

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 31.01.2018

PRONOUNCED ON : 09.02.2018

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.1405 of 2003

Sakthivel ... Appellant/Plaintiff in O.s

Vs.

Aran ... Respondent/Defendant in O.S

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree of the learned Additional District Judge (Fast Track Court No.IV) Erode at Bhavani in A.S.No. 80/2002 dated 18.10.2002 preferred against the judgment and decree of the learned Principal District Munsif of Bhavani in O.S. No.167/1999 dated 12.12.2001.

For Appellant : Mr.S.Kaithamalai kumaran

For Respondent : Mrs.P.Sharmila
for M/s. V.Rajesh

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 18.10.2002 passed in A.S.No. 80/2002 on the file of the Additional District Judge (Fast Track Court No.IV) Erode at Bhavani confirming the judgment and decree dated 12.12.2001 passed in O.S. No.167/1999 on the file of the Principal District Munsif Court, Bhavani.

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

3. Suit for permanent injunction.

4. The case of the plaintiff, in brief, is that the suit property was originally owned by Semban, the grandfather of the plaintiff and he had acquired the suit property by way of an allotment by the Government and since then, it is only Semban, who has been in possession and enjoyment of the suit property and during his life time, Semban executed a Will in respect of the suit property in favour of the plaintiff on 25.10.1984 and after the death of Semban, the plaintiff is in possession and enjoyment of the suit property as per the Will dated 25.10.1984

and the defendant is a total stranger to the suit property and also a neighbour, who has no manner of right, title or interest to the suit property. However, the defendant without any legal authority attempted to interfere with his possession and enjoyment. Hence, according to the plaintiff, he has been necessitated to lay the suit for appropriate reliefs.

5. The case of the defendant, in brief, is that the suit is not maintainable either in law or on facts. It is false to state that the suit property was allotted to Semban, the grandfather of the plaintiff, by the Government and that Semban executed a Will dated 25.10.1984 in favour of the plaintiff in respect of the suit property and that the plaintiff has been in possession and enjoyment of the suit property pursuant to the above said Will and that the defendant attempted to interfere with his possession and enjoyment etc., According to the defendant, the suit property and other properties situated nearby are harijan house sites and accordingly, site number 16 and site number 17 were allotted to the defendant and the defendant's mother and accordingly, they had been in possession and enjoyment of the above said sites and while so, one Siddhan @ Chinnan laid a false claim in respect of the above said property against the defendant without any authority in O.S.No.875/92 and after contest, the said suit had ended in dismissal and the appeal also preferred came to be dismissed and the plaintiff is not residing in the suit property and residing in Odathurai which is 4 kilometres away from the suit property and the Will projected by the plaintiff is a fabricated document and the plaintiff has never been in possession and enjoyment of the suit property at any point of time and hence, the suit is liable to be dismissed.

6. In support of the plaintiff's case PWs 1 to 4 were examined, Ex.A1 was marked. On the side of the defendant, DWs 1 and 2 were examined, 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 Courts below were pleased to dismiss the suit laid by the plaintiff. Challenging the same, the present second appeal has come to be laid.

8. At the time of admission of the second appeal, the following substantial question of law was formulated for consideration:

Whether the Courts below are right in dismissing the suit for injunction, when the plaintiff had successfully proved his possession of the suit property on the date of suit?

9. The suit has been laid simpliciter for permanent injunction by the plaintiff. Briefly stated, according to the plaintiff, the suit property was allotted to the plaintiff's grandfather Semban by the Government and Semban had been in possession and enjoyment of the suit property and executed a Will dated 25.10.1984 in respect of the suit property in favour of the plaintiff and after his demise, it is only the plaintiff who has been in possession and enjoyment of the suit property pursuant to the above said Will and inasmuch as the defendant attempted to interfere with his possession and enjoyment, according to the plaintiff, he has been constrained to lay the suit for appropriate reliefs.

10. Per contra, it is the case of the defendant that site number 16 and 17 were allotted by the Government to him and his mother and they had been in possession and enjoyment of the same and the case of the plaintiff that he is in possession and enjoyment of the suit property is false and also denied that the suit property had been allotted to Semban, the plaintiff's grandfather and also disputed the Will projected by the plaintiff dated 25.10.1984 said to have been executed by Semban in favour of the plaintiff in respect of the suit property. According to the defendant, the plaintiff has never been in possession and enjoyment of the suit property at any point of time and hence, the suit is liable to be dismissed.

11. Considering the pleadings set out by the respective parties in this matter, it is evident that the defendant is fighting tooth and nail the plaintiff's lis, in particular, the defendant has vehemently disputed the claim of title to the suit property as projected by the plaintiff. The plaintiff traces title to the suit property from his grandfather Semban. According to the plaintiff, the suit property was allotted to his grandfather. However, neither in the plaint nor during the course of evidence, the plaintiff has whispered as to on what date the same had been allotted to his grandfather by the Government. The said allotment order said to have been issued in favour of his grandfather as regards the suit property has not been marked. Though the plaintiff would claim in the plaint that he would present the same during the course of trial, for the reasons best known to the plaintiff, the said document has not seen the light of the day. That apart, no material has been placed to show that the suit property had been in possession and enjoyment of Semban, the plaintiff's grandfather. Such being the position, when there is no acceptable and reliable materials to point out that Semban had title, possession and enjoyment of the suit property as putforth by the plaintiff, the Courts below had rightly disbelieved the above aspects of the plaintiff's case.

12. However the plaintiff's counsel would contend that the defendant examined as DW1, during the course of cross examination, has admitted that site number 17 has been allotted

to Semban. However, on a reading of the evidence of DW1, on a whole, would go to show that the defendant has not admitted the title of Semban in respect of the suit property, in particular. The plaintiff has not described that site number 17 is the suit property in his plaint. Further, according to the defendant, site number 16 and 17 had been allotted to him and his mother and accordingly, they are in the possession and enjoyment of the suit property. In such view of the matter, merely from the stray sentences found in the testimony of DW1, it cannot be inferred or concluded that he had admitted the title of the plaintiff's grandfather Semban in respect of the suit property. The evidence of DW1 read as a whole would only point out that he is stoutly disputing the alleged title of the plaintiff's grandfather in respect of the suit property and when it is found that to buttress his claim, the plaintiff has not produced the allotment in favour of his grandfather, not produced the material pointing that his grandfather had been in possession and enjoyment of the suit property etc., in such view of the matter, merely from one or two sentences here and there from the evidence of DW1, it cannot be concluded that the plaintiff has established his case satisfactorily.

13. The plaintiff in his plaint has only averred that he is in possession and enjoyment of the suit property pursuant to the Will executed by his grandfather in his favour in respect of the suit property dated 25.10.1984. Now, according to the plaintiff, after the demise of his grandfather, he has been in possession and enjoyment of the suit property pursuant to the above said Will. However, the plaintiff has not whispered as to when his grandfather had died. The death certificate of his grandfather has not been produced. Be that as it may, when according to the plaintiff he claims title to the suit property based upon the above said Will and when further according to the plaintiff, he claims to be in possession and enjoyment of the suit property pursuant to the above said Will and when the above said Will has been stoutly repudiated by the defendant as not true and a fabricated document, it is for the plaintiff to establish the authenticity of the said Will as per law. The above said will has come to be marked as Ex.A1. As rightly determined by the Courts below, on a mere perusal of Ex.A1, it would go to show that it is not a genuine Will. Ex.A1 is stated to be executed by Semban on 25.10.1984. Ex.A1 is found to have been engrossed on stamp papers which are found to have been purchased on 26.10.1984. This itself would go to show that the sale deed dated 25.10.1984 could not have been engrossed on stamp papers purchased on 26.10.1984 and the above aspects of the matter alone would go to establish the falsity of the will in question. Further, even in Ex.A1, it has not been established as to when the suit property had been allotted to Semban and what is the site number of the property allotted to Semban. Further, as rightly determined by the Courts below, the LTI of Semban seems to have been obtained only on the last page of the Will and that too on the left hand side of the Will, at

which place, LTI is normally not obtained and this would also go to expose the falsity of the Will in question. In addition to that, on a perusal of the Will marked as Ex.A1, it is found that there are various interlineations, corrections made in the Will and as regards the interlineations and corrections made in the first page of the Will, there seems to be some authentication. However, as regards the interlineations and the corrections made in the second and the third page of the Will, particularly, the corrections made in the description of the property, no authentication has been made and with reference to the same, there is no proper explanation adduced on the part of the plaintiff. This also would go to reveal that Ex.A1 Will is not a true document and accordingly, necessary authentication has not been carried out with reference to the interlineations and corrections made in the said document. In the light of the above position, I do not find any error or mistake in the determination of the Courts below that Ex.A1 Will has not been established to be a true and genuine document.

14. It the specific case of the plaintiff that he has acquired possession and enjoyment of the suit property only pursuant to the above said Will, on the demise of his grandfather. When the above case of the plaintiff has been stoutly challenged by the defendant, to evidence that the plaintiff is in possession and enjoyment of the suit property as described, pursuant to Ex.A1, on the demise of his father, no material whatsoever has been placed by the plaintiff. Particularly, when it is the specific case of the defendant that the plaintiff is residing 4 kilometres away from the suit property and when to repudiate the said defence, no material has been projected by the plaintiff to show that he has been residing in the suit property by placing acceptable and reliable documents and when the plaintiff has failed to establish the authenticity of Ex.A1 Will, the claim of the plaintiff that he is in possession and enjoyment of the suit property pursuant to the said Will, on the demise of his grandfather, as such, cannot be believed and accepted in any manner.

15. The plaintiff's counsel contended that admitted facts need not be proved and inasmuch as the defendant has admitted his title as above discussed, there is no need for the plaintiff to place any other material to buttress his case. However, when the so called admission projected by the plaintiff through the mouth of DW1 as above discussed the same cannot be construed as admission on the part of DW1 and on the other hand, the evidence of DW1 read as a whole would go to show that he is disputing the claim of the plaintiff both as regards the title as well as the possession and enjoyment of the suit property altogether, it is found that the said piece of evidence cannot at all be construed as admission as such of the plaintiff's case. In this connection, the plaintiff's counsel placed reliance upon the decision reported in 2015 (5) CTC 500 (G.M.Jagannathan and another Vs. H.Indira and another). The plaintiff's counsel

placed reliance upon Section 58 of the Indian Evidence Act to contend that admitted facts need not be proved. However, as per the proviso appended to Section 58 of the Indian Evidence Act, it is found that the Courts may in its discretion, require the facts admitted to be proved otherwise than by such admissions. Such being the position, when it is found that the so called admission of DW1 cannot be strictly deemed to be a clear admission of the plaintiff's case and when the plaintiff has miserably failed to establish his claim of title, possession and enjoyment of the suit property completely by failing to place any material worth acceptance and when in particular the Will projected by the plaintiff is found to be a false document, in such view of the matter, the plaintiff cannot be allowed to obtain the relief sought for merely on the so called admission of the defendant examined as DW1.

16. As above seen, the defendant is fighting tooth and nail the plaintiff's claim of title, possession and enjoyment of the suit property. In all aspects, the defendant has repudiated the plaintiff's case. Despite the above stand of the defendant, the plaintiff has not endeavoured to seek the relief of declaration in respect of the suit property. As rightly put forth by the defendant's counsel, on the defendant challenging the plaintiff's case altogether, particularly, his claim of title, possession and enjoyment of the suit property, pursuant thereto, the plaintiff should have taken steps to amend the plaintiff for seeking the relief of declaration. On the other hand, despite the specific stand of the defendant, with reference to the plaintiff's case, as above seen, the plaintiff has not ventured to seek the relief of declaration. This would only go to show that inasmuch as the plaintiff has no title to the suit property as such, he has not shown the inclination to seek the said relief from the Court and accordingly, it is found that on that score alone the plaintiff's suit should fail.

17. The defendant's counsel in support of her contentions placed reliance upon the decision reported in 2016-5-LW 211 (Sekar Vs. Ganesan). The principles of law outlined in the above said decision are taken into consideration and followed as applicable to the case at hand.

18. In the light of the above discussions, the contention of the plaintiff that he had successfully proved his possession of the suit property on the date of the suit, as such, cannot be accepted and it is found that the Courts below had rightly held that the plaintiff had miserably failed to establish his title, possession and enjoyment of the suit property and when there is no infirmity attached to the same whatsoever, the substantial question of law formulated in this second appeal is accordingly answered against the plaintiff.

19. At the end, the second appeal is dismissed with cost. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar(CCC)

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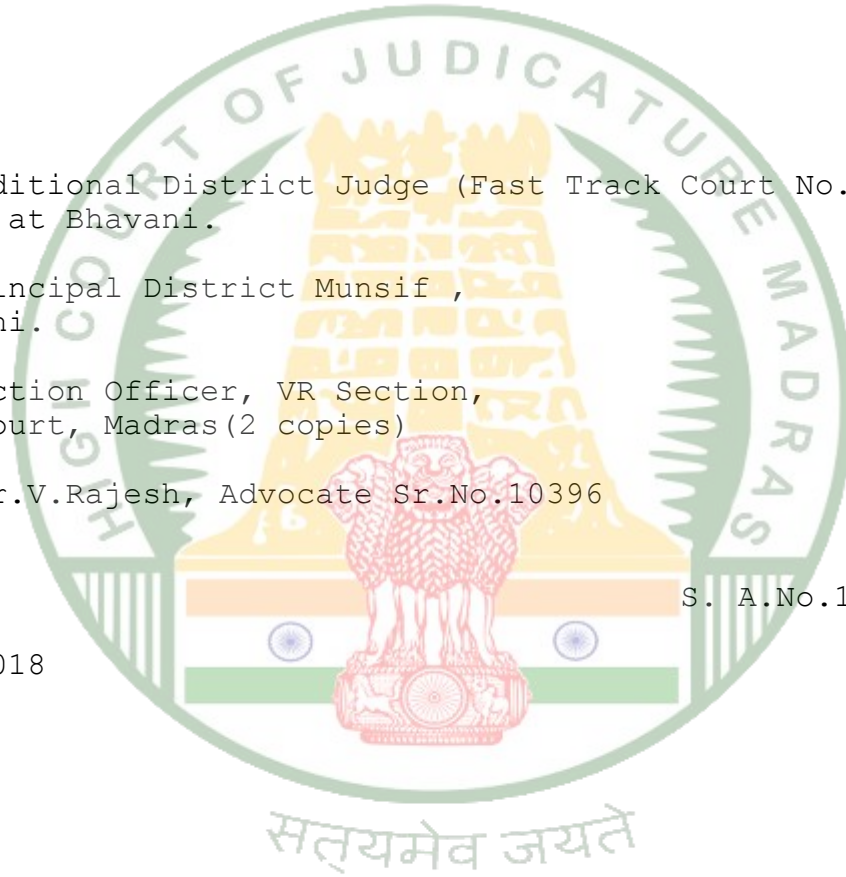
To

1. The Additional District Judge (Fast Track Court No.IV), Erode at Bhavani.
2. The Principal District Munsif , Bhavani.
3. The Section Officer, VR Section, High Court, Madras (2 copies)

+1cc to Mr.V.Rajesh, Advocate Sr.No.10396

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SKV(CO)
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