



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.09.2017

CORAM

WEB COPY

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

SECOND APPEAL (MD) No.888 of 2014

and

M.P.(MD).No.1 of 2014

1.R.Solaivalli

2.V.Seeman

S/o.Late Vellaisamy,
rep. by his power agent
KR.Ramaiah

... Appellants /
Appellants / Plaintiffs

Vs.

1.V.Radhakrishnan

2.V.Rajaram

3.V.Pandi

4.V.Nachammai

5.V.Kalyani

... Respondents /
Respondents/ Defendants

PRAYER: Appeal filed under Section 100 of C.P.C., against the judgment and decree, dated 27.06.2014, made in A.S.No.18 of 2013 by the learned Subordinate Judge, Devakottai, confirming the judgment and decree, dated 16.04.2013, made in O.S.No.112 of 2011 by the learned Principal District Munsif cum Judicial Magistrate, Karaikudi.

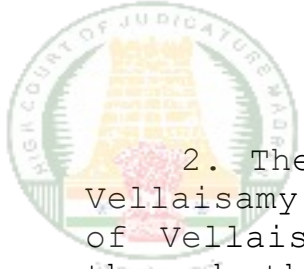
For appellants ... Mr.R.Sundar Srinivasan

For 1st respondent ... No appearance

For respondents 2 to 5 Mr.V.R.Shanmuganathan

JUDGMENT

<https://hcservices.e-filing.gov.in/hcservices/> ... The learned plaintiffs have preferred the above appeal against the concurrent judgment and decree passed in the suit for declaration and for recovery of possession.



2. The plaintiffs and the defendants are the children of one Vellaisamy. The plaintiffs 1 and 2 are born through the first wife of Vellaisamy viz., Deivanai. The defendants 1 to 5 are born through the second wife of Vellaisamy viz., Kalyani Ammal. The said Vellaisamy died on 09.08.1987. The mother of the plaintiffs viz., Deivanai died on 27.12.1993. The plaintiffs claimed that the suit property belonged to their mother Deivanani as the patta was standing in her name. The defendants, who have got no right or title over the suit property, had encroached upon the suit property and put up three tiled houses and one terraced house in the suit property. Hence, the plaintiffs, claiming exclusive ownership of the suit property, had filed the suit for recovery of possession.

3. Denying the facts leading to the cause of action, the defendants had filed the written statement. The relationship between the parties was admitted. It is stated by the defendants that the suit property was ancestral property of Vellaisamy and in a partition, the suit property was allotted to Vellaisamy. Even during the life time of their father, the plaintiffs and the defendants were living in the suit property jointly. But, by mistake, the patta was transferred in the name of Deivanai. The defendants in the written statement had specifically stated that the first defendant had put up two tiled houses and the second defendant had put up a tiled house. The third defendant had put up a construction on the south of the second defendant's house. Thus, they prayed for dismissal of the suit.

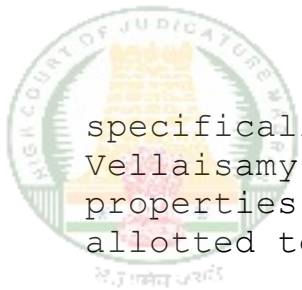
4. Before the trial Court, on the side of the plaintiffs, the first plaintiff herself was examined as PW.1 and Exs.A1 to A4 were marked. On the side of the defendants, DWs.1 to 3 were examined and Exs.B1 to B11 were marked.

5. Both the Courts below, on consideration of the documents and evidences, have concurrently dismissed the suit. Aggrieved by the same, the plaintiffs have preferred the above appeal.

6. At the time of admission, only notice was ordered.

7. Heard the learned counsel for the appellants and the learned counsel for the respondents.

8. The only point based on which the plaintiffs had filed the suit was Ex.A3, which is a patta standing in the name of his mother - Deivanai. The defendants also had admitted that the patta was standing in the name of the plaintiffs' mother. But, according to them, it was by mistake. The plaintiffs had claimed that the suit property exclusively belonged to their mother, without any documentary evidence. Whereas, the defendants have



specifically stated that in the year 1960, their father viz., Vellaisamy and his brothers partitioned their joint family properties and as per the said partition, the suit property was allotted to the share of Vellaisamy.

9. As admitted, during the life time of the said Vellaisamy, the plaintiffs and the defendants were living together under the same roof. Hence, they are all co-owners of the suit property. It is also admitted that the marriage of the plaintiffs' mother and the defendants' mother with the said Vellaisamy was prior to 1948 and from the date of marriage, they ought to have been living together. It is stated that the patta was issued in the name of the plaintiffs' mother by mistake and as the parties were living under the same roof, the same was not challenged. Now, the plaintiffs, taking advantage of the same, claimed exclusive right over the suit property.

10. From the averments made in the plaint and also in the written statement, it is evident that the first, second and third defendants had made constructions in the suit property and they have been in possession in their respective constructions. The allegation of the plaintiffs that the defendants had encroached upon the property is also incorrect, as the defendants had put up separate construction at least 10 or 15 years prior to the filing of the suit and have been living there independently.

11. There is no evidence to show as to whether the plaintiffs' mother - Deivanai purchased the suit property or it was inherited by her or it was assigned to her by the Government. Excepting Ex.A3 - Patta, there is no other document produced by the plaintiff to establish their claim. As it is a settled position that the patta will not confer title and it is also admitted that the patta in the name of the plaintiffs' mother was only by mistake, the claim of the plaintiffs is unsustainable. Merely because, the name of the mother of the plaintiffs is found in the revenue records, the title cannot be said to be proved. The plaintiffs have to prove their title independent of the revenue records. Both the Courts below have rightly held that both the parties are co-owners of the property. Hence, the plaintiffs cannot claim exclusive right over the suit property.

12. The attempt made by the plaintiffs to produce "A" register also ended in vain, as the photocopy of the same was only produced by the plaintiffs before the trial Court. Though it is contended by the plaintiffs that the defendants had not produced any document to prove the partition between Vellaisamy and his brothers, the plaintiffs, who had come to the Court, claiming exclusive right to the property, have the initial burden of proving the same. As they had failed in their attempts, the Courts have rightly dismissed the suit. There is no justifiable reason warranting any interference of this Court. In the light of



the above and in the absence of any question of law arising for consideration, the present second appeal is liable to be dismissed.

13. 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 (CS-III)

/True Copy/

Sub-Assistant Registrar

To

1. The Subordinate Judge, Devakottai,

2. The Principal District Munsif cum Judicial Magistrate,
Karaikudi.

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

+One cc to Mr. R. Sundar Srinivasan, Advocate, SR.No.78676

+One cc to Mr. V. R. Shanmuganathan, Advocate, SR>No.78261

gcg

RL/6C/4P/GT/SAR2/31/10/2017

S.A. (MD) No.888 of 2014

12.09.2017