

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.06.2018

PRONOUNCED ON : 29.06.2018

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.2019 of 2004

Deenan ... Appellant/Plaintiff

Vs.

1. Devachellappa
2. Kolanji ... Respondents/Defendants

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree of the Additional District and Sessions Judge, Fast Track Court, Kallakurichi, passed in A.S.No.240/02, dated 28.06.2004, reversing the judgment and decree passed by the learned III Additional District Munsif, Kallakurichi, passed in O.S.No.136/98, dated 30.04.2001.

For Appellant : Mr. E.Vijay Anand

For Respondents: Mr. P.Srinivas

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 28.06.2004, passed in A.S.No.240/02, on the file of the Additional District and Sessions Judge, Fast Track Court, Kallakurichi, reversing the judgment and decree dated 30.04.2001, passed in O.S.No.136/98, on the file of the III Additional District Munsif Court, Kallakurichi.

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

3. Suit for declaration and permanent injunction.

4. The case of the plaintiff, in brief, is that the suit property originally belonged to his grand father Seeralan and thereafter inherited by his father Mangalanathan and after Mangalanathan had left to north India to eke out his livelihood, it is only the plaintiff, who is his only son, was enjoying the suit property as the family manager by paying kist etc., and the patta in respect of the suit property stands in the name of Mangalanathan and Mangalanathan had leased out the suit property in favour of the third defendant during 1990 and thereafter, the plaintiff on 10.12.97 discharged the bogiyam and engaged in the cultivation of the suit property and thereby, the plaintiff has also on account of his continuous enjoyment prescribed title to the suit property by way of adverse possession. The defendants have no right, title or interest in respect of the suit property and on the other hand, at the instigation of others, they started disputing the plaintiff's title, possession and enjoyment of the suit property and left with no other alternative, according to the plaintiff, he has been necessitated to lay the suit for appropriate reliefs.

5. The case of the defendants 1 and 2, in brief, is that the suit laid by the plaintiff is not maintainable either in law or on facts. After denying the plaint averments in toto, according to the defendants, the suit property originally belonged to Munian, son of Aandaan and one Parvathi ammal, wife of Kullan had purchased the suit property from Munian by way of a registered sale deed dated 03.05.1947 for herself and as a guardian of her minor son and enjoying the suit property by paying kist etc., and the patta was also mutated in the name of Parvathi ammal. Parvathi ammal died in the year 1965 leaving her daughter Jagadhambal as her legal heir and Parvathi ammal's husband predeceased her and Jagadhambal enjoyed the suit property and on account of her long and continuous possession of the suit property, prescribed title to the suit property by way of adverse possession and Mangalanathan, died long prior to the suit and the first defendant had purchased 0.26 cents in the suit survey number from Jagadhambal under a registered sale deed dated 10.11.1997 for a valid consideration within specific boundaries and the second defendant purchased 0.35 cents out of the 0.61 cents in the suit survey number from Jagadhambal by way of a registered sale deed dated 10.11.1997, for a valid consideration and since then, it is the defendants 1 and 2, who are in possession and enjoyment of their respective purchased portions of the suit property and enjoying the same by paying kist etc., and the plaintiff has never been in the possession and enjoyment of the suit property at any point of time and there is no cause of action for the suit and the suit is liable to be dismissed.

6. In support of the plaintiff's case, PWs 1 to 3 were examined, Exs.A1 to A9 were marked. On the side of the defendants, DWs 1 and 2 were examined, Exs.B1 to B14 were marked.

7. The trial Court, on an appreciation of the materials placed on record, both oral and documentary and the submissions made, 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 1 and 2, dismissed the suit laid by the plaintiff. Impugning 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:

1. Whether the appellate Court is right in holding that only the Revenue documents just prior to the filing of the suit is relevant for deciding the issue of declaration and injunction?
2. Whether the first appellate Court is right in not granting the relief of declaration and injunction without going into the antecedents of the title to the suit property?
3. Whether the appellate Court is correct in not declaring the title in favour of the appellants without considering the fact that no document has been produced for proving possession of the defendants vendor, viz., Jagadambal.

9. The plaintiff claims title to the suit property from his grandfather Seeralan and through his father Mangalanathan. According to the plaintiff, the suit property originally belonged to his grandfather Seeralan. However, it has not been averred in the plaint as to how his grandfather had acquired title to the suit property. It has not even been averred in the plaint that the suit property belonged to Seeralan ancestrally. Be that as it may, there is no material placed on record to hold that Seeralan had acquired title to the suit property in the manner known to law. The plaintiff has traced title to the suit property from his grandfather and through his father Mangalanathan and thus according to the plaintiff, he is in possession and enjoyment of the suit property by paying kist etc., However, as rightly determined by the first appellate Court, it is found that there is no valid material placed on behalf of the plaintiff to hold that he has a valid title to the

suit property. The documents marked as Exs.A1 to A5 being the patta, kist receipts, chitta and adangal extracts are all found to have come into existence after the institution of the suit. That apart, as rightly put forth by the defendants, the alleged patta granted in favour of the plaintiff by way of Ex.A1 has been cancelled vide order dated 25.02.99, marked as Ex.B11. No doubt, Ex.B11 has also come into existence after the institution of the suit. Be that as it may, the patta relied upon by the plaintiff marked as Ex.A1 is found to be cancelled. As above seen, Exs.A1 to A5 are all documents which have come into existence after the institution of the suit. Therefore, by way of the abovesaid revenue documents as such, we cannot safely conclude that the plaintiff has valid title, possession and enjoyment of the suit property. Even, as per the case of the plaintiff, his father had left to north India to eke out his livelihood and therefore, it is found that his father would not have been in the possession and enjoyment of the suit property as such. Accordingly, it is found that the plaintiff has projected a case as if his father had leased out the suit property in favour of the third defendant and with reference to the abovesaid lease projected by the plaintiff, it is found that there is no material placed to accept the same. Conveniently, the third defendant remained ex-parte. The plaint does not disclose as to when the suit property was leased out to the third defendant by the plaintiff's father, other than vaguely stating that it was leased out during 1990. However, no material as such has been placed to hold that prior to 1990, the plaintiff's father had been in the possession and enjoyment of the suit property. With reference to the alleged lease arrangement projected, there is no evidence placed on the side of the plaintiff as to how the same had come to be determined. The plaintiff would also claim that he has discharged the bogiyam and obtained the possession of the suit property on 10.12.1997. However, even with reference to the alleged bogiyam arrangement, there is no clear plea in the plaint as well as no material placed by the plaintiff to evidence the same. Such being the position, as rightly determined by the first appellate Court, when there is no document forth coming on the part of the plaintiff to show the genuineness of the lease arrangement, bogiyam arrangement and discharge of bogiyam etc., as rightly found, all these pleas has been made by the plaintiff to give a colour of title in respect of the suit property. Accordingly, it is found that the plaintiff is unable to place any document, as such, to safely conclude that the suit property has been in the possession and enjoyment of the plaintiff and his ancestors as put forth in the plaint.

10. As regards the other documents projected by the plaintiff marked as Exs. A6 to A9, they are all found to be marked through PW3, Assistant, working in the Taluk office, Kallakurichi. The documents are shown as adangal extract in the

name of one A.Mari ranging from 1387/1391 to 1393 fasli. Accordingly, it is found that other than Exs.A6 to A9, there is no other material placed by the plaintiff to show his title, possession and enjoyment in respect of the suit property. As rightly found by the first appellate Court, the plaintiff has not traced his title clearly from A.Mari, in whose name the adangal extract Exs.A6 to A9 stands. The plaint averments, as above seen, would only go to show the claim of title of the plaintiff is only through his grandfather. Thus, it is found that the documents marked as Exs.A6 to A9 would not in any manner advance the plaintiff's claim of title, possession and enjoyment of the suit property as on the date of the suit and accordingly, as rightly determined by the first appellate Court, the plaintiff has not placed any material to hold that he has been in possession and enjoyment of the suit property 12 years prior to the filing of the suit and such being the position, merely from Exs.A6 to A9 and when the plaintiff has not established as to how he traces the source of title from A.Mari, in toto, it is seen that, on the basis of the documents projected by the plaintiff, no declaration of title could be granted in favour of the plaintiff in respect of the suit property.

11. The defendants claim that the suit property belongs to Munian, son of Aandaan. In this connection, the defendants have marked the sale deed dated 03.05.1947 as Ex.B1 to show that Munian son of Aandaan had alienated the suit property in favour of Parvathi ammal and from the kist receipts marked as Exs.B3 to B9, we can see that pursuant to Ex.B1, it is only Parvathi ammal and her daughter Jagadhambal, who had been in possession and enjoyment of the suit property by paying kist etc., Further, the case of the defendants is that they had acquired the portions of the suit property from Jagadhambal, the daughter of Parvathi ammal, by way of registered sale deeds dated 10.11.1997, which documents have come to be marked as Exs.B2 and 14 and on a perusal of the same, it is found that the defendants 1 and 2 had acquired the suit property from Jagadhambal and further from the adangal extract marked by the defendants as Ex.B13 for the faslis 1394 to 1402, it is seen that the same stands in the name of Parvathi ammal, which would only go to further establish that the suit property has been in the possession and enjoyment of Parvathi ammal as put forth by the defendants. Accordingly, it is found that as rightly determined by the first appellate Court, the defendants have placed documents of title to evidence their claim of title, possession and enjoyment of the suit property and on the set of documents projected by the defendants, in the nature of preponderance of probabilities, it is found that the defendants have a better title to the suit property than the claim of title projected by the plaintiff. That apart, it is also found from Ex.B10, the defendants' vendor Jagadhambal had succeeded in the civil suit laid by her in

O.S.No.637/95 against Seetharaman, the third defendant and as per the decree obtained by her in A.S.No.74/98, it is found that she had been granted the decree in O.S.No.637/95. Accordingly, by way of the said document also, it is found that the defendants have established the claim of title of their vendor Jagadhambal in respect of the suit property.

12. On the whole, it is found that the documents projected by the plaintiff, all being only revenue documents and as above discussed cannot be safely relied upon to uphold the case of title, possession and enjoyment of the plaintiff in respect of the suit property and when most of the abovesaid documents are also found to have come into existence after the institution of the suit and also dated long back to the institution of the suit and when the plaintiff has failed to establish his trace of title to the suit property as projected in the plaint and on the other hand, when it is found that the defendants have established their claim of title, possession and enjoyment of the suit property right from 1947 onwards, accordingly, it is found that the first appellate Court is justified in negating the reliefs sought for by the plaintiff and upholding the defendants' version. Such being the position, in my considered opinion, no substantial question of law is involved in this second appeal. Be that as it may, the substantial questions of law formulated in this second appeal are answered against the plaintiff and in favour of the defendants.

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

Sd/-
Assistant Registrar(CS VI)

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Sub Assistant Registrar

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To

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1. The Additional District and Sessions Judge,
Fast Track Court, Kallakurichi.
2. The III Additional District Munsif Court,
Kallakurichi.

3. The Section Officer,
V.R.Section, High Court, Madras.(2 copies)

+1cc to Mr. E.Vijay Anand, Advocate sr.no.42148
+1cc to Mr.P.Srinivas, Advocate sr.no.42368

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