



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Judgment Reserved on : 24.04.2017

Judgment Pronounced on : 31.10.2017

WEB COPY

CORAM : THE HONOURABLE MR.JUSTICE N.SESHASAYEE

S.A.(MD) No.687 of 2014

MariammalAppellant/Appellant/Plaintiff

Vs.

1.Ramasamy
2.Muthu

3.The President,
Panchayat Board,
Kalappakulam Panchyat,
Sankarankovil Taluk,
Tirunelveli District. ...Respondents/Respondents/Defendants

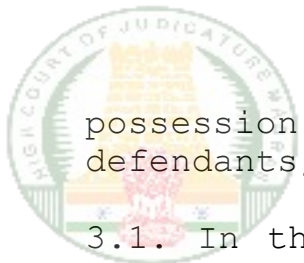
Prayer: Second Appeal filed under Section 100 of the Code of the Civil Procedure against the judgment and decree passed in A.S.No.14 of 2012 and counter claim on the file of Sub Court, Sankarankovil, dated 11.02.2014, confirming the judgment and decree passed in O.S.No.125 of 2010 and counter claim on the file of the Additional District Munsif Court, Sankarankovil, dated 19.12.2011.

For Appellant : Mr.Nataraj
for Mr.R.Manimaran
For Respondents : Mr.R.Vijayakumar [R1 & R2]

JUDGMENT

The plaintiff has preferred this appeal against the concurrent findings of the Courts below dismissing her suit for injunction and decreeing the counter claim of the defendants for declaration and recovery of possession.

2.The suit property is described in the plaint as a property having an extent of 3 cents with a 16' x 8' feet tiled roof house bearing Door No.3/68 (Old No.53A) in S.F.No.30. According to the plaintiff, the suit property was an ancestral property in the hands of her father Ariya Thevar. Ariya Thevar died some time in 1983. While so, her father during his life time, has orally partitioned the suit property and at any rate, she being the sole heir of her father, has been in continuous possession and enjoyment of the property, and has been paying property tax and rates payable. As she apprehended disturbance to her peaceful

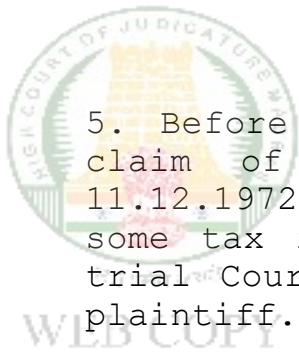


possession and enjoyment of the property at the hands of the defendants, she has come forward with the suit for injunction.

3.1. In the written statement, the defendants have contested the title of the plaintiff as alleged by her and pleaded that the suit property is comprised in Natham S.F.No: 504/12 correlated to Old Sy.No:30/3R. Old Sy.No:3R had an extent of 1.40 acres in which the first defendant, second defendant's husband Muthiah Thevar and their father Shanmugaiah Thevar were having title to undivided 21 cents. This, they obtained under a partition deed dated 11-12-1972. Shanmugaiah Thevar and his son, namely the first defendant and Muthaiah Thevar, husband of the second defendant, constructed a house in 21 cents of land in Survey No.30/3 and resided in the said property and had also put up a cow shed in the said property. To keep their agricultural implements they had put up a small building on the eastern side of their plot. As per the current revenue record, this plot of land is now comprised in S.F.No:504/12 correlated to Old S.F.No:30/3R. The defendants 1 and 2, therefore, are the owners of the property. For over 30 years, the first defendant has been in Gangaikondan for his livelihood, and his father Shanmugaiah Thevar and brother Muthaiah were in the said plot of 21 cents. While so, Muthaiah Thevar and his father-in-law Shanmugaiah Thevar died successively in 2004 and 2006 respectively.

3.2. Meanwhile, some 20 years prior to the suit (about 1990), the defendants 1 and 2 had inducted one Karuppasamy @ Vellapandiyan to manage the fields of Shanmugaiah Thevar and to take care of their cows and to supervise the agricultural activities. At that time the appellant appeared to have developed some relationship with Vellapandian and was living with him in the said house. Subsequently, Vellapandian died and after his demise the appellant continued to live in the same house. She has no right, title or interest in the suit property. The property tax receipts, land tax receipts and the electricity charges paid did not confer any title to the suit property. Since Vellapandian himself was a permissive occupant of the suit property, the plaintiff, who was only in a live-in-relationship with him, has acquired no right in the suit property. Since, the plaintiff has asserted title against the defendants, the defendants have come with a counter claim for declaration of title and recovery of possession.

4. After framing proper issues, the suit went for trial. During trial the plaintiff examined herself as PW1 and she had examined another person Chinnathai as PW2. Of the documents she produced, Ext.A-5 is a deed of simple mortgage dated 13.11.1989, that the plaintiff had executed in favour of a stranger. On the side of the defendants, they examined the first defendant as DW1 and examined one of their relative (Chelladurai) as DW2.



5. Before the trial Court, the defendants in support of their claim of title have produced Ex.B-1 partition deed dated 11.12.1972, and also Ex.B-2 patta. Besides, they too produced some tax receipts. On an evaluation of evidence before it, the trial Court held in favour of the defendants and non-suited the plaintiff. Its reasoning is:

- That Exts.B-1 and B-2 are reliable enough to be acted upon and they indicate that the suit property and the adjacent properties originally belonged to the family of the defendants.
- The tax receipts and receipts for electricity charges did not confer title.
- The plaintiff has created a simple mortgage deed in favour of one Madasamy Vide Ext.A-5 and it can be created behind the back of the defendants and the defendants are not parties to the said document. Hence, it cannot bind the defendants.

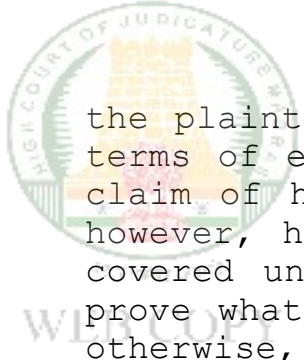
6. The First Appellate Court concurred with the above stated reasonings of the trial Court and confirmed the decree passed by it.

7. Heard both sides. The only point insisted by the learned counsel for the appellant is that the Courts below have overlooked the revenue records and tax receipts in the name of the plaintiff, and should not have discounted the same especially when the defendants have not specifically stated where exactly in the entire 1.40 acres in the survey field, their specific plot of 21 cents acquired under Ext.B-1 is located.

8. Primarily, the plaintiff who has come to the Court should establish how she is entitled to the property she is in possession of, in order she proves the legality of her possession. Now, even the defendants, who have sought a decree in counter claim for declaration of their title and recovery of possession against the plaintiff have conceded plaintiff's possession. Therefore, plaintiff's possession is hardly a fact in dispute.

9. Property tax receipts, receipts for payment of electricity charges that the plaintiff has produced are documents of inconsequential evidentiary value in deciding the title to the property. At the best they may be termed as documents evidencing possession but as already indicated plaintiff's possession is not a fact in issue. But only its legality is.

10. What is the character of plaintiff's title? She has pleaded that the suit property originally belonged to her father. It is her burden to explain how her father became entitled to it. While



the plaint is silent on how her father traced his title, even in terms of evidence, she has not produced anything to sustain her claim of her father's alleged title to the suit property. She, however, has produced Ext.A-15, land tax receipts for a property covered under patta no:160, but she has not strained herself to prove what is that property which patta No:160 deals with. Even otherwise, it is settled beyond debate that patta too is not a document of title, unless the same is a document under which lands are assigned for the first time, in which case it would amount to a document of title. In fact, she has not produced the said patta either.

12. So far as the quality of evidence produced by the defendants are concerned, they surely preponderate the probability of their case and the approach of the Courts below cannot be faulted.

13. The legal effect and implication of the evidence produced by the plaintiff/appellant have been settled and this Court therefore, does not consider that this appeal raises any substantial question of law for this Court to resolve. Hence this appeal is dismissed but without costs, confirming the judgment and decree passed by the Courts below.

Sd/-

Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar

To:

1. The Subordinate Judge, Sankarankoil.
2. The Additional District Munsif, Sankarankoil.

Copy to:

The Section Officer
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+1CC to Mr. R. Manimaran, Advocate, SR.No. 84606
+1CC to Mr. R. Vijayakumar, Advocate, SR.No. 84851

Judgment in
S.A. (MD) No. 687 of 2014
31.10.2017