

IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 15.03.2018
PRONOUNCED ON : 05.04.2018
CORAM
THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.2295 of 2003

1. Kuppusamy
2. Sengodan ... Appellants/Appellants 3 and 4/
Defendants

Vs.

1. Kuppayee
2. Natesan alias Thangavel
3. Sakthivel
4. Selvaraj
5. Vadivel
6. Sellammal ... Respondents 1 to 6/ Respondents 4 to 9
7. Arunachalam ... 7th Respondent/2nd Defendant
7th Respondent

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 05.09.2003 in A.S.No.54 of 1995 on the file of the subordinate judge, Sankagiri confirming the judgment and decree dated 14.09.1995 in O.S. No.189 of 1988 on the file of the District Munsif Court, Sankagiri.

For Appellants : M/s. D.Shivakumaran

For Respondents : M/s. Mythili Suresh
for Sarvabhauman Associates

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 05.09.2003 passed in A.S.No.54/95 on the file of the Subordinate Court, Sankagiri, confirming the judgment and decree dated 14.09.95 passed in O.S. No.189 of 1988, on the file of the District Munsif Court, Sankagiri.

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 he is the absolute owner of the plaint schedule properties and the patta

in respect of the suit properties stands in the name of the plaintiff and the plaintiff is paying kist for the same and the plaintiff purchased 2.34 acres in S.No.79/7, from the first defendant by way of a sale deed dated 10.12.69 and put in possession and enjoyment of the same by his vendor, namely, the first defendant and the plaintiff purchased 1.20 acres in S.No.79/7 from Muthusamy, the first defendant's son with a Well therein and another item by way of a sale deed dated 21.4.68 and put in possession of the same and the plaintiff was allotted 0.65 cents in S.No.79/7, by way of registered partition deed dated 27.09.79 between himself and his brother and thus, the plaintiff is entitled to 4.19 acres in S.No.79/7. The remaining 39 cents in S.No.79/7 belongs to the first defendant, Rajammal and Natesan. Out of the same, the first defendant is entitled to 0.22 cents and Rajammal is entitled to 0.11 cents. The plaintiff purchased 1.20 acres in S.No.109/1, out of a total extent of 6.60 acres, by way of a registered sale deed dated 21.04.68 from Muthusamy, first defendant's son and in possession and enjoyment of the same. The plaintiff purchased 1.71 acres in S.No.85/10 from Marakkal, wife of Palani gounder, by way of sale deed dated 13.04.70 and in possession and enjoyment of the same. The first defendant has executed a registered settlement deed in favour of his son, the second defendant, on 26.10.79. However, unscrupulously included 0.25 cents of lands in S.No.85/1C and 0.27 cents in S.No. 109/1 with a whole well in the above said settlement deed and 0.69 cents in S.No.79/7 which all belong to the plaintiff. Hence, the settlement deed above settled in favour of the first defendant, including the properties of the plaintiff is not valid and binding upon the plaintiff. The settlement deed is void ab initio and further, the defendants have created a sale deed dated 05.09.83 in favour of the defendants 3 and 4 by including the share of the plaintiff and therefore, the above said sale deed dated 05.09.83 is also not valid and binding upon the plaintiff and based upon the above said two invalid documents the defendants are attempting to interfere with the plaintiff's possession and enjoyment of the suit properties and hence, according to the plaintiff, he has been necessitated to lay the suit for appropriate reliefs.

5. The case of the defendants, in brief, is that the suit is not maintainable either in law or on facts. The purchase of 2.34 acres in S.No.79/7 from the first defendant by way of the sale deed dated 10.12.69 is accepted. However, the purchase of the properties by way of the sale deed dated 21.04.1968 by Muthusamy is denied and according to the defendants, Muthusamy has no title to the portions sold to the plaintiff by way of the above said sale deed. The claim of the plaintiff that he had been allotted 0.65 cents in S.No.79/7, by way of a partition deed dated 27.09.79 is not accepted and the same is misleading. The case projected by the plaintiff that the first defendant

along with Rajammal and Natesan are entitled to only 0.37 cents in S.No.79/7 is wrong and it is false to state that out of the same, the first defendant is entitled to only 0.22 cents. The case of the plaintiff that he has obtained title and possession in respect of 1.20 acres in S.No.109/1 is incorrect. The vendor of the sale deed dated 21.04.1968 has no title or possession to convey the same to the plaintiff. The defendants have no interest in the land in S.No. 85/1C. It is false to state that the first defendant had conveyed the properties belonging to the plaintiff by way of a settlement deed dated 26.10.1979 executed in favour of the second defendant. The second defendant had executed the sale deed dated 05.09.83 in favour of the defendants 3 and 4 and the same is valid and binding upon the plaintiff. The case of the plaintiff that he has title to an extent of 4.19 acres in S.No.79/7 and 1.20 acres in S.No.109/10 is false. The properties originally belonged to one Kuppa gounder, who had seven sons and after his demise, the properties belonging to Kuppa gounder equally devolved upon his seven sons and thereafter, the sons had been alienating the undivided shares. Some sons had acquired undivided shares from the other sons and thus, the defendants 3 and 4 had purchased 0.72½ cents in S.No.79/7 and 0.17½ cents in S.No.109/1 and the said property was originally settled in favour of the second defendant under a settlement deed dated 26.10.79 by the first defendant and the first defendant had acquired title to the same by way of a registered sale deed dated 06.08.57 and therefore, the case of the plaintiff that the settlement deed dated 26.10.79 and the sale deed dated 05.09.83 are invalid and not binding upon him is false. The plaintiff cannot claim any extent in S.No.109/1 by way of the purchase from Muthusamy when Muthusamy himself is not entitled to any extent in the above said survey number and according to the defendants, the plaintiff has no cause of action and the suit is liable to be dismissed.

6. In support of the plaintiff's case PWs 1 and 2 were examined, Exs.A1 to A41 were marked. On the side of the defendants DWs 1 and 2 were examined, Exs.B1 to B9 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 accept the plaintiff's case and accordingly, decreed the suit in favour of the plaintiff as prayed for. 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:

1. In the absence of a division in the family of the original owner/Kuppu gounder

in the property held by him, can a suit for declaration of title is maintainable by one of his successors in interest namely, the plaintiff, for any specified extent?

2. In other words, on facts stated in ground No.1 above, only a suit for partition would lie?

9. As far as the properties comprised in the plaint schedule measuring 1.71 acres in S.No.85/1C, the defendants have not laid any claim with reference to the same. It is found that the plaintiff had acquired the same by way of Ex.A4 sale deed and accordingly, the Courts below, based upon the abovesaid position, had accepted the plaintiff's claim of title to the abovesaid property.

10. Equally, it is found that there is no dispute as regards the purchase of 2.34 acres by the plaintiff in S.No.79/7, by way of the sale deed dated 10.12.69 from the first defendant and the copy of the sale deed has been marked as Ex.A2 and accordingly, it is found that the plaintiff has title to the said property comprised in Ex.A2 sale deed.

11. The plaintiff claims title to the suit properties by way of the sale deeds marked as Exs.A1 and A2 and the partition deed dated 27.09.1979 marked as Ex.A3. Thus, in all the plaintiff's claim title to an extent of 4.19 acres in S.No.79/7 and 1.20 acres in 109/1. As above seen, as regards the property comprised in S.No.85/1C, the defendants have not raised any issues.

12. Materials placed on record go to show that for claiming title to the properties acquired under Ex.A1, it is found that the same had been acquired by Muthusamy, son of the first defendant by way of purchase from one Marappa pillai by way of a sale deed dated 03.4.57, which document has come to be marked as Ex.A27. Thereafter, Muthusamy had conveyed the said property in favour of the plaintiff by way of Ex.A1 sale deed and the vendor of Muthusamy, Marappa pillai had acquired the said property by way of a sale deed dated 05.03.51, which document has come to be marked as Ex.B9 and accordingly, it is seen that Muthusamy had title to the said properties by way of his purchase from Marappa pillai who had acquired title to the same by way of Ex.B9 and thus, it is found that the plaintiff had acquired title to the properties purchased by him from Muthusamy, by way of Ex.A1 and in such view of the matter, the case of the defendants that Muthusamy himself has no title to convey the said properties in favour of the plaintiff as such cannot be accepted in any manner.

13. The main contention put forth by the defendants is that the plaintiff cannot lay any claim of title to an extent of 0.65 cents in S.No.79/7 by way of Ex.A3 partition deed. It is found that the plaintiff's father is also one of the sons of Kuppa gounder, who is the original owner of the properties involved in the matter. Accordingly, it is the case of the plaintiff that 0.65 cents belong to his family and in the partition effected between him and his brother Palaniappan by way of Ex.A3, 0.65 cents in S.No.79/7 had come to be allotted to him. However, it is the case of the defendants that when the said extent of 0.65 cents owned by the plaintiff's family had been alienated by way of Ex.B2 sale deed, the case of the plaintiff that the same had been allotted to him by way of Ex.B3 partition deed should not be accepted. However, as rightly determined by the Courts below, when considering the description of the properties covered under Ex.B2, it is found that the vendors thereof had conveyed only the specific extent of 75 cents in S.No.109/1 and when it is found that all the sons of Kuppa gounder are equally entitled to the properties belonging to him and when the two sons who had executed Ex.B2 deed had not chosen to convey their 2/7th share inherited by them from their father Kuppa gounder and on the other hand, chosen to alienate only a specific extent of 75 cents in S.No.109/1, it is found that the plaintiff's father had not alienated 0.65 cents in S.No.79/7 by way of Ex.B2 and accordingly the said extent remained in the family of the plaintiff and later by way of Ex.A3 partition deed, it is found that the same had been allotted to the share of the plaintiff. In such view of the matter, the contention put forth by the defendants that the plaintiff's father had already alienated 0.65 cents in S.No.79/7 by way of Ex.B2 sale deed as such cannot be accepted, particularly, when it is noted that the same had not been conveyed under the said deed as determined by the Courts below. The said contention of the defendants has been rightly discountenanced by the Courts below and no interference is called for with reference to the same.

14. As above seen, when it is found that the plaintiff has traced his vendor's title namely Muthusamy to the properties acquired by way of the sale deed dated 21.4.68 as above discussed, it is found that the claim of the defendants that Muthusamy does not own title to the said properties as such cannot be accepted.

15. In the light of the above discussions, when it is found that the legal heirs of Kuppa gounder have derived equal shares in the properties owned by him in equal moieties and the when the materials placed on record would go to show that the sons, even though no partition had been effected by meets and bounds, had been alienating their respective shares to others and when it is further found that the other co-owners had been acquiring the same from the co-owners, accordingly, it is found that the

parties had been enjoying their respective shares as inherited/acquired by them and accordingly, it is found that the plaintiff has also acquired title to the suit properties by way of the sale deeds and the partition deed projected by him and in addition to that, when the plaintiff has placed materials to hold that his vendors had acquired title to the properties alienated by them and when further as above discussed, the plaintiff has been allotted 0.65 cents in S.No.79/7 by way of Ex.A3 partition deed, it is seen that the Courts below had rightly, on an analysis of the materials placed on record, held that the plaintiff has established his title, possession and enjoyment of the suit properties and accordingly granted him reliefs as prayed for. As rightly determined by the Courts below, the voluminous materials placed by the plaintiff would go to show that it is only the plaintiff who has been in possession and enjoyment of the properties acquired by him by way of obtaining patta, paying kist etc., and accordingly, when it is found that the first defendant is not entitled to settle the properties belonging to the plaintiff in favour of the son Arunachalam and resultantly, Arunachalam, the second defendant is not entitled to convey the properties not owned by him legally in favour of the defendants 3 and 4, it is found that, as rightly putforth, the defendants under the guise of the settlement deed dated 26.10.1979 and the sale deed dated 05.09.83 cannot be allowed to interfere with the possession and enjoyment of the suit properties by the plaintiff.

16. In the light of the above discussions, in my considered opinion, the second appeal does not involve any question of law and on facts, the Courts below had rightly found that it is only the plaintiff who has title to the suit properties and the same are in his possession and enjoyment. Thus, it is found that the determination of the lis in favour of the plaintiff by the Courts below do not warrant any interference and accordingly, the substantial questions of law formulated in the second appeal are answered against the defendants and in favour of the plaintiff.

17. The principles of law outlined in the decision of the Apex Court dated 13.05.2011 in Civil Appeal No.562 of 2003 are taken into consideration and followed as applicable to the case at hand.

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

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Sub Judge
Subordinate Court,
Sankagiri.
2. The District Munsif
The District Munsif Court,
Sankagiri.
3. The Section Officer,
V.R.Section,
High Court, Madras.

+1 cc to Mr.D.Shivakumaran Advocate sr 25359
+1 cc to M/s.Sarvabhauman Associates sr 25090

S.A.No.2295 of 2003

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