex.A21, which is a copy of 'A' Register of the year 1972, in which Sankarappa Gounder's name is shown as owner of 3.58 acre in Survey No.150/3. He would also refer to the series of documents namely Ex.A24 dated 28.06.1912, Ex.A18 dated 21.06.1922, Ex.A19 dated 10.09.1926, Ex.A22 dated 10.08.1933 and Ex.A23 dated 30.10.1942, namely

mortgage deeds executed by Sankarappa Gounder and his sons with reference to the suit property and other properties also. This according to the learned counsel would show that the family of the plaintiffs' vendor exercising right over the properties in question, for well over 90 years prior to the institution of the suit. Therefore, the learned counsel would contend that the trial Court was justified in concluding that the plaintiffs have established their title over the suit properties.

13. On the above rival contentions, the following points arises for determination in this appeal:

1. Whether the Trial Court was right in concluding that the plaintiffs have proved the title of their vendors to the extent of 3.58 acres in Survey No.150/3?
2. Whether the final decree in the suit in OS.No.57 of 2008 is liable to be cancelled as prayed for?

Point No.1 :

14. The primary contention of the learned counsel for the appellant is that once it is shown that the predecessor in the interest of the plaintiffs have purchased only an extent of 4 acres 52 cents in Survey No.57 and 58 under the sale deed Ex.B6 dated 08.08.1906, in the absence of any other document (s) conferring title on the predecessor in the interest of the plaintiffs, the Trial Court was not right in upholding the claim to title for 3 acres 58 cents in Survey No.150/3. It is not in dispute that Survey No.58 now corresponds to new Survey No.150 which has got three subdivisions as 150/1 measuring 10 acres 63 cents, 150/2 measuring 3 acres 76 cents and 150/3 measuring 3 acres 58 cents and the Survey No.57 which is new Survey No.149.

15. It is seen from Ex.B6 dated 08.08.1906, that the great grandfather of PW2 Sankarappa Gounder had purchased an extent of 4 acres 52 cents out of total extent of 22 acres 54 cents in Survey No 57 and 58. The said sale deed was executed by the other two sons of Periyasamy Gounder namely Kutha Gounder and Ammasai Gounder. In the said sale deed itself Survey No.57 is shown to be of an extent of 4 acres 57 cents and Survey No.58 is shown to be of an extent of 17 acres 97 cents.

16. Under Ex.A21 which has been issued in the year 1972, Sankarappa Gounder is shown to be the owner of 3 acres 58 cents in Survey No.150/3 which correlates to old Survey No.58. It is also seen from Ex.A24 dated 28.06.1912, Sankarappa Gounder has dealt with an extent of 4 acres 57 cents in Survey No.57 and 17 acre 97 cents in Survey No.58 by mortgaging the said properties. Again under Ex.A18 dated 28.06.1922, Sankarappa Gounder dealt with an extent of 4 acres 44 cents in new Survey No.149 and an extent of 3 acres 58 cents in new Survey No.150/3. Again under Ex.A19 dated 10.09.1926, Sankarappa Gounder has mortgaged the properties covered by Ex.A18 dated 21.06.1922 in favour of another person after

redeeming mortgage of the year 1922. Similarly, Exs.A22 and A23 are other mortgage deeds dated 10.08.1933 and 30.10.1942, by which Rengaswamy Gounder son of Sankarappa Gounder dealt with the property as owner by mortgaging the same.

17. Thereafter, in the year 1974, Rengaswamy Gounder entered into partition with his sons and in the said partition, the suit property measuring 3.58 acres in Survey No.150/3 has been allotted to the husband of the vendor of the plaintiffs namely Periyasamy Gounder. The above sequence of events would show that Sankarappa Gounder, the grandfather of Periyasamy Gounder and after him, his son Rengaswamy Gounder, have been dealing with the suit property as their own by exercising right of ownership over the same. Patta and other revenue records also stand in their name.

18. Mr.V.Ragavachari, learned counsel would, however, attempt to restrict the ownership of the family only to the extent of 4.52 acres purchased under Ex.B6. Considering the fact that the sale is by brothers in favour of another brother of their share in the property, the possibility of the family owning some more extent cannot be ruled out.

19. The learned trial Judge rightly considered this aspect and as well the fact that the property has been dealt with by the family right through. Taking note of the fact that the revenue records are also in the name of the vendor of the plaintiffs, the learned trial Judge had concluded that the plaintiffs have established their title and the defendants have not established their right over the property.

20. The learned trial Judge also took note of the fact that the names of the defendants were incorporated in the revenue records only pursuant to the final decree obtained by them in O.S.No.58 of 2007. The learned trial Judge concluded that the defendants have no right over the properties and they have no connection at all to the suit property. Though an attempt was made by the defendants to rely upon Ex.B5 namely 'A' Register claiming that the same has been issued long ago, the learned trial Judge had considered the documents and found that the defendants have not established the link between the names of the persons found in the said document marked as Ex.B5 and their ancestors. Therefore, in the absence of any clinching evidence to establish lineage, the said document was rightly disbelieved by the trial Court.

21. PW2, who is the son of Periyasamy Gounder, has deposed as to how the property continued to be in possession of the family and his evidence has been rightly believed by the learned Trial Judge. Of course, a partition deed cannot be taken as the document of title. However, when there are enough materials to show that the family has been exercising the right of ownership over the property for more than 60 years prior to the partition. I do not see a real doubt could be

raised regarding the said dealings so as to dis-entitle the plaintiffs to the relief of declaration of title as prayed for by them.

22. The learned trial Judge has also taken note of the fact that the evidence of DW1 is wholly unconvincing in the matter of lineage claimed by the defendants. I do not see any reason to interfere with the said finding of the trial Court. Hence, the point No.1 is answered in favour of the plaintiffs/ Respondents.

Point No.2:

23. Once it is found that the plaintiffs are entitled to the property a final decree obtained through Lok Adalat in O.S.No.57 of 2008, as between the defendants cannot be binding on the plaintiffs. Therefore, the same is bound to be cancelled. The learned trial Court has granted the said relief by declaring that the partition decree passed in OS.No.57 of 2008 dated 25.04.2008 as null and void. I do not find any reason to interfere with the said finding of the trial Court also.

24. In fine, the appeal is dismissed with costs confirming the judgment and decree of the Trial Court.

dsa

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

dsa

To

1.The I Additional District Judge,
Coimbatore.

2.The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.V.Ragavachari, Advocate SR.No.59232
+1cc to Mr.C.Prakasam, Advocate SR.No.59568

A.S.No.503 of 2010

KJI (CO)
GN(06/10/2017)