

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.09.2018

PRONOUNCED ON : 25.10.2018

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.408 of 2015

Kumarasamy (died)
Govindasamy
S/o. Kumarasamy

...Appellant/Respondent/Plaintiff

Vs.

Ulaganathan

...Respondent/Appellant/Defendant

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 07.07.2011 passed in A.S.No.158 of 1993 on the file of the Subordinate Court, Ariyalur, reversing the judgment and decree dated 29.04.1993 made in O.S.No.296 of 1990 on the file of the District Munsif Court, Jayankondam.

For Appellant : Mr.S.Rajendra Kumar

For Respondent : Mr.S.Subramanian
for M/s.M.Vijayalakshmi

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 07.07.2011 passed in A.S.No.158 of 1993 on the file of the Subordinate Court, Ariyalur, reversing the judgment and decree dated 29.04.1993 passed in O.S.No.296 of 1990 on the file of the District Munsif Court, Jayankondam.

2. The second appeal has been admitted on the following substantial questions of law.

"a) When the respondent admitted the ownership of the appellant by pleading adverse possession, can the lower appellate court still insist upon the plaintiff to prove his title?

b) When the Government of Tamilnadu itself has recognized the title of the suit schedule property by issuing necessary notices under Ex.A9, dated 15.11.1964 the said statute, can the lower appellate court ignore the same and come to to a difference conclusion that the plaintiff has not proved title?

c) Whether the lower appellate court is correct in law in stating that the plaintiff or his brother did not have any property in Punja Adangal No.369?

3. Considering the scope of the issues involved between the parties as regards the subject matter lying in a narrow compass, it is unnecessary to dwell into the facts of the case in detail.

4. The plaintiff, who is the appellant in the second appeal, had laid the suit against the defendant for the reliefs of declaration, possession and past and future mesne profits on the footing that the suit property originally belonged to Ramasamy and Kuppumuthu, sons of Kattimuthu, Dharmalingam, Son of Muthusamy and Thangarasu and Muthusamy, sons of Dharmalingam and it is pleaded by the plaintiff that his paternal uncle Duraisamy Chettiar had purchased the portion of the suit property from Ramasamy and Kuppumuthu, sons of Kattimuthu by way of a registered sale deed dated 10.05.1992 and the remaining portion of the suit property had been purchased by his father Chokalingam from Dharmalingam, son of Muthusamy and Thangarasu and Muthusamy, sons of Dharmalingam by way of a sale deed dated 03.07.1924 and it is the further case of the plaintiff that Duraisamy and Chokalingam had enjoyed the suit property in toto acquired by them by way of the abovesaid sale deeds jointly and thereafter in the oral partition effected amongst themselves, it is stated that the suit property had come to be allotted to the plaintiff's father Chokalingam and it is the further case of the plaintiff that after the demise of Chokalingam, in the oral partition effected amongst his sons about 40 years ago, the suit property has been allotted to the share of the plaintiff and since then, the plaintiff had been in the possession and enjoyment of the suit property by paying necessary kists, etc., and also obtaining patta and on account of the previous enmity, the defendant without any authority trespassed into the suit property in the month of June 1979 illegally and occupied the same and in connection with the same though the plaintiff had issued a notice through his lawyer on 19.06.1979 complaining about the illegal trespass, the defendant sent a reply containing false allegations and further it is also pleaded by the plaintiff that on account of long and continuous possession and enjoyment of the suit property by him and his predecessors in interest, he has also prescribed title to the suit property

by way of adverse possession and for the reasons aforesaid, according to the plaintiff, he has been necessitated to lay the suit for appropriate reliefs.

5. The defendant resisted the plaintiff's suit by denying all the averments contained in the plaint put forth by the plaintiff for tracing the title to the suit property in toto and according to the defendant, the suit property belongs to him ancestrally and allotted to him by way of the partition and also projected the case that he has prescribed title to the suit property by way of adverse possession on account of long and continuous enjoyment and it is further stated that the suit property had been obtained by his grand father Appavu Padayachi through sale as well as ancestrally and the same was inherited by Govindasamy Padayachi, the defendants' father and Govindasamy padayachi had also sold the portion of the property obtained by him by way of the partition in favour of Chandrahasu Padayachi and in the partition effected between the defendant and his brother Murugesan, the suit property was allotted to him and he is in the possession and enjoyment of the same by obtaining patta, paying kists , etc., hence according to the defendant, the plaintiff has no cause of action to institute the suit and the suit is therefore liable to be dismissed.

6. The suit property is stated to be consisting an extent of 1 acre and 20 cents in survey No.133/2 of the suit village. It is the case of the plaintiff that the suit property belonged to the sons of Kattimuthu, Ramasamy and Kuppumuthu and Dharmalingam, Son of Muthusamy and Thangarasu and Muthusamy, Sons of Dharmalingam. The same has been disputed by the defendant. However, the plaintiff has not averred and also established as to in what manner, the suit property had belonged to the abovesaid persons, whether ancestrally or by way of acquisition and furthermore, as rightly found by the first appellate court, since when from the abovesaid persons had been exercising ownership in respect of the suit property. Similarly, though the plaintiff would claim that his paternal uncle and his father had obtained the portions of the suit property by way of the two sale deeds dated 10.05.1922 and 03.07.1924, as to which portion of the suit property they have acquired by way of the abovesaid sale deeds, there is no clear cut evidence on the part of the plaintiff. Furthermore, there is no material placed by the plaintiff to show that thereafter his paternal uncle Duraisamy Chettiar and his father Chockalingam had enjoyed the suit property jointly as one unit and furthermore, there is no proof placed by the plaintiff to evidence that in the oral partition effected between Duraisamy Chettiyar and his father Chokalingam, the suit property had been allotted to his father Chokalingam . The plaintiff has not averred as to when the abovesaid partition had been effected, in

whose presence the same had been brought about, what are the properties, which were the subject matter of the abovesaid oral partition and in that connection, the plaintiff has not endeavored to examine any independent person associated with the abovesaid oral partition to evidence that the suit property had been allotted to the plaintiff's father Chokalingam and also the plaintiff has not averred as to what are the properties allotted to Duraisamy Chettiyar in the alleged oral partition and furthermore, there is no acceptable material placed by the plaintiff to evidence that since the alleged oral partition, his father Chokalingam had been in the possession and enjoyment of the suit property in entirety as put forth. Furthermore, the plaintiff has not placed any acceptable material to evidence that after the demise of Chokalingam, in the oral partition amongst his sons, the suit property had been allotted to his share. As in the earlier case, even as regards the abovesaid partition, the plaintiff has not pleaded as to in whose presence the abovesaid partition was brought about, what are the properties involved in the abovesaid partition and who are all associated with the abovesaid partition, particularly, who are the sharers and what are the properties allotted to each sharer including the plaintiff. Very vaguely the plaintiff has averred that in the oral partition effected 40 years ago amongst the sons of Chokalingam, the suit property had been allotted to his share. Thus, it is found that though the plaintiff has traced the history of title to the suit property from various sources, with reference to the abovesaid claim, not having placed any reliable and acceptable material with proper pleadings and proof, accordingly sans evidence pointing to the same, the abovesaid case of the plaintiff for tracing the title to the suit property, as such, cannot be readily countenanced.

7. Now according to the plaintiff, he had been allotted the suit property in the oral partition effected amongst the sons of Chokalingam. To evidence that, since the alleged oral partition which took place 40 years ago the plaintiff has been in the possession and enjoyment of the suit property, there is no material forthcoming. Even as per the admitted case of the plaintiff as put forth in the plaint, the defendant had encroached into the suit property in the month of June 1979 and occupied the same. If really, the suit property belongs to the plaintiff and had been allotted to him in the oral partition, which took place 40 years ago and since then the plaintiff has been in the lawful possession and enjoyment of the suit property and the defendant had encroached into the suit property in June 1979 as projected, it has not been explained by the plaintiff as to why immediately thereafter, he had not endeavoured to claim the title in respect of the suit property and recover the possession of the same from the defendant and with reference to the same, though the plaintiff would aver in the plaint that he had sent a notice complaining of the unlawful trespass made into

the suit property by the defendant by issuing a legal notice on 19.06.1979 and when further according to the plaintiff, the defendant had repudiated his claim by sending a reply notice, even thereafter, it is found that the plaintiff had not endeavored to institute the necessary legal action against the defendant in seeking the recovery and possession of the suit property from the defendant. On the other hand, it is seen that the present suit had been laid by the plaintiff only on 29.08.1990, nearly 11 years after the alleged trespass of the suit property by the defendant. With reference to the abovesaid inaction of the plaintiff for several years, despite having knowledge about the alleged trespass of the suit property by the defendant, there is no proper explanation on the part of the plaintiff.

8. The defendant has also refuted the claim of the plaintiff that he had encroached into the suit property unlawfully in the month of June 1979 as projected in the plaint. In this case, the notice sent by the plaintiff to the Tahsildar, Jayankondam on 13.02.1991, has been marked as Ex.A41. In the said notice, the plaintiff had clearly averred that the village officials had been collecting kists in respect of the suit property from the defendant right from 24.01.1977 onwards and in such view of the matter, when as per the own admission of the plaintiff in Ex.A41 that it is only the defendant who had been in the possession and enjoyment of the suit property by paying kists right from 1977 onwards, his case pleaded in the plaint that the defendant had encroached into the suit property during June 1979 falls to the ground and accordingly as rightly put forth, the same is found to be a false case projected by the plaintiff for the purpose of the lis.

9. As above found, the defendant had also taken the plea of adverse possession for sustaining his claim of title to the suit property. When as per the admission of the plaintiff as above noted, to his knowledge, the defendant had been in the possession and enjoyment of the suit property openly, continuously by paying kists, thereby ascertaining his title to the same right from 1977 onwards, in such view of the matter, it is found that as rightly determined by the first appellate court, on the own admission of the plaintiff, it is seen that the defendant had been in the possession and enjoyment of the suit property continuously, openly and without any interruption to the knowledge of the plaintiff beyond the statutory period by ascertaining title on himself, in such view of the matter, the determination of the first appellate court that the defendant has established his plea of adverse possession, do not warrant any interference as such.

10. During the interregnum period from 1977 till the date of institution of the present suit, the plaintiff has not placed

any material worth acceptance that he has been in the possession and enjoyment of the suit property. Though, the plaintiff, during the course of evidence would claim that his father had leased out the suit property in favour of Ayyakannu, as regards the same, there is no plea in the plaint. That apart, even in the evidence, the plaintiff has not established that his father had leased out the suit property to Ayyakannu and the terms of the alleged lease and furthermore, to buttress the abovesaid claim, the plaintiff had not endeavored to examine Ayyakannu in support of his case. Subsequently, the plaintiff would also claim that he had also leased out the suit property to Ayyakannu, however, with reference to his abovesaid claim, there is no material placed evidencing the same and though the plaintiff would endeavour and mark the muchalika said to have been executed in favour of his father Chokalingam by Ayyakannu as Ex.A25, as rightly determined by the first appellate court, when with reference to Ex.A25 muchalika, there is no pleading as well as no one examined in support of the abovesaid lease arrangement and when Ex.A25 is also found to be an unregistered instrument, accordingly no safe credence could be attached to Ex.A25 for upholding the plaintiff's claim of title to the suit property as well as his claim of possession and enjoyment of the suit property from the days of his father Chokalingam.

11. The materials placed on record go to show that under the updating Registry Scheme, the patta had been issued in respect of the suit property in favour of the defendant. In this connection, the plaintiff has admitted during the course of evidence that in the enquiry conducted as regards the issuance of patta in favour of the defendant under the UDR scheme, he had also participated in the said enquiry and accordingly as rightly found by the first appellate court, considering the rival claims of title, possession and enjoyment of the suit property, it is seen that the revenue authorities also finding that it is only the defendant who has been in the possession and enjoyment of the suit property, accordingly rejecting the case of the plaintiff, had granted the patta in favour of the defendant marked as Ex.B1. Challenging the same, the plaintiff has not preferred any appeal or revision and there is no proof pointing to the same in any manner.

12. Though the defendant had traced his title to the suit property right from the date of his ancestor Appavu Padayachi, no doubt, the defendant had marked the patta as EX.B3 in the name of Appavu Padayachi and the patta standing in the name of his father Govindasamy Padayachi as Ex.B5 and also the other pattas standing in the name of Appavu Poosi, Govindasamy Poosi as Exs.B6 to B10, the fact remains, even though the defendant had failed to establish his trace of title to the suit property ancestrally other than marking the abovesaid patta documents, however, it has been clearly admitted on the part of the

plaintiff that it is only the defendant, who has been in the possession and enjoyment of the suit property since 1977 onwards. Furthermore, to sustain his claim of possession and enjoyment of the suit property over a long period of time, the defendant had also examined independent persons including the Village Administrative Officer as Dws.2 to 5 and they have also clearly deposed about the possession and enjoyment of the suit property by the defendant and therefore the first appellate court has also taken into consideration their evidence for sustaining the claim of possession and enjoyment of the suit property by the defendant over a long period of time by ascertaining his title in respect of the same openly, continuously and without any interruption by exhibiting the animus attitude to one and all including the plaintiff. As above noted, despite the abovesaid possession and enjoyment of the suit property by the defendant since 1977, the plaintiff having not endeavored to assert his title and recover the possession from the defendant in the manner known to law, in such view of the matter, the first appellate court is found to be justified in upholding the plea of adverse title projected by the defendant for sustaining his claim of title to the suit property.

13. As rightly put forth by the defendant's counsel, in a suit for declaration and possession, the onus is always upon the plaintiff to establish his claim of title to the suit property by placing acceptable and reliable materials with reference to the same and the plaintiff cannot be allowed to pick holes in the defence version and thereby endeavour to sustain his claim of title to the suit property sans materials pointing to the same. In this connection, the defendant's counsel has placed reliance upon the decisions reported in (1995)3 SCC 426 (Nagar Palika, Jind v. Jagat Singh, Advocate) and (2009)14 SCC 224 (T.K.Mohammed Abubucker (dead) through Lrs and others v. P.S.M.Ahamed Abdul Khader and others). The principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the case at the hand.

14. In the light of the above discussions, it is seen that the plaintiff has miserably failed to establish his claim of title to the suit property as put forth in the plain. Accordingly, it is also noted that knowing fully well that he has no trace of title to the suit property as pleaded in the plaint, it is found that the plaintiff has also taken the claim of title to the suit property by way of adverse possession and thereby impliedly had admitted the title of the defendant in respect of the suit property. As rightly put forth, the plaintiff cannot maintain the suit for seeking the declaration of title to the suit property based on the adverse possession. Furthermore, his claim of title to the suit property by way of the alleged pucca title as well as by way of the adverse

possession, being found to be mutually contradictory and not reconciling to each other, in such view of the matter, accordingly, as the plaintiff has no semblance of title to the suit property as put forth, it is seen that he had been taking inconsistent pleas one way or the other for seeking the claim of title to the suit property. However, with reference to the abovesaid case, the plaintiff has failed to place convincing material to sustain the same.

15. No doubt, the defendant has also taken the plea of adverse possession. But, as above noted, the defendant has established his adverse title to the suit property on the own admission of the plaintiff as above discussed and in such view of the matter, the upholdment of his title to the suit property by adverse possession has been rightly declared by the first appellate court and no interference is called for with reference to the same. The notice said to have been communicated dated 15.11.1964 marked as Ex.A9, would not, in any manner confer title on the plaintiff in respect of the suit property and as above noted, the plaintiff cannot be allowed to seek the title to the suit property based on the weakness of the defence version and in such view of the matter, accordingly, the substantial questions of law formulated in this second appeal are answered against the plaintiff and in favour of the defendant.

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

s/d-

Assistant Registrar (CS VIII)

True Copy

Sub-Assistant Registrar

bga

To

1. Subordinate Court, Ariyalur
2. District Munsif Court, Jayankondam.
3. The Section Officer, V.R. Section,
High Court, Madras.

+1 CC to Mr.S.Rajendra Kumar, Advocate sr 73627.

+1 CC to M/s.M.Vijayalakshmi, Advocate sr 74010.

S. A.No.408 of 2015

PPA (CO)

SP(18/02/2019)