



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 09.08.2017
CORAM

THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA

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SECOND APPEAL (MD) No.213 of 2014
and
M.P. (MD).No.1 of 2014

1. Indurani (died)
2. Meri Amsarani
3. Stella Ruby
4. Saronraj Nallakannu
5. Minor Shyamali Rajakkumari
6. Jeevakumar
7. Devaduraimani

... Appellants /
Appellants / Plaintiffs 2 to 8

Vs.

1. Thiraviam
2. Rajendran
3. Pulavendran
4. Raveendran Jeevakani

... Respondents /
Respondents/ Defendants

(The first appellant died vide memo in USR.2151/15, dated 01.06.2015. The other appellants are declared as LR's of the first appellant, as per the order of the Court dated 12.07.2017 made in S.A. (MD).No.213 of 2014)

PRAYER: Appeal filed under Section 100 of C.P.C., against the judgment and decree, dated 19.12.2011, made in A.S.No.23 of 2011 by the learned the Subordinate Judge, Uthamapalayam, confirming the judgment and decree, dated 29.03.2011, made in O.S.No.119 of 2005 by the learned District Munsif, Uthamapalayam.

For appellant ... Mr.V.Meenakshi Sundaram
for Mr.D.Nallathambi

For respondents Mr.A.Arumugam,
for M/s.Ajmal Associates

JUDGMENT

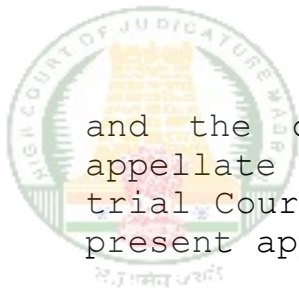
The legal heirs of the first plaintiff, who are the plaintiffs 2 to 8 are the appellants herein. The suit is filed for declaration of title and for permanent injunction. There are two items of properties regarding which the declaration is sought for.

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2. As per the plaint averments, the suit properties are vacant site belonging to the first plaintiff's father ancestrally. The first plaintiff had two other brothers by name Gnanasigamani and Masilamani. Masilamani died issueless. The first item of the property is 0.05 cents, of which 0.02 cents were released on 26.07.1931 by the brother of the first plaintiff viz., Gnanasigamani in favour of the first plaintiff and the other brother Masilamani. Out of the balance of 3 cents, 0.01-1/2 cents of land was sold by the first plaintiff's mother in favour of the first plaintiff on 20.03.1950. The said sale deed was attested by the father of the first plaintiff. As stated earlier, since the other brother of the first plaintiff viz., Masilamani died issueless, 0.01 cents belonging to him was also in the possession of the first plaintiff. After the death of the parents of the first plaintiff, the remaining 1-1/2 cents devolved upon the first plaintiff. Thus, the entire extent of 0.05 cents was in possession and enjoyment of the plaintiffs. So far as the second item of the suit schedule is concerned, it is an extent of 0.04 cents. It was purchased by the first plaintiff's grandfather on 22.07.1913. It is stated that there was a partition between the first plaintiff's father and his brothers in the year 1926, as per which the second schedule 0.02 cents fell to the share of the first plaintiff's father and the same has been in possession and enjoyment of the first plaintiff, after the death of his father. As the defendants were trying to disturb the possession denying the title of the plaintiffs, the suit has been filed.

3. In the written statement, the defendants had denied all the contentions raised by the plaintiffs. According to the defendants, the first item of suit property was originally owned by one Mahalingam Nadar, who sold it to one Ponnusamy Nadar, who is the father of the first defendant. From the date of purchase, the property has been in the possession and enjoyment of the said Ponnusamy Nadar and now by the first defendant and his children. The plaintiffs have got no right or title over the suit properties and they were never in possession of the same at any point of time. The defendants further contended that the documents produced by the plaintiffs do not tally with the suit properties. Therefore, they prayed for dismissal of the suit properties.

4. The trial Court, on perusal of the documents filed, had decreed the suit in part by granting the relief of declaration and permanent injunction with respect to the second item of the suit property and the suit was dismissed with respect to the first item. Aggrieved by the same, the plaintiffs preferred an appeal



and the defendants also preferred a cross appeal. The first appellate Court also confirmed the judgment and decree of the trial Court. Aggrieved by the same, the plaintiffs have filed the present appeal.

5. At the time of admission, the following questions of law were framed for consideration:

"a) When the courts below found that the plaintiffs/appellants are entitled for 3½ cents in suit 1st schedule property through Exs.A2, A7 and A8 which are all old documents prior to 30 years, whether the courts below are correct in declining the relief of declaration and permanent injunction in respect of entire 1st schedule property measuring five cents and thus the judgment and decree of the courts below warrants interference under Section 100 of CPC?

b) Whether the findings of the courts below that the respondents herein/defendants got title to suit 1st schedule property measuring 5 cents through Ex.B1 and B2 deeds in the year 1948 and 1968, whereas these appellants trace their title to the very same property through Exs.A2, A7 and A8 which are all very old documents and hence it got much importance in the rule of interpretation, thus the judgment and decree of the courts below in respect of the suit 1st schedule property warrants interference under Section 100 of CPC?

c) Whether the courts below are correct in holding that the respondents/defendants are having title to entire 5 cents of the suit 1st schedule property, when their antecedent title deed Ex.B1 have the recitals that the vendor therein (Mahalinga Nadar) is having title to 5 cents in S.No.294 (suit 1st schedule) only by patta No.499, which is not a document for title and this the interpretation of Ex.B1 goes to the root of the matter and thus warrants interference by this Court under Section 100 of CPC?

d) Whether the approach of the courts below in declining the relief of declaration and injunction in respect of the suit 1st schedule property on account of non production of documents showing possession over the same by these appellants are correct, when it is a settled proposition of law that as far as vacant land, possession follows title and thus the judgment and decree of the courts below in respect of the suit 1st schedule property warrants interference by this Hon'ble Court?

e) When it was found by the courts below that these appellants are having title to 3½ cents in



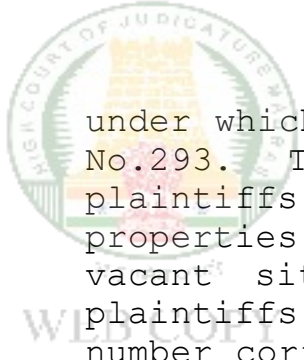
suit 1st schedule property, both the courts ought to have granted lesser relief to that extent in the interest of justice and thus the judgment and decree of the courts below warrants interference under Section 100 of CPC?"

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6. So far as the first item of the property is concerned, it is an extent of 0.05 cents in Survey No.294. The plaintiffs have produced Exs.A2, A7 and A8 as the relevant documents with respect to the title of suit first item. Ex.A2 is of the year 1926, which is a partition deed between the first plaintiff's father and his brother, under which 0.02 cents was allotted to the first plaintiff's father Shanmugvel Nadar. The said Shanmugavel Nadar had three sons viz., the first plaintiff, Gnanasigamani and Masilamani. The said Gnanasigamani has released his right in respect of 0.02 cents in favour of the first plaintiff and Masilamani. As the brother of the first plaintiff viz., Masilamani died issueless, the first plaintiff became the absolute owner of 0.02 cents. While so, the mother of the first plaintiff Samburanathammal sold 1-1/2 cents in the same survey number on 20.03.1950 under Ex.A8 in favour of the first plaintiff. Therefore, considering Exs.A2 and A8, the total extent available to the first plaintiff is only 3-1/2 cents. Whereas the plaintiffs are claiming right over 5 cents without filing any oral or documentary evidence for the additional 1-1/2 cents.

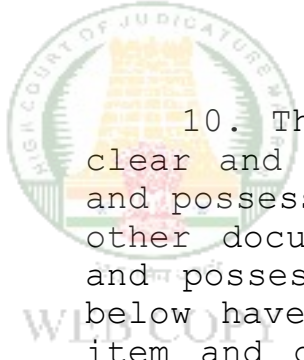
7. While so, the first defendant had produced Ex.B1, which is a sale deed in favour one Palanisamy Nadar, who is the father of the first defendant, in the year 1948. Under Ex.B1, 5 cents of land has been sold in favour of Palanisamy Nadar. As per Ex.B2, there was a partition between Palanisamy Nadar and his sons. In the cross examination, PW1 has stated that in Survey No.294, they are entitled only for two cents. As discussed earlier, as per Ex.A2, the remaining 3 cents was never allotted to the plaintiffs. Even as per Ex.A8 - 1-1/2 cents is not stated to be in possession of the family members of the plaintiffs. As found earlier, the plaintiffs are entitled to only 3-1/2 cents and they have not produced any document to establish their right over five cents. Whereas Exs.B1- sale deed, B2 - partition deed and B11 - patta in favour of the defendants would go to show that they have the title over the first item of the property.

8. The second item of the suit property which is a vacant site of about 0.04 cents. It is contended by the plaintiffs that it was originally purchased by the grandfather of the first plaintiff viz., Masilamani Nadar from one Madasamy Thevan and Velaietha Thevan in the year 1913 under Ex.A9. At the time of partition under Ex.A2, the said property was allotted to the first plaintiff. According to the plaintiffs, the second item is being enjoyed by them by storing wastages. So far as the second item is concerned, the defendants are claiming right under Exs.B3 to B9,



under which the defendants have purchased about 20 cents in Survey No.293. The entire extent of the 2nd item is 43 cents. But the plaintiffs' claiming right only in respect of two cents of properties. Admittedly, the second item of the suit property is a vacant site in Survey No.293. The document produced by the plaintiffs in respect of item No.2 does not mention the survey number correctly. But, in Ex.B1 - sale deed, which is in the name of the defendants' predecessors, the northern boundary is shown as Shanmugavel Nadar, who is the father of the first plaintiff. It appears from the report of the Commissioner that the second item of the suit property is on the north of the first item of the suit property. The boundary recitals in Ex.B1 clearly indicates that the second item of the property belongs to the first plaintiff. So far as the second item is concerned, the defendants also have not produced any evidence to substantiate that they are entitled for the same. Whereas the documents viz., Exs.A9 and A2 produced by the plaintiffs would go to show that the second item of the property belonged to the first plaintiff. Being a vacant site, the possession would follow title. Since the title of the first plaintiff with respect to the second item is proved, it has to be considered that they are in possession of the same.

9. Accordingly, the trial Court has given decree for the second item of property in favour of the plaintiffs. But, so far as the first item is concerned, there are no documents showing the possession over the same by the appellants/plaintiffs. The plaintiffs are having title for 3-1/2 cents for the suit first item as per Exs.A2, A7 and A8. It is contended that having given a finding that the Courts below ought to have granted declaration of title in respect of the said 3-1/2 cents, though the plaintiffs have claimed title for five cents. However, a deep scrutiny of Ex.A2 would go to show that it is an arrangement made within the family. Ex.A7 is the release deed by the brother of the first plaintiff's father in favour of his father and others. Whereas, Ex.A8 is the sale deed by the mother of the first plaintiff in favour of the first plaintiff. Therefore, the documents, Exs.A2, A7 and A8 are all executed by the members of the same family. Other than the said documents, nothing else has been produced by the plaintiffs to show that they were entitled to the five cents as claimed in the plaint. On the contrary, the defendants have produced Ex.B1, which is a sale deed dated 06.07.1948 executed in favour of Ponnusamy Nadar by Mahalinga Nadar. After two years, Ex.B2 was executed which is a partition deed between Ponnusamy Nadar and his sons in the year 1968 and they have been in possession of the same. Based on the said possession, a patta was also issued in favour of the defendants. The said documents viz., Exs.B1 and B2 and B11 are with respect to survey No.294 which is a suit first item. Therefore, the Courts below have held that the documents of the defendants outweigh the documents filed by the plaintiffs in establishing their title and possession.



10. The plaintiffs, who filed the suit, have to establish in clear and categorical terms that they are entitled for the title and possession. Excepting their own family documents, there is no other documents produced by the plaintiffs to prove their title and possession over the plaint first item. Hence, the Courts below have rightly dismissed the suit with respect to the first item and decreed the suit with regard to the second item. The cross appeal filed by the defendants was also dismissed by the first appellate Court. Though the second item of the property decreed in favour of the plaintiffs was confirmed by the lower appellate Court, the defendants have not preferred any independent appeal. Thus, the questions of law are answered against the plaintiffs.

11. In the result, this second appeal fails and the same is, accordingly, dismissed, confirming the judgment and decree passed by the Courts below. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(CSII)

/True Copy/

Sub-Assistant Registrar

To

1.The Subordinate Judge ,
Uthamapalayam.

2.The District Munsif,
Uthamapalayam.

3.The Record Keeper,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+2 ccs to M/s.D.Nallathambi, Advocate, SR.Nos.71404 and 71736

+One cc to M/s.Ajmal Associates, Advocate, SR.No.71785

gcg

RL/7C/6P/KK/SAR2/18/8/2017

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