

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.12.2017
PRONOUNCED ON : 20.12.2017

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.1200 of 2001

1. Krishnamoorthy
2. Arasu
3. Jeyanthi

... Appellants

Vs.

1. Ayyam Perumal Kounder (Deceased)
2. Ramanathan
3. Pandian
4. Tamilarasi

... Respondents

(R3 and R4 brought on record
as Lrs of the deceased R1 vide
order of Court dated 20.11.2017
made in CMP No.1030/2013)

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 28.03.2001 passed in A.S.No.62/96 before the Sub Court, Panruti confirming the judgment and the decree dated 30.01.95 passed in O.S.No. 449/90 on the file of the District Munsif Court, Panruti.

For Appellants : Mrs. R.Meenal

For Respondents : Mr.R.Gururaj

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 28.03.2001, passed in A.S.No.62/96, on the file of the Sub Court, Panruti, confirming the judgment and the decree dated 30.01.95, passed in O.S.No. 449/90, on the file of the District Munsif Court.

2. Parties are referred to as per their rankings in the trail Court.

3. Suit for declaration and possession.

4. The case of the plaintiff, in brief, is that the suit property belonged to his mother Sivabakkiyam ammal, she having acquired the same and settled in his favour by way of a registered settlement deed dated 29.9.71 and based on the same, the plaintiff has title to the suit property and accordingly, being in possession and enjoyment of the same by paying kist etc., and the defendants, who are his brothers requested the plaintiff to sell the suit property to them for a meagre price, which the plaintiff refused and resultantly, the defendants attempted to interfere with his possession and enjoyment of the suit property and also subsequently, encroached into the suit property illegally and unlawfully and hence the suit for appropriate reliefs.

5. The first defendant has filed written statement, accepting the plaintiff's title to the suit property as above claimed by the plaintiff and accordingly, prayed for the disposal of the suit in favour of the plaintiff and denied the allegations that he had interfered with the plaintiff's possession and enjoyment and hence, he is not a necessary party to the suit.

6. The second defendant has taken a plea that though the suit property had been purchased in the name of their mother, Sivabakkiyam ammal, it had been actually purchased by their father in their mother's name and accordingly treated and enjoyed as the joint family property and hence, Sivabakkiyam ammal has no competency to settle the suit property in favour of the plaintiff and according to the second defendant, in respect of the partition effected, with reference to the family properties, the suit property was allotted to his share and thence from it is only the second defendant, who has been in possession and enjoyment of the suit property by paying kist etc., The plaintiff had been given Rs.5,000/- in lieu of his share and the second defendant has also perfected his title to the suit property, by way of adverse possession and according to him, the plaintiff and the first defendant had colluded together in instituting the suit and the second defendant's own land is situated to the east of the suit property to an extent of 32 cents and without any demarcation, the defendant is enjoying the said property as well as the suit property as one unit and it is only the second defendant, who is in possession and enjoyment of the suit property all along and there is no question of encroachment into the suit property by the defendants and the suit is therefore liable to be dismissed.

7. In support of the plaintiff's case, PWs 1 to 3 were examined, Exs.A1 to 10 were marked. On the side of the defendants, DWs 1 to 4 were examined and Exs.B1 to B13 were marked.

8. On a consideration of the oral and documentary evidence and the submissions made, the Courts below were pleased to accept the plaintiff's case and accordingly, granted the reliefs in favour of the plaintiff as prayed for. Impugning the same, the present second appeal has come to be laid.

9. At the time of admission of the second appeal the following substantial questions of law were formulated for consideration:

1. Whether in law the Courts below are right in upholding Ex.A1 and Ex.B1 in the absence of proof of the settlement having been accepted and acted upon as contemplated in Sec.122 and 123 of the Transfer of Property Act?
2. Whether in law the Courts below were right in failing to see that the appellants had prescribed title by adverse possession especially since Exs.B3 to B7 show continuous possession and enjoyment by them?

10. It is the specific case of the plaintiff that the suit property is the separate property of his mother, Sivabakkiyam ammal, and she had settled the suit property in his favour by way of a registered settlement deed dated 29.9.71 and thus, he has title to the suit property. That the suit property had been acquired only in the name of Sivabakkiyam ammal, could be seen from the sale deed dated, 14.12.1954 Marked as Ex.B2. Though the second defendant claims that the suit property had been enjoyed only as joint family property, there is no material to hold that the suit property had been purchased by their father, in the name of their mother as put forth by the defendants and also there is no material to hold that the suit property had been treated and enjoyed as the joint family property as claimed by the defendants. Therefore, the contention of the second defendant that the suit property had been acquired in the name of Sivabakkiyam ammal by the male members of the family as such had been rightly rejected by the Courts below as there is no material pointing to the same worth acceptance.

11. It is the further case of the second defendants that in the family partition, the suit property had come be allotted to the second defendant and in lieu of his share, the plaintiff was given Rs.5,000/-. However, there is no material to hold that the suit property belonging to Sivabakkiyam ammal was the subject matter of the alleged oral partition amongst the family members and that the same had been allotted exclusively to the second defendant and the plaintiff had been given Rs.5,000/- in lieu of his share. Therefore, it is found that the plea of partition projected by the second defendant cannot be accepted and there is no reliable and acceptable materials to hold that

since the date of alleged partition, it is only the second defendant, who has been in exclusive possession and enjoyment of the suit property as the absolute owner thereof. Hence, the Courts below have rightly disbelieved the plea of oral partition set out by the defendants.

12. The plea has also taken by the second defendant that Sivabakkiyam ammal has no legal competency to execute the settlement deed in respect of the suit property in favour of the plaintiff, which document has come to be marked as Ex.A1 and it is his further case that Sivabakkiyam ammal was not even alive at the time of the execution of the said settlement deed. However, it is found that, on the same date, Sivabakkiyam ammal has also executed the settlement deed in favour of the first defendant, with reference to another 38 cents and that apart, it is seen that the plaintiff has examined the attesor of the settlement deed Ex.A1 and Ex.B1, as PW3 and also examined the scribe of the above said documents as PW2. Both PWs 2 and 3 have clearly deposed, without an iota of doubt, that the above said documents had been executed by Sivabakkiyam ammal on the date recited thereunder, in favour of the plaintiff and the first defendant respectively, by affixing her LTI with an intention to settle the property covered under the documents in favour of the plaintiff and the first defendant respectively. Despite cross examination, nothing has been culled out from them to disbelieve their testimony. Therefore, from the evidence of PWs 2 and 3, the plaintiff has established the due execution of the settlement deed under Ex.A1 for upholding his title to the suit property. The Courts below have also accordingly, upheld the truth and the validity of Ex.A1 settlement deed, as having been executed by Sivabakkiyam ammal and that Sivabakkiyam ammal had all the competency to execute the said deed. The Courts below have also taken into consideration, the documents marked as Exs.B12 and 13 for holding that Sivabakkiyam ammal was very much alive on the date of execution of the settlement deed Exs.A1 and B1 and accordingly, exercised absolute ownership over the suit property, she had executed the above said deeds of settlement in favour of the plaintiff and the first defendant respectively. A plea has been taken that the settlement deed had not been accepted and acted upon and hence, the same cannot be relied upon. However, as rightly determined by the Courts below, specific recitals are found in the said documents that the properties comprised thereunder had been handed over to the plaintiff and the first defendant respectively and that pursuant to the same, it is only they, who had secured the possession and enjoyment of the respective properties and being enjoying the same and the plaintiff has also further placed materials to show that based on the above said settlement deed, by accepting the same, he had been in possession and enjoyment of the suit property, which could also been seen from the kist receipts marked as Exs.A2 and A6, the adangal extract marked as Ex.A4 and other documents. It is thus found that Ex.A1 settlement deed has been accepted by the plaintiff and acted upon by keeping the

suit property in his possession and enjoyment by paying kist etc., and therefore, the contention putforth that the plaintiff has failed to establish that the settlement deed Ex.A1 has not come into force, cannot at all be countenanced in any manner and the same had been rightly rejected by the Courts below.

13. The remaining plea putforth by the second defendant that he has prescribed title to the suit property by way of adverse possession has been rightly not countenanced by the Courts below, as there is no material at all placed by the second defendant to uphold his above plea. The revenue documents namely the kist receipts placed by him as Exs.B3 to B7 by itself would not be sufficient to uphold his claim of adverse possession against the plaintiff. The above plea taken by the second defendant would itself go to show that he has admitted the title of the plaintiff in respect of the suit property. However, with reference to the claim of his adverse title, there is no acceptable and reliable materials placed on his part that he has been in possession and enjoyment of the suit property by exercising complete ownership over the same, over a long period of time exhibiting animus attitude against the title of the plaintiff, openly and continuously and uninterruptedly beyond the statutory period and in such view of the matter, it is found that the plea of adverse possession set out by the second defendant cannot at all be accepted and accordingly, it is seen that the same had been rightly rejected by the Courts below.

14. The Courts below are found to have analysed the materials placed on record in the proper perspective both factually as well as legally and accordingly, found that it is only the plaintiff, who has title to the suit property and the defendants without any entitlement to the same had illegally encroached into the suit property and accordingly, granted the appropriate reliefs in favour of the plaintiff as prayed for. The findings and conclusions of the Courts below based on the materials placed in favour of the plaintiff do not call for any interference. In such view of the matter, the substantial questions of law formulated for consideration are accordingly answered in favour of the plaintiff and against the second defendant.

15. In conclusion, the second appeal fails and is accordingly dismissed with costs. Consequently, connected miscellaneous petition, if any is closed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

To

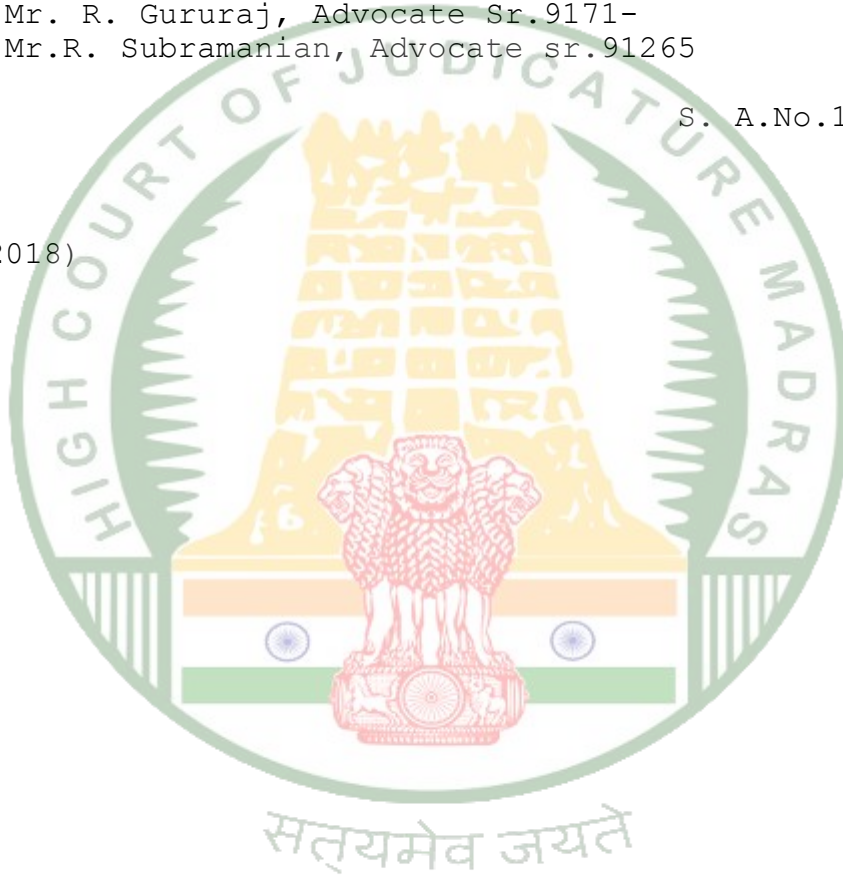
1. The Sub Court, Panruti
2. The District Munsif Court, Panruti.

Copy to: The Section Officer,
Vr Section, High Court, Madras.

- +1 cc to Mr. R. Gururaj, Advocate Sr.9171-
+1 cc to Mr.R. Subramanian, Advocate sr.91265

S. A.No.1200 of 2001

SSI (CO)
EU (21/02/2018)



WEB COPY