

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.04.2018

PRONOUNCED ON : 26.04.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.2101 of 2003

1.N.K.Shanmugasundaram

2.N.K.Jagannathan (Deceased)

3.Ammasai Ammal

4.C.Indirani

5.J.Raghavapriya

6.J.Lopikapriya

...

Appellants

(Appellant 3 recorded as LR of the deceased 2nd Appellant viz.N.K.Jaganathan and Appellants 4 to 6 brought on record as LRS of the deceased 2nd appellant viz., N.K.Jaganathan vide Court order dated 15.03.2018 made in CMPs. No.4304 & 4305/2018 in S.A.No.2101 of 2003)

Vs.

1.K.Radhakrishnan

2.K.Srinivasan

3.Sivakumar

...

Respondents

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 28.08.2003 passed in A.S.No.61 of 1998 on the file of the I Additional Subordinate Court (Additional charge of Principal Sub Court), Gobichettipalayam, confirming the Judgment and Decree dated 16.10.1998 passed in O.S.No.269 of 1993 on the file of the District Munsif Court, Gobichettipalayam.

For Appellants : Mrs.R.Meenal

For Respondents : Mr.J.Hariharan
for Mr.V.Nicholas

JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 28.08.2003 passed in A.S.No.61 of 1998 on the file of the I Additional Subordinate Court (Additional charge of Principal Sub Court), Gobichettipalayam, confirming the Judgment and Decree dated 16.10.1998 passed in O.S.No.269 of 1993 on the file of the District Munsif Court, Gobichettipalayam.

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 plaintiffs, in brief, is that the plaintiffs are the sons of V.Karuppuswamy Mudaliar, who died on 03.06.1992 and the defendants 1 & 2 are the sons of the deceased Karuppa Nadar and the third defendant is the mother of the defendants 1 & 2 and the properties described in the plaint schedule originally belonged to Palanimooppan and Karuppa Nadar, the father of the defendants 1 & 2 filed a suit in O.S.No.378 of 1949 against Palanimooppan for declaration on his alleged title and permanent injunction with reference to an extent of 7.53 acres of land in the suit survey number and as per the compromise decree passed in the said suit, Palanimooppan became entitled to 3.76 1/2 acres and the father of the defendants 1 & 2 became entitled to the remaining 3.76 1/2 acres and accordingly, Palanimooppan continued to be in possession of the property allotted in his favour as aforesaid and even in the criminal case pending before the abovesaid parties in Criminal Appeal No.362 of 1958, the abovesaid compromise decree was confirmed and accordingly, by a regular partition between the parties, northern ½ share was allotted to Palanimooppan and the southern ½ share was allotted to Karuppa Nadar and Palanimooppan sold the property allotted to him to Periyaswamy on 12.06.1958 and an agreement to reconvey was executed by Periyaswamy in favour of Palanimooppan and the said right of reconveyance was assigned in favour of the plaintiffs' father Karruppusamy Mudaliar and accordingly, on the failure of Periyaswamy to reconvey the suit property, the Plaintiffs' father, on the basis of the assigned right of reconveyance, filed a suit for specific performance in O.S.No.42 of 1962 and the said suit was decreed and pursuant to the execution proceedings initiated, the plaintiffs' father was found entitled to the suit property and accordingly, the sale deed has come to be executed in his favour on 13.03.1963 and based on the Court order, he took possession of the same through the Court process on 11.06.1965 and thus, the plaintiffs' father had acquired absolute title, possession of the suit property and been enjoying the same by paying kist and after the demise of the plaintiffs' father, it is the

plaintiffs, who are in possession and enjoyment of the suit property. During the suit survey, the property owned by the parties had come to be subdivided and in respect of the same, proceedings were initiated before the revenue authorities and patta granted in favour of the plaintiffs' father was affirmed in the said proceedings and accordingly, the plaintiffs had been in possession and enjoyment of the suit property from the days of their father and while so, the defendants again had laid a suit in O.S.No.125/1991 against the plaintiffs' father for declaration of title and injunction in respect of the entire 7.53 acres of land. However, the said suit had come to be dismissed as abated on the failure of the defendants to take appropriate steps on 15.09.1992 and no interim order was also granted in favour of the defendants in the said suit and thus, the plaintiffs' title and possession of the suit property had been again legally confirmed and therefore, inasmuch as the defendants again interfered with the plaintiffs' possession and enjoyment of the suit property and as the plaintiffs' father had bequeathed the suit property in favour of the plaintiffs by way of a Will dated 01.06.1992 in favour of the plaintiffs, 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 after denying all the averments contained in the plaint, put forth a claim that by way of the resurvey proceedings effected by the revenue authorities, the plaintiffs seek to claim more extent of land in their possession and enjoyment, than, to which, they are entitled to and accordingly, it is their case that the plaintiffs had created records with the assistance of the revenue authorities, as if an extent of 4.10 acres are in their possession and enjoyment and further, according to the defendants, the judgement and decree passed in O.S.No.378 of 1949 had not come into effect and further, the decree passed in O.S.No.378 of 1949 had not been confirmed in the criminal proceedings and also denied the claim of the plaintiffs that their father had taken possession of the suit property by way of the Court process in the execution proceedings levied in O.S.No.42 of 1962 and according to the defendants, the property comprised in suit survey number had not been divided and there has been no division of the property comprised in suit survey number as northern half and southern half as put forth in the plaint and accordingly, disputed the claim of the plaintiffs as regards the title, possession and enjoyment of the suit property. Further, the defendants have also feigned ignorance about the Will dated 01.06.1992 projected by the plaintiffs. The further case of the defendants is that the suit in O.S.No.125 of 1991 has not been properly disposed of on merits and the suit laid by the plaintiffs without impleading all the legal representatives of Karrupaswamy Mudaliar is not

maintainable and hence, the suit is liable to be dismissed.

6. In support of the plaintiffs' case, PWs 1 and 2 were examined and Exs.A1 to A59 were marked. On the side of the defendants, DWs1 & 2 were examined and Exs.B1 to B24 were marked. Exs.C1 to C5 were also 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 accept the plaintiffs' case and 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 in law, the courts below are right in granting injunction when an exact extent of a specific property was not set out in the plaint (1978 TNLJ 197)?

(ii) Whether in law the courts below are right in granting a decree for title on the basis of revenue records obtained pending suit?

(iii) Whether in law the courts below are right in finding that the respondents were allotted the northern half when there is no proof for division?"

9. The materials placed on record go to show beyond any doubt that the defendants' claim of title, possession and enjoyment of the suit property has ended in vain right from the institution of O.S.No.378 of 1949 and it is thus found that their father had not succeeded in obtaining the declaration of title to the entire extent in the suit survey number in the said suit and accordingly, it is found that Palanimooppan has been held to be entitled to 3.76 ½ acres of land in the suit survey number and it is further seen that the same had been also confirmed in the criminal proceedings as projected by the plaintiffs. Further, it is seen that the plaintiffs' father, on the basis of the right of reconveyance assigned in his favour by Palanimooppan, accordingly, preferred the suit in O.S.No.42 of 1962 against Periyaswamy and obtained the decree and pursuant to the execution proceedings initiated in the said suit, took possession of the suit property through Court process and it is thus found that it is only the plaintiffs' father, who has title, possession and enjoyment of the suit property as

determined by the Courts below. Not stopping there, it is also found that the defendants again reagitated the issue by claiming the entire extent in the suit survey number by laying a suit in O.S.No.125 of 1991. However, it is found that the said suit has not been properly prosecuted by the defendants and accordingly, it is seen that all the attempts put forth by the defendants and their father to claim title to the entire extent originally available in the suit survey number had been negated and from the materials placed on record by the plaintiffs, as rightly determined by the Courts below, based on the factual appreciation of the same, it is only the plaintiffs, who have title, possession and enjoyment of the suit property. Accordingly, it is found that the defendants are unable to place any acceptable and reliable materials in support of their case and the unacceptable evidence projected by the defendants had been rightly discarded by the Courts below. That apart, it is also found that it is only the plaintiffs, who are in possession and enjoyment of the suit property as put forth by them.

10. It is found that as per the plaintiffs' suit, they claim only title, possession and enjoyment of the suit property, which is described to be measuring an extent of 3.76 1/2 acres of land in Old S.F.No.533 and R.S.F.No.219/1B within the specific boundaries. After hearing the submissions of the both parties, it is found that the problems had erupted between the parties following the resurvey exercise done by the revenue authorities and accordingly, during the resurvey proceedings, it is the determination of the revenue authorities that the plaintiffs are in possession and enjoyment of more extent of land in the R.S. number assigned to them and aggrieved over the same, it is found that the defendants have again reagitated the issues already settled between the parties in respect of the title as regards the suit property. Further, it is found that the defendants have also not succeeded in their action before the revenue authorities and the resurvey effected had been confirmed in favour of the plaintiffs.

11. Thus, it is found that the Courts below, on a proper appreciation of the materials placed on record, found that it is only the plaintiffs, who have title, possession and enjoyment of the suit properties and further, the plaintiffs are also found to have established the authenticity of the Will projected by them in the manner known to law dated 01.06.1992 marked as Ex.A59 and in such view of the matter, the determination of the Courts below upholding the plaintiffs' claim of title, possession and enjoyment does not warrant any interference as such.

12. On a perusal of the materials placed on record, it is found that the plaintiffs' title to the suit property had not been upheld based on the revenue authorities, but, on the basis of the other documents of title projected in the matter and accordingly, when it is found that the plaintiffs are in possession and enjoyment of the specific northern share in the suit survey number and further, when, accordingly, the plaintiffs are entitled to injunct the defendants from disturbing their possession and enjoyment as described in the plaint, it is seen that as such, no substantial questions of law is found to be involved in this matter. In any event, the substantial questions of law formulated in the second appeal are accordingly answered in favour of the plaintiffs and against the defendants.

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

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

To

1. The I Additional Subordinate Judge,
(Additional charge of Principal Sub Court),
Gobichettipalayam.
2. The District Munsif Court, Gobichettipalayam.
3. The Section Officer, V.R. Section, High Court, Madras. (2 copies)

+1cc to Mr.V.NICHOLAS, Advocate, S.R.No.31378

+1cc to Mr.S.VENKATESWARAN, Advocate, S.R.No.31883

Judgment made
in S.A.No.2101 of 2003

NMI (CO)
TR(04/06/2018)

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