

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.01.2017

CORAM

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH

Second Appeal No. 215 of 2016

&

C.M.P. No. 4502 of 2016

1. Kuppusamy
Raman (died)
 2. Gunasekaran
 3. Govindammal
 4. Usha Rani
 5. Bharanidharan
 6. Johnsi Rani
- ...Plaintiffs/Appellants/Appellants

Vs.

1. Mari
 2. Chinnavalli
 3. Ilayaraja
- ...Defendants/Respondents/Respondents

Prayer: Second Appeal as against the judgment and decree dated 24.06.2015 made in A.S. No. 4 of 2014 on the file of Subordinate Judge, Harur, confirming the judgment and decree dated 30.09.2013 made in O.S. No. 540 of 2008 on the file of District Munsif cum Judicial Magistrate, Pappireddipatti (O.S. No. 313 of 2004, District Munsif, Harur) Dharmapuri District.

For Appellants :: Mr.Durai Gunasekaran

For Respondents :: Mr.K. Munisamy

J U D G M E N T
सत्यमेव जयते

The above second appeal arises against the judgment and decree dated 24.06.2015 passed in A.S.No.4 of 2014 on the file of Subordinate Judge, Harur, confirming the judgment and decree dated 30.09.2013 passed in O.S.No. 540 of 2008 on the file of District Munsif cum Judicial Magistrate, Pappireddipatti, Dharmapuri.

2. The plaintiffs, who suffered a decree, concurrently, before the Courts below, are the appellants and the defendants are the respondents in this second appeal.

3. The plaintiffs filed the suit in O.S. No. 540 of 2008 for declaration and permanent injunction.

4. The suit was laid on the premise that the entire suit property was given as a "Sreedhana" to the mother of the plaintiffs by her parents. Incidentally, the plaintiffs claimed adverse possession. It appears that, on an earlier occasion, the matter was remanded back by the First Appellate Court and on remand, the Trial Court found that as per Ex-A14, which is not in tune with the pleadings, as it exist now, the mother of the plaintiffs had purchased one-third of the suit property, though, undivided. Accordingly, while declaring the title of the plaintiffs in respect of one-third of the suit properties, without granting any other relief, the suit was dismissed. The Lower Appellate Court also concurred with the Trial Court by holding that there is no purpose in giving a decree for declaration and the remedy open to the plaintiffs is to file a comprehensive suit for partition and separate possession. Challenging the same, the present second appeal has been filed.

5. The following substantial questions of law have been raised in the second appeal:

"a. Whether the Courts below had properly appreciated the oral and documentary evidence on the side of the appellants?

b. Whether there is any perversity and illegality in the judgment and decree of both the Courts below?

c. When the appellants have proved their right over the suit property by producing Ex.A14 and examining P.W.4 independent witness, whether the Courts below are correct in law in non suiting the appellants?

d. Whether the Lower Courts are right in dismissing the suit when admittedly the suit property was in possession and enjoyment of the mother of the appellants?

e. Whether the Courts below are right in dismissing the suit when the defendants have failed to produce both oral and documentary evidence to prove their title and possession over the suit properties?

f. Are not the plaintiffs/appellants entitled to declaration and injunction in view of the issuance of joint patta and UDR patta and proof of possession?

g. Have not the Courts below committed an error of law to the facts and circumstances of the case, in not holding that Ex.A14 and A15, being registered documents, there is a statutory presumption under the Indian Evidence Act regarding the genuineness of the same and therefore, the suit filed by the appellants ought to have been decreed?"

6. Learned counsel for the appellants/plaintiffs submits that the plaintiffs have been dispossessed just prior to the suit. Therefore, the documents filed would show that they have been in possession, much earlier, for quite a number of years. Hence, the judgment and decree of the Courts below warrants interference.

7. Learned counsel for the respondents submits that though the matter was remanded by the Lower Appellate Court to the Trial Court, the plaintiffs did not make necessary pleadings afresh. Thus, no interference is required.

8. A perusal of the judgment and decree of the Lower Appellate Court and so also the Trial Court, would show, that Ex-A14 was given credit to, in favour of the plaintiffs. However, the Lower Appellate Court, taking into consideration, the fact that the plaintiffs could, at best, be co-owners, while declining to grant a specific decree for declaration, gave liberty to the plaintiffs to file a suit for partition and separate possession. It is settled law that being plaintiffs, no plea of adverse possession is sustainable. Hence, the only course open to the appellants/plaintiffs is to seek a decree for partition, if so advised.

9. In such view of the matter, this Court finds that there is no error in the judgment and decree of the Courts below warranting interference. Accordingly, the second appeal stands dismissed with liberty to the appellants/plaintiffs to file a comprehensive suit for partition, if so advised. No costs. Connected C.M.P. is closed.

s/d-
Assistant Registrar (CS-II)

//True Copy//

Sub-Assistant Registrar

To

1. The Subordinate Judge, Harur
2. The District Munsif cum Judicial Magistrate,
Pappireddipatti.

+ 1 CC to M/s. Durai Gunasekar, Advocate sr 3717

Second Appeal No. 215 of 2016

CNR (CO)
sp/16/2