

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.02.2017

Coram

The Honourable Mr.Justice M.M.SUNDRESH

S.A.No.336 of 2016
& C.M.P.Nos.6224 & 6225 of 2016

Ramalingam .. Appellant/Appellant/
Plaintiff

Vs.

Chinnasamy .. Respondent/Respondent/
Defendant

Second Appeal is filed under Section 100 C.P.C., as against the judgment and decree dated 30.10.2015 made in A.S.No.6 of 2014 on the file of Principal District and Sessions Judge, Ariyalur, confirming the judgment and decree dated 06.03.2007 made in O.S.No.1 of 2001 on the file of Principal District Munsif, Ariyalur.

For appellant : Mr.K.N.Nataraj

For respondent : Mr.V.Raghavachari

JUDGMENT

The plaintiff, who suffered decrees before the Courts below, is the appellant herein. Seeking to reverse them, he has filed the above second appeal raising the following substantial questions of law.

1. Whether both the Courts are correct in holding that Testator Rangasamy had no right to execute the registered Will dated 16.02.1949 in respect of the suit property?
2. Whether both the Courts below are correct in holding that the father of appellant/plaintiff namely Boorasamy was having title over the suit property to execute the sale deed dated 01.06.1961 i.e. Ex.B1 in favour of respondent/defendant's father Vaiyapuri?
3. Whether both the Courts below are correct in holding that the respondent/defendant

proved his possession over the suit property?

4. Whether both the Courts below are correct in rejecting the Will dated 16.02.1949 executed in favour of appellant/plaintiff and his brother Anbazhagan?
5. Whether Ex.B1 sale deed dated 01.06.1961 is valid when the registered Will dated 16.02.1949 i.e. Ex.A1 is in force?

2. The suit property originally belonged to one Rengasamy Padayachi and his son Boorasamy Pachachi. The plaintiff, who is the grandson of Rengasamy Padayachi, has filed the suit in O.S.No1 of 2001 seeking declaration and permanent injunction, solely placing reliance on Ex.A1, which is the certified copy of the registered Will executed by his grandfather Rengasamy Padayachi.

3. The case of the defendant is that the suit property has been sold by Rengasamy Padayachi along with his son Boorasami Padayachi under Ex.B1 dated 01.06.1961 in favour of the defendant. Prior to that, under Ex.B4, the property, which was the subject matter of Ex.A1 was also sold by Rengasamy Padayachi and Boorasamy Padayachi in favour of one Siva Padayachi. Ex.B1 also makes a reference to the minor children Booramy including the plaintiff.

4. The Courts below dismissed the suit holding that the property, which is the subject matter of Ex.B4, sold by Rengasamy Padayachi and Boorasamy Padayachi was also included in the Will-Ex.A1. Therefore, Rengasamy Padayachi could not have executed Ex.A1-Will for the entire property mentioned therein in view of the subsequent sale deeds executed under Exs.B1 and B4. No reliance can be made to Ex.A1 and Boorasamy have a share in the properties mentioned under Ex.A1. It was further held that Ex.A1 has not been proved in the manner known to law as mandated under Section 63 of the Indian Succession Act, 1925 read with Section 68 of the Indian Evidence Act, 1872. In such view of the matter, Section 90 of the Indian Evidence Act, 1872, cannot be pressed into service. In view of the evidence of P.W.2 accepting the possession of the suit property with the defendant's father, a factual finding has been given by the Courts below that the plaintiff/appellant is not in possession of the suit property. Seeing to reverse the aforesaid decisions rendered, the present second appeal has been filed.

5. The learned counsel appearing for the appellant vehemently contended that Section 90 of the Indian Evidence Act, 1872, would come into play as Ex.A1 has been registered more

than 30 years ago. The patta though cannot be a document of title shows possession and therefore, it has to be read along with Ex.A1. The lower appellate Court has committed an error in declining to accept Ex.A1 on the ground of not producing the original. In support of his contention, reliance has been made on the following decisions:

1. SMT.DAYAMATHI BAI V. SRI K.M.SHAFI ((2004) 4 CTC 226); AND
- 2.VADIVELU AND THREE OTHERS V. NATESAN AND SEVEN OTHERS ((2013) 1 MWN (Civil) 81).

6. The learned counsel appearing for the respondent submits that admittedly, Ex.A1 has not been proved in the manner known to law as no witness whatsoever has been examined in support of it. The presumption available, if any, to Ex.A1 would also apply forcibly to Exs. B1 to B4 as well. The appellant has not shown that the subject matter of Ex.B1 is not the subject matter of Ex.A1. The findings of possession have been granted based upon evidence of P.W.2 and on analysis of Exs.A4 and A5. Thus, no interference is required.

7. Coming to Ex.A1, admittedly no witness has been examined to prove it. Merely because it is 30 years old, it cannot be stated that parameters required under Section 63 of the Indian Succession Act, 1925, read with Section 68 of the Indian Evidence Act, 1872, can be dispensed with. Marking of documents is different to admissibility, relevancy and proof being a settled position of law. Consequently, evidence can be admitted and if done so, the Will has to be proved in the manner known to law. The lower Appellate Court has made a remark about the non availability of original document in view of the factual position that no evidence whatsoever let in to prove it, this Court does not find any reason to interfere with the judgments rendered.

8. The presumption under Section 90 of the Indian Evidence Act, 1872, is only with respect to the due execution and thus, not meant for its relevancy and admissibility. In other words, such a document cannot be taken as a gospel truth to show the title of the executor when disputed. The Courts below have given a finding that the testator did not own the suit property unsuccessfully. The attending circumstance governing Exs.B1 and B2 have been taken into consideration as mentioned earlier. Ex.A1 states that the son of the testator was not in good terms. In the subsequent documents in Exs.B1 and B4, both the father and son have signed and the son also represented his minor son including the plaintiff. The property which is the subject matter of Ex.B4 also found mentioned in Ex.A1-Will. Thus, the findings rendered by the Courts below in this regard are perfectly in order.

9. A patta is not a document of title, which is a established position of law. Merely because, the appellant has obtained a patta, the same will not give his title. Perhaps there may be a case against the party, who does not have a better title. In the case on hand, the Courts below have concurrently found patta, title and possession are in favour of the defendant. Therefore, this Court does not find any reason to interfere with such findings in exercise of the power under Section 100 of Code of Civil Procedure.

10. The decision relied upon by the learned counsel appearing for the appellant are not applicable to the case on hand. In SMT.DAYAMATHI BAI V. SRI K.M.SHAFI ((2004) 4 CTC 226) the Apex Court has dealt with the case of sale deed marked as a secondary document. Similarly, in VADIVELU AND THREE OTHERS V. NATESAN AND SEVEN OTHERS ((2013) 1 MWN (Civil) 81) the finding was to the effect that the defendant did not have any better title. Therefore, the aforesaid decisions would not help the case of the appellant.

11. In such view of the matter, this Court is of the view that no substantial question of law warranting interference. Accordingly, the second appeal stands dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

raa

To

1.Additional Sub Court,
Mayiladuthurai.

2.District Munsif Court,
Sirkali.

+ 1 cc to Mr.V. Raghavachari, Advocate Sr.6783
+ 1 cc to Mr.M. Thamizhavel, Advocate Sr.6904

S.A.No336 of 2016

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