

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.02.2017

PRONOUNCED ON : 27.02.2017

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.851 of 2011

and

M.P.No.1 of 2011

1.Govindarajan

2.Shanmugam

... Appellants/Plaintiff

Vs.

Ramakrishnan

... Respondent/Petitioner

Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree in A.S.No.31 of 2009 on the file of the Principal District Judge, Villupuram dated 12.08.2009 in confirming the judgment and decree of the Principal District Munsif, Tirukoilur as made in O.S.No.21 of 2006 dated 11.01.2007.

For Appellants : Mr.V.Ayyadurai
Senior Counsel
for Mr.G.Gokul

For Respondent : Mr.P.Rajavel

JUDGMENT

In this second appeal, the plaintiffs have impugned the judgment and decree dated 12.08.2009 passed in A.S.No.31 of 2009 on the file of the Principal District Court, Villupuram, confirming the judgment and decree dated 11.01.2007 passed in O.S.No.21 of 2006 on the file of the Principal District Munsif Court, Tirukoilur.

2. The suit has been laid by the plaintiffs for declaration and permanent injunction.

3. As seen from the evidence adduced by the respective parties, it is found that the suit property purchased in the name of the defendant's father Thambusamy and other properties had been divided orally amongst Thambusamy and his three brothers viz., Rathinam, Duraisamy and the plaintiff's father Dharmalingam about 50 years ago and according to the plaintiffs, the suit property and other properties fell to the share of their father Dharmalingam and thus, it is stated that after their father, the plaintiffs had inherited the suit property and inasmuch as the defendant, by misusing the issuance of patta in his name in respect of the suit property wrongly, had attempted to interfere with the plaintiffs' possession and enjoyment in respect of the suit property, the suit has come to be laid.

4. It is admitted by the defendant also that Thambusamy and his three brothers had effected oral partition in respect of the suit property and other properties and as per the defence version, the suit property and other properties fell to the share of Thambusamy and thenceforth, it is only Thambusamy and thereafter, the defendant has been enjoying the suit property and further, according to the defendant, the patta has been issued in his name and he has been paying kist and therefore, according to the defendant, the plaintiffs have no right nor possession in respect of the suit property and hence, the suit is liable to be dismissed.

5. The suit property has been described as an extent of 0.22 cents in Punja R.S.No.129/4. Therefore, it could be seen that the suit property is a Punja land. As regards the oral partition amongst Thambusamy and his three brothers in respect of the suit property and other properties, there is no dispute.

6. The plaintiffs' case is that the suit property fell to the share of Dharmalingam, whereas, the case of the defendant is that the suit property fell to the share of Thambusamy. The plaintiffs have come forward with the suit seeking the reliefs of declaration and permanent injunction. As rightly argued by the defendant's counsel, the plaintiffs have to establish their case by adducing acceptable oral and documentary evidence. As regards the allotment of the suit property in favour of Dharmalingam, there is no acceptable evidence on the side of the plaintiffs. That apart, the plaintiffs have also not established that pursuant to the oral partition, it is only Dharmalingam and thereafter, the plaintiffs had been enjoying the suit property as absolute owners. With reference to the possession and enjoyment of the suit property, as rightly found by the Courts below, nill material has been placed by the plaintiffs. If really, the suit property had been allotted to the share of Dharmalingam, it is evident that the plaintiffs would have placed acceptable and reliable materials to show that the same had been in their possession and enjoyment. On the

other hand, as argued by the defendant's counsel, inasmuch as the suit property had not been allotted to the share of Dharmalingam, the plaintiffs are unable to place any material to evidence that Dharmalingam and thereafter, the plaintiffs had been in possession and enjoyment of the suit property.

7. On the other hand, it is found that the suit property had been allotted to Thambusamy and accordingly, it is found that the defendant had inherited the suit property from his father and the patta had also been issued in his favour, which have been marked as Exs.B2 & 3. Further, from the kist receipts marked as Exs.B4 to 13, it is found that it is only the defendant, who has been paying the kist in respect of the suit property and enjoying the same. The resultant position is that inasmuch as the suit property had been allotted to the share of Thambusamy, naturally, the defendant had inherited the same from his father and been enjoying the suit property by obtaining patta and paying kist etc., Therefore, the defendant has clearly established that the suit property belongs to him and the same is in his possession and enjoyment.

8. The suit property is found to be a Punja land. In such view of the matter, particularly, when it is not the case of both parties that the suit property is a Grama Natham property, the trial Court has, without any basis, proceeded to observe that the suit property is a Grama Natham land. However, for arriving at such a decision, no material is placed on record. It is, therefore, evident that the observation of the trial Court that the suit property is a Grama Natham land, as such, cannot be countenanced.

9. In such view of the matter, the argument put forth by the plaintiffs' counsel that the suit property being a Grama Natham land, the Patta Pass Book Act, 1986, would not apply to such lands and therefore, no reliance should be placed upon the patta and the kist receipt marked on the side of the defendants. However, when the position is other wise and it is found that the suit property is only as a Punja land and not a Grama Natham land and it is not the case of both parties that the suit property is a Grama natham land, it could be seen that the above argument projected by the plaintiffs' counsel based upon the above said wrong observation of the trial Court is unacceptable.

10. The plaintiffs' counsel, further, contended that as regards the possession of the plaintiffs in respect of the suit property, the plaintiffs have examined as PWs 2 to 6 and therefore, the Courts below should have accepted their evidence and upheld the plaintiffs' case. However, as seen from the judgment and decree of the Courts below, it is found that both Courts have given convincing and acceptable reasons for not accepting the oral evidence adduced by PWS2 to 6. No infirmity

is noted in the reasonings and conclusions of the Courts below for not accepting the evidence of Pws 2 to 6. In such view of the matter, the unreliable oral evidence of PWs 2 to 6 would not be adequate and sufficient to hold that the suit property had been allotted to Dharmalingam and that, Dharmalingam and thereafter, the plaintiffs had been enjoying the suit property as absolute owners.

11. In the light of the above discussions, it is found that the Courts below have rightly found that the plaintiffs have miserably failed to establish their title, possession and enjoyment of the suit property in any manner. Therefore, it is found that the Courts below have rightly held that the plaintiffs have no title over the suit property. No infirmity is attributed or made out as regards the above said findings and conclusions of the Courts below for rejecting the plaintiffs case.

At the end, no substantial question of law is found to be involved in this case. Accordingly, the second appeal fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

To

1. The Principal District Judge,
Villupuram.
2. The Principal District Munsif,
Tirukoilur.

+2cc to Mr.G. Gokul, Advocate Sr. 12741
+1cc to Mr.P. Rajavel, Advocate Sr. 12311

Pre-delivery Judgment in
S. A.No.851 of 2017
and
M.P.No.1 of 2011

RJ(CO)
VR(03/04/2017)