

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

S.A.No.863 of 1999

1.Janakirama Gounder (Died)
2.Gopinathan
3.Nachiar
4.Amutha
5.Thirukama Sounthari ... Appellants/Defendants
(Appellants 3 to 5 brought on record as LRs of the deceased first appellant vide Court order dated 01.06.2017 in C.M.P.Nos.7312 & 7352 of 2017 in S.A.No.863 of 1999)

Vs.

Vijaya Ammal ... Respondent/Plaintiff

PRAYER: Second Appeal filed under Section 100 Civil Procedure Code praying to prefer the Second Appeal against the Judgment and decree dated 05.02.1998 in A.S.No.98 of 1996 on the file of the Additional District Court, Villupuram preferred against the Judgment and decree dated 30.04.1996 in O.S.No.1068 of 1993 on the file of the Additional District Munsif Court, Villupuram.

For Appellants : Ms.R.Meenal

For Respondent : No appearance

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J U D G M E N T

The un-successful defendant who lost the case before the Court below have filed this second appeal.

2.The sum and substance of the plaint averments are as follows:

(i) The suit property originally belonged to one Ramanuja Goundar. He along with his minor son Palanivelu sold the property in favour of one Ramasamy Naickar by means of registered Sale Deed dated 01.07.1961. Ramasamy Naickar after enjoying the property sold the same to one Manicka Goundar by

means of registered Sale Deed dated 24.03.1964. The said Manicka Goundar enjoyed the suit property by cultivating the land and by paying the kist. Thereafter, Manicka Goundar mutated the Revenue records in his name bearing Patta No.119 and later it became 181. The available Revenue Kist records stand in the name of Manicka Goundar and the same is filed as Exhibits on behalf of the plaintiff.

(ii) Manicka Goundar sold the suit property in favour of the plaintiff by means of registered Sale Deed dated 14.06.1993. The plaintiff's husband Harikrishna Goundar has properties to the east of the suit property. The first defendant is the father and the second defendant is his son. They owned the property to the west of the suit property comprised in Survey No.300/5. The total extent of Survey No.300/5B is one acre 46 cents, out of which Manicka Goundar had purchased 0.83 cents and the property has been divided as S.No.300/5B2. The defendants owned an extent of 0.63 cents in S.No.300/5B out of 1.46 cents. The suit property is in "L" shape.

(iii) The defendant also owned property at the east side of the suit schedule property. While such being the position, the first defendant and his son, second defendant attempted to encroach upon the suit property at the south-eastern side on 17.09.1993, by denying the plaintiff's title to the suit property. By the way of timely intervention of neighbours the thwarted action was evolved. The plaintiff being a lady is unable to meet the challenge forced by the defendants by trying to tress-pass into the property from 17.09.1993 onwards. Hence, the plaintiff is constrained to file the suit for declaration and for permanent injunction, in respect of the suit property with costs.

3.The sum and substance of the written statement filed by the first defendant which was adopted by the second defendant are as follows:

(i) The defendant specifically denied the execution, truth, validity and binding nature of the Sale Deed alleged to have been executed on 01.07.1961 by Ramanujam for himself and on behalf of his minor son Palanivelu. The said Sale Deed is not supported by valid consideration and the same was created for the discharge of debt payable to the alliance with an exaggerated extent of 0.83 cents and the defendant also denies the due execution, truth and validity of the Sale Deed dated 24.03.1964 in favour of one Manicka Goundar and thereafter, on 14.06.1993, alleged to have been executed by Manicka Goundar in favour of the plaintiff and the defendant also denied the truth and validity of the chitta, adangal and other revenue records extract relating to the suit property issued by the Village

Administrative Officer and the plaintiff also denied the possession and harvest of A.S.18 paddy variety in the suit schedule property.

(ii) The defendant averred in his written statement that his father Sundara Goundar and his brother Ramanuja Goundar are entitled to 1.46 cents in S.No.300/5B and the same was obtained in the partition under a registered Partition Deed dated 16.12.1944 and the said document was filed as Ex.B1.

(iii) The appellant/defendant stated that his father and junior paternal uncle Ramanuja Goundar are entitled to 0.73 cents each in 1.46 acres, in the above S.No.300/5B. The appellant/defendant stated that his father had been in enjoyment and possession of the western 0.73 cents till his death and thereafter the same was succeeded by the first defendant and his brother T.S.Jayagopal. Thereafter on 27.03.1988, the first defendant through partition in between him and his brother T.S.Jayagopal has obtained 0.76 cents in S.No.300/5B which is shown as "B" schedule in the partition deed. Thereafter, the first defendant enjoyed the property without any interference. The first defendant states that he had prescribed title to western 0.73 cents in S.No.300/5B by way of adverse possession.

4. At the time of admission this Court framed the following substantial questions of law:

"(i) Whether in law the Courts below are right in finding that the appellants are estopped from questioning the respondents title by the Judgment in O.S.No.246 of 1964 to which the appellants were not parties?

(ii) Whether in law the lower appellate court, as the final court of facts, has discharged its duty, while giving a cursory disposal without re-appraising the facts and the evidence?

(iii) Whether in law the Courts below are right in finding that Exs.A8 to A18 prove the respondent's possession when the extent is not mentioned in the documents?

(iv) Whether in law the Courts below did not err in overlooking that Ramanuja Gounder could not have conveyed more than the 73 cents he was entitled to the respondent's predecessor in title?"

5. The learned counsel appearing for the appellants would submit that the Judgment of the Courts below are vitiated on account of the ignoring of Ex.B1, which is the Partition Deed in

between the father of the appellant as well as the vendor of the plaintiff/respondent. In support of his arguments, the learned counsel appearing for the appellants would submit that though the Lower Court and the Lower Appellate Court were influenced by the Judgment in A.S.No.8 of 1967 on the file of the Sub Court, Cuddalore which held that the 86 cents were allotted to Ramanuja Goundar who is none other than the brother of the appellant's father and the same was confirmed by this Court in S.A.No.550 of 1967 and the same was marked as Exs.A5 and A6, however the Lower Court as well as the Lower Appellate Court without verifying Ex.B1 arrived at a conclusion and it is perverted. Accordingly, he prayed for allowing the Second Appeal.

6.Heard the learned counsel appearing for the appellants. None appeared for the respondent. This Court also perused the materials available on record.

7.On perusal of the Lower Court records especially Ex.A5, the suit was filed by one Manicka Goundar seeking declaration of title to the suit property in respect of 86 cents in S.No.300/5B in Kaperi Village and the suit was decreed by the Lower Appellate Court in A.S.No.8 of 1967 and the categorical finding of the Lower Appellate Court is as follows:

"6.If Ex.B7 is thus eliminated, the 1st respondent has no other basis to reply upon, excepting his case of exclusive enjoyment since 1950, of the entire suit survey field, as spoken to by himself and D.Ws 4 and 5. This would necessitate a consideration of the entire evidence available on record, pertaining to the enjoyment of the property. It is not disputed, as also evidenced by the contents of the Chitta extract Ex.B6, that the suit survey filed R.S.No.300-5B, is comprised in Patta No.119, which included in itself, survey No.301 also, and that the same viz., patta No.119, originally stood in the joint names of the 1st respondent his brother Janakiraman and Ramanuja Kounder, and that subsequent to the sale under Ex.A-2 in fasli 1371, the name of Ramanuja Kounder was deleted and replaced by the second respondent, the purchased under Ex.A2, and that after the sale by the latter under Ex.A1, to the appellant, the name of the second respondent was deleted and replaced by the appellant. It could therefore be safely concluded, that there has been a transfer of patta, consistent with the sales under Exs.A2 and A1 and that the 1st respondent has offered no explanation whatever in this regard. While so, the learned District

Munsif, has proceeded on an erroneous assumption that the entire suit survey field stood registered in the name of the 1st respondent alone. This apart, the 2nd respondent has produced the kist receipts Exs.A3 and A4 evidencing the payment of kist by him. Subsequent to his purchase under Ex.A2 and before the sale under Ex.A1, under patta No.119, comprising in itself, the suit survey filed. Even the contents of the thandal extract Ex.B4, bear out the demand for kist payable by Ramanuja Kounder under patta No.119 for the years 1959 and 1960 which preceded Ex.A2. It could therefore be stated, that the learned District Munsif, was not right in concluding, that neither Ramanuja nor the 2nd respondent, had ever paid kist, subsequent to 1950, while as a matter of fact, the contents of Ex.B4, Ex.A3 and Ex.A4 clearly and indisputably prove it. While according to the chitta extract Ex.B6, the total kist payable for patta No.119 was Rs.6-13 p. the Katchat Ex.B-8 produced by the 1st respondent, shows that he had paid for patta No.119, only Rs.3-10 P. in the year 1962 and Rs.3-07 P. in the years 1963 and 1964, which amount works out to just half of the total kist payable for the said patta. For reasons best known to himself the 1st respondent has not produced the prior kist receipts. It must be stated, that the parties are agreed about owning a moiety each by Ramanuja Kounder and the 1st respondent, in R.S.No.301, also included in patta No.119. Reading in this background, the contents of Ex.B8 detailed earlier, it could be safely concluded, that the 1st respondent could not have owned the entire suit survey filed. The adangal extract Ex.B5 would no doubt show, the 1st respondent as the pattadar for the entire suit survey filed. This is clearly contrary to the contents of the chitta extract Ex.B6 as well as the thandal extract Ex.B4. Under the circumstances, Exs.B5 cannot be availed at all by the 1st respondent. Turning to the oral evidence on record, the enjoyment of the suit property by the 2nd respondent, on the foot of the purchase under Ex.A2, has been spoken to by himself and DWs 2 and 3. According to the 2nd respondent, he leased out the suit property to Ramanuja himself for two years subsequent to Ex.A2 and that for the next year, DW3 the

brother of the appellant, w as a lessess under him on the suit property. That DW3 has been cultivating as a lessee, the land adjacently south of the suit survey filed, has been admitted by DW4 the owner thereof. This circumstance clearly probabilises the enjoyment of the suit property by DW3, as a portion contiguous to the land taken by him on lease from dW4. The bald evidence of DWs 4 to 6 of whom DW6 is the 1st respondent and DW5 is his mother's sister's son, in my opinion is clearly contrary to the contents of the village records referred to and discussed earlier, and hence cannot be relied upon. The learned District Munsif without properly considering the village records detailed earlier, has chosen to accept the bald evidence of DWs 4 to 6, in preference to that of DWs 1 to 3. I am satisfied, that his conclusions based on such approach, which has been demonstrated by me as erroneous, cannot be accepted. I am also add, that the learned District Munsif, has also been wrong in stating that in the sale deed Ex.A2 by Ramanuja Kounder, there is no reference to his retaining a portion of the suit survey filed in himself, as it is clearly stated therein, that he himself owns the property by the portion of the 1st respondent. The existence of the channel, as manifested in the plan Ex.A5 from the well in the family land, and running along the fringe of the suit survey filed does not in any manner mitigated against the case of the appellant, respecting the enjoyment of Ramanuja Kounder. The facts on record, point to the one and the only conclusion, that in the partition of the year 1950, the allotment of portions in the suit survey filed, has been only in the manner spoken to by the second respondent, as supported by the dealing with his portion by Ramanuja under Ex.A2 and that the 1st respondent for his part, has failed to establish, on any satisfactory evidence, the allotment of the entire suit survey filed to the share of his father."

8.It is relevant to note that the above said suit was represented by the appellant's brother Jayagopal Goundar and contested the case upto this Court. This Court also confirmed the Lower Appellate Court Judgment and the same was marked as Ex.A6 in S.A.No.550 of 1967. Hence, the factual conclusion arrived at by the Lower Appellate Court as well as this Court

cannot be disputed by other brother in the very same property. Accordingly, the appellants/defendants are not entitled to any relief. The issue is covered by section 11 of the Code of Civil Procedure. For better appreciation Section 11 of the Code of Civil Procedure is extracted hereunder:

"Res judicata means: No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit' between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

Explanation III: The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other."

The claim of 73 cents by the respondent/plaintiff was confirmed by both the Courts, cannot be interfered.

9. In view of the above, I am not inclined to interfere with the decision of the Courts below. Accordingly the substantial questions of law are answered against the appellants.

10. In the result, the second appeal is dismissed. The Judgment and decree dated 05.02.1998 made in A.S.No.98 of 1996 on the file of the Additional District Court, Villupuram is confirmed. No costs.

Sd/-
Assistant Registrar (CS-VII)

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To

1. The Additional District Judge, Villupuram.

2. The Additional District Munsif, Villupuram.

+1cc to Mr.R.MEENAL, Advocate, S.R.No. 5150

S.A.No.863 of 1999

KJI (CO)
TR(10/07/2018)