

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 06.03.2018
CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

S.A.No.1847 of 2002

1.B.Sevanan (Died) ...Appellant/Plaintiff
2.S.Kuppi
3.S.Janaki
4.S.Mohan
5.S.Suseela
6.S.Saradhamani ...Appellants 2 to 6/
LRS of deceased Plaintiff

(Appellants 2 to 6 brought on record
as LRs of the deceased sole appellant
vide order of Court dated 01.02.2013
made in C.M.P.Nos.253 and 254/09
in S.A.No.1847/02)

Vs.

1.Bojan
2.Keppiammal
3.Sankar
4.Krishnan
5.Jayaraman
6.Joghee
7.Devaraj
8.Jothi ... Respondents/Defendants
Prayer:

Second Appeal filed under Section 100 of C.P.C. against the
judgment and decree of the learned District Judge and Appellate
Authority of The Nilgiris at Uthagamandalam, in A.S.No.45 of
2001 dated 07.02.2002 partly allowed against the judgment and
decree of the learned District Munsif of Coonoor in O.S.No.124
of 1984 dated 30.08.2001.

For Appellants : Mr.S.Kaithamalai Kumaran
For Respondents: No Appearance for R1
M/s.Srinath Sridevan for R2 to R8

J U D G M E N T

The plaintiff who lost his case before the Courts below has
filed this second appeal.

2.The first appellant herein is the sole plaintiff and the
respondents 1 to 8 herein are the defendants 1 to 8 in the suit
in O.S.No.124 of 1984. Appellants 2 to 6 being legal heirs of

the first appellant are impleaded in the second appeal. For the sake of convenience, the parties are hereinafter referred to as per their rank in the suit.

3.The sum and substance of the plaint averments are as follows: The plaintiff is the absolute owner with separate possession of the suit schedule properties. The plaintiff has constructed a building in the suit schedule properties prior to 25 years without any other persons assistance or any manner of help from others. The land is owned by the plaintiff and the superstructure was put up by him and he continued to be in separate possession of the same till date without any disturbance or obstructions from any quarter.

4.The plaintiff further aver that the suit schedule properties were acquired by the plaintiff by self-acquisition and ancestral nucleus. After construction of the building, the plaintiff was paying taxes to the Panchayat Board and other Revenue to the State Government. The suit schedule property stands in the name of plaintiff. Accordingly, the plaintiff has perfected his title to the suit schedule properties and continues to be in separate possession of the same till date.

5.The plaintiff further aver that the suit schedule properties were let out to a Children's Home for running a Nursery School therein. The suit schedule properties are used for educational purpose and are maintained by him. The first defendant is the son of the plaintiff's younger brother Bellie. The second defendant is the wife of another brother Bogan and defendants 3 to 8 are second defendant's sons. The defendants have no manner of right in the suit schedule properties. Without any rights, they are attempting to disturb the plaintiff's peaceful separate possession of the suit schedule properties. The said interference was successfully prevented by the plaintiff.

6.The plaintiff further aver that on 21.12.1980, 10.01.1981 and on 11.03.1981, the defendants tried to disturb the plaintiff's peaceful separate possession and enjoyment of the property. Hence, the plaintiff filed the suit for declaration declaring the plaintiff's title to the suit property and for consequential injunction restraining the defendants, their relations, their men, servants and workmen from in any manner interfering with the lawful and peaceful possession and enjoyment of the plaintiff in the suit property.

7.The first defendant in his written statement supports the case of the plaintiff. However, the second defendant has filed a separate written statement. The sum and substance of the written statement filed by the second defendant is as follows: The second defendant denied the allegations made in the plaint.

The second defendant would contend that the plaintiff has filed the suit with an intention to recover possession of the ancestral property exclusively for himself in violation of the rights of this defendant as well as the other legal heirs of Bojan/ father - in - law of the second defendant. The extent of 2-1/2 cents alleged to have been purchased by the plaintiff in the year 1964 is also the joint family property belonging to the plaintiff and his brothers, one of whom is husband of this defendant.

8.The second defendant further contend that the plaintiff taking advantage of the fact that an extent of 2-1/2 cents was acquired in his name in the year 1964 is now attempting to recover possession of the ancestral properties. Accordingly, all the members of the joint family are equally entitled to a share on the property. Infact in the year 1964, the father - in - law of the second defendant was not alive. The plaintiff was the eldest male member of the joint family and Kartha of the same and he purchased the property in his name vide registered sale deed dated 19.03.1964. As such, the second defendant is entitled to 1/3 share in not only the property that originally belonged to her father - in - law but also in the share which stands in the name of the plaintiff.

9.The second defendant further contend that the suit premises has been given for running Nursery School. The plaintiff was entrusted with the management of the family properties and taking advantage of the implicit faith and utmost confidence reposed in him, the plaintiff has been scheming to grab the property. Infact, Nursery School is being run only in D.No.3/59 alone.

10.After elaborate discussions and after framing issues, the lower Court dismissed the suit, as against which, the first appellant/ plaintiff filed appeal before the lower Appellate Court and the lower Appellate Court partly confirmed the decree passed by the lower Court. As against the findings of the Courts below, the present second appeal is filed.

11.At the time of admission of the second appeal, this Court framed the following substantial question of law:

"1.Whether the lower appellate, having declared the title of the appellant in respect of the property purchased under Ex.A-3 Sale deed, is right in dismissing the suit in entirety?"

12.The learned counsel appearing for the appellants would submit that admittedly an extent of 2-1/2 cents in the suit schedule property stands in the name of the plaintiff. The plaintiff acquired the property through oral partition and after

the partition, the plaintiff constructed a building and let out the properties to third parties and collected rent from the third parties. While such being the position, the defendants attempted to interfere with the peaceful possession of the property. Hence, the plaintiff filed the suit for declaration and for consequential injunction. The plaintiff marked 49 documents as exhibits in order to prove that the plaintiff is in possession of the property. However, the lower Court erroneously dismissed the suit and the lower Appellate Court held that Ex.A3 title has been declared and in other aspects dismissed the appeal. Hence, the judgment and decree passed by both the Courts below are un-sustainable in law. Accordingly he prayed for allowing the second appeal.

13.The learned counsel appearing for the respondents 2 to 8 would submit that admittedly the properties are ancestral properties purchased by senior Bojan. The said senior Bojan had three sons. The plaintiff is the eldest son and the suit schedule properties are purchased in the name of the plaintiff and in the name of the senior Bojan. After the death of the senior Bojan, the plaintiff acted as Kartha of the joint family and after sometime the properties were divided inbetween them, however, the suit schedule properties were retained as family properties without any partition. Hence, the plaintiff is not entitled to claim exclusive right over the suit schedule properties which belong to the three sons of senior Bojan. The lower Court as well as the lower Appellate Court after perusal of the entire records arrived at a right conclusion. Hence, the well considered judgment and decree of the Courts below need not be interfered with. Accordingly, he prayed for dismissal of the second appeal.

14.Heard the arguments advanced on either side and perused the materials placed on record.

15.Perusal of material records discloses that the plaintiff has filed the suit for declaration of title and consequential injunction. However, all the documents which were filed by the plaintiff are only house tax receipts and other revenue records. Even Ex.A3 relates to some other property which is not covered in the suit schedule. Ex.A3 was purchased by the plaintiff in the year 1964 and accordingly, he enjoyed the property separately. The suit properties are common properties initially enjoyed by the senior Bojan. Thereafter, the property is acquired by the plaintiff and his brothers namely, first defendant and husband of second defendant as joint family properties in the name of the plaintiff.

16.Admittedly, the senior Bojan who is the father of the plaintiff, grandfather of the first defendant and father - in - law of the second defendant passed away in the year 1942. After

the death of the senior Bojan, the plaintiff acted as Kartha of the joint family. Accordingly, he purchased Ex.A3 property in the year 1964 and except Ex.A3 property, no other property was purchased by the plaintiff. All the properties are acquired from the senior Bojan. The suit schedule property is acquired from the senior Bojan.

17.In the absence of any material to show that the suit schedule property was purchased by the plaintiff independently after the alleged partition, law is well settled that mere revenue receipts and house tax receipts will not confer any right or title over the property. In the present case, the lower Appellate Court gave a finding with respect to the suit schedule properties that the appellant/ plaintiff filed a suit for declaration without describing the four boundaries of the suit property. Accordingly, before the lower Appellate Court, he filed amendment petition. However, the lower Appellate Court dismissed the amendment petition and partly confirmed the decree passed by the lower Court, however, liberty was granted to file a suit for appropriate relief in appropriate time before appropriate forum and the ownership of the property has been left open. The lower Appellate Court issued a direction granting liberty to the plaintiff to work out the remedy in the manner known to law without disturbing the order of the lower Court.

18.In view of the above discussions and in the absence of any materials, I do not find anything to interfere with the well considered findings of the lower Court. Accordingly, the substantial question of law is answered against the appellants and the second appeal is dismissed.

19.In the result, the second appeal is dismissed. The suit in O.S.No.124 of 1984 on the file of the learned District Munsif, Coonoor, is dismissed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

pri

To

1.The District Judge and Appellate Authority,
The Nilgiris at Uthagamandalam.

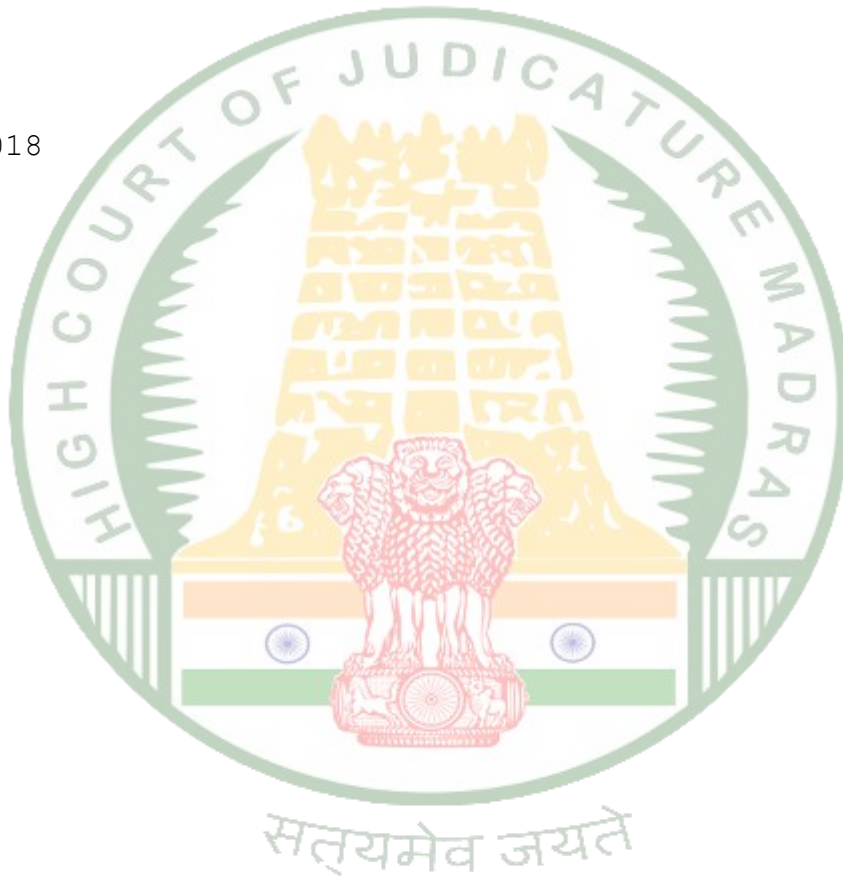
2.The District Munsif, Coonoor.

3.The Section Officer
VR Section, High Court, Madras

+1 cc to Mr.S.Kaithamalai Kumaran Advocate sr 17364

S.A.No.1847 of 2002

vgi(co)
aa03/04/2018



WEB COPY