

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 05.01.2017

Judgment pronounced on : 18.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.485 of 2011

1. Muthusamy Mudaliar (deceased)
 2. Parvathammal
 3. M.Rajendran
 4. M.Purushothaman
 5. M.Gopenathan
 6. M.Tamilselvan
 7. Mala
- ... Appellants

(Appellants 2 to 7 are brought on record as LRs of the deceased sole appellant vide order of this Court dated 29.11.2016 made in M.P.Nos.1 to 3/2015 in S.A.485 of 2011)

Versus

1. Nawabjan
 2. Abdul Rahman Shaib
- ... Respondents

Second Appeal is filed under Section 100 of the Civil Procedure Code against the judgment and decree in A.S.No.23 of 2010 on the file of the Principal District Subordinate Judge, Tindivanam, dated 31st January 2011 confirming the judgment and decree in O.S.No.346 of 2006, dated 11th March 2010, on the file of Principal District Munsif, Tindivanam.

For Appellants : Mr.N.P.Kumar
For Respondents : Mr.B.Gurunathan

JUDGMENT

Challenge in this Second Appeal is made by the plaintiff against the judgment and decree dated 31.01.2011 made in A.S.No.23 of 2010, on the file of the Principal Subordinate Judge, Tindivanam, confirming the judgment dated 11.03.2010 made in O.S.No.346 of 2006, on the file of the Principal District Munsif Court, Tindivanam.

2. The suit has been laid by the plaintiff for declaration and permanent injunction in respect of the suit property and also for the cancellation of the judgment and decree in O.S.No.65 of 1994 on the file of the District Munsif Court, Tindivanam, insofar as the suit property is concerned.

3. The second appeal has been admitted and the following substantial question of law is formulated for consideration in this Second Appeal:

"Whether the judgment and decree of the Courts below in dismissing the suit filed by the plaintiff are misdirected against the evidence on record and erroneous?"

4. As seen from the pleadings of both parties, it is found that the extent of 3.07 acres in old survey no.22/2 and other properties originally belonged to Balakrishna Reddiar. It is also found that Balakrishna Reddiar had settled the above said properties in favour of Venugopal and Krishnasamy under the settlement deed, dated 07.06.1956. It is also found that there has been a partition suit in respect of the above said properties between Venugopal and Krishnasamy in O.S.No.179 of 1961 and the same could be evinced from the final decree, marked as Ex.B4.

5. Now according to the plaintiff, he has purchased the suit property and other properties from Krishnasamy under the sale deed dated 02.09.1962 and the above said sale deed has been marked as Ex.A1. It is admitted that in old survey no.22/2, out of 3.07 acres, according to the plaintiff he has purchased the undivided half share in the same under Ex.A1. As per the plaint pleadings, it is the case of the plaintiff that he had title to 1.30 acres in survey no.22/2 by virtue of the sale deed, marked as Ex.A1. It is the case of the plaintiff that out of the above said 1.30 acres in survey no.22/2, he had gifted 0.25 cents to the Commissioner of Marakkanam Panchayat Union by way of gift deed, dated 08.02.1965, marked as Ex.A2. Thus, according to the plaintiff barring the above said 0.25 cents covered Ex.A2, he retains title to the remaining extent of 1.05 acres in survey no.22/2 and further according to the plaintiff, the above said survey no.22/2 had been sub divided and according to the plaintiff new survey no. is 13/5 - 0.44.5 ares. Further, according to the plaintiff, the 0.25 cents gifted by him to the Commissioner of Marakkanam Panchayat Union is now situated in new survey no.13/4.

6. As rightly found by the Courts below, it has not been clearly pleaded by the plaintiff as to how Krishnasamy had title to the suit property in particular and as described in the plaint, so as to convey the same to the plaintiff under Ex.A1. In the plaint, the suit property has been described to be situated in old survey no.22/2, 1.05 acres out of 3.07 acres within specific boundaries and the new survey number is mentioned as 13/5 related to 0.44.5 ares. However, the plaintiff has not filed any document to show that the suit property as described in the plaint situated within the specific boundaries belonged to Krishnasamy, as claimed by him. As adverted earlier, even as per the case of the plaintiff under Ex.A1, he had claimed to have purchased only undivided

share in respect of certain properties including the property situated in survey no.22/2. Thus, it has not been substantiated by the plaintiff by acceptable documentary evidence that Krishnasamy had title to the suit property as described in the plaint. As rightly found by the Court below that when the plaintiff has not established by acceptable proof that the suit property as described in the plaint belonged to Krishnasamy, the case of the plaintiff that he had acquired title to the suit property under Ex.A1 cannot be accepted in any manner.

7. As seen from the defence set out by the defendants, it could be seen that in the partition suit in O.S.No.179/1961, it is found that Survey no.22/2 out of the total extent of 3 acres and 7 cents Venugopal had been allotted 1.53 acres and that he had alienated the same as 3 items to the second defendant and the father of the first defendant and others under the sale deed dated 10.09.1966. The above said sale deed has been marked as Ex.B5. It could therefore be seen that Venugopal had alienated certain items in survey no.22/2 under Ex.B5 to the second defendant and others and according to the defendants the suit property is also situated in the property comprised in Ex.B5. It is found that in particular the extent of 68 cents in survey no.22/2 had been alienated to the second defendant and others under Ex.B5 and that extent had been allotted only to Venugopal in the final decree passed in OS.No.179/61. According to the defendants, the suit property is also situated in the extent of property purchased by them under Ex.B5, inclusive of the alleged 25 cents said to have been gifted to the Commissioner of Marakkanam Panchayat Union by the plaintiff and when no contra evidence has been adduced by the plaintiff to show that the suit property as such and as described in the plaint had been allotted to Krishnasamy in O.S.No.179/61 and that even as per the case of the plaintiff, he had purchased only undivided share from Krishnasamy and Krishnasamy is not shown to be having title to the suit property as described in the plaint or as allotted to him in O.S.No.179/61, the case of the plaintiff that he has title to the suit property as such cannot be accepted and the courts below have accordingly and rightly negated the reliefs sought by the plaintiff.

8. It is also found that the first defendant's father, the deceased Abdul Hamid Sahib had laid the suit against the Commissioner of Marakkanam Panchayat Union claiming title to the suit property particularly the extent of 68 cents and also the extent of 25 cents said to have been gifted by the plaintiff in favour of the Commissioner of Marakkanam Panchayat Union and other properties in OS.No.65/94. Admittedly, the plaintiff has been examined as a witness in support of the case of the Commissioner of Marakkanam Panchayat Union as DW5. It is also found that the said suit ended in favour of the deceased Abdul Hamid Sahib. Further, it is also found that in the said suit the plaintiff's document

of title has been held to be an invalid or void document and it could therefore be seen that in O.S.65/94, the plaintiff's title deed has been declared to be an invalid document. Admittedly, the plaintiff is not a party to O.S.No.65/94. Even then, it is seen from the admitted case of both parties, that the plaintiff stood as a witness for the defendant viz., Commissioner of Marakkanam Panchayat Union in O.S.No.65/94. It could therefore be seen that he should have been aware as to why he had been called for in the above suit as a witness and particularly, when his title deed is being questioned in the same. Even as per the admitted case of the plaintiff, he had come to know about the judgment and decree passed in the above suit dated 31.08.2001. At least, on perusing the same, the plaintiff should have taken adequate steps to challenge the same in the manner known to law. However, the plaintiff has not challenged the same and on the other hand has laid the present suit seeking for the cancellation of the judgment and decree passed in O.S.No.65/94 as not binding upon the plaintiff in so far as the suit property is concerned. However, when the plaintiff has not preferred any appeal after coming to know of the judgment and decree rendered in O.S.No.65/94 in the manner known to law and when it has also not been established that the plaintiff as such had purchased the suit property inclusive of 0.25 cents said to have been gifted by him to the Commissioner of Marakkanam Panchayat Union, under Ex.A1 and when it is the admitted case of the plaintiff that he had purchased only undivided share in survey no.22/2 under Ex.A1, the case of the plaintiff that the judgment and decree passed in O.S.No.65/94 should be cancelled as regards the suit property, as such cannot be accepted. In the plaint, there is no specific pleadings as to on what basis the plaintiff claims the cancellation of the judgment and decree passed in O.S.No.65/1994. According to the plaintiff, inasmuch as the Commissioner of Marakkanam Panchayat Union had not contested the above said suit seriously and not evinced any interest as regards the outcome of the said suit, according to the plaintiff, the relief of cancellation sought for by him should be granted. However, as rightly put forth by the defendant's counsel, the relief of cancellation sought for by the plaintiff in the suit cannot be accepted, when no material is placed by the plaintiff to show that the Commissioner of Marakkanam Panchayat Union had not contested the above suit 'tooth and nail' or seriously as now put forth by the plaintiff. Further the Commissioner, Marakkanam Panchayat Union has not been added as a party in the present suit.

9. The plaintiff's counsel contended that by admitting the defendants case they had purchased 68 cents in survey no.22/2 under Ex.B5 from Venugopal, according to him, the Courts below should have decreed the suit at least for the remaining extent in survey no.22/2. However, when the plaintiff has failed to establish that Krishnasamy had title to the suit property as described in the plaint and when it is

found that the defendants and others had purchased certain extent inclusive of the suit property in survey no.22/2 under Ex.B5 and also the alleged the 0.25 cents said to have been gifted to the Commissioner of Marakkanam Panchayat Union by the plaintiff under Ex.A2 and the claim of the defendants as regards their case had also been upheld in O.S.No.65/94, the argument now put forth by the plaintiff's counsel that the Courts below at least should have granted the suitable reliefs to the plaintiff in respect of the remaining extent, as such, in the suit survey number cannot be accepted, particularly, when the plaintiff has miserably failed to establish that his predecessor in title had clear title to the suit property as described in the plaint.

10. The plaintiff's counsel further contended that the plaintiff has also claimed the reliefs in the suit, on the footing that he had prescribed title to the suit property by way of adverse possession. In this connection, the plaintiff's counsel relied upon the decisions reported in 1995 2 MLJ 294 Ponnaiyan vs. Munian (died) and others and the decision of the Supreme court dated 24.04.2007 in Appeal (Civil) no.7062/2000, P.T.Munichikkanna Reddy & Others vs. Revamma and Others. The above authorities point out as to the proof that had to be adduced for claiming relief to the property on the basis of adverse possession. The plaintiff has sought the relief of declaration on the basis that he has title to the suit property under Ex.A1. Ex.A1 does not advance the case of the plaintiff, as seen above. It has not been clearly spelt out in the plaint as to against whom the plaintiff seeks to prescribe title to the suit property by way of adverse possession. However, according to the plaintiff he has also prescribed title to the suit property by adverse possession in case his title to the suit property under Ex.A1 is not accepted. In other words, it is found that the plaintiff has admitted the title of the defendants in respect of the suit property. In such view of the matter, if the plaintiff has to succeed on his plea of adverse possession, he has to specifically plead and also prove as to when from he has set up adverse title and possession to the knowledge of the defendants denying their title and also exhibiting the hostile title in respect of the suit property. As regards the above case of the plaintiff, it is found that no acceptable material has been placed as regards adverse possession. The plaintiff has marked only 2 documents, viz., Exs.A4 and A11, kist receipts. Exs.A4 and A11, as such are not found to be correlated to the suit property as described in the plaint and they are found to be dated 1994 and 2008, respectively. The other document is Ex.A3 patta dated 09.01.2006. The suit has been laid by the plaintiff on 18.09.2006, it could therefore be seen that Ex.A11 has come into existence after the institution of the suit, Ex.A3 has been obtained just prior to the institution of suit, hardly eight months prior to the launch of the suit. When Ex.A3 is also not found to be correlated to the suit property, the said document would also not in any manner be

useful to sustain the plaintiff's case. Therefore, on the basis of the Exs.A3 and A4 as rightly put forth by the defendant's counsel, the plea of adverse possession raised by the plaintiff cannot be accepted in any manner. It has to be therefore held that the plaintiff cannot be granted the reliefs sought for in respect of the suit property or any lesser extent therein on the plea of adverse possession.

11. In the light of the above discussion, it is found that the Courts below have properly appreciated the evidence on record in the right perspective and given sound reasons for ultimately negating the reliefs sought for by the plaintiff. In such view of the matter, the substantial question of law formulated in this second appeal is answered against the plaintiff and in favour of the defendants.

12. In conclusion, the second appeal fails and is dismissed. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

To

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

+1 cc to mr.B.Gurunathan,advocate,sr.3497.

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S.A.No.485 of 2011

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