

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.02.2018

PRONOUNCED ON : 16.03.2018

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A.No.947 of 2003

1. Ganesan (Deceased)
2. Mrs. Jeeva Ganesan
3. Saravanan
4. Miss.Punitha

.... Appellants

(Appellants 2 to 4 are brought on record as LRs of the deceased sole appellant vide order of Court dated 08.08.2007 made in CMP No.2499 to 2501/07)

Vs.

1. A.Poongavanam
2. A.Ganesan
3. A.Raja
4. A.Krishnan
5. A.Sivajayam

.... Respondents/1,3 to 6
Defendants

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree made in A.S.No.50/97 dated 27.06.2002 passed by the Subordinate Judge, Dharmapuri reversing the judgment and decree dated 04.07.1997 passed by the District Munsif-cum-Judicial Magistrate, Palakode in O.S. No.165/1995.

For Appellants : Mr.K.Selvarangan

For Respondents: Mr.V.R. Anna Gandhi
for M/s.Sarvabhauman Associates

JUDGMENT

This second appeal is directed against the judgment and decree dated 27.06.2002 passed in A.S.No.50/97 on the file of the Sub Court, Dharmapuri, reversing the judgment and decree dated 04.07.1997, passed in O.S. No.165/1995 on the file of the District Munsif-cum-Judicial Magistrate, Palakode.

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 belonging to the plaintiff having been purchased by him by way of a registered sale deed dated 23.09.69, for a valid consideration from the previous owner Rajammal and others and since then, it is the plaintiff who has been in possession and enjoyment of the suit property and accordingly, after the purchase, the plaintiff has constructed a tiled house, latrine and bathroom in the suit property and also paying tax and also put up a small thatched shed in the suit property on the northern side of the well and bathroom and enjoying the suit property as such and the defendants are third parties and not entitled to the suit property and on the other hand, the first defendant claiming that she is the wife of one Sivajayam, who is the brother of the plaintiff and that the suit property is the ancestral property and that she is entitled to her husband's share in the same, laid a false claim in respect of the suit property and on the other hand, the suit property is only the self acquired property of the plaintiff and the plaintiff has also sent a reply notice to the above said claim of the defendants and despite the same, the defendants without any right, title or interest attempted to interfere with the plaintiff's possession and enjoyment of the suit property and left with no other alternative, according to the plaintiff, he has been necessitated to lay the suit for appropriate reliefs.

5. The case of the defendants as made in the written statement is that the suit laid by the plaintiff is not maintainable either in law or on facts. The written statement has been filed only questioning the jurisdiction of the Court and the defendants reserve the right to the resistance of the plaintiff's suit in other aspects. The value of the suit property on the date of the suit is Rs.50/- per square feet and further, there are super structure put up in the suit property and the value of the suit property would be on the higher side and the plaintiff had undervalued the suit property and suppressing the real market value of the suit property, come forward with the suit for the reliefs prayed for without paying necessary Court fees thereto and therefore, if the suit had been properly valued, this Court may not have the jurisdiction to try the suit and hence, the suit laid by the plaintiff is liable to be dismissed on the above score and prayed for dismissal.

6. On the basis of the above said pleadings putforth by the respective parties, though it is found the defendants have raised only a preliminary objection in the written statement as to the improper value of the suit and the inadequate Court fees

paid by the plaintiff thereto, it is found that the parties having projected their respective claims of title to the suit property and accordingly, the Courts below also having proceeded with the case on the above said rival claims of the respective pleas of the parties as regards the title of the suit property, it is found that accordingly, issues were formulated by the Courts below in the matter and based on the issues formulated, the Courts below endeavoured to dispose of the lis involved the matter.

7. Even in the plaint itself the plaintiff has averred that the first defendant has made a claim that she is the wife of his own brother Sivajayam and also claimed that the suit property is the ancestral property belonging to the plaintiff and his brother Sivajayam and after the demise of Sivajayam, the first defendant being his legal heir, according to the first defendant, she is entitled to a share in the suit property i.e., ancestral property and thereby the plaintiff himself has averred in the plaint that the first defendant is disputing his absolute title to the suit property. Accordingly, it is found that based on the above said projections of the claim of title to the suit property by the respective parties, the matter had been dealt with by the Courts below. It is accordingly noted that during the course of the trial proceedings, the notice issued by the first defendant and the reply sent by the plaintiff to the same, have also come to be marked as Exs.A5 and A6.

8. In support of the plaintiff's case PWs 1 and 2 were examined, Exs.A1 to A6 were marked. On the side of the defendants DW1 to 3 were examined, Exs. B1 to B3 were marked.

9. The trial Court, on a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, was pleased to decree the suit as prayed for. The first appellate Court, on an appreciation of the materials placed on record, was pleased to set-aside the judgment and decree of the trial Court and by way of allowing the appeal preferred by the defendants, dismissed the suit laid by the plaintiff. Aggrieved over the same, the present second appeal has been laid.

10. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration:

1. Are not the allegations of facts in the plaint regarding the title and possession of the plaintiff to the suit property to be taken as admitted by the defendants, especially when the defendants have not chosen to deny the allegations by filing written statement, in view of Order VIII,

Rule 5 of C.P.C.?

2. Whether the Lower Appellate Court is right in reversing the judgment of the trial Court by holding that the suit property is a joint family property, especially when there is no iota of evidence on the side of defendants to prove the same?

11. Materials placed on record go to show that the first defendant is the wife of Sivajayam, who is the brother of the plaintiff. Though it is found that the plaintiff examined as PW1 during the course of his evidence would even plead ignorance of the marriage of the first defendant with his brother Sivajayam, however, it is found that the first defendant is the wife of the plaintiff's brother Sivajayam and in this connection, PW2 examined on behalf of the plaintiff, during the course of cross examination has admitted that the first defendant is the wife of the plaintiff's brother Sivajayam and in such view of the matter, it is seen that the first defendant is the wife of the plaintiff's younger brother Sivajayam. Materials placed further would go to show that the family consisting of the plaintiff and his younger brother Sivajayam owned ancestral property in Door nos.35 and 36 of the suit village. The suit property is stated to be located in Door no.36 adjacent to Door no.35, within the specific boundaries and according to the plaintiff, he has put forth a claim that he had purchased the suit property by way of a sale deed dated 23.09.69, from its previous owners Rajammal and others and on the other hand, it is the case of the defendant that the suit property is the ancestral property of the plaintiff and his brother Sivajayam. Despite the above stand of the plaintiff, it is found that for the Door nos.35 and 36, the tax had been paid in the name of the plaintiff right from 1965-1966 to 1991-1992 and the same could be seen from the certificate issued by the Executive officer, Selection grade, Town panchayat, Marandahalli, Dharmapuri district, which document has come to be marked as Ex.A4. If really the property comprising of Door no.36 happened to be acquired by the plaintiff only by way of a sale deed dated 23.09.69 and thereafter, only the plaintiff had put up the super structure thereon, to which door no.36 had been assigned, it does not stand to reason as to how even prior to the same, for Door nos.35 and 36 in the suit village, the tax has come to be laid in the name of the plaintiff as could be seen from Ex.A4. Despite the above position, the plaintiff has not chosen to place any parent title deed of his vendors to show that they had a valid title to the property said to have been acquired by him by way of sale deed dated 23.09.69 absolutely and they had validly conveyed the same to the plaintiff and it is only thereafter, the plaintiff had put up the super structure thereon and enjoying the same as the absolute owner thereof. On

the other hand, from Ex.A4, it is found that the tax has been levied in the name of the plaintiff for both door nos.35 and 36 right from 1965 to 1966.

12. It is found that the plaintiff is the eldest member of the family. That apart, as could be seen from the evidence of the plaintiff in toto, it is noted that the family consisting of the plaintiff and his brother Sivajayam owned ancestral property in Door nos. 35 and 36 and it is not the case of the plaintiff that he and his brother had been divided in respect of the ancestral property belonging to them. In this connection, the plaintiff examined as PW1 during the course of cross examination has admitted that their ancestral property house is situated in Marandahalli and the same is located in muthu udaiyar street and there are two doors in the said property bearing door nos.35 and 36. However, the plaintiff would claim that door no.36 was constructed by him pursuant to the sale deed dated 23.09.69. He has also admitted that for door nos.35 and 36, the payment of tax had been made in his name from 1965 to 1966. Accordingly, suggestions had been made to him that both door nos.35 and 36 are the ancestral properties belonging to him and his brother and no doubt, the same had not been denied by the plaintiff. As above seen, it is admitted that the plaintiff is the eldest member of the family. Further, the plaintiff has also admitted during the course of cross examination that till the date of the demise of his brother Sivajayam, there has been no division effected in respect of the ancestral property and accordingly, it is seen that no partition document has been placed before the Court for proving any valid partition had been done amongst them. It is thus found that the family of the plaintiff consisting of his brother also owned ancestral property and when the plaintiff has failed to establish the legal entitlement of his alleged vendors to convey the suit property to him as put forth by him and when it is seen that the suit property has also comprised of the ancestral property belonging to the plaintiff and his brother and further, when it is also seen that the first defendant is the wife of his deceased brother, accordingly, it is found that the first defendant has made a claim of share in the ancestral property as the wife of the deceased brother. PW2 also during the course of his evidence has admitted that till the demise of his brother there has been no partition effected between the plaintiff and his brother.

13. In the light of the above position, when the plaintiff is found to be the eldest member of the family and when the family consisting of the plaintiff and brother owned ancestral property, which also is found to be inclusive of the suit property as could be seen from Ex.A4 and also admitted by the plaintiff himself and when the plaintiff has not established his vendors legal entitlement to convey the suit property as such and when there is no acceptable and reliable document placed by

the plaintiff to show that he has been in exclusive possession and enjoyment of the suit property as such, as rightly determined by the first appellate Court, the parties having understand their respective cases and accordingly, proceeded to adduce evidence in the matter, found that the plaintiff having failed to establish his legal claim of title to the suit property as such and on the other hand, finding that the suit property is only forming part of the ancestral property belonging to the plaintiff and his brother Sivajayam and the first defendant being the wife of Sivajayam, accordingly held that the plaintiff is not entitled to obtain the reliefs sought for in the plaint.

14. In the light of the above position, I do not find any error or mistake in the determination of the first appellate Court in holding that the plaintiff has failed to establish that the suit property exclusively belong to him by way of Ex.A1 and the same is in his exclusive possession and enjoyment and accordingly, it is found that the first appellate Court is justified in dismissing the suit laid by the plaintiff. Though the defendants have not specifically denied the plaint averments as such, as already pointed out, when the parties have understand their respective cases, as far as the claim of title putforth by them to the suit property and accordingly, proceeded to adduce evidence in the matter and the Courts below also having understand the case of the parties and framed necessary issues and points for determination and proceeded to determine the rival claims of the parties to the suit properties, it is found that the evidence on record would only lead to the conclusion that the suit property is only the joint family ancestral property of the plaintiff and his brother Sivajayam and in such view of the matter, no interference is called for in the judgment and decree of the first appellate Court and accordingly, the substantial questions of law formulated in the second appeal are answered against the plaintiff.

15. The principles of law outlined in the decisions relied upon by the plaintiff counsel reported in (1998) 9 SCC 458 (Raj Bahadur Sharma (Dead) through Lrs. Vs. Union of India and others) and 2005 (5) CTC 264 (Savithiri Ammal and Ilayaperumal and another) are taken into consideration and followed as applicable to the case at hand.

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

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1. The Subordinate Judge,
Subordinate Court, Dharmapuri.
2. The District Munsif-cum-Judicial Magistrate,
Palakode.
3. The Section Officer,
V.R. Section,
High Court, Madras.

+1 cc to Mr.K.SelvaRangan Advocate sr 20555
+1 cc to Mr.V.R.AnnaGandhi Advocate sr 19818

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