

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 05.01.2017

Judgment pronounced on : 12.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.641 of 2011
& M.P.No.1 of 2011

Kaluvu ... Appellant/Appellant/Defendant

Versus

Kathavarayan ... Respondent/Respondent/Plaintiff

Second Appeal is filed under Section 100 of the Civil Procedure Code to set aside the judgment and decree made in A.S.58 of 2004 dated 23.03.2011 on the file of the 1st Additional Subordinate Judge, Villupuram, confirming the Judgment and Decree in O.S.62 of 1999 dated 30.04.2004 on the file of the Principal District Munsif, Villupuram.

For Appellant : Mr.N.Suresh

For Respondent : No Appearance

JUDGMENT

Challenge in this Second Appeal is made by the defendant against the judgment and decree dated 23.03.2011 made in A.S.No.58 of 2004 on the file of the 1st Additional Subordinate Judge, Villupuram, confirming the judgment and decree dated 30.04.2004 made in O.S.No.62 of 1999, on the file of the Principal District Munsif, Villupuram.

2. The Suit has been laid by the plaintiff for declaration of permanent injunction.

3. According to the plaintiff, the suit property originally belonged to Mottaivariyan and he was in possession and enjoyment of the same and after the death of Mottaivariyan, his wife Periyakozhandai Ammal was in possession and enjoyment of the property and inasmuch as the plaintiff is the sister's son of Periyakozhandai Ammal, out of love and affection Periyakozhandai

Ammal had settled the suit property in favour of the plaintiff by means of a registered settlement deed dated 26.02.1987 and thus according to the plaintiff, he is the owner of the suit property and the same is in his possession and enjoyment and inasmuch as the defendant without any authority under law, attempted to interfere in the possession of the plaintiff in respect of the suit property, he has been necessitated to lay the suit for appropriate reliefs.

4. The defendant has disputed the title of Mottaivariyan as well as Periyakozhandai Ammal in respect of the suit property. In such view of the defence put forth by the defendant, it could be seen that the plaintiff at the foremost should establish that Mottaivariyan, as claimed by him, had title of the suit property and the suit property was in his possession and enjoyment and after his death, the suit property came to be enjoyed by Periyakozhandai Ammal and that Periyakozhandai Ammal had the legal competency to execute the settlement deed in favour of the plaintiff in respect of the suit property.

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

"Whether the Courts below have erred in relying upon Exs.A1 & A2, which are not inter-parties and the recitals of boundaries in a document not inter parties are not admissible under the Evidence Act?"

6. The plaintiff in the plaint has not stated as to on what basis Mottaivariyan had title to the suit property. Apart from stating that the suit property belonged to Mottaivariyan, no further averments had been made in the plaint, as to how Mottaivariyan had title to the suit property. It is not even stated that the suit property being a Natham property, as such, Mottaivariyan had obtained patta in respect of the suit property from the concerned authorities and thereby been in possession and enjoyment of the same.

7. According to the plaintiff, the property situated to the East of the suit property belongs to his mother Nagammal and the property situated to the West of the suit property belongs to one Muniammal and it is stated that the title deed of Nagammal, i.e., the mother of the plaintiff dated 21.02.1942 and the title deed of Muniammal dated 20.04.1964 recite that the immediate Western owner and the Eastern owner of the respective properties, as belonging to Mottaivariyan and as such, the Court should hold that, based upon the boundary recitals of the above said two sale deeds, Mottaivariyan is the owner of the suit

property. The copies of the above said sale deeds are marked as Exs. A1 and A2.

8. The defendant in his Written Statement has specifically pleaded that the recitals in the boundaries of the title deeds of others as such would not confer title of the suit property in favour of the Mottaivariyan and therefore it is pleaded that the recitals in the boundaries of the above said documents cannot feed title over the suit property in favour of the plaintiff's predecessor in title.

9. A perusal of Exs. A1 and A2 would go to show that the above said documents are not inter-parties documents. It could therefore be seen that Exs.A1 & A2 being not inter-parties, recitals of boundaries in the above said documents would not be admissible in evidence under the Indian Evidence Act. In this connection, the defence counsel strongly placed reliance upon the decisions reported in AIR 1972 MADRAS 154 V.A.Amiappa Nainar (died) and others Vs. N.Annamalai Chettiar (died) and others, 2007 (5) MLJ 1232 M.Subramani Vs. P.Shanmugam and others and CDJ 2014 MHC 4152 Rajamani Ammal & others Vs. Poovayee & Others. A perusal of the above said decisions would go to disclose that the recitals as to boundaries in documents not inter-parties are inadmissible in evidence under Sections 11, 13(a), 32(3) and 32 (7) of the Indian Evidence Act. Further, it could also be seen that the only method by which the recitals in the documents not inter-parties, could be admitted in evidence, is by examination of the executant of the documents, in which such recitals as to boundaries are found. It could therefore be seen that as rightly put forth by the defendant's counsel Exs.A1 & A2 as such are found to be inadmissible documents and therefore no safe reliance could be attached to the same. However, Exs.A1 & A2 have come to be admitted and marked on the side of the plaintiff.

10. Be that as it may, when as per the above said decisions Exs.A1 & A2 are found to be inadmissible documents as far as boundary recitals are concerned, they being not inter-parties documents, it could be seen that the Courts below had erred in placing reliance upon the said documents to uphold the title of Mottaivariyan in respect of the suit property.

11. It is found that the Courts below have on the basis that inasmuch as no objection had been put forth by the defendant in marking the above said documents, the boundary recitals contained there in could be relied upon for holding that Mottaivariyan was the owner of the suit property. However, when the defendant in his written statement itself had disputed that the boundary recitals of the sale deeds relied upon by the plaintiff could not feed title in respect of the suit property to the plaintiffs predecessor in title, in such position, the

approach of the Courts below that the defendant has admitted the contents of Exs.A1 & A2 as such in their entirety, cannot be countenanced in any manner.

12. It is also found that the Courts below have also take into consideration the boundary recitals found in Exs.A1 & A2 in support of the plaintiff's claim on the footing that Exs.A1 & A2 are old documents and therefore they could be received in evidence under Section 90 of the Indian Evidence Act. However, as rightly contended by the defendant's counsel, the invocation of Section 90 of the Indian Evidence Act could only be restricted to the factum of the execution of the document. As such, the same cannot be the basis for holding that the contents of the documents as such can be taken and acted upon on the face value of the documents without any poof of the same. In this connection, reliance was placed upon the decision reported in CDJ 2014 MHC 4152 (cited supra). Therefore, the approach of the courts below that inasmuch as Exs.A1 & A2 are old documents, the genuineness of the same can be accepted and consequently, the boundary recitals contained in the same could also be accepted for upholding the title of Mottaivariyan in respect of the suit property, completely ignoring the defence put forth by the defendants as regards the boundary recitals contained in the said documents, is erroneous and unacceptable.

13. The Courts below have also accepted the plaintiff's case on the footing that the plaintiff being the son of Nagammal and in such circumstances, he being the natural legal heir of Nagammal is entitled to speak about Ex.A1 sale deed and by adducing evidence, thus according to the Courts below, the plaintiff has established the genuineness of Ex.A1 and also the boundary recitals contained therein and in that view of the matter, upheld the case of the plaintiff. However, as seen from the aforesaid authorities, it could be seen that the documents which are not inter-parties cannot be admitted in evidence. However, the only method by which the boundary recitals contained in such documents could be admitted in evidence is only by examining the executant of the documents in which such recitals of boundaries are found. As far as Ex.A1 is concerned, admittedly, Nagammal is not the executant of the said sale deed. In such view of the matter, the approach of the Courts below that the plaintiff, being the son of Nagammal, is entitled to speak about the boundary recitals contained in Ex.A1 and therefore Ex.A1 could be relied upon as such cannot be accepted in any manner. As regards Ex.A2, admittedly, no one has been examined who is concerned with the said document. It could therefore be seen that the executant of the documents Exs.A1 & A2 having not been examined in support of the plaintiff's case,

the boundary recitals contained therein could not be relied upon in any manner for upholding the title of Mottaivariyan in respect of the suit property.

14. The courts below have also failed to note that the plaintiff having come forward with the suit seeking necessary reliefs, particularly, the reliefs of declaration and permanent injunction, should be called upon to establish his case. As adverted to earlier, the plaintiff in the plaint has not specifically stated as to on what basis Mottaivariyan had title to the suit property. Not a single document has been produced by the plaintiff to show that Mottaivariyan had title to the suit property other than the boundary recitals contained in Exs.A1 & A2. When the boundary recitals contained in Exs.A1 & A2 cannot be relied upon as per law and when there is nothing to hold that Mottaivariyan had legal title to the suit property, the case of the plaintiff that after the death of Mottaivariyan, his wife Periyakozhandai Ammal became the owner of the suit property cannot be countenanced. Similarly, the case of the plaintiff is that he has obtained title to the suit property on the basis of the settlement deed alleged to have executed in his favour by Periyakozhandai Ammal on 26.02.1997 also cannot be countenanced and relied upon to uphold the plaintiff's title to the suit property. When Periyakozhandai Ammal has not been shown to be having title to the suit property, legally it could be seen that, as rightly put forth by the defendant's counsel, the alleged settlement deed dated 26.02.1997 said to have been executed by Periyakozhandai Ammal, in favour of the plaintiff in respect of the suit property, has no legal sanctity so as to confirm title of the suit property in favour of the plaintiff.

15. The Courts below have also on the footing that the defendant having pleaded that his father had been granted patta in respect of the suit property and having failed to establish the same by producing the patta went on to hold to that inasmuch as the defendant has not marked acceptable documents of title to uphold his defence, relying upon the boundary recitals contained in Exs.A1 & A2, granted the reliefs sought by the plaintiff. However, the courts below, forgetting for a moment that it is for the plaintiff had to succeed on the strength of his own case, the plaintiff cannot be allowed to pick holes in the defendant's case and thereby succeed in his case without placing adequate material to sustain his case. That apart, it is also found that the defendant has produced the sketch as well as the copy of the Settlement Register, which would go to indicate cumulatively that in respect of the portion of the suit property, his father's name had been incorporated in the revenue records. As such it could be seen that some prima facie materials have been produced by the defendant to hold that his father had been recognised as the patta holder in respect of the

portion of the suit property. Per contra, no material, whatsoever has been placed by the plaintiff to show that Mottaivariyan had legal title to the suit property other than the boundaries recitals contained in Exs.A1 & A2. In the light of the above position, the approach of the Courts below that the defendant having not established her case, therefore, the plaintiff's case could be accepted, is seen to be an erroneous approach, contrary to law and wholly unacceptable.

16. In the light of the above discussions, I hold that the documents marked as Exs.A1 & A2 not being inter parties are inadmissible documents and the recitals of boundaries contained in the above said documents are also inadmissible as per the principles of law enunciated in the above said decisions. Accordingly, the substantial question of law formulated in this Second Appeal is answered in favour of the defendant and against the plaintiff.

17. In conclusion, the judgment and decree of the Courts below are set aside and the suit laid by the plaintiff is dismissed. Accordingly, the Second Appeal is allowed. No costs. Consequently, the connected Miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

pvs

To

1. The I Additional Subordinate Judge,
Villupuram.

2. The Principal District Munsif,
Villupuram.

+1cc to Mr.N.Suresh, Advocate Sr.3255

S.A.No.641 of 2011
& M.P.No.1 of 2011

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srg 2/2/2017