

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.09.2018

PRONOUNCED ON : 04.10.2018

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.1 of 2015

Srinivasamurthy ...Appellant/Appellant/plaintiff

Vs.

1. Marimuthu

2. Mangalakshmi ...Respondants/Respondents/ Defendants 2 & 3

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 25.03.2014 passed in A.S.No.16 of 2011 on the file of the Principal Sub Court, Villupuram, confirming the judgment and decree dated 23.12.2010 passed in O.S. No.10 of 2008 before the Additional District Munsif Court, Villupuram.

For Appellants : Ms.R.Meenal

For Respondent : Mr.N.Suresh

JUDGMENT

In this second appeal, challenge is made to the judgment and decree dated 25.03.2014 passed in A.S.No.16 of 2011 on the file of the Principal Subordinate Court, Villupuram, confirming the judgment and decree dated 23.12.2010 passed in O.S. No.10 of 2008 on the file of Additional District Munsif Court, Villupuram.

2. Parties are referred to as per their rankings in the trial Court.

3. Suit for declaration and permanent injunction.

4. The case of the plaintiff, in brief, is that the suit properties originally belonged to Erusappa Kounder, he having acquired the same by way of a registered sale deed 07.09.1942 and enjoying the same and Erusappa Kounder had executed a settlement deed dated 19.12.1974 in favour of his daughter Karupayee @ Valliammal in respect of the suit properties and

other properties and the same had been duly accepted and acted upon and came into effect. The male issues of the settlee would be entitled to the properties settled absolutely in the event of no male issues born to Ranganatha Kounder through his wife Mangalakshmi within a period of ten years from the date of execution of the settlement deed. No male issue was born to Ranganatha Kounder within the abovesaid period of 10 years and accordingly the male issues of the settlee are entitled to the settled properties. A mistake has crept in with regard to the survey number in respect of the first item of the suit properties in the settlement deed and the same has been stated as 357/3 instead of 358/1, but the boundaries are given correctly. The settlee was in the possession and enjoyment of the suit properties and other properties by paying kists, etc., and she along with her husband and sons executed a registered sale deed dated 05.02.2007 in favour of the plaintiff in respect of items 1 and 2 of the suit properties and accordingly, the plaintiff has been in the possession and enjoyment of the suit properties and thereby by way of continuous and uninterrupted possession, prescribed title to the suit properties by way of adverse possession also and Ranganatha Kounder, Son of Erusappa Kounder, since deceased, seem to have created the settlement deed dated 05.04.2007 in favour of the 2nd defendant and the said document is invalid and Ranganatha Kounder had no right to execute the settlement deed in respect of the suit properties, it is only the plaintiff, who has been in the possession and enjoyment of the suit properties, however, the defendants attempted to interfere with his possession and enjoyment and accordingly left with no other alternative, according to the plaintiff, he has been necessitated to lay the suit for appropriate reliefs.

5. The case of the defendants, in brief, is that the suit laid by the plaintiff is not maintainable either in law or on facts. The suit properties had been acquired by Erusappa Kounder from and out of the income from the ancestral properties and the same has been treated only as the family properties and accordingly, Erusappa Kounder is not entitled to settle the suit properties in favour of his daughter Karuppayee ammal and the defendants deny the due execution, valid attestation and the validity of the settlement deed dated 19.12.1974 said to have been executed by Erusappa Kounder in favour of Karuppayee ammal and the abovesaid settlement deed will not confer any title on the settlee and the same is not binding on the defendants. The settlement deed abovestated, has not been accepted and acted upon and never came into effect and it is only the defendants, who are in the possession and enjoyment of the suit properties for several decades to the knowledge of Karuppayee ammal and the plaintiff and the patta for the suit properties stand in the name of the defendants and the

allegations that the patta had been changed in the name of the plaintiff is false and the defendants had taken steps to cancel the patta said to have been issued in favour of the plaintiff and after due enquiry, the patta granted in favour of the plaintiff had been cancelled and the same had been changed in the name of the defendants and it false to state that the first item of the suit properties has not been correctly mentioned in the settlement deed and on the otherhand the first item had never been the subject matter of the settlement deed as not only the survey number differs, even the extent also differs and the boundaries also do not tally and therefore the plaintiff is not entitled to claim title to the first item of the suit properties and it is only the defendants who are in the possession and enjoyment of the suit properties and the first defendant had executed the settlement deed on 05.04.2007 in favour of the second defendant, his son, and the same is true and valid and the plaintiff is not entitled to challenge the same and not entitled to obtain the relief of permanent injunction, hence, the suit is liable to be dismissed.

6. In support of the Plaintiff's case, PWs1 to 3 were examined and Exs.A1 to A10 were marked. On the side of the defendants Dws1 and 2 were examined and EXs.B1 to EX.B8 were marked. Ex.X1 was also marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the courts below were pleased to dismiss the plaintiffs' suit. Agrrieved over the same, the present second appeal has been laid.

8. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration.

1) Whether the finding of the first appellate court that the suit properties are ancestral properties, whereas, the trial court has held that the suit properties are all self acquired properties, is sustainable in law, in view of the fact that the properties are not inherited but purchased ?

2) Whether the first appellate court was right in holding that there was no coparcenary to which the first defendant is a party?

3) Whether the non examination of the attester of the settlement deed dated 19.12.1974 (Ex.A2) would automatically

disprove the case of the plaintiff for title?"

9. According to the plaintiff, the suit properties originally belonged to Erusappa Kounder, he having acquired the same by way of the sale deed dated 07.09.1942, the copy of which has been marked as Ex.A1. The materials placed on record go to show that the properties acquired by Erusappa Kounder by way of Ex.A1 and the properties belonging to others were put in common hotch pot and accordingly Erusappa Kounder and others following the same, effected the partition of the abovesaid properties by way of the deed of partition dated 26.09.1946, the copy of which has been marked as Ex.B6. The factum of partition effected by Erusappa Kounder and others by way of Ex.B6 partition deed is not in dispute. Thus, it is found that all the properties owned by different persons including Erusappa Kounder were treated and enjoyed in common by all the parties to EX.B6 partition deed and thereafter, it is found that they had chosen to effect the partition of the abovesaid properties under the abovesaid document and in the said partition, it is found that the suit properties had come to be allotted to Erusappa Kounder and the abovesaid facts are not in issue. Thus, as rightly determined by the trial court, when there is no material placed to safely conclude that the suit properties had been acquired by Erusappa Kounder out of the income received or obtained from the ancestral nucleus as such and on the other hand, when the parties to Ex.B6 partition deed had blended all their several acquisitions in a common hotch pot and thereafter proceeded to partition the same and whereunder, different properties had been allotted to various shares, in such view of the matter, as rightly determined by the trial court, the properties allotted to Erusappa Kounder would only constitute as his self acquired properties and accordingly it is found that as rightly determined by the trial court, Erusappa Kounder would be entitled to deal with the suit properties as he desires and in such view of the matter, it is found that the first appellate court is not correct in coming to the conclusion that the properties derived by Erusappa Kounder under Ex.B6 partition deed are the joint family properties of Erusappa Kounder and the first defendant is also entitled to the same. As rightly put forth by the appellant's counsel, taking into consideration the principles of law outlined in the decisions reported in 2011-3-L.W. 317 (B.Nalina and other v. Arumugam and others) and 2017-2-L.W.343 (M.Palaniappan & another vs. Nachimuthu), it could be seen that the properties derived by way of the partition in respect of the joint family properties by the sharers, they obtaining the clear and ascertainable shares in the common properties by way of the same, accordingly it is found that the properties derived by them ceases to be joint family properties or the coparcenary properties as such. In view

of the above, in particular, when there is no material to hold that the properties acquired by Erusappa Kounder by way of Ex.A1 had been secured with the aid of ancestral nucleus and furthermore as determined by the trial court, the parties to Ex.B6 partition deed had chosen to divide the properties derived from the various sources and accordingly, it is seen that the determination of the first appellate court that the suit properties are the ancestral properties of Erusappa Kounder and his son, the first defendant Ranganatha Kounder, as such, cannot be sustained and thereby proceeding to hold that the settlement deed dated 19.12.1974 is invalid in respect of the share to which the first defendant is entitled thereto, cannot be countenanced and accordingly, the substantial questions of law No.1 and 2 formulated in the second appeal are suitably answered.

10. Be that as it may, the plaintiff traces his vendors title to the suit properties based on the settlement deed dated 19.12.1974, the copy of which has been marked as Ex.A2. According to the plaintiff, he had acquired the suit properties from Karupayee ammal and others by way of the sale deeds dated 05.02.2007, marked as Ex.A3 and A4. Now the defendants have taken the defence challenging vehemently the truth and the validity of the settlement deed dated 19.12.1974. According to the defendants, no such settlement deed had been effected or executed by Erusappa Kounder in favour of Karupayee ammal as projected by the plaintiff and the abovesaid settlement deed has not been accepted and acted upon and never came into effect and thus it is contended by the defendants that Karupayee ammal cannot lay a valid claim of title to the suit properties on the strength of the settlement deed marked as Ex.A2 and it is contended by the defendants that the sale deeds obtained by the plaintiff from Karupayee ammal and others in respect of the suit properties by way of Ex.A3 and A4 on the strength of Ex.A2 settlement deed would also be invalid documents and cannot be enforced legally and such being the defence projected by the defendants, as rightly put forth, it is incumbent to the plaintiff to establish foremost the validity of the settlement deed Ex.A2 projected by him.

11. Despite the defence taken by the defendants that Ex.A2 settlement deed is not a genuine and valid document, the plaintiff has not endeavoured to produce the original settlement deed projected by him. There is no explanation on the part of the plaintiff as to why the original settlement deed has not been placed for consideration. Furthermore, when the defendants had challenged in toto the settlement deed, marked as Ex.A2, as rightly determined by the courts below, the plaintiff should have endeavoured to legally establish the validity of the settlement deed marked as Ex.A2. As abovesaid, the original

settlement deed has not been marked and no reason has been offered for the same. The plaintiff has not even chosen to examine his vendor Karupayee ammal with reference to the same or atleast to prove the validity of Ex.A2 settlement deed. Furthermore, the plaintiff has also not endeavoured to examine anyone of the attestors of Ex.A2 settlement deed. Accordingly, it is found that when the plaintiff has not chosen to examine any person associated with the settlement deed Ex.A2, in the light of the decisions relied upon by the trial court, it is found that the plaintiff, being incumbent to establish the validity of the settlement deed as per law particularly in the light of the serious challenge thrown to the same by the defendants and the plaintiff miserably failed to establish the same by examining the attestors or any other persons associated with the said settlement deed, the courts below are justified in coming to the conclusion that the plaintiff has failed to establish his vendors' title to the suit properties based on Ex.A2 settlement deed. Furthermore, the plaintiff has also not placed any acceptable material to show that Ex.A2 settlement deed had been accepted and acted upon and since then it is only his vendor Karupayee ammal, who had been in the possession and enjoyment of the suit properties. As rightly determined by the courts below to establish the possession and enjoyment of the suit properties by his vendors, particularly, karupayee ammal, the plaintiff has not chosen to examine her and also not endeavoured to place any record evidencing the possession and enjoyment of his vendors in respect of the suit properties. Thus, it is seen that as rightly determined by the courts below, when the plaintiff has failed to establish his vendors' valid title to the suit properties based on Ex.A2, as above discussed, the plaintiff cannot be granted the relief of declaration of title sought for in respect of the suit properties based on the sale deeds marked as Ex.A3 and A4.

12. Furthermore, even as per the case of the plaintiff, the first item of the suit properties has not been correctly depicted in Ex.A2 settlement deed. According to the plaintiff, as regards the first item, the same has been shown as survey number 357/3 instead of survey number 358/1 and however according to the plaintiff, the extent and the boundaries tally with survey number 358/1. However, as rightly determined the courts below, on a comparison of the properties described in the partition deed marked as Ex.B6 and the allotment of properties comprised in survey No.357/3 to the other sharers and the boundary recitals relating to the same, it is found that, in particular, when in the plaint, the plaintiff had been endeavoured to describe the suit properties by giving the boundaries and accordingly when the first item of the properties described in Ex.A1 does not tally with the property in survey number 358/1 and furthermore when no endeavour has been made by

the plaintiff's vendor or the plaintiff, as the case may be, to rectify the survey number in the settlement deed Ex.A1, in such view of the matter, no interference is called for in the determination of the courts below that the settlement deed Ex.A2 does not pertain to the first item of the suit properties and the plaintiff thus has also failed to establish that the first items of the suit properties is covered in Ex.A2 settlement deed.

13. The plaintiff has also taken a plea that he has perfected the title to the suit properties by way of adverse possession and with reference to the abovesaid claim, as rightly determined by the trial court, in particular, by way of the same, indirectly the plaintiff has admitted the claim of title to the suit properties by the defendants. Furthermore, the plaintiff has not placed any reliable materials to hold that he and his predecessors in interest had been in the possession and enjoyment of the suit properties openly, continuously and uninterruptedly for more than the prescribed period by exhibiting animus attitude against one and all including the defendants in entitling them to claim the title to the suit properties by way of the adverse possession. Therefore, it is found that the abovesaid plea of the plaintiff has been rightly rejected by the courts below.

14. Furthermore, the plaintiff has also not placed any acceptable material to show that he has been in the possession and enjoyment of the suit properties as put forth by him. The patta relied upon by the plaintiff is found to have been cancelled by the endeavour of the defendants and the same could be evidenced from Ex.B8, order of the RDO dated 31.07.2009. Furthermore, the patta is found to be standing only in the name of the defendants as could be seen from the documents projected by the defendants. Therefore, it is seen that the plaintiff has not placed any materials to evidence his claim of possession and enjoyment of the suit properties and as rightly determined by the courts below, the encumbrance certificates marked as Exs.A9 and A10, singularly, would not, in any manner, advance the case of the plaintiff for seeking the reliefs prayed for.

15. An argument has been put forth by the plaintiff that the defendants has failed to establish his relationship with the second defendant and accordingly, it is contended by the plaintiff that the settlement deed executed by the first defendant in favour of the second defendant is not true and valid. As rightly pointed out by the courts below, the failure of the defendants in establishing their title to the suit properties by itself would not enure to the benefit of the plaintiff for seeking the claim to the suit properties. The plaintiff, having laid the suit seeking specific reliefs based on a particular set of facts and when the abovesaid facts had

been challenged by the defendants tooth and nail and the plaintiff having failed to establish his vendor's title to the suit properties as above discussed, also failed to establish his claim of possession and enjoyment of the suit properties as well as his vendors / predecessors in title, possession and enjoyment of the suit properties and thereby when it is found that the plaintiff's case has been rightly rejected by the courts below, no interference is called for with reference to the same. In the light of the above discussions, the courts below are justified in holding that the plaintiff has failed to establish his vendors' title to the suit properties and also failed to establish that all the suit properties had been covered under the settlement deed Ex.A2 and accordingly, the courts below are justified in holding that the plaintiff has failed to establish his claim of title, possession and enjoyment of the suit properties. The third substantial question of law is accordingly answered against the plaintiff and in favour of the defendants.

16. In the light of the above discussions, the second appeal fails and is accordingly dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

bga

To

1. The Sub Court, Villupuram,
2. The Additional District Munsif Court,
Villupuram.

+1cc to Mr.R.Meenal, Advocate, S.R.No. 68684
+1cc to Mr.N.Suresh, Advocate, S.R.No. 68975

S. A.No.1 of 2015

GJ(CO)
GN(16/11/2018)