

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.07.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

S.A.No.31 of 2016
and C.M.P.Nos.944 of 2016

1.Ramasamy Nadar (deceased)
2.Chinnapillai
3.Kanthan @ Chinnapaiyan
4.P.Murugesan
5.Chinna thambi
(appellants 3 to 5 impleaded as legal heirs
of the deceased 1st appellant vide order
of this Court dated 12.08.2016 made in
C.M.P.No.13083 of 2016) .. Appellants/Defendants 1&5

Vs.

1.Alamelu
2.Govindaraj
3.Bhoopathi
4.Palaniammal
5.Amaravathi
6.Kathamuthu
7.Natarajan
8.Ganesan .. Respondents/Plaintiffs &
Defendants 2 to 4

PRAYER: Second Appeal is filed under Section 100 of C.P.C against the judgment and decree dated 05.07.2007 made in A.S.No.30 of 2006 on the file of the Sub Court, Mettur, confirming the judgment and decree dated 21.08.2006 made in O.S.No.34 of 1997 on the file of the District Munsif Cum Judicial Magistrate Court, Omalur.

For Appellants : Mr.N.Ponraj
for Mr.M.Elango

For R1 to R5 : Mr.S.Mayilnathan for
Mr.D. Shivkumaran,

J U D G M E N T

Second Appeal is filed against the judgment and decree dated 05.07.2007 made in A.S.No.30 of 2006 on the file of the Sub Court, Mettur, confirming the judgment and decree dated 21.08.2006 made in O.S.No.34 of 1997 on the file of the District Munsif Cum Judicial Magistrate Court, Omalur.

2.The defendants 1 and 5 who are unsuccessful in both the Courts below have come out with the present Second Appeal. The 1st appellant/1st defendant died pending Second appeal and appellants 3 to 5 were brought on record as the legal heirs of the deceased 1st appellant. The respondents 1 to 5 and one Palniammal filed the suit O.S.No.34 of 1997 for partition and separate possession of two acres described in the schedule to the plaint. The first respondent is wife, respondents 2 to 5 are children and the 6th plaintiff is mother of Chinnapaiyan @ Ramasamy Nadar. According to the respondents 1 to 5 and said Palaniammal, the said Chinnapaiyan @ Ramasamy Nadar purchased 1 acre and 80 cents in Survey No.224/1 and another 20 cents in the same Survey number in Manathal village by the sale deed dated 28.09.1968 and 04.10.1966 respectively for valuable consideration. From the date of purchase, he was in joint possession of the property with Perianna Nadar and enjoyment of the property measuring 6 acres and 12 cents along with other properties. The joint patta was issued in their name. The said Perianna Nadar died and his legal heirs are defendants 2 to 4/respondents 6 to 8. The suit properties are separate, not subdivided and appellants and respondents are not able to enjoy the properties in common. In spite of panchayat, appellants did not partition the property and hence, plaintiffs filed the said suit for the above stated relief. The parties are referred as arrayed in the suit.

3.The deceased 1st defendant filed written statement and denied that Chinnapaiyan @ Ramasamy Nadar purchased 1 acre and 80 cents and 20 cents and he was not in possession and enjoyment of the same till his death. The land in Survey No.224/1 in Manathal Village measuring 6 acres 12 cents belonged to one Chinnapaiyan Nadar. He had two sons viz., Kalimooopan and Narayanan. The said Kalimooopan had two sons, Ramasamy Nadar/first defendant and Lakshmanan. Kalimooopan had 3.06 acres of land as his share. Out of this, the deceased 1st defendant had obtained an extent of 1.53 acres as his share. Kali Nadar has created nominal sale deed in favour of Ramasamy Mudaliar to obtain loan. Subsequently, he repaid the loan and got back the property. Lakshmanan sold 1.47 acres to Perianna Nadar. Out of remaining 3.06 acres, Ramasamy Mudaliar sold 3 cents on 03.07.1946 to the deceased 1st defendant. The said Ramasamy Mudaliar sold 77 cents of land to Chinnapillai, wife of deceased 1st defendant. Again, on 13.09.1956, the said Ramasamy Mudaliar sold 60 cents of land to deceased 1st defendant. The family members of deceased 1st defendant was having the land to the extent of 2 acres and 93 cents. Perianna Nadar was having the land to the extent of 1.53 acres.

3(a).Vendors of the plaintiffs, Narayana Nadar and Chinnapaiya Nadar have purchased only 1.53 acres from the said Ramasamy Mudaliar. The vendors of the plaintiffs have no right to sell more than 1.53 acres. The two sale deeds dated 28.09.1968 and 04.10.1966 are not valid. The vendors of the

plaintiffs sold the property without title. The vendors of the plaintiffs were in possession and enjoyment to an extent of only 1.53 acres. The remaining 13 cents are enjoyed as house site. The defendants 1 to 5 and plaintiffs are enjoying the property separately. The plaintiffs never asked for partition. They do not have title to the 2 acres. No cause of action has arisen for the suit and prayed for dismissal of the same.

4.The deceased 1st defendant filed additional written statement and the same was adopted by the defendants 2 to 4 and contended that Chinnapillai, wife of the deceased 1st defendant is having title to 77 cents in the suit properties. She is the necessary party to the suit. The suit is barred for non-jointer of necessary parties. The deceased 1st defendant filed another written statement and contended that the defendants 1 to 4 are denying the title of the plaintiffs and suit without declaration of title is not maintainable. Second appellant is the 5th defendant in the suit.

5.Based on the above pleadings, necessary issues were framed by the trial Court. Before the learned Trial Judge, 3rd plaintiff examined himself as P.W.1 and one Rangasamy was examined as P.W.2 and marked 16 documents as Exs.A1 to A16. On behalf of the defendants, deceased 1st defendant examined himself as D.W.1 and marked 10 documents as Exs.B1 to B10. The learned Trial Judge considering the pleadings, oral and documentary evidence, decreed the suit, holding that the plaintiffs have proved their title by both oral and documentary evidence, especially through evidence of P.W.2, who was an attesting witness to Exs.A1 and A2, sale deeds. The learned Trial Judge also held that defendants have to prove their contention with regard to the title of the properties.

6.Against the said judgment and decree, the defendants 1 and 5 filed A.S.No.30 of 2006. The learned I Appellate Judge framed necessary points for consideration. The learned I Appellate Judge independently considering the materials on record, judgment of the Trial Court and arguments of the counsel for the parties, dismissed the appeal, confirming the judgment of the Trial Court.

7.Against the said judgment and decree dated 05.07.2007 made in A.S.No.30 of 2006, the appellants have preferred the present Second Appeal.

8.At the time of admission, following Substantial Questions of Law were framed:

"1.Whether the Courts below erred in law in granting a decree for partition when the defendants have specifically raised the plea with regard to the maintainability of the suit as they dispute the title to the property as claimed by plaintiffs based on the sale deeds?

2. Whether the present suit for partition is maintainable in law when the plaintiffs have not chosen to seek for declaration of the title also especially when the defendants dispute such title?"

9. The learned counsel for the appellants contended that the plaintiffs failed to prove the title, except by producing the sale deeds, Exs.A1 and A2. The Courts below failed to see that Exs.A1 and A2 are not valid in law and do not confer any title to the plaintiffs as per their claim. The Trial Court did not frame necessary issues based on the pleadings. The Trial Court failed to give findings and failed to consider the pleadings. The Courts below failed to consider that the vendors of Exs.A1 and A2 do not have any title to the extent they sold. The vendors of the plaintiffs sold more than the extent what they possess. The Courts below failed to consider Exs.B1 and B2 in deciding the issue. The Courts below have not taken into consideration that Exs.B3 to B7 are earlier to Exs.A1 and A2. The Courts below failed to consider that appellants have disputed the title. The learned counsel for the appellants further contended that the vendors of the plaintiffs have title only to 1.53 acres and they did not have any right to convey 2 acres to the plaintiffs. When the title of the plaintiffs is disputed, they must prove their title by seeking declaration. The Courts below have failed to consider this aspect. They ought to have dismissed the suit and allowed the first appeal. The suit without relief of declaration is not maintainable.

10. Per contra, the learned counsel for the respondents 1 to 5 contended that the plaintiffs have proved their title by producing and marking the sale deeds, Exs.A1 and A2 in their favour. The plaintiffs proved their title by examining one of the attesting witness, Rangasamy as P.W.2. Chinnapaiyan @ Ramasamy Nadar purchased the property from the legal heirs of Narayana Nadar. The appellants have admitted that Narayana Nadar inherited 3.06 acres out of 6.12 acres and handed over properties to Ramasamy Mudaliar. The appellants have not proved this contention. They have not examined either Ramasamy Mudaliar or anybody else to substantiate this contention. They have not produced any document to show as to how Ramasamy Mudaliar acquired title to 3.06 acres, belonging to Narayana Nadar. The appellants have not produced original documents through which they have purchased the properties. Joint patta is issued and plaintiffs are paying kist and electricity charges. The suit is for partition and therefore, there is no necessity to claim relief of declaration of title and prayed for dismissal of the Second Appeal.

11. Heard the learned counsel for the appellants as well as the respondents 1 to 5 and perused the materials available on record.

Substantial Questions of Law 1 and 2:

12.The appellants 3 to 5 are brought on record as the legal heirs of the deceased 1st appellant. The plaintiffs filed suit for partition and separate possession of 2 acres of land out of 6.12 acres. According to them, their predecessor in title, Chinnapaiyan @ Ramasamy Nadar purchased 2 acres by Exs.A1 and A2 and he was in possession and enjoyment till his death. After his death, the plaintiffs are in possession and enjoyment of 2 acres of the suit property and they constructed house and are residing there. They are paying taxes and also electricity charges. The plaintiffs have produced joint patta and other documents to show that they have title and they are in possession of 2 acres.

12(a).On the other hand, the contention of the appellants is that the plaintiffs have title only to 1.53 acres and not to 2 acres as claimed by them. According to the appellants, the vendors of the plaintiffs purchased only 1.53 acres and the sale deeds, Exs.A1 and A2 are invalid and void. They have raised this contention on the ground that the deceased 1st defendant has purchased 3 cents and 60 cents and his wife, the 5th defendant purchased 77 cents from Ramasamy Mudaliar. Both the Courts below have considered the evidence and found that appellants failed to prove the title of Ramasamy Mudaliyar. On the other hand, both the Courts below have held that the plaintiffs proved that their predecessor, Chinnapaiyan @ Ramasamy Nadar purchased the properties from legal heirs of Narayanan Nadar by examining P.W.2, one of the attesting witness. In view of this findings of fact, this Court has not framed any Substantial Questions of Law with regard to title of plaintiffs and their claim of 2 acres. The second Substantial Question of Law framed by this Court relates to whether suit is maintainable without seeking relief of declaration.

13.From the judgment of the Courts below, it is seen that even though the appellants dispute title of the plaintiffs, the deceased 1st defendant as D.W.1 has admitted that plaintiffs are in possession of the property purchased by Chinnapaiyan @ Ramasamy Nadar and they have constructed a house and are residing there. The suit is for partition and to get a decree of partition, the plaintiffs have to prove the joint possession of extent claimed by them. Plaintiffs have proved joint possession by producing joint patta, Ex.A14. The appellants have not disputed the said document. Further, plaintiffs have produced Ex.A15, mortgage deed executed by Pappayammal, the wife of Narayana Nadar for herself and on behalf of her minor children in favour of Marianna Nadar and Ramasamy Nadar. The property given as security for the said land is 1.80 acres. In the said Ex.A15, the mortgage deed, the deceased 1st defendant has signed as witness. This clearly shows that neither Narayana Nadar nor his legal heirs sold the property to Ramasamy Nadar. Further, the deceased 1st defendant

admitted that the plaintiffs have title to 1.53 acres. The Courts below considered all the materials on record and concluded that the plaintiffs have proved the title to 2 acres and are entitled for partition.

14.The present suit is not for injunction and therefore, the contention of the appellants that suit without seeking declaration of title is not maintainable is without merits. It is pertinent to note that the Hon'ble Apex Court has held that even in a suit for injunction, the Court can decide the issue of title if there is no complicated facts. Only when there are complicated facts, the Court can direct the plaintiffs to seek for declaration of title. For the above reason, both the Substantial Questions of Law are answered against the appellants.

15.In the result, this Second Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

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To

1.The Subordinate Judge, Mettur.

2.The District Munsif Cum Judicial Magistrate, Omalur.

+ 1 cc to Mr.D. Shivkumaran, Advocate Sr.46715

S.A.No.31 of 2016
and C.M.P.Nos.944 of 2016 and 4627 of 2018

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