

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

SECOND APPEAL NO.1629 OF 2008

1.Natesa Mandiri
2.Krishnamoorthy
3.Karthikeyan
4.Mahalakshmi

... Appellants/Defendant

-Vs-

Andalammal

... Respondent/plaintiff

PRAYER: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 25.08.2003 made in A.S.No.62 of 2002 by the Sub Court, Ranipet, reversing the judgment and decree of the District Munsif Court, Arcot, made in O.S.No.22 of 1998, dated 28.02.2002.

For Appellants : Mr.G.Rangarajan

For Respondent : Mr.N.Janakiram

J U D G M E N T

The defendants are the appellants in the above Second Appeal. Originally, a suit for declaration of title and consequential injunction was filed by the respondent/plaintiff. The vendor of the respondent/plaintiff purchased the property on 07.07.1988 from one Rama Mandiri and got the revenue records mutated in her name and she was in continuous possession and enjoyment. The respondent/plaintiff purchased the suit property on 09.02.1996 from one Raniammal by a registered sale deed. The third appellant/third defendant issued a legal notice to the respondent/plaintiff, which was suitably replied. Since the appellants/defendants created problems, disturbing her possession, claiming title, she filed the above suit.

2. The appellants/defendants have denied the averments made in the plaint and contended that the suit property was a joint family property and it was not partitioned. The respondent/plaintiff cannot claim right over the undivided joint family property. The property originally belonged to the first appellant/first defendant's parents Chinnammal and Varadha Mandiri. After demise of his father, the first appellant/first

defendant alone was in possession and enjoyment of the property. The vendor of Raniammal, namely, Rama Mandiri, is the brother of the first appellant/first defendant. Neither his brother nor his purchasers were in possession and enjoyment of the property. His brother Rama Mandiri is having only 1/4th share in the undivided common property and therefore, the sale made by him in favour of Raniammal on 07.07.1988 is not valid. Therefore, the suit filed by the respondent/plaintiff for declaration of title is not maintainable. The respondent/plaintiff had no knowledge about the said sale transaction and also the transaction between the third and fourth defendants and Arumugam. He is in continuous possession of the suit property and it was not handed over at any point of time either to Raniammal or the respondent/plaintiff. The suit is liable to be dismissed.

3. The Trial Court considered both oral and documentary evidence and came to a conclusion that partition of the joint family properties were not proved by the respondent/plaintiff and therefore, the sale of an undivided joint family properties was held to be illegal. Ultimately, the suit was dismissed, against which, the respondent/plaintiff preferred an appeal, in which, the Lower Appellate Court has given a finding that partition had been proved and the respondent/plaintiff is entitled to the relief claimed and accordingly, reversed the finding of the Trial Court and decreed the suit.

4. Challenging the judgment and decree of the Lower Appellate Court, the appellants/defendants preferred the above Second Appeal on the following substantial questions of law:

"a) Whether the First Appellate Court erred very much in NEGATIVATING the finding of the trial Court when it has been proved beyond any reasonable doubt through exhibits A-3 and A-6 that the Plaintiff is not in possession and enjoyment of the suit properties, the Plaintiff cannot claim the relief of declaration of the Plaintiff's title of the suit properties and also cannot claim the relief of permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment over the suit properties?

b) Whether the First Appellate Court erred very much in NEGATIVATING the finding of the trial court that even though in the suit plaint the survey Nos. of the properties over which the Plaintiff's claims title are mentioned in the documentary evidence produced on the side of the Plaintiff viz. Exhibit A-3. Accordingly the trial

court has correctly rejected the reliefs claimed by the Respondent / Plaintiff herein. However, the first Appellate Court incorrectly and erroneously granted the reliefs sought by the Respondents / Plaintiffs herein in the suit?"

5. I have gone through the materials available before this Court.

6. The crucial issue in the suit revolves around the nature of property as to whether it is joint family property or individual property. On a perusal of the documents, which were marked as Exs.A10 to A12, more particularly, Ex.A12, the sale deed executed by the first appellant/first defendant by itself reveal that he derived title through partition. The schedule of the property shows that there is a common well, in which, he possess 1/3rd share. Likewise, he possessed 1/3rd share in the paraphernalia used for drawing water from the well, as well as electricity service connection and the water channel. Vide Ex.A12, the very same first and second appellants/first and second defendants have sold the property in favour of the son of the plaintiff's vendors' vendor, namely, Rama Mandiri, vide Document No.734/1994, in which, the oral partition taken place between the brothers is clearly mentioned. The schedule of the property also shows the southern boundary land allotted to one of the brothers, Balaraman Mandiri. Therefore, the document executed by the first and second appellants / defendants 1 and 2 by itself shows that there was oral partition of the properties among the brothers. During examination of witnesses, the first appellant/first defendant who deposed as D.W.1., would state that his father had executed a WILL, but any partition or settlement deed. Further, he know about the sale of the suit property in favour of the plaintiff's vendor by his brother. He had not objected the sale and he would also admit that the revenue records were transferred in favour of the plaintiff's vendor and it was objected only by his sister and not by him. The exhibit marked as Ex.B3 is a joint patta and during cross examination, he would admit the shares of Balaraman Mandiri and Rama Mandiri as boundary of the property. From the admission during cross examination, the first appellant/first defendant had categorically admitted regarding the partition of the property, which is further substantiated by the evidence of D.W.2, who is none other than the wife of the first appellant/first defendant/Natesa Mandiri and mother and mother in law of the second and fourth appellants. On verification of the sale deeds, it could be noted that all the share-holders have shown their individual shares and the corresponding common rights in the well, irrigation channel and electricity service connection. The respondent/plaintiff was also shown as a joint pattadhar in Ex.A-3 - patta.

7. From the above, it can be inferred that there was a partition, which is admitted by the first appellant/first defendant during the cross examination. The documents executed by them also profusely shows that there was partition.

8. The respondent/plaintiff has categorically stated that the property was sold by her vendor by Rama Mandiri, who is one of the share-holders. The said Rama Mandiri was examined as P.W.2. He would categorically state that the properties were partitioned by his father in the year 1967 itself. Thereafter, patta was transferred in their respective names, in the year 1984. Thereafter, he was in separate possession and enjoyment of the property and sold the same to one Raniammal, the vendor of the respondent/plaintiff. The sale deed was witnessed by one of his brothers and his son and thereafter, when the said Raniammal executed a sale deed in favour of the respondent/plaintiff and he also signed as a witness to the same along with his brother. Therefore, the conduct of the parties go to show that there was partition and the property sold to the respondent/plaintiff was an individual property of Rama Mandiri. The evidence of the respondent/plaintiff's witnesses with regard to the partition was not impeached by the appellants/defendants. When the respondent/plaintiff had proved the partition, it is the burden of the appellants/defendants to prove that there was no partition. But the oral and documentary evidence clearly shows that there was partition. In such circumstances, the finding of the Lower Appellate Court that partition of the properties is proved is based on legal evidence. Further, the sale deeds executed by all the parties does not overlap the property sold to the respondent/plaintiff.

9. In so far as the appellants are concerned, they have taken three different stands, viz., (i) there is a will executed by Varadha Mandiri, the father of the first appellant/first defendant in his favour, and a WILL in favour of his wife Paunammal, in the year 1963, and thereby they derived title; (ii) the first appellant/defendant is in continuous possession and enjoyment of the suit property; and (iii) the property was not partitioned and remained as an undivided joint family property and therefore, the sale made to the respondent/plaintiff is not valid in law.

10. On the other hand, the WILL executed in favour of the first appellant/first defendant as well as the WILL said to have been executed in favour of his wife were not produced before the Court and they were not proved. Contrary to the same, the property was in joint possession of all the three brothers and a joint patta was issued as evidenced by Ex.A3. After partition, the patta was transferred in favour of the respondent/plaintiff and her vendor. They were shown as joint

pattadhars and joint title holders. Further, by their own admission, the first appellant/first defendant and his wife admitted that there was partition and the brothers were allotted independent shares. Therefore, the contradictory stand taken by the first appellant/first defendant by itself is fatal to his case and he has also failed to prove any of the defenses taken by him.

11. In such circumstances, I find the questions raised in the Second Appeal do not raise any legal issue but are purely questions of fact. The Lower Appellate Court on thorough perusal of the oral and documentary evidence has rightly come to the conclusion that the respondent/plaintiff has proved her case and thus, entitled to declaration of title and consequential injunction. I do not find any infirmity in the judgment and decree passed by the Lower Appellate Court reversing the findings of the Trial Court.

12. In fine, the Second Appeal is dismissed. No costs.

s/d-
Assistant Registrar (CS VIII)

True Copy

Sub-Assistant Registrar

rts/tk

To

1. The Sub Judge
Ranipet.

2 The District Munsif
Arcot.

Copy to

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

+1 cc to Mr.G. Rangarajan, Advocate sr 6655.

+1 cc to Mr.N. Janakiram, Advocate sr 6570.

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NRI (CO)
SP(10/10/2018)