



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 04.09.2018

DELIVERED ON: 25.09.2018

CORAM:

THE HON'BLE MRS.JUSTICE R. HEMALATHA

S.A.No.2175 of 2001

1. Kokila
2. Malar Kodi
3. Thangavelu (deceased)
4. T.Prema
5. Kavitha
6. Kalpana
7. Latha
8. Elango

(Appellants 4 to 8 brought on record as legal heirs of the deceased 3rd appellant vide order dated 27.08.2018 made in Cmp No.12344 to 12346 of 2018 in S.A.No.2175 of 2001)
... Appellants/Plaintiffs

Vs.

Secretary,
Co-operative Agricultural Bank,
Vengal Village and Post,
Thiruvallur District.

... Respondent/Defendant

PRAYER : Second Appeal filed under Section 100 of C.P.C., against the decree and judgment dated 31.07.2001 passed by the Subordinate Judge, Thiruvallur in A.S.No.33 of 1999 reversing the decree and judgment dated 29.06.1999 passed by the District Munsif, Thiruvallur in O.S.No.270 of 1986.

For Appellants : Mr.S.T.Bharath Gowthaman
Respondent : Sole respondent set exparte
vide court order dated 28.06.2018.

JUDGMENT

The appellants in this second appeal are plaintiffs in O.S.No.270 of 1986 on the file of the District Munsif, Thiruvallur and the respondents in A.S.No.33 of 1999 on the file of the Subordinate Judge, Thiruvallur. During the pendency of the second appeal, the third appellant died and his legal heirs have been impleaded as appellants 4 to 8.

2. One Mr.K.Thirunavukkarasu, Mrs.Ellammal and appellants 1 to 3/ plaintiffs 3 to 5 filed O.S.No.270 of 1986 for



declaration of their title to the suit properties and for a permanent injunction restraining the respondent/defendant from interfering with their peaceful possession and enjoyment over the suit property.

WEB COPY

3. The case of the appellants/plaintiffs is briefly as follows. The suit properties measuring 12 cents of Vengal Village (Old Pymosh No.901/1), Thiruvallur Taluk, originally belonged to one Veerasamy Mudaliar. The said Veerasamy Mudaliar and his brother's wife Unnamalai Ammal and others executed a settlement deed dated 27.04.19842 (Ex.A1) in respect of the suit properties in favour of Kumarasamy Mudaliar and others. Subsequently, Kumarasamy Mudaliar and his wife executed a Will dated 29.12.1972 (Ex.A2) in favour of the first plaintiff Thirunavukkarasu (since deceased).

4. The specific contention of the appellants/plaintiffs is that they have title to the suit property by means of the Will dated 29.12.1972 (Ex.A2) and that the defendant is attempting to interfere with their peaceful enjoyment over the suit properties. The first plaintiff issued a notice dated 01.06.1986, a copy of which was marked as Ex.A3 and the defendant after receiving the said notice, sent a reply dated 14.06.1986 (Ex.A4), which according to the appellants/plaintiffs, contained false allegations. It is also contended by them that the appellants/plaintiffs are in possession of the suit properties as evidenced by the patta (Ex.A6), chitta (Ex.A7) and kist receipts (Ex.A8 to Ex.A11).

5. The defendant filed a written statement contending that they purchased the suit property through 2 sale deeds both dated 03.10.1958 (Ex.B1 and Ex.B2) and they are also in possession of 15 cents in survey No.224 /7 for more than 25 years. According to them, the first plaintiff in fact issued a notice in the year 1978 claiming right over the suit properties for which, the defendant sent a suitable reply and thereafter, the first plaintiff did not proceed further. It is their contention that the first plaintiff has again raised the same contention and filed a frivolous suit and that the plaintiffs' predecessors in title do not have any right over the suit properties. Therefore, the defendants prayed for dismissal of the suit.

6. The trial court, after full contest, decreed the suit filed by the plaintiffs by observing that the defendant did not prove his case. In fact, the trial court has thrown the entire burden of proving title to the suit property on the defendant, which is unknown to law.

7. The first appellate court reversed the findings of the



trial court and dismissed the suit filed by the appellants/plaintiffs.

8. Now, the second appeal is filed on the following substantial questions of law.

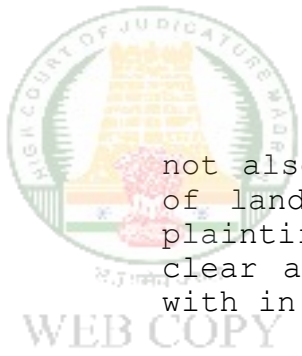
1. Is the learned Subordinate Judge right in holding that the plaintiff's have not proved the Will when in the evidence it was clearly stated that the witnesses for the Will are not alive and the signature of the executant identified and no suggestion put to the witness by the defendant disputing the Will?

2. When the defendant being a third party to the Will concerned, is he entitled to dispute the truth and validity of the Will?

3. When the plaintiffs have produced documents to prove their possession by filing patta and other documents to show their title and they are in possession, is the learned Subordinate Judge right in refusing a decree for injunction?

9. The appellants/plaintiffs claim title to the suit property through the settlement deed dated 27.04.1942 (Ex.A1) executed by Veerasamy Mudaliar, Unnamalai Ammal in favour of Kumarasamy Mudaliar and Pachaiaammal and also through the Will dated 29.12.1972 (Ex.A2) executed by Kumarasamy Mudaliar and Pachaiaammal in favour of the first plaintiff. A perusal of Ex.A1 and Ex.A2 shows that an extent of land measuring 0.1.8 Kani i.e. 133 cents was conveyed through Ex.A1 and Ex.A2. The suit property is shown as 12 cents in the suit survey number 224/7. No satisfactory explanation is given by the appellants/defendants in this regard. The plaintiffs have not also shown as to where their 12 cents is situate in survey No.224 /7, as per Ex.A1 and Ex.A2. Though specific boundary descriptions are given in the plaint schedule, there is no acceptable evidence that the property indicated in Ex.A1 and Ex.A2 is the suit property. The plaintiffs have not also adduced evidence to show as to how his ancestors got this property. The plaintiffs who filed a suit seeking for a declaration and injunction, should establish their case to the hilt and they cannot pick holes in the defendant's title and on that score ask for a decree of declaration and injunction. The trial court's judgment is totally misconceived and liable to be thrown away, because not only the entire burden of proving the title to the suit property was thrown on the defendant but also has decreed the suit, based on the advocate commissioner's report.

10. The Pw1 had also admitted that survey No.224/7 was sub divided and the total extent is 26 cents. He also deposed that no patta was issued in respect of survey No.224/7 either in his name or in his father's name (first plaintiff). He could



not also explain as to what happened with the remaining 5 cents of lands in survey No.224/7, after deducting 12 cents of the plaintiffs and 9 cents of the defendant. The plaintiffs are not clear about their property. This aspect has in fact been dealt with in extenso by the first appellate court.

11. A perusal of the sale deed Ex.B1 shows that a joint patta was issued in favour of Kumarasamy Mudaliar, who allegedly executed Ex.A2 Will and in fact a partition was effected in their family during 1917. In the circumstances, plaintiffs have not proved that they are entitled to the suit property, especially, when Ex.B1 sale deed in favour of the defendant shows that a joint patta was issued in favour of the executant of the Will Ex.A2 as well as other sharers.

12. The Advocate Commissioner, who inspected the suit property has filed a report contending that the plaintiffs are in possession of 9 cents in the suit survey number 224/7. Based on the Advocate Commissioner's report, the plaintiff cannot be granted a relief of declaration and permanent injunction. Moreover, the Advocate Commissioner is not a competent person to say as to who is in possession of the suit property. The plaintiffs, who have filed the suit for declaration and permanent injunction have not established that Kumarasamy Muddaliar had right over the suit property to execute a Will Ex.A2 and Veerasamy and Unnamalai Ammal had a right to execute settlement deed Ex.A1 in respect of the suit property. The first appellate court has rightly pointed out that there is a vast difference in the extent of land mentioned in Ex.A1 and Ex.A2 and the suit property. Since the title itself has not been proved by the plaintiffs, the other document filed on behalf of the appellants/plaintiffs are of no avail to them. The defendants also claim title to an extent of 15 cents in the old Pymash No.901/1 through the sale deeds Ex.B1 and Ex.B2. The total extent in Old Pymosh No.901/1 and new Pymosh No.43/1 is indicated as 26 cents in Ex.B1. The Pymosh number indicated in Ex.B2 is 901/2 and the total extent is 0.25 cents. In any event, since the appellants/plaintiffs have miserably failed to establish their title and possession over the suit property, the appeal fails.

13. In the result, the second appeal is dismissed. No order as to costs.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

mst



To

1. The Subordinate Judge, Thiruvallur.
2. The District Munsif, Thiruvallur.

WEB COPY

Copy TO

The Section Officer,
V.R. Section, High Court,
Madras.

+1cc to Mr.T.R.Rajaraman, Advocate, S.R.No. 66896

S.A.No.2175 of 2001

SAI (CO)
GN(29/10/2018)