

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

S.A.No.2189 of 2002

1) Gopalakrishnan

2) Narayanasamy

... Plaintiffs/Appellants

Vs.

Karunanidhi

... Defendant/Respondent

Prayer: Second Appeal has been filed under Section 100 of C.P.C. against the Judgment and Decree dated 1.08.2001 made in A.S.No.27 of 2001 on the file of Principal District Court, Nagapattinam confirming the Judgment and Decree dated 20.12.2000 made in O.S.No.54/2000 on the file of District Munsiff Court, Nagapattinam

For Appellants : Mr.Srinath Sridevan

For Respondent : M/s.K.M.Nalanishree

J U D G M E N T

The unsuccessful plaintiffs' who lost their case before both the Courts below have filed this second appeal.

2. The appellants herein are the plaintiffs and the respondent herein is the defendant in the suit in O.S.No.54 of 2000. For the sake of convenience, the parties are hereinafter referred to as per their rank in the suit.

3. The averments made in the plaint are as follows:-

The suit schedule property at Survey No.205/8 an extent of 40 cents is plaintiffs' ancestral property. The plaintiffs' father Thangavelu Mudaliyar enjoyed the property till his death. After the death of the plaintiffs' father, the plaintiffs' along with the other family members are enjoying the property. The plaintiffs' father and plaintiffs' paid kist to the Government. Chitta and Adangal stands in the name of the second plaintiff.

4. The defendant is residing at north east of survey no.205/8 (i.e) survey no.205/12. On 17.07.1999, when the 1st plaintiff was out of station , the defendant along with his men

trespassed upon the suit schedule property and they cut and carried away some of the trees standing in the suit schedule property. The first plaintiff returned on 18.07.1999 and immediately, he have a complaint to Thalaignayar Police Station on 19.07.1999.

5. A joint notice was issued on 02.08.1999 by the plaintiffs upon the defendant. The defendant had replied to the above notice stating that, he purchased the property by way of two registered sale deeds dated 25-6-1979, 10 cents from one Vedavalli, W/o Nagappa Mudaliar and 10 cents from one Ramalingam Mudaliar, S/o Manickam Mudaliar. He claims that on the eastern side, 20 cents were in possession of his own, as per the sale deed. The defendant had concocted the documents with the help of Vedavalli and Ramalingam in the year 1979.

6. The patta for the suit schedule property stands in the name of the 2nd plaintiff. At the time of upgrading the patta proceedings, patta also given in the name of the 2nd plaintiff, so the eastern 20 cents does not belong to the defendant. The defendant gave a petition to the Tahsildar at Thirumullaivasal for changing his name in the suit schedule property, which was rejected. Therefore, the plaintiffs filed the suit for declaration and recovery of possession.

7. The gist and essence of the written statement filed by the defendant are as follows:-

The suit is not maintainable. The defendant is in possession and enjoyment of the property from the year 1979 onwards. The suit is liable to be dismissed with exemplary cost. Survey No.205/8 an extent of 40 cents is plaintiffs' ancestral property. The plaintiffs' grandfather Narayana and his brother Manickam Mudaliyar orally partitioned the property and enjoyed the property. The said Narayana Mudaliyar was allotted 20 cents on the western side and Manickam Mudaliyar was allotted 20 cents in the eastern side, during the oral partition.

8. After the death of Narayana Mudaliyar, his only son Thangavel Mudaliar succeeded the western 20 cents and enjoyed the property. After the death of Thangavel Mudaliar, his legal heirs including the plaintiffs enjoyed the property. In respect of the eastern 20 cents, Manickam Mudaliar enjoyed the property till his death. After his death, his sons Nagappan and Ramalingam succeeded the property as legal heirs. Thereafter, they orally divided the property and eastern 10 cents was allotted to Nagappa Mudaliar and western 10 cents was allotted to Ramalingam Mudaliar. Since Nagappa Mudaliar died, his wife Vedavalli and their sons Singaravelu and Ganesmurthy enjoyed the same and they executed the sale deed in favour of the defendant

on 25.06.1979. From that date onwards, the defendant is enjoying the property. Thereafter, Ramalingam sold his 10 cents on the same day in favour of the defendant. So, the defendant is the owner of the eastern 20 cents.

9. The second plaintiff is an Village Administrative Officer (V.A.O.). He abused his power and got patta for 40 cents in his favour. The first plaintiff, Gopalakrishnan is the eldest male member of Thangavelu family and he is the only kartha of the family. But patta was in the name of the second plaintiff, which has clearly proved that he misused his powers and obtained patta in his name. The matter was complained by the defendant to the Manakudi Village Panchayat Committee and they passed an order on 15.07.1999, in favour of the defendant, stating that the defendant was in possession of the eastern 20 cents. In between the eastern and western 20 cents, there was a live fence and thorning fence. After purchasing the property from Vedavalli and Ramalingam, the defendant raised a tamarind tree sapling and he also put up a well. He had also put up a cattle shed. However, the defendants petition for change of patta was dismissed at the instigation of the 2nd plaintiff, who is the Village Administrative Officer.

10. After elaborate discussions and after framing issues, the lower Court dismissed the suit against which, the appellants/plaintiffs filed appeal before the Principal District Court, Nagapattinam and the lower Appellate Court also after examining the case in detail, dismissed the Appeal and confirmed the decree passed by the lower Court. As against the concurrent findings of the Courts below, the present Second Appeal has been filed.

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

- (i) Whether the Courts below were right in holding that the plaintiffs have no title over the property especially they are having possessory tittle?
- (ii) Whether the lower Appellate Court is right in dismissing the IA's under Order 41 Rule 27 when it can show the possessory title?
- (iii) Whether the Appellate Court is right in holding that Will is not proved when it has dismissed the IA and did not receive the Will at all on additional evidence?

12. The learned counsel for the appellants would submit that the entire suit schedule property was an ancestral property. The suit schedule property was enjoyed by the plaintiffs' father

Thangavelu Mudaliar. After his death, his legal heirs succeeded and enjoyed his property. The revenue records stand in the name of the second plaintiff and patta also stands in the name of the second plaintiff.

13. In order to substantiate their claim, the appellants filed two Interlocutory Applications in I.A.Nos.103 and 105 of 2001 under Order 41 Rule 27 C.P.C for marking additional documents. The plaintiffs filed the suit in respect of Survey No.205/8 an extent of 40 cents which is an ancestral property. At the time of updating patta proceedings, patta was given in the name of the 2nd plaintiff. The plaintiffs have not done any correction. The 2nd plaintiff was appointed as a Village Administrative Officer only in the year 1988. The documents chitta, adangal, patta kist receipts are necessary for disposal of Appeal. Without considering the above two documents, the Courts below arrived at a conclusion against the appellants/plaintiffs and dismissed the suit. Accordingly, he prayed for allowing the second appeal.

14. The learned counsel for the respondent/defendant submitted that the suit schedule property belongs to Narayana Mudaliar and Manickam Mudaliar, who have acquired the same by way of inheritance. By oral partition, the suit schedule property was divided between them and Manickam Mudaliar was allotted with 20 cents in the eastern portion and Narayana Mudaliar was allotted with 20 cents in the western portion. After the death of Narayana Mudaliar his son Thangavel Mudaliar succeeded the western 20 cents and enjoyed the same and after the death of the said Thangavel Mudaliar, his legal heirs including the appellants enjoyed the property. In respect of the eastern 20 cents, Manickam Mudaliar enjoyed the property till his death. After his death, his sons Nagappa and Ramalingam succeeded the property as legal heirs. Thereafter, they orally divided the property and eastern 10 cents was allotted to Nagappa Mudaliar and western 10 cents was allotted to Ramalingam Mudaliar. Since Nagappa Mudaliar died, his wife Vedavalli and their sons Singaravelu and Ganesmurthy enjoyed the same. Thereafter, they executed the sale deed in favour of the defendant on 25.06.1979. From that date onwards, the defendant enjoyed the property. Thereafter, Ramalingam sold his 10 cents on the same day in favour of the defendant. So, the defendant perfected his title.

15. The learned counsel for the respondent/defendant would further submit that the second plaintiff is the Village Administrative Officer (V.A.O.). He abused his power and got patta for 40 cents in his favour.

16. After perusing the entire records, the courts below rightly held in favour of the defendant and the well considered judgment and decree of the Courts below need not be interfered with. Accordingly, he prayed for dismissal of the second appeal.

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

18. On perusal of the materials on record, it is seen that the property belongs to one Narayana Mudaliar and Manickam Mudaliar. After the death of Narayana Mudaliyar, his only son Thangavel Mudaliar succeeded the western 20 cents and enjoyed the property. After the death of Thangavel Mudaliar, his legal heirs including the plaintiffs enjoyed the property. In respect of the eastern 20 cents, Manickam Mudaliar enjoyed the property till his death. After his death, his sons Nagappan and Ramalingam succeeded the property as legal heirs. Thereafter, they orally divided the property and eastern 10 cents was allotted to Nagappa Mudaliar and western 10 cents was allotted to Ramalingam Mudaliar. Since Nagappa Mudaliar died, his wife Vedavalli and their sons Singaravelu and Ganesmurthy enjoyed the same. The defendant made a complaint before the Manakudi Village Panchayat Committee and they passed an order on 15.07.1999, in favour of the defendant, stating that the defendant was in possession of the eastern 20 cents. In between the eastern and western 20 cents, there was a live fence and thorning fence. After purchasing the property from Vedavalli and Ramalingam, the defendant has raised a tamarind tree, and he has also put up a well at cattle shed. However, the petition filed by the defendant for change of patta was dismissed at the instigation of the 2nd plaintiff, who is the Village Administrative Officer.

19. In order to substantiate their claims; on the side of the plaintiffs, the first plaintiff examined himself as P.W.1 and one Murugaiyan was examined as P.W.2 and 20 documents were marked as exhibits Ex.A1 to Ex.A20. On the side of the defendant, the defendant examined himself as D.W.1 and two other independent witnesses were examined D.W.2 and D.W.3 and nine documents were marked as exhibits Ex.B1 to Ex.B9.

20. After considering the entire materials and the evidence of the witnesses, the lower Court dismissed the suit on the ground that the defendant purchased the property from the legal heirs of Manickam Mudaliar. Aggrieved by the same, the plaintiffs/appellants filed appeal before the first Appellate Court. In the first appeal, the appellants filed two interlocutory applications in I.A.No.103 and 105 of 2005 under Order 41 Rule 27 of C.P.C. for the purpose of marking additional documents.

21.I.A.No.103 of 2005 was filed for the purpose of marking additional documents i.e., Adangal, Chitta and Kist receipts and appointment order of the second plaintiff. I.A.No.105 of 2005 was filed for the purpose of marking un-registered Will. The lower Appellate Court, on perusal of the entire additional documents sought to be marked arrived at a conclusion that the appellants want to mark adangal, chitta and kist receipts as additional documents in order to establish their title in the suit schedule property. However, all those documents are only revenue records and it will not confer any title over the property. Further, on perusal of the un-registered Will, the lower Appellate Court arrived at a conclusion that the un-registered Will is incomplete and without description of the immovable property. The un-registered Will was executed by the appellants great grandfather, however, that un-registered Will does not relate to the suit schedule property. Accordingly, the lower Appellate Court arrived at a conclusion that the appellants failed to establish their title over the suit schedule property and confirmed the order of the lower Court.

22. Admittedly, the suit schedule property is an ancestral property of the plaintiffs. The plaintiffs grandfather Narayana Mudaliar and his brother Manickam Mudaliar orally partitioned the 40 cents to 20 cents each. The defendant purchased the property from the legal heirs of the said Manickam Mudaliar. Thereafter, the defendant put up a live fence and enjoyed the property. Exhibits Ex.B1 and Ex.B2 sale deeds and Ex.B3 which relates to village Panchayat order filed by the defendant clearly establish the possession of the defendant/respondent. Hence, I do not find any error in the order passed by the Lower Court as well as the Lower Appellate Court. Accordingly, the substantial questions of law are answered against the appellants and the second appeal is dismissed.

23. In the result, the second appeal is dismissed. The judgment and decree of the learned Principal District Judge, * **Nagapatnam** in A.S.No.27 of 2001, dated 01.08.2001 is confirmed. No costs.

Sd/-

Assistant Registrar(CS V)

Dated : 29/05/2018

***Corrected as per order**

dated 30.07.2018

Sd/-Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Principal District Court,
Nagapattinam.
- 2.The District Munsiff Court,
Nagapattinam.
- 3.The Section Officer,
V.R. Section,
High Court, Madras. (2copies)

+1cc to Mrs.K.M.Nalinishree, Advocate Sr.11475
+1cc to M/S.Srinath Sridevan, Advocate Sr.11234

**To be Substituted to the
order already despatched
on 13/06/2018**

S.A.No.2189 of 2002
and
C.M.P.Nos.4045 of 2000,
21493 of 2001 &
887 of 2010

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srg 31/05/2018
GN(09/08/2018)



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