

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.12.2017
PRONOUNCED ON:15.12.2017

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A. No.767 of 2002
and
C.M.P.No.11579 of 2005
and
C.M.P.No.995 of 2008

Chockalingam

... Appellant/Plaintiff

Vs.

1.Selvaraj
2.Gunaseelan
3.Mani
4.Karunakaran
5.Selvamani

.. Respondents/Defendants

Prayer: Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree passed in A.S.No.37 of 1996 dated 31-10-2001 on the file of the Sub Judge, Poonamallee, confirming the Decree and judgment passed in O.S.No.1258 of 1980 dated 03-01-1996 on the file of the District Munsif Court at Poonamallee.

For Appellant : Mr.B.Mahendra Naidu

For Respondents: Mr.J.R.K.Bhavanantham

J U D G M E N T

This second appeal is directed against the judgment and decree dated 31-10-2001 passed in A.S.No.37 of 1996 on the file of the Sub Court, Poonamallee, confirming the judgment and decree dated 03-01-1996 passed in O.S.No. 1258 of 1980 on the file of the District Munsif Court, Poonamallee.

2. The parties are referred to as per the rankings in the trial court.

3. Suit for declaration and permanent injunction.

4.The case of the plaintiff in brief is that he is the owner of Item No.1 of the plaint schedule properties, it had been acquired by him under oral partition and he had purchased Item No.2 of the plaint schedule properties, by way of a registered sale deed dated 19.01.1966 from Naaliammal and the defendants own site to the south of Item No.2 of the plaint schedule properties and the plaintiff had constructed the house in a portion of Item No.1 and 2 of the plaint schedule properties and the rest of the portion is being used for other purpose allied therewith. The defendants recently made arrangements to construct a house in their property, while doing so, they had attempted to enter into the portion of Item No.2 of the plaint schedule properties, and the same was prevented by the plaintiff and inasmuch as the above acts of the defendants persisted according to the plaintiff he has been initiated to lay the suit for appropriate reliefs.

5.The case of the defendants' in brief is that the suit is not maintainable either in law or on facts and the plaint plan is not admitted and the Commissioner who had been appointed in the matter has furnished a detailed report, on inspection with plan and the same would go to show the topography of the properties owned by the respective title holders in the area and on the extreme south of the properties belonging to the parties concerned one Ayothi, owns a house property and the same has not been disputed and from the northern boundary of Ayothi's property, the Commissioner had taken measurement as per the records of title of the respective parties and to the north of Ayothi's property, one Murugan owns property measuring north to south 23 feet, which he had purchased, in the name of his wife Karuppayiammal by way of registered sale deed dated 24-10-1957 and the said Murugan is also called Chinna Murugan and to the north of his property, one Periya Murugan owns the property measuring north to south 27 ½ feet, which he had acquired by way of registered sale deed dated 02-02-1945 and the properties owned by Chinna Murugan and Periya Murugan were originally owned by one Kanni who sold the above said properties to them and north of Periya Murugan's property, one Annammal had owned the property measuring north to south 57 feet, which she had obtained by way of registered settlement deed dated 07-09-1957 executed by her brother Chinnappan and the plaintiff's property is situated only to the north of the above said 57 feet owned by Annammal and from Annammal, the first defendant's mother Lakshmi Ammal and the first defendant purchased the property measuring 57 feet north south, by way of three registered sale deeds dated 17-05-1973, 20-07-1977 and 21-01-1981 and hence the claim of the plaintiff that he is entitled to the property described as Item No.2/1 in the plaint schedule is not sustainable and there is no proof placed by the plaintiff to show that he and his predecessors in title owned 57 feet north south and the alleged mortgage deed referred to in the plaint is

a manipulated document and the disputed 4 feet space claimed by the plaintiff is only in the portion of the defendants' property and the defendants have left 7 feet space on the northern side of their construction and hence the plaintiff is not entitled to obtain the reliefs sought for and the suit is liable to be dismissed.

6. In support of the plaintiff's case, P.W.1 has been examined. Exs. A1 to A7 were marked. On the side of the defendants', D.W.1 was examined. Exs.B1 to B7 were marked. Further, Exs.C1 to C4 were also marked.

7. On consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, both the Courts below were not pleased to accept the plaintiff's case and accordingly dismissed the suit. Aggrieved over the same, the present second appeal has come to be laid.

8. At the time of admission of the second appeal, the following substantial question of law was formulated for consideration.

Whether the Courts below are right in taxing into account Ex.B5 and ignoring Ex.A1 to A7?

9.Learned counsel for the defendants placed reliance upon the decision reported in (2016) 10 SCC 315, (Syeda Rahimunnisa Vs Malan Bi (Dead) By legal representatives and another)The principles of law outlined in the above said decisions are taken into consideration and followed as applicable to the facts and circumstances of the case at hand.

10.The suit has been laid by the plaintiff for declaration and permanent and injunction. From the averments contained in the plaint, and also the materials placed by the plaintiff, both by way of oral and documentary evidence, it could be seen that, the parties are at issue only as regards the property described as Item No.2/1 of the plaint schedule. The said property is stated to be measuring 200 feet East to West, 4 feet north to south being the south portion of Item No.2 of the plaint schedule and shown as FJKF in the plaint plan. It is seen that the property involved in the suit is "Gramanatham". The plaintiff traces his title to the suit property namely the first item, by way of an oral partition and the second item by way of a registered sale deed dated 19.01.1966 executed by one Nalliammal. As regards the oral partition, during course of evidence a Koor-Chit has been projected under which the plaintiff claims to have been allotted 19 feet north to south in the suit survey No.1151/1. On a perusal of the same and also as seen from the evidence of P.W.1, the plaintiff, it is found that

by virtue of the said document, the plaintiff had been allotted the property in the middle portion measuring north to south 19 feet and 200 feet East to West and that apart, there is no reference in the said document, as to what are the shares allotted to the other family members, with whom the plaintiff had effected the partition in respect of the suit survey number. That apart, as rightly found by the Courts below, at the foremost, the plaintiff has not established by placing acceptable materials that his family had owned 38 feet North to South in the suit survey number and the same was subject matter of partition effected amongst the family members and by way of the said partition he had been allotted north to south 19 feet in specific in the suit survey number. Further, on perusal of Ex.A4 would go to show that, the property said to have been allotted to the plaintiff has not been described by four boundaries and as adverted supra, the document also does not disclose as to what are the other properties and the measurement of the said properties allotted to the other family members, by way of oral partition or the Koor Chit as projected in the matter and marked as Ex.A4. It is thus found that, when the plaintiff has not placed any proof to hold that his family had owned property in the suit number, measuring north to south, 38 feet or to any other extent, so as to effect the partition amongst them, merely from Ex.A4, it cannot be safely concluded that the other family members had also been allotted a particular extent of property in the suit survey number and in such view of this matter, it cannot be concluded firmly that the other family members had been allotted the actual extent in the suit survey number as put forth by the plaintiff. In particular, the plaintiff claim to have acquired title to Item No.2 of the plaint schedule properties by way of a registered sale deed dated 19.01.1966 which has come to be marked as Ex.A6. However, as above seen, the plaintiff has not established that the vendors of the sale deed marked as Ex.A6, namely Nalliammal and her children had been allotted the property comprised in Ex.A6, by way of the partition effected on 12.04.1964. According to the plaintiff, the property described in Ex.A4 had been allotted by way of the partition effected on 12.04.1964. However, when there is no material placed to hold that Nalliammal and her children were allotted any particular extent of the property in the suit survey number and that apart, when there is no material to hold that the plaintiff's family prior to the partition effected on 12.04.1964 had owned the suit properties as described in the plaint in toto measuring north to south 38 feet, it is seen that merely on the basis of Ex.A6 it cannot be concluded that the plaintiff has acquired a valid title to the second item of the plaint schedule properties. As rightly put forth by the plaintiff's counsel, when the plaintiff has not placed any material to show that his vendors under Ex.A6, had been allotted the property described in the said document, under the oral partition, it is seen that, Nalliammal

and others are not competent to convey the said property to the plaintiff, by way of Ex.A6.

11. On the other hand, it is the specific case of the defendants that an extent of 57 feet north to south was originally owned by Chinnappan, S/o, Muniyan and that he had settled the said property in favour of his sister Annammal and the settlement deed dated 07.09.1957 has been marked as Ex.B1. It is thus found that, even prior to the alleged partition, put forth by the plaintiff, sought to have been effected on 12.04.1964, Chinnappan exercising ownership over an extent of property measuring North to South, 57 feet accordingly settled the same in favour by his sister, by way of Ex.B1. Further as put forth by the defendants, it could be seen that, Annammal and her son Renganathan had conveyed an extent of property measuring North to South 22 feet to the plaintiff's mother Lakshmi Ammal, by way of registered sale deed dated 17.05.1973, which has come to be marked as Ex.B2. Further from Ex.B3, the sale deed dated 20.07.1977, it is found that the plaintiff had acquired an extent of property measuring north to south 22 feet to the north of the property convey to Lakshmi Ammal by way of Ex.B2 from Annammal and her son Renganathan and it is further seen that, by way of Ex.B4 registered sale deed dated 21.01.1981, the plaintiff had further acquired an extent of property in the suit survey number measuring north to south 13 feet situated to the north of the property acquired by him by way of Ex.B3. It is the case of the defendants that their vendors Annammal and her son had retained the property measuring an extent of 13 feet north to south, situated to the north of the property convey to the plaintiff, under Ex.B3. However, subsequently noting that in Ex.B3 they have wrongly described the northern boundary as Chockalingam's house plot instead of describing the same as their house plot, accordingly executed a rectification deed as regards the sale deed has been marked as Ex.B3, and the said rectification deed marked as Ex.B5 where under they have rectified the northern boundary of the property conveyed by them to the plaintiff under Ex.B3 as the property retained by them measuring north to south 13 feet and therefore, it is seen that the rectification deed Ex.B5 has cleared the position that the property situated to in the north of the property conveyed to the plaintiff by way of Ex.B3 is only the property of Annammal and her son Renganathan and accordingly set at right the mistake that had crept in Ex.B3 by way of the rectification deed marked as Ex.B5. Accordingly, it is found that subsequent to Ex.B5, Annammal and her son had sold the retained extent of property measuring north to south 13 feet to the first defendant himself by way of Ex.B4 sale deed as adverted above. Thus, it is found that by way of Exs.B1 to B5, it is only the first defendant's mother and the first defendant who owned an extent of property measuring 57 feet north to south in the suit survey number, such being the position, the claim

of the plaintiff that he had acquired title to an extent 38 feet in the suit survey number by way of an oral partition effected on 12.04.1964 and by way of Ex.A6, as such cannot be readily countenanced as above referred to when the plaintiff has not placed any acceptable and reliable materials to establish that, Nalliammal and her childrFen had been granted any particular extent of the property in the suit survey number under the oral partition. It cannot be thus concluded that the plaintiff owns the extent of property measuring 19 feet north to south as described in Item No.2 of the plaint schedule properties. As above mentioned, the disputed property is only measuring 4 feet north to south, which is shown to be the southern portion of Item No.2 of the plaint schedule properties.

12.This position is also further fortified by the Commissioner's reports and plans in the case marked as Ex.C1 to C4 and a reading of Ex.C1 to C4 would go to show that the Commissioner based upon the title deeds of the respective parties had measured the properties of the different owners in the area, commencing from the property owned by one Ayothi which is situated at the extreme southern end. Accordingly, the Commissioner's report and plan also only go to disclose that there is an extent of 7 feet vacant space available to the north of the built up portion of the defendants and according to the Commissioner the same is the disputed property between the parties concerned. However, when the plaintiff who has come forward with the case has failed to establish that he has a valid title to the Item No.2 of the plaint schedule properties which includes the disputed portion shown as Item No.2/1 in the plaint schedule, the reliefs sought for by the plaintiff cannot be granted as rightly determined by the Courts below.

13.However, it is vehemently contended by the plaintiff's counsel that in the Koor Chit marked as Ex.A4 and also in the sale agreement marked as Ex.A5 and in the sale deed marked as Ex.A6, inasmuch as Chinnappan has attested the above said documents and as the defendants claim title to other property only from Chinnappan who had settled the property of the defendants in favour of his sister Annammal by way of Ex.B1, according to the plaintiff's counsel, if really Chinnappan had title to an extent of property measuring north to south 57 feet in the suit survey number, he would not have attested the above said documents namely Ex.A1, A5 and A6 and therefore, by way of attestation in the above said document, Chinnappan having accepted title of the plaintiff in respect of the suit properties, according to him, the defendants cannot claim any valid title to the disputed property. Countenancing the same, it is argued by the defendants' counsel that mere attestation of the documents by itself would not constitute that an attestor had knowledge about the contents of the documents and therefore

when there is no material placed on the part of the plaintiff that, Chinnappan knowing the contents of the above said documents had attested the same, it is his contention that, it cannot be concluded that Chinnappan had acquiesced the title of the plaintiff in respect of the suit properties. That apart, when it is seen that Chinnappan had already settled the property owned by him in the said survey number, in favour of his sister and thereafter his sister had also conveyed the properties settled on her in favour of the first defendant and his mother, by way of Exs.B1 to B5, it is further contended that the attestation of Chinnappan in Exs.A4, A5 and A6 would not be a supportive factor to the plaintiff's claim of title to the plaint schedule properties. The above contention of the defendants' counsel seems acceptable. A reading of the evidence of the plaintiff examined as P.W.1 would only go to show that the plaintiff has only stated that Chinnappan had attested Ex.A4 Koor Chit and further he has only testified that Chinnappan would have attested in Ex.A5 and A6. In the absence of any material to hold that Chinnappan had attested the above said documents knowing the contents of the same in all aspects and as per the definition of the word "attested" as defined in the Transfer of Property Act, it cannot be imputed that the attestor also knew the contents of the document attested by him. It is seen that sans materials we cannot conclude that Chinnappan had admitted the title of the plaintiff to the plaint schedule properties by way of attesting the documents marked as Exs.A4 to A6. In such view of this matter, it is found that the attestation of the defendants' predecessor in title by itself would not enable the plaintiff to claim a valid title to the plaint schedule properties.

14. In the light of the above discussions, it is found that as rightly determined by the Courts below the plaintiff has failed to establish that he has a valid title to the disputed property and that he is in possession and enjoyment of the disputed property as put forth by him. On the other hand, the materials disclose that it is only the defendants who have title possession and enjoyment of the disputed property as discussed above. Accordingly, it is seen that the Courts below have rightly placed reliance upon the documents projected by the defendants inclusive of Ex.B5 in the right perceptive both on factual and legal aspects and accordingly held that the plaintiff has failed to establish his title to the disputed property and while determining so, the Courts below had rightly placed the reliance upon the documents projected by the plaintiff's marked as Ex.A1 to A4. No infirmity or error is noted in the reasonings and conclusions of the Courts below for rejecting the plaintiff's case. Accordingly, the substantial question formulated for consideration is answered.

15. In conclusion, the second appeal fails and accordingly is dismissed with costs. Consequently, connected miscellaneous petitions are closed.

-s/d-

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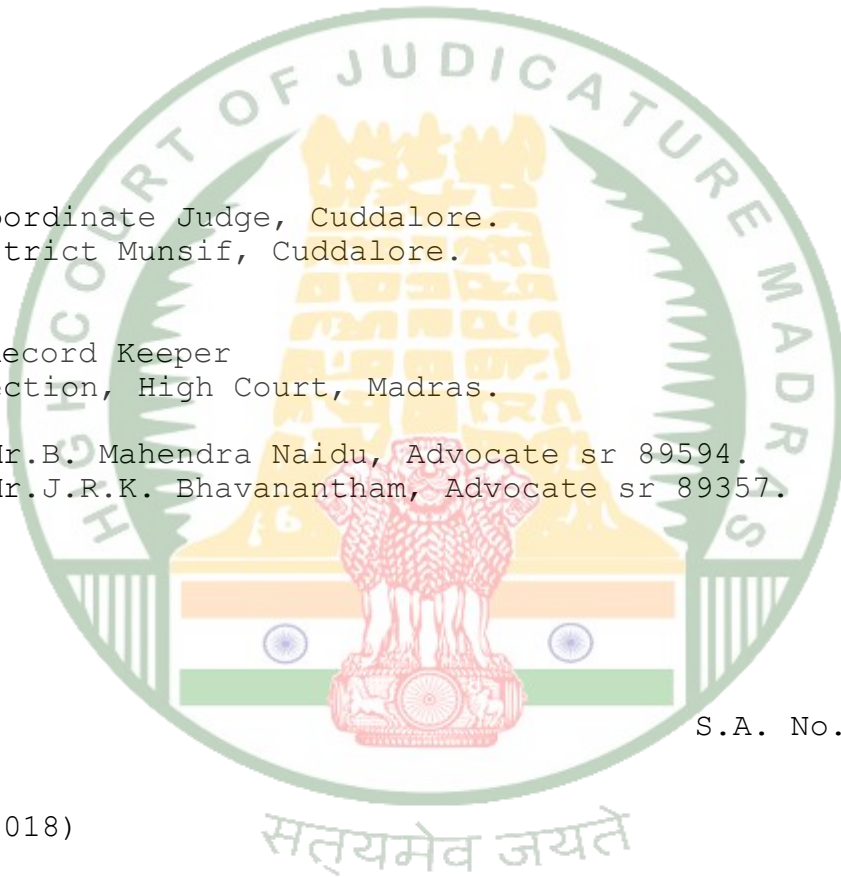
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