

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.270 of 2001

Narayana Reddiyar

Appellant/Defendant

Vs.

1. Bangaru Reddiar (Deceased)

2. Balaraman

Respondents/Plaintiff LR
of Plaintiff

(R2 brought on record as LR of
the deceased R1 vide order dated
22.11.2017 made in C.M.P. Nos.
417 & 418 of 2014)

Prayer: Second Appeal filed under Section 100 of Civil
Procedure Code, against the judgment and decree in A.S.
No.121/97, dated 29.9.1999 on the file of Additional District
Court, Villupuram, reversing the judgment and decree in O.S.
No.809/95, dated 07.03.1997, on the file of II Additional
District Munsif Court, Ulundurpet.

For Appellant : Mr. V.Raghavachari

For Respondents : Mr.Sathyamoorthy
for M/s. G.M.Mani Associates

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JUDGMENT

This second appeal is directed against the judgment and
decree dated 29.9.1999 passed in A.S. No.121/97, on the file of
Additional District Judge, Villupuram, reversing the judgment
and decree dated 07.03.1997, passed in O.S. No.809/95, on the
file of II Additional District Munsif Court, Ulundurpet.

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

3. Suit for declaration and permanent injunction.

4. The case of the plaintiff, in brief, is that the suit property and the other properties are the separate properties of his father Balu Reddiar, who was in possession and enjoyment of the same, till his death and further according to the plaintiff, while he was alive, he had executed a Will dated 17.06.1964, bequeathing the properties to the plaintiff, his son and maternal aunt and died thereafter and thus, it is stated that the suit property had been bequeathed to the plaintiff, by way of the above said Will executed by his father and accordingly, the plaintiff, by retaining the suit property in his possession, had been enjoying the same by securing patta, paying kist etc., for several years and accordingly, also prescribed title to the suit property by way of adverse possession and the defendant without any legal authority attempted to interfere with the possession and enjoyment of the plaintiff in respect of the suit property and hence, it is stated that the plaintiff had been necessitated to lay the suit for appropriate reliefs.

5. The case of the defendant, in brief, is that the suit property is not the separate property of the plaintiff's father Balu Reddiar as claimed in the plaint and the claim of the plaintiff that the suit property had been bequeathed to him by his father, by way of a Will dated 17.9.1964 is also not admitted and according to the defendant, Balu Reddiar and his brother Govinda Reddiar, who is the father of the defendant, owned ancestral properties and accordingly, about 40 years ago, they partitioned the properties and in the said partition, northern share of the suit property was allotted to Govinda Reddiar and southern half share was allotted to the plaintiff's father Balu Reddiar and after the demise of Govinda Reddiar, his two sons namely, the defendant and his brother divided the properties amongst themselves and the suit property fell to the share of the defendant and further according to the defendant, the plaintiff had conveyed the other half share of the suit property to him orally for a sum of Rs.4,000/- and accordingly, it is only the defendant, who is in possession and enjoyment of the entire suit property by obtaining patta, paying kist etc., and the defendant has also prescribed title to the suit property, on account of his continuous and long enjoyment and hence, the suit is liable to be dismissed.

6. In support of the plaintiff's case, PWs 1 and 2 were examined, Exs.A1 to A9 were marked. On the side of the defendant, DWs 1 and 2 were examined and Exs. B1 to B9 were marked.

7. The trial Court, on an appreciation of the materials placed and the submissions made, was pleased to dismiss the suit laid by the plaintiff. On appeal the first appellate Court, on an analysis of the materials placed, was pleased to set-aside the judgment and decree of the trial Court and accordingly, by allowing the appeal preferred by the plaintiff, decreed the suit in favour of the plaintiff as prayed for. Aggrieved over the same, the second appeal has come to be preferred.

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

1. Whether the lower appellate Court is right in upsetting the findings of the trial Court as regard Ex.B9 when adequate and ample reasons have been given by the Court for its acceptance?
2. Whether the lower appellate is right in not exercising the power under Section 73 the Indian Evidence Act and have the documents under Ex.B9 compared with the admitted signature of PW1?

9. The plaintiff traces his title to the suit property on the footing that it is the separate property of his father Balu Reddiar. However, the plaintiff, in the plaint, has not whispered anything as to on what basis his father had title to the suit property i.e., whether he had acquired the suit property by way of purchase or other modes and with reference to the same, the plaint averments are completely silent. Even during the course of trial, the plaintiff has not placed acceptable materials clearly as to how his father had derived title to the suit property and this would only go to show that inasmuch as, the plaintiff's father had no valid title to the suit property, as putforth in the plaint, the plaintiff is unable to substantiate the same with acceptable and reliable materials. Alleging that the suit property is the separate property of his father, according to the plaintiff, by way of the Will dated 17.9.1964, marked as Ex.A1, the suit property had been bequeathed to him by way of the above said document and thus, he has absolute title to the suit property. However, the Will above stated and marked as Ex.A1 has not been established to be a true document as per the requirements of law. None had been examined with reference to the Will, to substantiate its authenticity and accordingly, it is found that the plaintiff has also miserably failed to establish his case for the claim of the title to the suit property, by virtue of the above said Will. A perusal of Ex.A1 also does not indicate clearly as to whether at all the suit property had been bequeathed by the plaintiff's

father in his favour. All that the document recites is that the property located at Kallakurichi is also bequeathed. The description of the property is nowhere given and such being the position, it cannot be concluded that, it is only the suit property which had been bequeathed to the plaintiff under the said document by his father Balu Reddiar. It is thus seen that Ex.A1 Will also goes out and therefore, the plaintiff is now having only the revenue documents namely, the Kist receipts and chitta extract for claiming title to the property. However, when the revenue records projected by the plaintiff, namely, the Kist receipts, Chitta extract etc., cannot be equated as documents of title, as rightly determined by the trial Court, no safe credence could be attached to the same for upholding the plaintiff's case. Therefore, in toto, it is seen that no valid and acceptable material has been placed by the plaintiff to hold that he has a valid title to the suit property for granting the reliefs sought for by him in the matter.

10. However, the first appellate Court proceeded to uphold the plaintiff's case on the basis of the so called admission of the defendant that the suit property is the property of the plaintiff's family. However, it is seen that the above approach and the determination of the first appellate Court for upholding the plaintiff's title to the suit property, is found to be completely erroneous both on factual as well as legal aspects. It is thus found that the plaintiff failing to establish the title to the suit property as projected by him in the plaint, the plaintiff is endeavouring to derive strength from the defendant's version for claiming title to the suit property i.e., by other means.

11. The defendant has disputed the title of the plaintiff in respect of the suit property. However, it is the further version of the defendant that the suit property and the other properties belonged ancestrally to the plaintiff's father Balu Reddiar and his father Govinda Reddiar and in the partition effected amongst themselves several years ago, it is his case that the northern share of the suit property was allotted to his father Govinda Reddiar and the southern share of the suit property was allotted to the plaintiff's father Balu Reddiar. Even as per the above version of the defendant, it is seen that the plaintiff's father has not been allotted the entire suit property in the said partition effected between Govinda Reddiar and Balu Reddiar, only the southern half share was allotted to the plaintiff's father Balu Reddiar. Further according to the defendant, in the partition effected between him and his brother, the northern half share in the suit property had been allotted to him and his further case is that the plaintiff had orally sold the southern half share in the suit property to him for a sum of Rs.4,000/-. With reference to the same, it is

found that the defendant has placed reliance upon the document marked as Ex.B9. However, when Ex.B9 cannot be equated as a pucca title deed as per law, the same cannot be the basis for upholding the case of the defendant that he has validly acquired the title to the half share of the suit property, said to have been allotted to the plaintiff's father in the partition as above stated. Be that as it may, even assuming for the sake of arguments that the defendant has failed to establish the plea of oral sale of the half share of the suit property under Ex.B9, that by itself would not entitle the plaintiff to claim the absolute title to the whole of the suit property. As above stated, all the pleadings set out by defendant as regards the partition, we have no reliable and acceptable materials. Even assuming the same to be true, at the most we can only conclude that the plaintiff's father had been allotted only the southern half share. If that be so, it does not stand to reason that by virtue of the failure of the defendant to sustain his oral sale under Ex.B9, automatically it would not lead to the conclusion that the plaintiff has title to the whole of the suit property. In such view of the matter, it is found that the first appellate Court on an erroneous appreciation of the materials placed on record proceeded to hold that the plaintiff has established his title to the suit property by way of the defence version put forth by the defendant. As above seen, there is also no material worth acceptance that the plea of partition set out by the defendant is true and reliable. Such being the position, it is found that based on the documents placed by the defendant, it has to be held that he has also failed to establish that he has title to the whole of the suit property. It is found that the Kist receipts marked by him as Exs.B1 to B9, not being the documents of title, cannot be relied upon to sustain his claim of title to the entire suit property.

12. Both the plaintiff as well as the defendant claims title to the suit property by way of adverse possession. However, with reference to their above claim, there is absolutely no acceptable and reliable materials and by way of the above pleadings projected by them, each, one way or the other, indirectly admits the title of the other. However, the above plea as set out by them remains not proved.

13. The plaintiff has laid the suit for claiming the reliefs of declaration and permanent injunction. It is thus seen that the plaintiff has to stand or fall on the strength of his own case and he cannot be allowed to pick holes in the defence version and thereby, endeavouring to succeed in his case without any foundation in support of his case. Accordingly, it is found that merely on the footing that the defendant has failed to establish his version that by itself would not be a factor for upholding the plaintiff's case sans proof and acceptable and

reliable materials pointing to the same. Counsel for the defendant placed reliance upon the decision reported in 1956 SCR 451 (Nagubai ammal & others Vs. B.Shama rao & others). The principles of law outlined in the above said decision are taken into consideration and followed as applicable to the case at hand.

14. The substantial questions of law formulated in the second appeal are answered as above discussed.

15. In conclusion, the judgment and decree of the Additional District Court, upholding the plaintiff's case without any basis or foundation, are found to be unsustainable in the eyes of law and accordingly set-aside and the judgment and decree of the II Additional District Munsif Court are confirmed. Resultantly, the second appeal is allowed with costs. Consequently, connected miscellaneous petition, if any is closed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1. The Additional District Court,
Villupuram.
2. The II Additional District Munsif Court,
Ulundurpet.

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+1cc to M/s. G.M.Mani Associates, Advocate, S.R.No.31221
+1cc to Mr.V.Raghavachari, Advocate, S.R.No.90753

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