

THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.01.2017

PRONOUNCED ON : 11.01.2017

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.639 of 2011
and
M.P.No.1 of 2011

1.Saroja (died)		
2.Kasthuri (died)		
3.Selvi	...	Appellant
	Vs.	
1.P.Subbiah (died)		
2.S.Poornammal		
3.S.Murugan		
4.A.Krishnaveni	...	Respondents

(R2 to R4 brought on record as LR's
of the deceased sold respondent vide
order of Court dated 07.04.2014 made
in M.P.No.2 &3 of 2013 in S.A.639/2011)

Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 15.09.2009 passed in A.S.No.14 of 2008 on the file of Sub Court, Ponneri reversing the judgment and decree dated 28.09.2007 passed in O.S.No.384 of 1996 on the file of the District Munsif, Ponneri.

For Appellant	: Mrs.T.Jayalakshmi
No.3	for M/s.Paul and Paul

For Respondent	: Mr.P.G.Thiyagu
Nos.2 to 4	

JUDGMENT

The defendants in this second appeal have impugned the judgment and decree dated 15.09.2009 passed in A.S.No.14 of 2008 on the file of the Sub Court, Ponneri, reversing the judgment and decree dated 28.09.2007 passed in O.S.No.384 of 1996 on the file of the District Munsif Court, Ponneri.

2. 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 are based upon perverse findings and misdirected against the evidence on record.”

3. The suit has been laid by the plaintiff for declaration and possession.

4. According to the plaintiff, the suit property had been allotted to Thangammal, the mother of the plaintiff and the plaintiff under the Burma Repatriates Rehabilitation Scheme by the Government in the year 1966 - 67 and pursuant to the same, they have constructed a house in the suit property by obtaining loan from the Government

and been in the possession and enjoyment of the same and subsequently, Thangammal had transferred her right in respect of the suit property to the plaintiff and patta has been issued in favour of the plaintiff in respect of the suit property and enjoyed by the plaintiff from 1973 onwards and thus, according to the plaintiff, he is the absolute owner of the suit property. It is the further case of the plaintiff that after the death of Thangammal, the defendants had illegally trespassed into the suit property, despite protests by the plaintiff and hence, the plaintiff has been necessitated to lay the suit against the defendants for appropriate reliefs.

5. The defendants in their written statement have vehemently denied the claim of title to the suit property by the plaintiff and his mother as put forth in the plaint and also the plea of trespass alleged in the plaint. It is the case of the defendants that the suit property was purchased by Thangammal under the sale deed dated 26.06.1971 and according to them, the defendants' mother Pappammal and Thangammal had been residing in the suit property and after the death of Pappammal, the defendants, being her daughters, had been in possession and enjoyment of the suit property and further, according to the defendants, Thangammal had orally willed the suit property in favour of Pappammal and the defendants

after her life time and thus, according to the defendants, they are absolute owners of the suit property and hence, the plaintiff is not entitled to obtain the reliefs sought for in the plaint.

6. Inasmuch as the defendants have disputed the claim of title over the suit property by the plaintiff as put forth in the plaint, as rightly contended, it could be seen that the plaintiff has to establish that the suit property had been assigned by the Government in favour of Thangammal and the plaintiff during the year 1966-67 under the Burma Repatriates Rehabilitation Scheme. However, as regards the above case of the plaintiff, no document whatsoever has been placed to show that the suit property had been assigned to Thangammal and the plaintiff. Neither the assignment deed nor the copy of the same has been filed. No reason has been adduced for the same by the plaintiff. According to the plaintiff, securing loan from the Government, Thangammal and the plaintiff had put up a house in the suit property. The said case of the plaintiff has also been controverted. Despite the same, no material is placed to hold that Thangammal and the plaintiff had put up superstructure in the suit property by obtaining loan from the Government. Equally, the plaintiff's case that Thangammal and the plaintiff had been in possession of the suit property from the date of assignment during

the year 1966-67, though disputed by the defendants, has not been substantiated by the plaintiff by placing any acceptable and reliable material. Further, according to the plaintiff, during the year 1973, Thangammal had transferred her right over the suit property in favour of the plaintiff. Though the above case of the plaintiff has been repudiated, still the plaintiff has not cared to place any material to hold that Thangammal during her lifetime, if at all, she had any title to the suit property, had conveyed her right to the plaintiff as put forth by the plaintiff. Therefore, it could be seen that absolutely, nill material is produced on behalf of the plaintiff for holding that Thangammal and the plaintiff had title to the suit property by way of assignment and pursuant to the same, they had been enjoying the suit property by putting up house construction etc.,

7. To sustain the plaintiff's case, it appears the plaintiff has produced pattas in support of his case marked as Exs.A1 and 7. A perusal of Exs.A1 & 7 do not indicate that they had been issued in favour of the plaintiff, pursuant to the assignment of the suit property by the Government in favour of Thangammal and the plaintiff. Nothing is available in those two documents to show that recognising the assignment of the Government in respect of the suit property in favour of Thangammal and the plaintiff, the above said pattas have been issued in favour of the plaintiff. In such circumstances, the trial

Court has rightly disbelieved Exs.A1 and 7 to uphold the plaintiff's title in respect of the suit property on the footing that pattas in the nature of Exs.A1 & 7 cannot confer title on the plaintiff in respect of the suit property. Barring Exs.A1 & 7, no material whatsoever has been placed by the plaintiff to show that he or his mother Thangammal had valid title to the suit property as claimed. The kist and house tax receipts marked on behalf of the plaintiff as Exs.A2 & 3 would not confer title of the suit property in favour of the plaintiff or Thangammal.

8. The plaintiff's counsel however contended that Exs.A1 & 7 have been issued, in pursuance to the assignment of the suit property by the Government in favour of Thangammal and the plaintiff. However, when there is no evidence with reference to the same in Exs.A1 & 7 and particularly, when Exs.A1 & 7 are challenged by the defendants as rightly contended the plaintiff should have endeavoured to examine the authors of Exs.A1 & 7, to substantiate his case that they had been issued in recognition of the assignment of the suit property by the Government in favour of Thangammal and the plaintiff. However, the plaintiff, for the reasons best known to him, had not endeavored to establish his case on the above lines. Resultantly, it could be seen that the plaintiff has miserably failed to

establish that the suit property had been assigned to Thangammal and the plaintiff as put forth in the plaint and that thereafter, they had been enjoying the suit property by putting up house construction etc., and subsequently, Thangammal had conveyed her share in respect of the suit property in favour of the plaintiff and thereafter, the plaintiff had been enjoying the suit property as absolute owner thereof.

9. It is the case of the defendants that the suit property had been purchased by Thangammal under the sale deed dated 26.06.1971 and the copy of the same had been marked as Ex.B5. However, Ex.B5 has been repudiated by the plaintiff. According to him, the suit property had not been purchased by Thangammal as claimed by the defendants. The suit property is stated to be situated in Survey No.119/44 measuring an extent of 0.03 cents. However, a perusal of Ex.B5 would go to show that the same is related to a property situated in Survey No.119/6. The boundaries of the property comprised in Ex.B5 and the boundaries of the suit property as described in the plaint do not tally. They materially differ. The suit property is stated to be an extent of 0.03 cents whereas the property comprised in Ex.B5 is stated to be an extent of 0.05 cents, no material is placed to hold that the suit property forms part and

parcel of the property comprised in Ex.B5 or the same property as that of the property described in Ex.B5. Therefore, merely on the basis of the certified copy of the sale deed above mentioned marked as Ex.B5, when no material is placed by the defendants to show that there is any nexus between the suit property and the property described in Ex.B5 and when in particular the plaintiff has disputed the case of the defendants that his mother had purchased the suit property under Ex.B5, it could be seen that the case of the defendants that Thangammal had title to the suit property by virtue of Ex.B5 as such cannot be countenanced.

10. It is not the case of the plaintiff that apart from him, Thangammal had other legal heirs. Similarly the defendants have also in the written statement not pleaded that Thangammal had a daughter by name Pappammal and another son by name Karuppaiah other than the plaintiff. Therefore, it could be seen that even when there is no specific pleading either in the plaint or in the written statement as to Thangammal having the other legal heirs other than the plaintiff, the Courts below have proceeded in the matter as if Thangammal had a daughter by name Pappammal and another son by name Karuppaiah other than the plaintiff and believing and holding that Ex.B5 is conferring title on Thangammal in respect of the suit

property, sans proof, the trial Court has held that the plaintiff would be entitled to claim only 1/3 undivided share in the suit property and accordingly, granted a declaration in favour of the plaintiff in respect of the same and declined the relief of recovery of possession sought for by the plaintiff. According to the trial court, Thangammal died leaving behind the plaintiff, another son Karuppaiah and daughter by name Pappammal. According to the defendants, they are the daughters of Pappammal. However, there is no plea made in their written statement that Pappammal is the daughter of Thangammal.

11.No doubt, there has been an exchange of notices between the parties prior to the institution of the suit. In the reply notice, the defendants have taken a plea that Thangammal had title to the suit property under the sale deed marked as Ex.B5 and she died leaving behind the plaintiff, Pappammal and Karuppaiah. However, as regards the above case put up in the reply notice, there is no averment in the written statement. It is also not even pleaded that the reply notice should be read part and parcel of the written statement. In such view of the matter, it could be seen that when it is not the case of any of the parties that Thangammal left behind Karuppaiah and Pappammal also as the egal heirs in addition to the plaintiff and when no acceptable material has also been placed in

support of the same, it could be seen that the approach of the Courts below in dwelling upon the said issue as to whether Thangammal had left behind Karuppaiah and Pappuammal also in addition to the plaintiff as her legal heirs cannot be accepted in the eyes of law. In the absence of pleadings, no amount of evidence would be helpful to uphold either the plaintiff's case or the defendants' case. The documents marked on the side of the defendants viz., photograph Ex.B1 and the copy of the marriage extract of Karuppaiah would not be adequate and safe to conclude that Pappammal left behind Karuppaiah and Pappammal also as her legal heirs to succeed to her property. Therefore, the Courts below have proceeded to embark upon on the issue as to whether Thangammal had left behind Karuppaiah and Pappammal also as her legal heirs in the absence of any pleadings put forth by the parties either in the plaint or in the written statement. The said approach of the Court is not acceptable in the eyes of law. That apart, the defendants have also, if really, they stake a claim in the suit property on the footing that they are the legal heirs of the deceased Thangammal, nothing prevented them from making a counter claim in the written statement seeking a declaration that they are entitled to a share in suit property and seek appropriate reliefs. Further, Karuppaiah or his heirs have not been added as parties to the suit. Therefore, it could be seen that both

courts have exceeded the pleadings set out by the parties in the case and approached the matter in the wrong perspective of the issues involved in the matter.

12. Further more, it could be seen that the plaintiff has not only established his title to the suit property but also failed to establish his further case that the defendants have trespassed into the suit property despite his protests. According to the plaintiff, as pleaded in the plaint, after the death of his mother Thangammal, despite his protests, the defendants have trespassed into the suit property and occupied the same illegally. Hence, according to the plaintiff, he has sought the relief of recovery of possession of the suit property from the defendants. Giving a go bye to the above case of the plaintiff set out in the plaint, the plaintiff examined as PW1 during the cross examination has clearly admitted that he had let out the suit property to Pappammal and he had kept the suit property under lock and key and as Pappammal had made a request that she would pay rent for the same, according to the case of the plaintiff, he had let out the suit property to Pappammal. Further, he has also deposed that Pappammal had been inducted into the suit property on her assurance that she would pay the rent and giving the said assurance, she came into the suit property during 1992 but she had not paid the

rent. Therefore, as per the above evidence of the plaintiff, it could be seen that his case that the defendants have trespassed into the suit property as such cannot be accepted. On the other hand, it is found that even as per the testimony of the plaintiff, he has let out the suit property to Pappammal. According to the defendants in the written statement Pappammal had been residing in the suit property along with Thangammal and after the death of Pappammal, the defendants continue to remain in the suit property. All this facts would only go to disclose that inasmuch the plaintiff has no title to the suit property and had not enjoyed the suit property as absolute owner thereof, is unable to present a clear case in the plaint as well as in the evidence and in opposition had projected contradictory pleas and the same would only go to show that the plaintiff has no title to the suit property and not entitled to seek the reliefs sought for.

13. In the light of the above discussions, the Courts below had based their judgment and decree upon the perverse findings derived against the pleadings set out by the parties and also misdirected against the evidence on record. Accordingly, the substantial question of law formulated in this second appeal is answered against the plaintiff .

In conclusion, the judgment and decree of the Courts below are

set aside and the suit filed by the plaintiff is dismissed. The second appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

11.01.2017

Index : Yes/No
Internet: Yes/No
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To

1. The Sub Court, Ponneri.
2. The District Munsif, Ponneri.

T.RAVINDRAN,J.

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Pre-delivery Judgment in
S. A.No.639 of 2011
and
M.P.No.1 of 2011

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