

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.02.2018

PRONOUNCED ON : 07.03.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.1374 of 2003

1. Minor Manikandan
2. Minor Manivel
(Minors 1 & 2 are represented by
next friend and mother Anjalai
Valasai Village, Vridhachalam Taluk)... Appellants

Vs.

1. Thangarasu (died)
2. Deivasingamani ... Respondent

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 22.11.2002 passed in A.S.No.64 of 2002 on the file of the Principal Sub Court, Vridhachalam, reversing the Judgment and Decree dated 31.01.2002 passed in O.S.No.1589 of 1993 on the file of the Additional District Munsif Court, Vridhachalam.

For Appellants : Mr.D.Venkatesulu
for Mr.Usha Raman
For Respondent : Mr.J.Antony Jesus
No.2

JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 22.11.2002 passed in A.S.No.64 of 2002 on the file of the Principal Subordinate Court, Vridhachalam, reversing the Judgment and Decree dated 31.01.2002 passed in O.S.No.1589 of 1993 on the file of the Additional District Munsif Court, Vridhachalam.

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

3. Suit for declaration and permanent injunction or in the alternative for possession.

4. The case of the plaintiffs, in brief, is that the suit property belonged to Vaithiyalingam and originally, the suit property belonged to the paternal uncle of Vaithiyalingam viz., Sadaiya Padayachi and it is only Vaithiyalingam, who had lit the pyre of Sadaiya Padayachi and thereby, the suit property came to be acquired by Vaithiyalingam and accordingly, by obtaining patta, paying kist etc., Vaithiyalingam was enjoying the suit property for several years and thereafter, conveyed the suit property in favour of the plaintiffs by way of a registered sale deed dated 07.06.1993, for a valid consideration and pursuant to the above said sale transaction, it is only the plaintiffs, who had been enjoying the suit property through their mother by paying kist etc., and the defendants have no right, title or interest over the suit property and as the plaintiffs refused to sell the suit property to the defendants as requested by them, developing enmity, the defendants attempted to interfere with their possession and enjoyment and hence, according to the plaintiffs, they had been necessitated to lay the suit for appropriate reliefs.

5. The case of the defendants, in brief, is that the suit is not maintainable either in law or on facts. After denying all the plaint allegations, according to the defendants, the suit property and other properties belonged to Manickam and Vaithiyalingam, sons of Kesavan and after the death of Kesavan and his wife Chinnapillai, in the oral partition effected between Vaithiyalingam and Manickam, the suit property and other properties were allotted to the share of Manickam and accordingly, the sharers took possession of the properties allotted to them and enjoying the same by obtaining patta, paying kist etc., and the extent in R.S.72/1, 0.71 cents belonged to Manickam and after the demise of Manickam, his legal heirs inherited the above said property and enjoying the same by obtaining patta and paying kist and hence, the sale transaction projected by the plaintiffs for deriving title to the suit property is not binding upon the defendants and the suit laid by Rajambal and others in respect of the suit property in O.S.No.1528 of 1993 is still pending and the suit is bad for non-joinder of Rajambal, Valliammai and Yasodai, who are also the legal heirs of Manickam and the suit, laid without any cause of action, is, therefore, liable to be dismissed.

6. In support of the plaintiffs' case, PWs1 & 2 were examined and Exs.A1 to A6 were marked. On the side of the defendants' Dws1 & 2 were examined and Exs.B1 and B2 were marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial Court was pleased to decree the suit as prayed for. On appeal, the first appellate Court, on an appreciation of the materials placed on record, was pleased to set aside the judgment and decree of the trial Court and by way of allowing the appeal preferred by the defendants, dismissed the suit laid by the plaintiffs. Aggrieved 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:

"(i) Whether the admission of the defendants of the ownership of the plaintiffs vendor and his brother Manickam as heirs of their father not sufficient to displace the burden of proof on the defendants to establish that the suit property had been allotted to Manickam and on their failure, were not the plaintiffs entitled to the decree as prayed for?"

(ii) Whether the lower appellate Court erred in law in setting aside the judgment of the trial Court without assigning reasons for coming to a different conclusion, as required under Order 41 Rule 31 CPC?"

9. The plaintiffs claim title to the suit property by way of purchase from Vaithiyalingam Padaychi under a sale deed dated 07.06.1993, which document has come to be marked as Ex.A1. The defendants have thrown a challenge to the case of the plaintiffs that the suit property originally belonged to Vaithiyalingam Padayachi. According to the plaintiffs, the suit property originally belonged to Vaithiyalingam Padaychai's paternal uncle Sadaiya Padachi and inasmuch as Vaithiyalingam Padayachi lit the funeral pyre of Sadaya Padayachi, he acquired the suit property. However, as rightly determined by the first appellate Court, there is no material placed on the part of the plaintiffs to establish at the first instance that the suit property originally belonged to Sadaya Padayachi as put forth by the plaintiffs. Particularly, when the defendants have thrown a challenge to the claim of the plaintiffs that the suit property originally belonged to Sadaya Padayachi, to buttress the same, the plaintiffs should have placed acceptable and reliable materials to come to the conclusion that the suit property originally belonged to Sadaya Padayachi as putforth by them. In addition to that, there is no material placed to show that Sadaya Padayachi had been in possession and enjoyment of the suit property at any point of time as claimed by the plaintiffs. The position being above, the case of the plaintiffs that inasmuch as Vaithiyalingam Padayachi lit the funeral pyre of Sadaya Padayachi, he had acquired the suit property also cannot be believed and accepted. Merely because, Vaithiyalingam Padayachi had lit the funeral pyre of Sadaya Padayachi,

we cannot presume that he had validly acquired title to the suit as such and in such view of the matter, as rightly determined by the first appellate Court, the plaintiffs have miserably failed to establish the original title of Sadaya Padayachi and then, that of Vaithiyalingam Padayachi as projected by them in the plaint. The plaintiffs' mother examined as PW1, during the course of cross examination, would state that the suit property originally belonged to the grandfather of Vaithiyalingam Padayachi, viz., Kesavan Padayachi and it is the ancestral property of Vaithiyalingam Padayachi and in the partition effected between Vaithiyalingam and his brother Manickam Padayachi about 40 years ago, according to her, the suit property was allotted to Vaithiyalingam Padayachi, inasmuch as he had lit the funeral pyre of his grandfather and thus, it is found that as rightly determined by the first appellate Court, the source of title to the suit property as projected by the plaintiffs in the plaint and adduced during the course of evidence appear to be contradictory and not consistent and it is thus found that when there is no material either to prove the title of Sadaya Padayachi or Kesavan Padayachi as the case may be and no material to show that either of them had been in possession and enjoyment of the suit property as such, it is seen that the case of the plaintiffs that the suit property had been allotted to Vaithiyalingam Padayachi on account of the lighting of the funeral pyre of Kesavan Padayachi or Sadaya Padayachi, as such, cannot be accepted in any manner.

10. As rightly determined by the first appellate Court, the other documents projected by the plaintiffs, would be of no use to sustain their case. Now, according to the plaintiffs, the suit property is situated in R.S.No.72/1B measuring an extent of 0.23 cents in patta No.379. As rightly determined by the first appellate Court, the kist receipts marked by the plaintiffs as Exs.A2 to 4 would only go to show that the same pertains to the lands comprised in patta No.399 and they seem to be of recent origin and it is thus found that when according to the plaintiffs, Vaithiyalingam Padayachi had been in possession and enjoyment of the suit property comprised in patta No.379 and when there are no documents pointing to the same and when the kist receipts marked as Exs.A2 to A4 point that the same is with reference to the lands comprised in Patta No.399, it is found that the above said documents would be of no purpose to sustain the plaintiffs' case. The adangal extract produced by the plaintiffs marked as Ex.A5 seems to be pertaining to the faslis 1402 to 1404 and when it is found that the suit has been laid in the year 1993 and in such view of the matter, on the basis of the above said Adangal extract, it cannot be safely concluded that the suit property had been in possession and enjoyment of Vaithiyalingam Padayachi as projected by the plaintiffs as the said document is found to be issued after the institution of the suit. Similar is the case of the chitta extract marked as Ex.A6 and it pertains to the faslis 1395 to 1409 and it is also found to be issued in respect of the lands comprised in Patta No.399. As rightly found

by the first appellate Court, the plaintiffs seem to have obtained some mutation during the Updating Registry Scheme and accordingly, have come to mark the documents exhibited as A2 to A6. However, when there is no material to establish that the suit property either belonged to Sadaya Padayachi or Kesava Padayachi as the case may be and that, the same had been validly acquired by Vaithiyalingam Padayachi and Vaithiyalingam Padayachi had been in possession and enjoyment of the same as claimed by the plaintiffs for several years, it is found that the case of the plaintiffs that they had acquired title to the suit property based upon Ex.A1 sale transaction as such cannot be straightaway accepted.

11. In this matter, the plaintiffs have examined Vaithiyalingam as PW2 and PW2 has also admitted that he has no material to show that the suit property originally belonged to Sadaya Padayachi and further, according to PW2, R.S.No.72/1 measures 0.71 cents and according to him, on the demise of Sadaya Padayachi, out of the above said 71 cents, the western 0.21 cents was allotted to Manickam Padayachi and the eastern 0.46 cents was allotted to him and according to him, thus he has title to an extent of 0.46 cents in R.S.No.72/1 and it is thus seen that PW2, during the course of evidence, projects a new version about the source of title to the suit property and further, according to PW2, out of 46 cents derived by him, as above stated, he had alienated the suit

property measuring an extent of 0.23 cents to the plaintiffs and the remaining extent in the said survey Number was given to his daughter's children. However, the claim of PW2 as to the above derivation of title to the suit property, when it is not borne out by acceptable and reliable materials, it is seen that on the basis of the above said uncorroborated testimony of PW2, we cannot safely conclude that PW2 had acquired a valid title to the suit property so as to entitle him to convey the same to the plaintiffs by way of Ex.A1. On the other hand, as rightly found by the first appellate Court, the defendants have also marked the revenue documents as Exs.B1 & B2 showing that it is only Manickam Padayachi, who had been in possession and enjoyment of the suit property, particularly, the extent of 0.71 cents situated in R.S.No.72/1. In such view of the matter, when there is no proof or material to accept the source of title to the suit property as projected by the plaintiffs and when there is no material to show that the lands comprised in patta No.399 had been allotted to Vaithiyalingam Padayachi, it is found that particularly, when according to the plaintiffs, the suit property is comprised in patta No.379 and considering the inconsistent claims of title to the suit property as projected by the plaintiffs in the pleadings and during the course of evidence and particularly, when the defendants have thrown a stout challenge to the claim of title of the plaintiffs to the suit property by way of Ex.A1, in particular, challenging the title of the plaintiffs' vendor as such, it is found that based upon Exs.A2 to A6, we cannot safely conclude

that Vaithiyalingam Padayachi or for the matter, the plaintiffs had a valid title to the suit property. In such view of the matter, it is found the first appellate Court, has rightly disbelieved the case of the plaintiffs for claiming title to the suit property and other consequential reliefs.

12. In the light of the above discussions, the first appellate Court, is found to have considered the issues involved in the matter in detail by assessing the materials placed on record, both oral and documentary, in the correct perspective under the main point for determination in the appeal. Resultantly, it is found that the failure of the first appellate Court in forming distinct points for determination as such would not in any manner vitiate its judgment and decree and further, when it is seen that by way of the above approach of the first appellate Court, no prejudice had been caused to the plaintiffs as such and accordingly, when it is further seen that the first appellate Court has given proper reasonings and conclusions for arriving at a different conclusion than that of the trial Court and thereby dismissed the plaintiffs civil action, it is found that no interference is called for in the judgment and decree of the first appellate Court in any manner. Accordingly, it is further seen that when the plaintiffs have failed to establish source of title of their vendor to the suit property as claimed by them and when the plaintiffs have projected inconsistent pleas as regards the source of title of their vendor and unable to establish both claims by placing acceptable and reliable

materials, it is found that the first appellate Court, has rightly declined to grant the reliefs sought for by the plaintiffs and I do not find any material as such to interfere with the above said determination of the first appellate Court and accordingly, it has to be held that the plaintiffs have miserably failed to establish their claim of title to the suit property and their entitlement to obtain the reliefs sought for in the plaint. The substantial questions of law formulated in the second appeal are accordingly answered against the plaintiffs.

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

Index : Yes / No
Internet : Yes / No
sms

07.03.2018

To

- 1.The Principal Sub Court, Vridhachalam.
- 2.The Additional District Munsif Court, Vridhachalam.
3. The Section Officer, V.R.Section, High Court, Madras.

T.RAVINDRAN, J.

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**Pre-Delivery Judgment made
in S.A.No.1374 of 2003**

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