

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 19.09.2018
DELIVERED ON: 28.09.2018

CORAM:

THE HON'BLE MRS.JUSTICE R. HEMALATHA

S.A.No.494 and 495 of 1999

In S.A.No.494 of 1999

1. Subramanian Rep by his power agent Mr.Jayapal
2. Mannu ... Appellants/Appellants/Defendants

Vs.

1. Mannangatti (deceased) ...1st Respondent/Respondent/Plaintiffs
2. Yasodai
3. Jaya
4. Kannan
5. Ratnam
6. Hariadoss
7. Annadurai
8. Rajendran
9. Annamma ...2 to 9 Respondents

(Respondents 2 to 9 brought on record as legal heirs of the deceased sale respondent by order dated 01.08.2014 made in CMP No.903 to 905 of 2012.)

In S.A.No.495 of 1999

Subramanian
Rep by his power agent
Mr. Jayapal ... Appellant/Appellant/Defendants

Vs.

1. Mannangatti
2. Kannan
3. Mariyadas
4. Annadurai
5. Rajendran ... Respondents/Respondents/Plaintiffs

PRAYER IN S.A.494 OF 1999 : Second Appeal filed under Section 100 of C.P.C., against the decree and judgment dated 30.11.1998 passed by the Subordinate Judge, Kallakurichi in A.S.No.395 of 1996 upholding the decree and judgment dated 30.07.1996 passed by the Additional District Munsif, Kallakurichi in O.S.No.315 of 1991.

PRAYER IN S.A.495 OF 1999 : Second Appeal filed under Section 100 of C.P.C., against the decree and judgment dated 30.11.1998 passed by the Subordinate Judge, Kallakurichi in

A.S.No.396 of 1996 upholding the decree and judgment dated 30.07.1996 passed by the Additional District Munsif, Kallakurichi in O.S.No.216 of 1986.

For Appellants in both
appeals : Mrs.Hema Sampath, Senior Counsel
for Ms. R.Meenal

For Respondents in both the : M/s Dakshyani Reddy
appeals

COMMON JUDGMENT

The plaintiff in O.S.No.216 of 1986 and the defendant in O.S.No.315 of 1986 on the file of Additional District Munsif, Kallakurichi has filed these appeals in S.A.No.494 of 1999 and S.A.No.495 of 1999 respectively. During the pendency of these appeals, the first respondent Mannangatti died and his legal heirs have been impleaded as respondents 2 to 9 in A.S.No.494 of 1999.

2. The case of the Appellant Subramaniyan, who is the plaintiff in O.S.No.216 of 1986 is briefly as follows. The plaintiff and the father of the first defendant are brothers. The plaintiff's grand father Kullan had two wives. The plaintiff's father was born through the first wife of Kullan, while the first defendant was born through his second wife. One Poondian, the brother of Kullan had a daughter by name Muniammal. Poondian also had two sons by name Duraisamy and Swaminathan. Muniammal executed a sale deed dated 13.12.1957 (Ex.A3) in favour of the plaintiff in respect of the suit property. The first defendant Mannangatti got a registered sale deed dated 07.01.1948 (Ex.A2) in respect of the suit property executed in his favour by the sons of Poondian. Therefore, the plaintiff's father asked the first defendant to execute a deed in his favour. The first defendant, who admitted title and possession of the plaintiff's father, executed a settlement deed dated 17.12.1973 (Ex.A4) in favour of the plaintiff's father. He got the patta transferred in his name and also paid land revenue as evidenced by Ex.A5 to Ex.A8. The plaintiff's son (2nd appellant) also dealt with the property by executing a mortgage deed dated 17.10.1981 (Ex.A7) in favour of one Subbammal. According to the plaintiff, in the sale deeds dated 05.03.1965 (Ex.A9), 14.05.1964 (Ex.A13) and 24.08.1960 (Ex.A17), the boundary descriptions would show that the suit property was already conveyed to the plaintiff's father Chinnapaiyan and that he was in possession and enjoyment of the suit property. Therefore, the appellant/ plaintiff has prayed for declaration of his title over the suit property and for a permanent injunction restraining the defendant from interfering with his possession and enjoyment of the suit property.

3. The respondents/defendants resisted the suit by filing a written statement, in which they have contended that the suit property does not belong to the plaintiff and that a partition took place in their family about 40 to 42 years back. According to them, the suit property was purchased by the first defendant during the year 1948 and the said property also belonged to the defendants 2 to 5, who are the co-parceners in the joint family and therefore, the first defendant does not have any right to execute a settlement deed dated 17.12.1973 (Ex.A4) in favour of the plaintiff's father. It is also their contention that Muniammal, who executed the sale deed dated 13.12.1957 (Ex.A3) in favour of the plaintiff's father had no right to execute the sale deed in respect of the suit property. The plaintiff's father had grabbed the suit property from the first defendant by way of settlement deed Ex.A4, which is not valid. They have therefore, prayed for the dismissal of the suit filed by the plaintiff.

4. The first defendant/first respondent Mannangatti filed a suit in O.S.No.315 of 1991 on the file of the Additional District Munsif, Kallakurichi against the plaintiff Subramanyan and his son Mannu seeking for a declaration of his title to the suit property and also for a permanent injunction restraining the defendants from interfering with his peaceful possession and enjoyment over the suit property.

5. The plaintiff in O.S.No.216 of 1986 filed a written statement in O.S.No.315 of 1991, wherein he has reiterated the same facts mentioned in O.S.No.216 of 1986.

6. Since the subject matter, parties and issues involved in both the suits in O.S.No.216 of 1986 and O.S.No.315 of 1991 on the file of the Additional District Munsif, Kallakurichi are one and the same, both the suits were tried jointly by the trial court.

7. The trial court after full contest, dismissed the suit in O.S.No.216 of 1986 and decreed the suit in O.S.No.315 of 1991 on the following grounds.

- Since the plaintiff in O.S.No.216 of 1986 did not prove his title and possession over the suit property, he is not entitled for the relief of declaration and injunction as prayed for by him.
- Since the suit property is a joint family property, the first defendant had no right to execute a settlement deed in favour of the plaintiff's father.
- The defendants have proved their title over the suit property and therefore, they are entitled for a declaration of their title and possession over the suit property.

8. Aggrieved over the same, the plaintiff in O.S.No.216 of 1986 filed appeals in A.S.No.395 of 1996 and A.S.No. 396 of 1996 before the Subordinate Judge, Kallakurichi. Both the appeals were dismissed by the Subordinate Judge, Kallakurichi on 30.11.1998.

9. Now the second appeals in S.A.No.494 of 1999 and S.A.No.495 of 1999 are filed by the plaintiffs in O.S.No.216 of 1986, who are the defendants in O.S.No.315 of 1991.

10. Heard Mrs.Hema Sampath learned senior counsel appearing for Ms.R.Meenal for the appellant and Ms.Dakshayani Reddy, appearing for the respondents.

11. At the outset, it may be observed that the appellants claimed their title to the suit property through sale deed dated 13.12.1957 (Ex.A3) and settlement deed dated 17.12.1973 (Ex.A4). Ex.A2 is the sale deed dated 07.01.1948 executed by Swaminathan and Duraisamy in favour of the first respondent (since deceased). Swaminathan and Duraisamy are the sons of Poondian, brother of Kullan. Kullan is the grand father of the first plaintiff. Poondian had a daughter by name Muniammal and she executed a sale deed dated 13.12.1957 (Ex.A3) in favour of the plaintiff's father Chinnapaiyan in respect of the suit property. The specific contention of the appellants is that the first respondent started threatening his father Chinnapaiyan by showing the sale deed (Ex.A2), executed by Swaminathan and Duraisamy and that subsequently, he admitted the title and possession of the plaintiff's father and executed the settlement deed dated 17.12.1973 (Ex.A4).

12. Mrs.Hema Sampath, learned Senior Counsel would contend that once the settlement deed is executed, it cannot be revoked and that since in the instant case there is no revocation of the settlement deed executed by the first defendant, it has to be construed that the plaintiff has proved his title over the suit property.

13. In the instant case, the appellants have produced the original settlement deed dated 17.12.1973 (Ex.A4) from their custody. The first respondent has contended that the plaintiff's father had somehow managed to get the settlement deed executed in his favour. He has not denied the execution of the settlement deed. No fraud, coercion or undue influence is pleaded either in the written statement in O.S.No.216 of 1986 or in the plaint in O.S.No.315 of 1991 by the first defendant.

14. Both the courts below have held that since the suit property is a joint family property, the first respondent/first defendant alone cannot execute a settlement deed in favour of

the first appellant's father. The trial court had also fixed the age of the first defendant as 17 years on the date of execution of the sale deed Ex.A2, without any basis. On perusal of a copy of the sale deed Ex.A2, it is seen that the first respondent has not been shown as a minor. Apart from this, in the plaint in O.S.No.216 of 1986, the age of the first defendant is indicated as 56 years. However, in the deposition of the first defendant (Dw1) dated 27.07.1995, he has indicated his age as 73 years. Therefore, as per the admissions made by DW1, his age on the date of Ex.A2 would have been 26 years. In this background, both the lower courts' observation that the first defendant would have purchased the property only from out of the income of the joint family cannot be held to be a right observation, for the following reasons.

[i] There is no evidence that the joint family owned several properties.

[ii] The income derived from such properties was surplus and out of that income, the property under Ex.A2 was purchased.

[iii] There is no presumption as to the existence of joint family property, even though there is a presumption as to the existence of a Hindu Joint family.

[iv] The Dw1 in his deposition before the Additional District Munsif, Kallakurichi has clearly admitted that he purchased the suit property from the sons of Poondian and that a partition took place in their family as early as 1940.

[v] The Ex.A2 is dated 07.01.1948, which is very much later in point of time to the alleged partition that took place in the family.

[vi] The Dw1 also in his deposition in O.S.No.495 of 1999 (Ex.A15) on the file of District Munsif Court, Kallakurichi had observed that except the properties measuring 3 acres 50 cents in survey number 22/2 and one acre in survey number 23/4, the remaining extent of land belonged to other sharers. The suit property is in survey No.23/4.

[vii] Both the courts below have failed to note these aspects and simply held that the properties are joint family properties.

In the considered opinion of this court, the judgment of both the courts below are perverse. The trial court has in fact written the judgment half in Tamil and half in English and has not gone into the vital aspects of the case.

15. Ms.Dakshayni Reddy, learned counsel appearing for the respondents would contend that since the specific case of the appellants is that in order to confirm Ex.A3 sale deed, Ex.A4

settlement deed was executed, the appellants cannot be granted declaration of their title to the suit property. She would also contend that since the appellants did not prove that Muniammal had any right over the suit property to convey through Ex.A3 and Ex.A4 is for confirmation of Ex.A3, both the documents would not confer any title upon the appellants. She further relied on the decisions in Shanmugaiah and another V. Thirumalayandi alias Thirumalai Pandaram and 5 others reported in 2004 (3) CTC 92 and Thamma Venkata Subbamma (dead) by L.R. V. Thamma Rattamma reported in 100 L.W. 282 and contended that the settlement deed created by one Coparcener in favour of third party is invalid and that in the instant case, since the first respondent an individual member of the Hindu joint Family, is not competent to execute a settlement deed infavour of the first appellant's father.

16. In the present case, the sale deed stands in the name of the first respondent and there is absolutely no pleading to the effect that the property covered under Ex.A2 was purchased from out of the income derived from the joint family properties. In fact, the properties owned by the family and the income derived out of it were not shown by the respondents. It is also not shown that the income was enough to purchase the property under Ex.A2. Therefore, Ex.A2 has to be held to be a self acquired property of the first defendant. This is in fact admitted by the first respondent as Dw1 in his deposition.

17. After the execution of Ex.A4 settlement deed, the plaintiff's father had been paying kists as evidenced by Ex.A5 and Ex.A6. Further more, the second appellant has also dealt with the property by mortgaging the same in favour of Subbammal during the year 1981 and this is evidenced by Ex.A7 dated 17.10.1981. More over, in the sale deed Ex.A17 dated 24.08.1960 executed in favour of Pw4 also, one of the boundaries of the property is indicated as the suit property.

18. Another glaring feature is that, both the courts below have harped on the boundary description of Ex.A3 and Ex.A4. The property in Ex.A2, Ex.A4 and the suit property are one and the same. More over, there is no dispute over the identity of the suit property. In fact, the first respondent has filed a separate suit in O.S.No.315 of 1991 on 03.05.1991 on the file of the Additional District Munisif, Kallakurichi for a declaration of his title to the suit property. His specific contention is that the first appellant's father got the settlement deed executed in his favour in respect of the suit property.

19. The settlement deed Ex.A4 is executed by the first respondent in favour of the plaintiff's father and the said settlement deed has not been revoked till date. The respondents had claimed title to the suit property through Ex.A2, which was

executed in favour of the first respondent by the sons of Poondian. The possession is also with the appellants and they have also dealt with the suit property subsequent to the execution of Ex.A4.

20. The execution of the settlement deed is not denied by the first respondent and he has neither pleaded nor proved any act of fraud, coercion or undue influence by the first appellant's father against him in executing Ex.A4. In the absence of the same, it has to be held that the settlement deed (Ex.A4) is true and valid.

21. Both the courts below have erred in dismissing the suit filed by the appellant and decreeing the suit filed by the respondents. In fact, the first respondent has also prayed for declaration of his title to the suit property through Ex.A2. It is pertinent to point out that the first respondent has not sought for cancellation of settlement deed Ex.A4. In the circumstances, the suit filed by the first respondent in O.S.No.315 of 1991 on the file of the Additional District Munsif, Kallakurichi is not maintainable and the document Ex.B6 to Ex.B8, which are chitta, adangal and kist receipts respectively do not show exclusive possession of the respondents over the suit property. The respondents have failed to establish their title and possession over the suit property.

22. In the result,

[i] The S.A.No.494 of 1999 is allowed. No costs.

[ii] The S.A.No.4495 of 1999 is allowed. No costs.

[iii] The decree and judgment passed by the Subordinate Judge, Kallakurichi in A.S.No.395 of 1996 and A.S.No.396 of 1996 dated 30.11.1998 are set aside.

[iv] The suit in O.S.No.216 of 1986 on the file of the Additional District Munsif, Kallakurichi is decreed as prayed for with costs.

[v] The suit in O.S.No.315 of 1991 on the file of the Additional District Munsif, Kallakurichi is dismissed. No costs.

s/d-

Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

mst

To

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

Copy to

The Section officer
VR Section, High Court, Madras 104.

+2 Ccs to Mrs.R. Meenal, Advocate sr 67999, 68000.

S.A.No.494 and 495 of 1999

RSY(CO)
SP(14/11/2018)



WEB COPY