

IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON: 04.10.2018
DELIVERED ON: 24.10.2018
CORAM:
THE HON'BLE MRS.JUSTICE R. HEMALATHA
S.A.No.534 of 2002

1. Raniammal (died)
2. Selvi
3. Manjula
4. Muthu
5. Parthasarathy
6. Rajkumar

(Respondents 2 to 6 brought on record as legal heirs of the deceased sole appellant vide order of this court dated 22.01.2013 made in CMP No.1736 to 1738 of 2010 in S.A.No.534 of 2002.)

... Appellants

Vs.

Kuppusami ... Respondent

PRAYER : Second Appeal filed under Section 100 of C.P.C., against the decree and judgment dated 24.12.1998 passed by the Sub Judge, Kallakurichi in A.S.No.409 of 1996 upholding the decree and judgment dated 31.07.1996 passed by the Additional District Munsif, Kallakurichi in O.S.No.852 of 1989.

For Appellants : Ms.Meenal

Respondent : Mr.S.Mukunth
for M/s Sarvabhauman Association

JUDGMENT

This is the second appeal against the decree and judgment in O.S.852/1989 on the file of the Additional District Munsif, Kallakurichi and the subsequent decree and judgment in the appeal A.S.409/1996 on the file of the Subordinate Judge, Kallakurichi confirming the decree and judgment of the trial court.

2. The plaintiff and defendant in the original suit are named the same in the present appeal also, for the sake of convenience.
3. Briefly, a look into facts of the case, as narrated by both the parties. The plaintiff has averred that

the suit property along with other properties west of it were originally owned by his ancestors. The plaintiff's father and his brother's widow Kamalammal had sold the properties west to the suit property to one Amirthavalli Ammal and one Panduranga Naidu (defendant's husband) on 21.09.1956 (Ex.A1) and 20.06.1965 (Ex.A2) by way of two separate title deeds. The plaintiff has been enjoying the suit property since the demise of his father Kanmani Naidu. Since the said property is a grama natham / poromboke land, no taxes were paid by him. He had prayed for permanent injunction restraining the defendant from interfering with his peaceful possession and enjoyment over the suit property.

4. The defendant on her side had contended that the plaintiff neither had the title nor possession over the suit property. According to her, the suit property was sold to her husband Panduranga Naidu on 02.06.1965 (Ex.B2) for Rs.150/- by the mother of the plaintiff, Padmavathi Ammal on her behalf and on behalf of her minor children, the plaintiff and his sisters. This was after the demise of plaintiff's father Kanmani Naidu. Since then, the defendant's husband has been in possession of the suit property and after his demise, the defendant has been in possession. Hence the prayer for dismissal of the suit.

5. In the trial court, the plaintiff examined himself as PW1 and marked Ex.A1 and Ex.A2 on his side. The defendant examined herself as DW1 and marked Ex.B1 to Ex.B7 on her side.

6. The trial court after having gone through the documentary evidence adduced by both the parties could find that the sale deed dated 2.6.1965 (Ex.B2) adduced by the defendant contained a different description of the boundaries of the property when compared to the description of the suit property in Ex.A1 (sale deed dated 21.09.1956).

7. The point for consideration is to find out whether Ex.A1, Ex.A2, Ex.B4 and Ex.B2 are genuine?

8. The contention of the plaintiff is that the suit property is his ancestral property and he has been enjoying the suit property since the demise of his father Kanmani Naidu. His further contention is that since the suit property is a grama natham / poromboke land, no taxes were paid by him.

9. At this juncture, it is relevant to mention about the term Grama Natham land. The term Grama Natham was brought into existence in order to define the land that could be used for building houses. It was also created to better differentiate housing sites from government held land, such as Inam land, Ryotwari land, Pannai land and Waste land. Gramanatham land can only be used for residential purposes and not for commercial. In Gramanatham, the first occupier of the land is considered as the rightful owner and generally, no patta is issued to him/her. However, these lands are house sites and must be actively used by the land owner.

10. The defendant has contended that the property in Ex.A1 which was sold to one Amirthavalli Ammal by the plaintiff's father Kanmani Naidu and his brother's widow Kamalammal on 21.09.1956 was subsequently sold to the defendant's husband Panduranga Naidu on 02.06.1965 vide Ex.B2. The trial court has observed that Ex.A1 and Ex.B4 are one and the same document. It is further held that Ex.A2 and Ex.B1 are one and the same and that the contention of the defendant that Ex.B2 is the sale deed by which the suit property was sold to the defendant's husband also goes wrong, because, the boundaries mentioned in the document Ex.B2 are totally different from that of the suit property. Thus, the evidentiary value of Ex.B7 also is marginalised and therefore, looking into the boundaries of the various properties for which documents have been adduced, it is clear that the suit property was in the name and possession of the plaintiff alone and the defendant had no right to claim it. The suit was thus decreed.

11. The first appellate court in its judgment justified the reason to rely on the boundaries instead of the documents. The first appellate court declared that no direct documentary evidence was adduced by either of the parties and that in the absence of such documentary evidence, the suit had to be decided based on the description of boundaries mentioned in the documents accepted by both the parties.

12. It was also the decision of the first appellate court that Ex.A1 and Ex.B4 and Ex.A2 and Ex.B1 being one and the same documents accepted by both the parties. The document Ex.B3, showing how the suit property came into the hands of the defendant's husband was not taken into consideration. The defendant had adduced Ex.B3 dated 19.11.1947 to show, how the defendant's grand father Duraisamy bought the property from one Chinnasamy Naidu. The first appellate court held that it contained different description of the boundaries, though mentioning the same S.No.35 and hence it was not taken cognizance of. Moreover, in both Ex.A1(Ex.B4) and Ex.A2 (Ex.B1), the suit property is mentioned as owned by the plaintiff's father Kanmani Naidu. Both these documents have been accepted by both the parties and therefore, it was concluded that this suit property was clearly owned only by the plaintiff.

13. As regards Ex.B2, which the defendant has claimed as the one document through which the suit property was sold to the defendant's husband by the plaintiff's mother on behalf of her and her children, when the plaintiff and his sister were minors, the first appellate court concluded that the description of boundaries in Ex.B2 did not match with that of the suit property and that Ex.B6 and Ex.B7 are erroneous and cannot be relied upon to arise at a proper and fair conclusion.

14. Both the lower courts have decided on all important aspect of declaration of title of the suit property, though the suit was for a permanent injunction only, based on mere description of boundaries of the suit property by comparing various documentary evidence adduced on both sides. It is intriguing that both the lower courts have also not insisted on the plaintiff proving his case. The onus of proving the possession of title was shifted to the defendant and by picking holes in the defendant's documentary evidence, the first appellate court has gone ahead with the confirmation of the judgment of the trial court. The judgments of both courts below are totally perverse.

15. Both the lower courts have based their conclusion on a wrong premise of description of boundaries of properties reportedly in and around the suit property and if such a logic is applied in the manner in which it has been applied, it would set a wrong precedent for dealing with such suits. The references to the various documents adduced by both the parties can only be incidental and cannot be a clinching evidence in any manner to favour either of the parties and therefore, I allow the appeal and set aside both the decrees and judgments of the lower courts.

16. In the result,

(i) The second appeal is allowed. No costs.

(ii) The decree and judgment dated 24.12.1998 passed by the Subordinate Judge, Kallakurichi in A.S.No.409 of 1996 is set aside.

(iii) The decree and judgment dated 31.07.1996 passed by the Additional District Munsif, Kallakurichi in O.S.No.852 of 1989 is set aside.

(iv) The suit in O.S.No.852 of 1989 on the file of the Additional District Munsif, Kallakurichi is dismissed with costs.

24.10.2018

Index : Yes/No

Internet : Yes/No

Speaking Order/Non Speaking Order

mst

To

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

R. HEMALATHA, J.

mst

S.A.No.534 of 2002

24.10.2018