



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.02.2017

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAISWAMY

S.A. (MD) No.128 of 2011

Jothiammal

.. Appellant/Appellant/Plaintiff

Vs.

M/s Kalaimaghal Sabha,
Office at D.No.67-A,
Pudhu Pallipalayam Road,
Komarapalayam Town,
Tiruchengode Taluk
represented by its Joint Receiver
S.Navaneethakrishnan and
K.R.Hariharan.

.. Respondent/Appellant/Defendant

Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code against the decree and judgment passed in A.S.No.10 of 2010 on the file of the Principal Subordinate Judge, Thanjavur, dated 27.09.2010 reversing the decree and judgment passed in O.S.No.351 of 2006 on the file of the District Munsif, Thanjavur, dated 19.11.2009.

For Appellant	: Mr.T.A.Ebenezer
For Respondent	: Mr.R.Vijayakumar

JUDGMENT

Challenging the judgment and decree passed in A.S.No.10 of 2010, on the file of the Principal Subordinate Court, Thanjavur reversing the judgment and decree passed in O.S.No.351 of 2006, on the file of the District Munsif Court, Thanjavur, the plaintiff has filed the above Second Appeal.

2. The plaintiff filed the suit in O.S.No.351 of 2006 for declaration and for permanent injunction. The brief case of the plaintiff is as follows:

According to the plaintiff, the suit property along with other property ancestrally belonged to her father Sivasamy Udayar, who died intestate 50 years ago leaving behind his three daughters



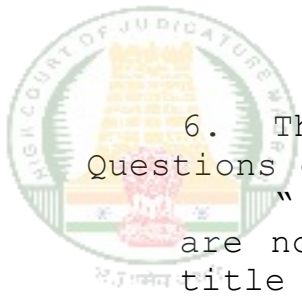
viz., Jothiammal, Thangapponnu and Pappa as his legal heirs. After his death, as per the oral partition held in a family, the suit property was allotted to the share of the plaintiff. As per the partition, she is in possession and enjoyment of the property as the absolute owner. Without her knowledge, an extent of 0.49.5 Ares of land was divided into two portions viz., eastern portion and western portion. The eastern portion was sold to one Ganaprakasam by some persons, who had no right over the property. The plaintiff came to know about the said fraudulent act. The western portion measuring an extent of 0.61 cents stands in the name of the plaintiff and she had applied for separate patta. The defendant nor his vendors have no right over the property. In these circumstances, the plaintiff has filed the suit.

3. The brief case of the defendant is as follows:

According to the defendant, the suit property does not belong to the father of the plaintiff viz., Sivasamy Udayar. There was no oral partition held in the family after the death of Sivasamy Udayar. The defendant had purchased the suit property under a registered sale deed dated 29.10.1987 from one Ramu Udayar, who executed the sale deed for himself and on behalf of his minor children. The suit property originally belonged to one Veerappa Udayar and after his death, it devolved to his son Duraisamy Udayar and after his death, it devolved to his son Ramu Udayar from whom the defendant purchased the property. The alleged patta transfer was objected by the defendant. Behind the back of the defendant, the plaintiff obtained UDR patta and the same will not confer any title on the plaintiff in respect of the suit property. The entry with regard to the purchase made by the defendant reflected in the encumbrance certificate. But the plaintiff, by way of illegal means, obtained encumbrance certificate without mentioning the defendant's purchase. In these circumstances, the defendant prayed for dismissal of the suit.

4. Before the trial Court, on the side of the plaintiff, two witnesses were examined and 9 documents viz., Exs.A.1 to A.9 were marked and on the side of the defendant, three witnesses were examined and 10 documents viz., Exs.B.1 to B.10 were marked. The trial Court, after taking into consideration the oral and documentary evidences let in by the parties, decreed the suit. Aggrieved over the same, the defendant preferred an appeal in A.S.No.10 of 2010 and the lower Appellate Court reversed the judgment and decree of the trial Court and dismissed the appeal. Aggrieved over the judgment and decree of the lower Appellate Court, the plaintiff has filed the above Second Appeal.

5. Heard Mr.T.A.Ebenezer, learned Counsel appearing for the appellant and Mr.R.Vijayakumar, learned Counsel appearing for the



6. The appellant has raised the following Substantial Questions of Law in the Second Appeal:

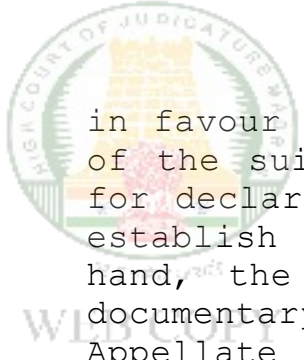
" (a) Whether the oral partition and other evidences are not enough in addition to revenue records to confer title over the property?

(b) Whether the lower appellate Court is correct in deciding the suit is bad for non-joinder of parties against the appellant without regarding Order 1 Rule 9 and Order 1 Rule 10(2) C.P.C.?"

7. The plaintiff contended that the suit property is the ancestral property of her father and the same was allotted to her under the oral partition held between her sisters after the demise of her father Sivasamy Udayar. While issuing UDR patta in respect of the suit property, a joint patta was issued in her name along with one Thangaraju. However, she claimed that the entire property belongs to her. On the other hand, the defendant is claiming title over the suit property under Ex.B.2 registered sale deed, dated 29.10.1987. The said sale deed was executed by one Ramu Udayar in favour of the defendant. Though the plaintiff contended that the suit property ancestrally belonged to her family, she has not established the said contention by adducing proper evidence. Ex.A.1 is the patta standing in the name of the plaintiff along with one Thangaraju. Exs.A.3 to A.9 are the documents just prior to the filing of the suit. The adangal extract relates to the year 2007 i.e., after filing of the suit.

8. In the plaint, though the plaintiff contended that the suit property was allotted to her in the oral partition, she has not mentioned about the date of oral partition and only in her cross-examination, she has stated that the oral partition was held in the year 1976. That apart, she has also admitted that she did not have any evidence to prove the oral partition. In the absence of any evidence produced by the plaintiff to establish the plea of oral partition, the lower appellate Court rightly rejected the plea of oral partition. The defendant contended that the plaintiff should have impleaded Thangaraju as a party in the suit for the reason that the UDR patta was issued jointly in the name of the plaintiff along with one Thangaraju. In spite of the said contention raised by the defendant, the plaintiff has not impleaded him in the suit. Under Ex.B.2 sale deed dated 29.10.1987, the defendant purchased the property from one Ramu Udayar. It is also pertinent to note that the plaintiff has not taken any steps to set aside the sale deed standing in the name of the defendant. Ex.B.10 encumbrance certificate reveals the purchase made by the defendant. The plaintiff also admitted that Sivasamy Udayar and Veerappa Udayar are brothers and Ramu Udayar is the grandson of the said Veerappa Udayar.

9. It is settled position that the patta shall not confer title over the suit property. Merely because the patta was issued



in favour of the plaintiff, that will not confer title in respect of the suit property on her. When the plaintiff filed the suit for declaration and permanent injunction, the burden is on her to establish her case by adducing proper evidence. In the case on hand, the plaintiff has not established her case by oral and documentary evidences. In these circumstances, the lower Appellate Court rightly reversed the judgment and decree of the trial Court and dismissed the suit.

10. For the reasons stated above, I do not find any ground much less any substantial question of law to interfere with the judgment and decree of the lower Appellate Court. The Second Appeal is liable to be dismissed. Accordingly, the same is dismissed. There shall be no order as to costs.

Sd/-

Assistant Registrar (CS-II)

/True copy/

Sub Assistant Registrar

To

1. The Principal Subordinate Judge, Thanjavur.

2. The District Munsif, Thanjavur.

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

+1 cc to M/s.T.A.Ebenezer, Advocate in SR.No. 6560

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CSL/SV-MMS/23.02.2017 : 4P/5C

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