

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 04.09.2017

Judgment Pronounced on : 20.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE S.BASKARAN

S.A.No.772 of 2011
and MP.No.1 of 2011

Subbulakshmi Ammal ... Appellant//Plaintiff

Vs.

1.Rangaswami
2.Shanmugam
3.Kanniammal
4.Chellammal
5.Chandra
6.Nagaraj
7.Nagalakshmi ... Respondents/Defendants

(Respondents 1,3 to 7 have been set exparte in the Lower court,hence notice may be dispensed with)

This second appeal has been filed under Section 100 of CPC, against the judgment and decree dated 16.12.2009 made in A.S.No.39 of 2007 passed by the learned Subordinate Judge, Maduranthagam confirming the Judgment and decree dated 12.04.2006 in O.S.No.419 of 1999 passed by the learned District Munsif, Maduranthagam.

For Appellant : Mr.R.Rathna Thara
For Respondents : Mr.S.N.Sankaravadivel for R2

JUDGMENT

This second appeal arises out of the Judgment and Decree dated 16.12.2009 made in A.S.No.39 of 2007 passed by the learned Subordinate Judge, Maduranthagam confirming the Judgment and decree dated 12.04.2006 in O.S.No.419 of 1999 passed by the learned District Munsif, Maduranthagam.

2. Brief facts of the case is as follows:-

The plaintiff filed the suit for bare injunction. According to the plaintiff, the suit property was purchased in her mother-in-law's name in the year, 1944. Her mother-in-law Alamelu Ammal executed a settlement deed in favour of the plaintiff on 30.06.1981. The settlement deed was accepted by the plaintiff and it was acted upon. From the date of settlement, the plaintiff is in possession and enjoyment of the suit property. The patta stands in the plaintiff name. The defendants who are strangers to the suit property made attempt to tress pass into the suit property on 19.11.1999 and subsequently the defendant attempted to disturb the possession of the plaintiff, she came forward with the suit for bare injunction.

3. On the other hand, denying the claim of the plaintiff, the defendants contended that the plaintiff has not title or possession of the suit property. The plaintiff's mother-in-law Alameluammal did not have title to the suit property and she cannot transfer any title in favour of the plaintiff. The settlement deed dated 30.06.1981 executed by the said Alameluammal will no way any title to the plaintiff. The said settlement deed is not valid and binding upon the defendants and their father. The third defendant states his grand father Kanny Gounder and his two brothers Madurai Gounder and Raghava Gounder were living in a joint family and Madurai Gounder was the Manager of the family. For the benefit of the joint family land measuring 1 acre 65 cents in Survey No.325/5 was purchased in the name of Alameluammal wife of Madurai Gounder. The joint family was in possession and enjoyment of the property till division effected in 1935. In the said Division, Madurai Gounder was allotted 90 cents in the southern portion while Kanny Gounder and Raghava Gounder were allotted 75 cents each in the northern portion of Survey No.325/5 with other properties. After the family division in 1935, Madurai Gounder and his three sons Duraisamy, Paulsamy and Sreenivasan were living as joint family. Subsequently, on 12.10.1973, they divided their property in to 4 shares and each one was allotted one such share. Subsequent to the division, list of properties allotted to each sharer was written on the same day and on the same day signed by Madurai Gounder and Alameluammal and their three sons. In the said partition, Madurai Gounder and Alameluammal were not given any property in Survey No.325/5. While three sons of Madurai Gounder were each allotted 30 cents out of 90 cents in the southern portion. The same is now sub divided as 325/5 and 325/5C. As such, the said Alameluammal has no property allotted to her and the settlement deed executed by her in favour of plaintiff is without title and the said document is void.

3.1) The 3rd defendant further submits that the northern 75 cents in Survey No.325/5 was allotted to Kanny Gounder and Raghava Gounder in family partition took place during 1935 and the same is now sub divided as Survey No.325/5-A. After the family division, Kanny Gounder and Raghava Gounder wherein possession and after the demise, the legal heirs are having title and possession of the suit property. The present suit is filed in respect of the northern 75 cents out of 1 acre 65 cents in Survey No.325/5, over which neither Alameluammal had title nor the plaintiff acquired title. The said Kanny Gounder and Raghava Gounder died leaving behind 4 sons respectively as their legal heirs. As the 3rd defendant purchased the share of Ealumalai, Ramasamy, Duraisamy and Rangasamy in the suit property and as the legal heirs acquired title to the share of his father Jayaram Gounder. Thus, the third defendant claims absolute title to other portion of the suit property. The defendants also states that one Balu son of Raghava Gounder executed settlement deed dated 06.12.1964 in favour of his wife Chinnakulanthai Ammal and bequeathed is share of 11 cents in the suit property. Likewise, Raghava Gounder executed the settlement deed in favour of his daughter-in-law Pushpavathi Ammal on 10.05.1965 there by the said Pushpavathi Ammal acquired title to 16 cents of the suit property. The said Chinnakulanthai Ammal and Pushpavathi Ammal acquired title to 21 cents in the suit property and they are in possession and enjoyment of the same. Both of them orally sold their property to the third defendant. The patta relating to Survey No.325/5 originally stood in the name of Alamelu Ammal since the sale deed was in her name. Subsequently, the plaintiff in collusion with the Alamelu Ammal seems to have obtained joint patta. The plaintiff did not if any title to the suit property and they are not in possession and enjoyment of the same. The husband of the plaintiff made attempt to crop the property in Survey No.325/5 by filing suit in O.S.No.237/1982 before the District Munsif Court, Maduranthagam against the father of the third defendant and others. After contest, the said suit was dismissed. In the earlier suit, the property in Survey No.325/5 measuring to an extent of one acre 65 cents was held to be joint family property of Madurai Gounder and his two brothers, the present suit is the second round litigation initiated by the husband of the plaintiff by setting of his wife. The third defendant is in continuous possession of the suit property for more than statutory period and perfected his title to the suit property by adverse possession and prescription. The plaintiff has no cause of action. Thus, the third defendant seeks for dismissal of the suit.

4.After contest, the trial Court dismissed the suit. Aggrieved upon that the plaintiff preferred the first appeal before the lower appellate Court and after contest, the lower appellate Court dismissed the first appeal and confirmed the decree and judgment of the trial Court. Now, aggrieved upon that the plaintiff has come forward with this second appeal.

5.At the time of admission, the following substantial question of law was framed by this Court for consideration.

1)Whether the Courts below were right in holding that the settlor has to right over the suit property and the appellant will not get any right under Ex.A1?

2)Whether the courts below were right in holding that the appellant is not in possession of the property and the respondents perfected title by adverse possession?

6.The learned counsel appearing for the appellant/plaintiff would submit that the plaintiff's mother had purchased the suit property by means of a registered sale deed. As the owner of the property, she had settled the suit property in favour of his daughter, namely, the plaintiff. Ex.A1 sale deed stands in the name of the mother of the plaintiff Alamelu Ammal. The same was not challenged by the defendants. The lower Court wrongly held that Ex.A2 patta is fabricated document for the purpose of the case. When such evidence was let in by the defendants fact that Ex.A2 joint patta was in the name of the appellant/plaintiff and his mother Alamelu Ammal which will prove the title and possession of the plaintiff was not considered by the Court below. The first appellate Court also failed to consider that Ex.A3 sale deed under which Alamelu Ammal acquired 1.66 cents was dated 29.01.1994 and as such they could not be any partition of the suit property in 1935 as alleged by the defendants. Both the Courts below failed to consider the fact that under Ex.B1 partition deed dated 12.10.1973 out of total extent of 1.66 cents only 90 cents was given to the three sons and the remaining land was retained by the Alamelu Ammal and the same has been settled in favour of the plaintiff as per Ex.A1 settlement deed. The Courts below also failed to consider the fact that the third defendant did not produce any document to prove his title and possession. The claim of the defendant on the ground of adverse possession is not maintainable as she is a close

relative of the plaintiff's husband. Thus, the appellant/plaintiff contends that the finding of the Courts below is not proper and in accordance with law. However, the trial Court as well as the first appellate Court based upon the oral evidence of D.W.1 and the un registered partition deed, negatived the claim of the plaintiff. It is against law. Hence, interference of this Court is warranted and seeks to entertain the appeal.

7.The learned counsel appearing for the respondents/ defendants would submit that after elaborate discussion of both oral and documentary evidences, both the Courts below came to the correct conclusion to dismiss the suit and there is no infirmity on the findings of the Courts below. Further, there is no substantial question of law involved in this appeal. Hence, the second appeal is sought to be dismissed.

8.I have heard the rival submissions and also perused the materials available on record.

9.On perusal, it is clear that the plaintiff came forward with the suit for bare injunction against the defendants on the strength of settlement deed Ex.A1. From the beginning, the defendants denied the title of the plaintiff. Even then, the plaintiff has not chosen to alter the suit for declaratory relief. In this regard, on the side of the appellant/plaintiff, the learned counsel relied on a ruling reported in 2016 (2) CTC 131 in S.SHANMUGAM AND OTHERS Vs. CHANDRASEKARAN, wherein it is held as follows:-

11.....Thus, it is crystal clear that in respect of 11 cents comprised in S.No.63/7 both parties have got documents and they are making rival claims. When that be so, it would have been appropriate for the plaintiff to amend the suit so as to include the prayer for a Decree for Declaration of Title also. But, the plaintiff has failed to do so. In such view of the matter, I have to necessarily answer the Substantial Question of Law only in favour of the defendants. But, at the same time, in order to avoid multiplicity of litigations, I deem it appropriate to remit the matter back to the Trial Court to enable the plaintiff to amend the suit appropriately and to try the same in accordance with law. Thus, I am inclined to set aside the decree and judgment passed by the Courts below."

In the above said case, both the parties have got documents and they are making rival claims. In such circumstances, it would be appropriate for the plaintiff to amend the suit so as to include the prayer for declaration of title also. The plaintiff has failed to do so. Hence, the question of law was answered against the plaintiff. To avoid the multiplicity of litigation, the matter was remanded for making amendment and to try the suit again. However, in the case on hand, the factual situation is different. From the beginning, the defendants have denied the title and also the plaintiff's mother Alamelu Ammal was also party to the partition deed. In such circumstances, after knowing the facts that the properties stands in her name, fell to the share of her three sons at the rate of each 30 cents and in turn, they have also sold the same to the third defendant, the above said citation is not applicable to the case on hand as facts are entirely different from the facts in the present case.

10.The specific case of the defendants is that the suit property originally belongs to the husband of the said Alamelu Ammal and his brothers and from and out of joint family funds, 1 acre 63 cents of land was purchased in the name of Alamelu Ammal and it is not the self acquired property of the said Alamelu Ammal. The above said facts was spoken by P.W.1 herself as follows:-

“1973-ஆம் ஆண்டு நானும் என்தகப்பனாரும் மற்றும் சகோதரர்களும் சேர்ந்து எங்கள் குடும்ப சொத்தை பிரித்துக் கொண்டோம். அந்த பாக்பிரிவினையில் என்தாயாரையும் ஒரு பார்ட்டியாக சேர்த்துத் தான் பாகம் பிரித்துக் கொண்டோம். அந்த பாக்பிரிவினை ஆவணத்தில் என்தாயார் கையெழுத்து போட்டுள்ளார். தென்புறத்தில் உள்ள 90 சென்டும் என்தசகோதரர்கள் மூன்று பேருக்கும் 30 சென்ட் வீதம் பிரித்துக் கொடுக்கப்பட்டது என்றால் சரிதான். அதன் அடிப்படையில் நாங்கள் 30 சென்ட் நிலத்தை பிரித்து கிரையம் கொடுத்துள்ளோம்.”

So, the plaintiff as P.W.1 came to know about the partition between her brothers and mother. The above said property was partitioned in the year, 1973 itself. Ex.A1 settlement deed was executed on 30.06.1981. On the date of settlement, Alamelu Ammal was not the owner of the suit property. Out of 1 acre 63 cents, 90 cents were allotted to the Mathura Gounder. The Northern side 75 cents land were allotted to Kanni Gounder and Raghava Gounder in the family partition in 1935. The plaintiff and her mother accepted the partition of 1 acre 63 cents. Out of the said land, 90 cents land were allotted to her husband and remaining 75 cents land allotted to the brothers of her husband, namely,

Kanni Gounder and Raghava Gounder. The sons of Alamelu Ammal partitioned their 90 cents, and the same was accepted by her. However, the plaintiff came forward with the suit regarding the remaining 75 cents which were originally allotted to Kanni Gounder and Raghava Gounder. The legal heirs of Kanni Gounder and his sons Ealumalai Gounder, Subramaniya Gounder, Ramasamy Gounder and Jayarama Gounder. The said Jayarama Gounder son is Shanmugam, who is the 3rd defendant in the suit. The said Raghava Gounder died leaving behind 4 sons, namely, Duraisamy, Ramasamy, Balu and Thangavelu. Already Ealumalai Gounder, Ramasamy Gounder, Duraisamy Gounder and Rangasamy Gounder sold their share to the third defendant.

11. On the side of the plaintiff, She has produced Ex.A1 to Ex.A3 before the trial Court. Ex.A1 is the settlement deed dated 30.06.1981. Ex.A2 is Patta dated 25.07.1987 which stands in the name of the plaintiff and her mother Alamelu Ammal. Ex.A3 is the sale deed dated 29.01.1944 standing in the name of Alamelu Ammal. Except these documents, to prove the possession, the plaintiff has not produced any piece of paper. The said Alamelu Ammal is party to Ex.B1 partition deed. In the above said partition, Ex.A3 property measuring 90 cents was also divide through Ex.B1. When Alamelu Ammal accepted the portion of the property as her husband and her brothers property, she cannot claim the remaining property as her own property in the year 1981 through Ex.A1. Therefore, both the Courts below came to the conclusion that the plaintiff miserably failed to prove her possession on the date of her suit and further more even if her title to the suit property was denied by the defendants, she has not chosen to alter the suit for declaratory relief. As per the Apex Court verdict which is reported in 2008 (6) CTC 237 in ANATHULU SUDHAKAR Vs. P.BUCHI REDDY AND OTHERS, it is held as follows:-

"12. We may however clarify that a prayer for declaration will be necessary only if the denial of title by the defendant or challenge to plaintiff's title raises a cloud on the title of plaintiff to the property. A cloud is said to raise over a person's title, when some apparent defect in his title to a property, or when some prima facie right of a third party over it, is made out or shown. An action for declaration, is the remedy to remove the cloud on the title to the property. On the other hand, where the plaintiff has clear title supported by documents, if a trespasser without any

claim to title or an interloper without any apparent title, merely denies the plaintiff's title, it does not amount to raising a cloud over the title of the plaintiff and it will not be necessary for the plaintiff to sue for declaration and a suit for injunction may be sufficient. Where the plaintiff, believing that defendant is only a trespasser or a wrongful claimant without title, files a mere suit for injunction, and in such a suit, the defendant discloses in his defence the details of the right or title claimed by him, which raises a serious dispute or cloud over plaintiff's title, then there is a need for the plaintiff, to amend the plaint and convert the suit into one for declaration. Alternatively, he may withdraw the suit for bare injunction, with permission of the court to file a comprehensive suit for declaration and injunction. He may file the suit for declaration with consequential relief, even after the suit for injunction is dismissed, where the suit raised only the issue of possession and not any issue of title."

When the defendants cast the cloud upon the title of the plaintiff, the plaintiff ought to have amended the plaint for the relief of declaration, failing which the suit has to be thrown out. On relying upon the above said Apex Court verdict, even if Ex.A1 is a registered sale deed in the name of Alamelu Ammal, as she has accepted the sale deed which was purchased from and out of joint family funds of her husband and his brothers, she cannot claim the same as her own property. Hence Ex.A1 is not a valid document. Therefore, the findings of the both the Courts below have no infirmity and substantial question of law raised in this appeal is answered against the appellant/plaintiff.

12.As far as the second substantial question of law is concerned, the defendants proved their title as well as possession and enjoyment of the property as their own property. Hence, both the trial Court as well as the lower appellate Court have not framed any issue with regard to the adverse possession. On the side of the appellant/plaintiff, the learned counsel relied on a ruling reported in 2009 (13) SCC 229 in L.N.ASWATHAMA AND ANOTHER Vs. P.PRAKASH, wherein it is held as follows:-

"13.In law, possession follows title. The plaintiffs having established title to the suit property, will be entitled to decree for possession, unless their right to the suit property was extinguished, by reason of the defendant being in adverse possession for a period of twelve years prior to the suit."

In the above said referred case, the plaintiffs proved the title. So, it was held that the possession follows title. However, if the right of the plaintiff was extinguished by reason of the defendant being in adverse possession for a period of twelve years prior to the suit. The principle of possession follows title will not be applicable, In the case on hand, the plaintiff neither established her title nor possession. The plaintiff herself admitted in her evidence that "தாவா தாக்கல் செய்வதற்கு முன்பிருந்தே தாவா சொத்தின் சுவாதீனம் 3ஆம் பிரதிவாதியின் வசம் இருக்கிறது." The admission of P.W.1 is sufficient to negative the claim of the plaintiff and more over it is crystal clear that on the date of suit, the plaintiff was not in possession and enjoyment of the suit property. Hence, the possession follows title is certainly not applicable to the facts of this case. As such, the above said ruling is not applicable to the facts of this case. Therefore, this Court comes to the conclusion that the 2nd Substantial Question of Law is also unsustainable and the same is answered in favour of the defendants. Thus, view from in any angle, the findings of the Courts below cannot be found fault with. Therefore, this Court comes to the conclusion that there is no merit in the second appeal and the same has to fail. The point is answered accordingly.

13.In the result, the second appeal is dismissed. No costs. The Judgment and decree dated 16.12.2009 made in A.S.No.39 of 2007 by the learned Subordinate Judge, Maduranthagam is hereby confirmed. Connected MP is closed.

Sd/--
Assistant Registrar(CS)
//True Copy//

Sub Assistant Registrar

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To

1.The Subordinate Judge,
Madhuranthagam.

2.The District Munsif Court,
Madhuranthagam.

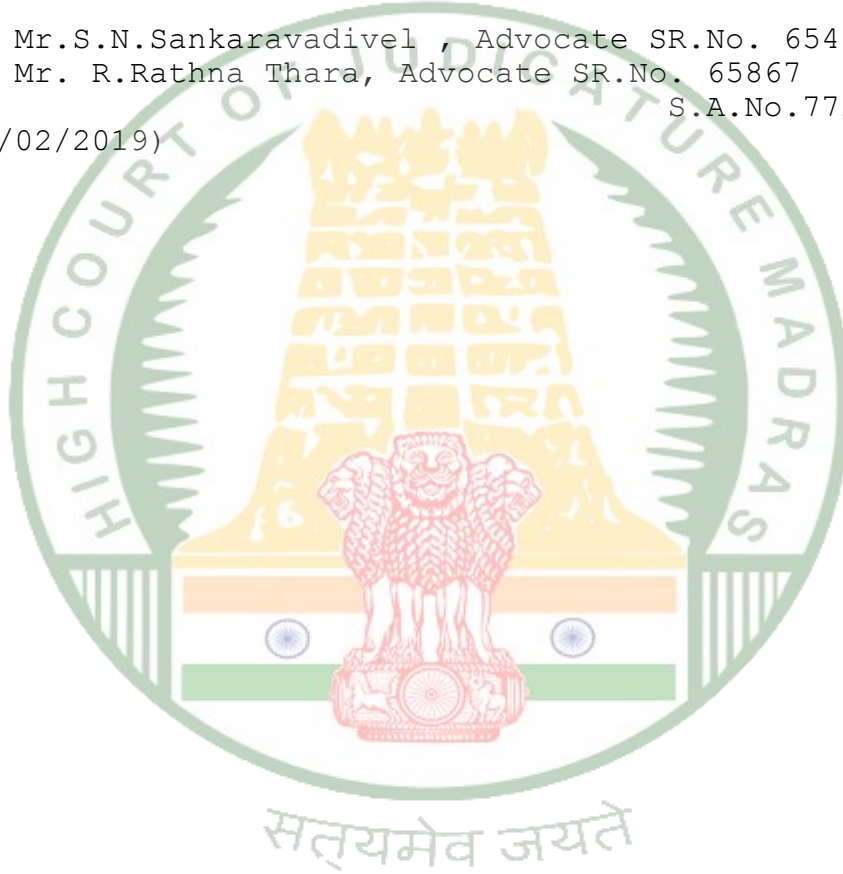
3. The section officer,
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+lcc to Mr.S.N.Sankaravadivel , Advocate SR.No. 65455

+lcc to Mr. R.Rathna Thara, Advocate SR.No. 65867

S.A.No.772 of 2011

A.SK(01/02/2019)



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