

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.07.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

S.A.No.359 of 2018
and C.M.P.No.10049 of 2018

1.Mokkappan
2.Ponnappan
3.Thangavel

... Appellants/Defendants

Vs.

1.M.R.Jayakumar
2.M.R.Krishnakumar
3.M.R.Premnath
4.M.R.Manoharan
S.Suseela (Deceased)
5.R.Maheswari
6.Sathyanarayan
7.Shoba Rani
8.Harish Babu
9.Kamala

.. Respondents/Plaintiffs

PRAYER: Second Appeal is filed under Section 100 of C.P.C against the judgment and decree dated 30.11.2017 made in A.S.No.3 of 2011 on the file of the Additional District and Sessions Judge(FTC),, Dharmapuri, confirming the judgment and decree dated 23.04.2007 made in O.S.No.237 of 2000 on the file of the District Munsif Court, Palacode.

For Appellants : Mr.R.Selvakumar

J U D G M E N T

Second Appeal is filed against the judgment and decree dated 30.11.2017 made in A.S.No.3 of 2011 on the file of the Additional District Court, Dharmapuri, confirming the judgment and decree dated 23.04.2017 made in O.S.No.237 of 2000 on the file of the District Munsif Court, Palacode.

2.The appellants are the defendants who lost in both the Courts below and respondents 1 to 5 and one Suseela are the plaintiffs in O.S.No.237 of 2000 on the file of the District

Munsif Court, Palacode. The respondents 1 to 5 and one Suseela filed the said suit for declaration, recovery of possession and for mesne profits. After the death of Suseela, the 5th plaintiff, the respondents 6 to 9 were impleaded as her legal heirs. The suit property along with other properties were purchased by their father, M.V.Ramanatha Chetty. The Government acquired the properties in Survey Nos.201/3, 201/7, 205/5 and 202/8 purchased by their father, M.V.Ramanatha Chetty, except the suit properties. The patta for the suit properties was issued to their father M.V.Ramanatha Chetty on 05.06.1992. From that date onwards, M.V.Ramanatha Chetty was paying the kist. During April 1999, the appellants trespassed into the suit property and took possession illegally. Hence, the plaintiffs filed the suit.

2(a).The appellants filed written statement and denied all the averments and contended that they are the owners of the property and they are in possession and enjoyment of the property for more than 40 years. According to the appellants, the suit property was allotted to the share of their father in oral partition. In the year 1989, the 1st respondent created problem, claiming that his property got mixed up with the properties of the appellants and in the Panchayat convened, he sold the suit property to the appellants after receiving a sum of Rs.5,000/- by the deed of sale dated 29.05.1989. Again, on 15.09.1989, the 1st respondent created problem and tried to interfere with possession of the appellants in the suit property. The appellants have filed O.S.No.305 of 1998 for declaration and permanent injunction and also filed I.A.No.495 of 1998 for temporary injunction and prayed for dismissal of the suit.

2(b).The learned Judge framed necessary issues. Considering the fact that the parties are one and the same, the learned Trial Judge conducted joint trial in O.S.No.237 of 2000 filed by the respondents 1 to 5 and deceased Suseela and O.S.No.305 of 1998 filed by the appellants. The evidence was recorded in O.S.No.237 of 2000. The 1st respondent examined himself as P.W.1, Murugan and Muniraj were examined as P.Ws.2 and 3 on behalf of deceased Suseela and 6 documents were marked as Exs.A1 to A6. The 2nd appellant examined himself as D.W.1 and three others were examined on behalf of the appellants as D.W.s.2 to 4 and 6 documents were marked as Exs.B1 to B6. The Advocate Commissioner's report and plan were marked as Court documents viz., Exs.C1 and C2.

3.The learned Trial Judge considering the pleadings, oral and documentary evidence, decreed the suit, O.S.No.237 of 2002 filed by the respondents 1 to 5 and deceased Suseela, holding that respondents 1 to 5 and deceased Suseela have produced documents to substantiate their claim and dismissed O.S.No.305

of 1998 filed by the appellants holding that claim of the appellants based on patta is not acceptable in view of production of title deeds by the respondents 1 to 5 and deceased Suseela.

4. Against the said common judgment and decree dated 30.11.2017 made in O.S.No.237 of 2000, the appellants have filed A.S.No.3 of 2011. The learned I Appellate Judge framed necessary points for consideration. The learned I Appellate Judge considering the materials on record and considering the fact that the learned counsel for the appellants in the First Appeal, A.S.No.3 of 2011 appeared on 24.11.2017, but subsequently did not appear even after giving opportunity to advance the arguments in number of hearings, dismissed the Appeal, confirming the judgment and decree made by the learned Trial Judge in O.S.No.237 of 2000.

5. Against the said judgment and decree dated 30.11.2017 made in A.S.No.3 of 2011, the appellants have come out with the present Second Appeal.

6. The learned counsel for the appellant contended that the learned I Appellate Judge erred in dismissing the First Appeal without appreciating the facts and legal position in proper perspective, especially Order XLI Rule 17 of C.P.C. He further contended that when there was no representation for the appellants on the date of hearing, the judgment of the I Appellate Court on merits is unsustainable in law. The I Appellate Judge has not given any finding with regard to acquisition of lands of M.V.Ramanatha Chetty and return of those lands by the land reforms. Once the lands are returned, the issue of consequential patta does not arise.

7. Heard the learned counsel for the appellants and perused the materials available on record.

8. From the materials on record, it is seen that the respondents have proved their title to the suit properties by filing Ex.A1 dated 04.08.1973, under which suit properties and other properties were purchased by M.V.Ramanatha Chetty. In addition to the same, the patta book in the name of M.V.Ramanatha Chetty and kist receipts were marked as Exs.A3, A5 and A6. As against the sale deeds, the appellants have only produced patta to claim their title. The appellants also have not produced any evidence to show that properties were allotted to their father by oral partition, 40 years ago. The Courts below considering Ex.B4, sale deed produced by the appellants, held that Ex.B4 does not relate to the suit property, but relates to the property in Survey No.202/4. The Courts below have considered the judgments relied on by the counsel for the

respondents and held that the title cannot be decided based on the patta, especially, when the respondents have produced sale deed to prove their title.

9.The contention of the learned counsel for the appellants that I Appellate Court ought to have given opportunity to the counsel for the appellants to make submission is without merits, as the learned I Appellate Judge has adjourned the First Appeal, A.S.No.3 of 2011 to various dates, viz., 20.11.2017, 23.11.2017, 27.11.2017, 28.11.2017 and 30.11.2017. On these days, the learned counsel for the appellants did not appear and argue the matter. In view of the same, there is no error on the part of the I Appellate Judge in considering the materials on record and delivering the judgment after hearing the arguments of the counsel for the respondents. A reading of the judgment reveals that the I Appellate Judge has considered the issues on merits and judgments on this point and delivered the judgment. There is no error of law warranting interference by this Court in the said finding. No question of law much less than the substantial question of law has arisen in this Second Appeal.

10.In the result, this Second Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True copy//

Sub Assistant Registrar

gsa

To

1.The District Munsif,
Palacode.

2.The Additional District Judge,
Dharmapuri.

+1cc to Mr.R.Selvakumar, Advocate SR.No.44194

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and C.M.P.No.10049 of 2018

CA(CO)
GN(07/08/2018)