

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.12.2017
PRONOUNCED ON : 19.01.2018

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A.No.1868 of 2001

1.S. Arumugham
2.Kumari Ammal

.. Appellants/Defendants

Vs.

V. Ramalingam

.. Respondent/Plaintiff

Prayer: Second Appeal is filed under Section 100 of the Code of the Civil Procedure against the Judgment and decree dated 29.12.1999 passed in A.S.No.65 of 1997 on the file of the Additional District Court, Cuddalore, confirming the judgment and decree dated 09.07.1997 passed in O.S.No.419/1994 on the file of the District Munsif of Cuddalore.

For Appellants : Mr.N. Damodharan
For Respondent : Mrs.R. Meenal

JUDGMENT

This Second Appeal is directed against the Judgment and Decree dated 29.12.1999 passed in A.S.No.65 of 1997 on the file of the Additional District Court, Cuddalore, partly allowing the appeal and mostly confirming the Judgment and Decree passed in O.S.No.419 of 1994 dated 09.07.1997 on the file of the District Munsif Court, Cuddalore.

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 Adivaraha Chettiar, the grand father of the plaintiff and after his death, his sons Pavadai Chettiar and Veerappa Chettiar divided the properties including the suit property by way of a registered partition deed dated 24.02.1962 and the suit property fell to the share of Veerappa Chettiar and plaintiff is the eldest son of the Veerappa Chettiar and Veerappa Chettiar, in turn, divided the properties

with his sons under a registered partition deed dated 31.03.1984 and the suit property was allotted to the share of the plaintiff and since then, it is only the plaintiff, who has been in exclusive possession and enjoyment of the suit property by paying tax, etc., and the second defendant is the daughter of Pavadai Chettiar and the first defendant is her son-in-law and Pavadai Chettiar being a party to the partition deed dated 24.02.1962, the defendant cannot question the title of the plaintiff to the suit property. However, it appears Pavadai Chettiar has created some documents of title in favour of the defendants and filed a suit in O.S.No.542/1990 against the plaintiff's father and accordingly, the defendants appeared to have obtained a decree in the said suit and attempted to take delivery of the suit property pursuant to the decree and as the plaintiff only has absolute title to the suit property, 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. It is false to state that the suit property belongs to the plaintiff and on the other hand, the suit property is the absolute property of the defendants, who got the same by way of a settlement deed executed by Chinnaponnu Ammal on 01.04.1980 and the suit property originally belonged to Adivaraha Chettiar and he sold the suit property to Sivagangai Ammal on 13.07.1917, who had two daughters viz., Lakshmi Ammal and Chinnaponnu Ammal. After the death of Sivagangai Ammal, the property devolved upon Lakshmi Ammal and Chinnaponnu Ammal, her daughters and Chinnaponnu Ammal executed a registered settlement deed in favour of the defendants on 01.04.1980 and since then, it is only the defendants, who had been in possession and enjoyment of the suit property. When the plaintiff's father attempted to interfere with their possession and enjoyment, the defendants preferred the suit against him and another in O.S.No.542/1990 on the file of the District Munsif Court, Cuddalore, for declaration and possession and after contest, the suit was decreed in favour of the defendants on 25.10.1993 and as against the same, no appeal has been preferred by the plaintiff's father and hence, the present suit laid by the plaintiff for claiming title to the suit property is hit by the Doctrine of res judicata and the claim of the plaintiff that he has got the suit property by way of partition amongst his family members on 31.03.1984 is false and hence, the suit is liable to be dismissed.

6. In support of the plaintiff's case, PWs1 to 4 were examined and Exs.A1 to A19 were marked. On the side of defendants, DWs1 to 3 were examined and Exs.B1 to B8 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 regards the relief of declaration sought for by the plaintiff and the first appellate Court has modified the judgment and decree of the trial Court and granted the relief of permanent injunction sought for by the plaintiff only as regards the restraintment of the defendants from interfering with his possession and enjoyment and accordingly disposed of the first appeal. 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 decree in O.S.No.542 of 1990 is not binding on the plaintiff and the suit is not barred by res judicata ?
2. Whether the suit without a prayer to set aside the decree in O.S.No.542 of 1990 is maintainable?

9. It is not in dispute that the suit property originally belonged to Adivaraha Chettiar, the grandfather of the plaintiff. Now, according to the plaintiff, Adivaraha Chettiar had two sons viz., Pavadai Chettiar and Veerappa Chettiar, the father of the plaintiff and according to the plaintiff's case, in the partition effected between them on 24.02.1962, the suit property fell to the share of Veerappa Chettiar, the plaintiff's father. The further case of the plaintiff is that Veerappa Chettiar, in turn, divided the properties belonging to the family with his sons on 31.03.1984 and in the said partition, the suit property fell to the share of the plaintiff and thus, the plaintiff claims title to the suit property and the copy of the partition deed dated 24.02.1962 is marked as Ex.A1. The partition deed dated 31.03.1984 is marked as Ex.A8. According to the plaintiff, inasmuch as the defendants attempted to interfere with his possession and enjoyment of the suit property by obtaining a decree in O.S.No.542/1990 with reference to the suit property for possession and seek to take possession through the Court process, he has been necessitated to lay the suit for appropriate reliefs.

10. Per contra, it is the case of the defendants that Adivaraha Chettiar, who is the original owner of the suit property, had alienated the same to his sister Sivagangai Ammal by way of a sale deed dated 13.07.1917 and after the death of Sivagangai Ammal, the property devolved upon her

daughters and one of the daughters Chinnaponnu Ammal had executed the settlement deed in favour of the defendants in respect of the suit property on 01.04.1980 and therefore, it is the case of the defendants that they have title to the suit property. It is the further case of the defendants that their title to the suit property had been declared in O.S.542/1990, wherein, the plaintiff's father Veerappa Chettiar was the first defendant and the contention of the plaintiff's father as regards the entitlement of the suit property by way of a partition deed dated 24.02.1962 was negatived in the said suit and therefore, according to the defendants, the plaintiff claiming title to the suit property only through the above said partition deed as well as the partition deed dated 31.03.1984, the suit laid by the plaintiff is hit by res judicata.

11. It is not in dispute that the suit property is the subject matter in O.S.No.542/1990. It is also found that the original owner of the suit property Adivaraha Chettiar has alienated the suit property by way of the sale deed dated 11.03.1917 in favour of Sivagangai Ammal and the said sale deed has been marked as Ex.B2. It is not in dispute that the suit property is the subject matter of Ex.B2 and therefore, when it is found that the suit property had been already alienated by Adivaraha Chettiar by way of Ex.B2 to Sivagangai Ammal, the case of the plaintiff that Adivaraha Chettiar's sons had partitioned the properties including the suit property by way of Ex.B1 partition deed dated 24.02.1962 as such cannot be accepted in any manner. When the suit property has already gone out of the family of Adivaraha Chettiar by way of Ex.B2 in favour of Sivagangai Ammal, even assuming for the sake of arguments that the suit property was the subject matter of the partition deed dated 24.02.1962 under Ex.B1, by way of the same, the plaintiff's father cannot claim any legal and valid title to the same as having been allotted to him. In such view of the matter, when it is found that the defendants have derived title to the suit property from the lawful owners viz., the legal heirs of Sivagangai Ammal by way of a settlement deed dated 01.04.1980, which document has come to be marked as Ex.B3 and accordingly, when the plaintiff's father Veerappa Chettiar attempted to interfere with their possession and enjoyment, it is seen that the defendants had been necessitated to lay the suit against him in O.S.No.542/1990 for declaration and recovery of possession. In the said suit, after contest, the defendants were granted the reliefs as prayed for and accordingly, it is found that the defendants' title to the suit property has been upheld in O.S.No.542/1990. The copy of the judgment passed in O.S.No.542/1990 has been marked as Ex.B4 and on a perusal of Ex.B4, it is found that of the various issues settled in the said suit, one of the issues is whether the partition deed dated 24.02.1962 effected amongst Veerappa

Chettiar and his brother is true, valid and binding upon the defendants. The said issue, after contest, has been held against Veerappa Chettiar, the defendant in O.S.No.542/1990. Therefore, in O.S.No.542/1990, Ex.B1 partition deed has been declared to be not a true and valid document and also not binding upon the defendants and accordingly, when the plaintiff traces his title to the suit property only through the said partition deed, it is found that the plaintiff cannot lay any claim in respect of the suit property by way of the subsequent partition deed dated 31.03.1984. Even though the plaintiff is not a direct party to the proceedings in O.S.No.540/1990, when it is found that his father is the defendant in the said suit and when the issue had been raised in the said suit as regards the validity of the partition deed dated 24.02.1962 and the said issue has ended against the plaintiff's father and when the plaintiff traces the origin of title to the suit property only under the said partition deed, it is seen that the subsequent partition deed dated 31.03.1984 effected amongst Veerappa Chettiar and his sons and the claim of the plaintiff that in the said partition, the suit property had been allotted to his share as such would not confer any valid title on the plaintiff in respect of the suit property.

13. In the light of the above said facts, the defendants have resisted the plaintiff's suit mainly on the Doctrine of res judicata. According to the defendants, inasmuch as the plaintiff is laying claim to the suit property only through the partition deed dated 24.02.1962 Ex.B1 and when the validity of the said partition deed has been settled against the plaintiff's father in O.S.No.542/1990, it is seen that the present suit laid by the plaintiff claiming under the said partition deed or in other words, through his father, no doubt, by way of another partition deed dated 31.03.1984, thus, it is found that the suit laid by the plaintiff is clearly hit by the principles of res judicata as contemplated under Section 11 of CPC. That apart, when it is found that the partition deed dated 31.03.1984 has come to be executed amongst Veerappa Chettiar and his sons including the plaintiff even prior to the disposal of O.S.No.542/1990, it is found that if really, the said partition deed is a valid document, Veerappa Chettiar should have projected the said partition deed in the said suit and accordingly, it is found that as per explanation - IV, any matter, which might and ought to have made ground of defence or attack in such former suit shall be deemed to have been a matter directly and subsequently in issue in such suit and accordingly, it is found that the very determination of the issue in O.S.No.542/1990 against the validity of the partition deed dated 24.02.1962, automatically renders the partition deed dated 31.03.1984 also invalid as the said partition deed was also the subject matter of the above said suit as per

explanation - IV of Section 11 of CPC. It is found that as rightly argued by the defendants' counsel, the present suit laid by the plaintiff is clearly hit by the principles of res judicata.

14. The Courts below have negatived the plea of res judicata raised by the defendants on the sole ground that the plaintiff has acquired an independent claim in respect of suit property by way of the partition deed dated 31.03.1984. However, the above said reasoning of the Courts below are found to be perverse and unacceptable. When even according to the plaintiff, he traces his title only through his father and when further according to the plaintiff, his father had acquired title to the suit property by way of Ex.B1 partition deed only and only under such a claim, according to the plaintiff, his father Veerappa Chettiar and the sons had effected the partition deed dated on 31.03.1984 i.e., Ex.A8 and when the partition deed dated 24.02.1962 has been declared to be not true and valid and not binding upon the defendants in O.S.No.542/1990 and when in the said suit, the plaintiff's father is a party, it is seen that when the plaintiff derives title to the suit property only through his father in the present suit also, in all aspects, the suit laid by the plaintiff is found to be clearly hit by the principles of res judicata. In such view of the matter, the reasonings of the Courts below that the plaintiff has acquired an independent claim of title to the suit property by way of the partition deed Ex.A8 and therefore, as he is not a party in O.S.No.542/1990, their conclusion that the Judgment and decree passed in the said suit is not binding upon him, is nothing but erroneous and fallacious and cannot at all be upheld in the eye of law.

15. In the light of the above position, the plaintiff's suit is barred by res judicata, in the light of the Judgment and decree passed in O.S.No.542/1990, it is found that the plaintiff is not entitled to obtain the reliefs claimed in the plaint. The defendants' counsel placed reliance upon the decision reported in 1994 (2) SCC 14 (Sulochana Amma Vs. Narayanan Nair). The principles of law outlined in the above said decision are taken into consideration and followed as applicable to the facts and circumstances of the case at hand.

16. In view of the above discussions, the first substantial question of law is answered against the plaintiff and in favour of the defendants and in the light of the above answer to the first substantial question of law, the second substantial question of law, in my considered opinion, is not required to be answered as the plaintiff is found to be not entitled to obtain the reliefs claimed in the suit in all aspects.

In conclusion, the judgment and decree dated 29.12.1999 passed in A.S.No.65 of 1997 on the file of the Additional District Court, Cuddalore, partly allowing the appeal and mostly confirming the judgment and decree dated 09.07.1997 passed in O.S.No.419/1994 on the file of the District Munsif Court, Cuddalore, are set aside and resultantly, the suit laid by the plaintiff is dismissed with costs and accordingly, the second appeal is allowed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sms

To

1. The Additional District Judge, Cuddalore.
2. The District Munsif, Cuddalore.
3. The Record Keeper, VR Section,
High Court, Madras

+1cc to M/s.N.Damodaran, Advocate SR.No.4361

+1cc to M/s.R.Meenal, Advocate SR.No.4336

NRI (CO)

sm:01.3.2018

Judgment made in
S.A.No. 1868 of 2001

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