



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 14.06.2018
Pronounced on : 21.06.2018

CORAM:

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

S.A. No.27 of 2001

Ragavaraj @ Rajkumar

... Plaintiff/Appellant/ Appellant

Vs.

1.Kanniyaraj

2.Perumal gounder

... /Defendant Respondents/Respondents

Prayer:- Second Appeal filed under Section 100 of C.P.C., against the judgment and the decree passed by the learned Sub Judge, Kallakurichi in A.S.No.40 of 1997 dated 26.08.1999 confirming the judgment and decree passed the learned Additional District Munsif, Kallakurichi in O.S.No.379 of 1990 dated 24.07.1995.

For Appellant : M/s.A.G.Rajan
and S.Deivaneethi

For Respondents : No appearance

J U D G M E N T

This second appeal has been filed by the plaintiff against the judgment and decree passed by the learned Sub-Judge, Kallakurichi in A.S.No.40 of 1997 dated 26.08.1999 confirming the judgment and decree passed by the learned Additional District Munsif, Kallakurichi in O.S.No.379 of 1990 dated 24.07.1995.

2.The appellant herein has filed a suit in O.S.No.379 of 1990 on the file of the Additional District Munsif, Kallakurichi, seeking declaration of title over the suit property and for delivery of possession of the suit property and also for mense profits. The learned Additional District Munsif, Kallakurichi, by the judgment dated 24.07.1995, has dismissed the said suit. As against the same, the appellant herein has



filed an appeal in A.S.No.40 of 1997 on the file of the Sub-Judge, Kallakurichi, and the same was dismissed on 26.08.1999. Aggrieved by the same, the plaintiff has filed the present second appeal. For the sake of convenience, the parties are referred to as described before the trial Court.

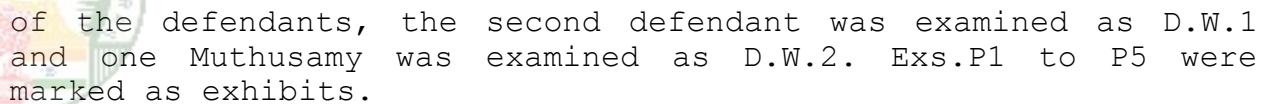
3.The averments made in the plaint are in brief as follows:-

The suit property originally belonged to the plaintiff's father viz., Chinnapparaja. After his death, the plaintiff succeeded to the suit property and he was in possession and enjoyment of the same, till the second defendant entered into the suit property in the year 1981, when the plaintiff went to Punjab for eking out his livelihood. Before going to Punjab, the plaintiff had entrusted the suit property with the first defendant, who is a close relative of the plaintiff. Subsequently, the plaintiff came to know that the first defendant had allowed the second defendant to enter into the suit property in the year 1981. Hence, the plaintiff requested the defendants to surrender possession of the suit property. But, they refused to surrender the possession. Hence, the suit.

4.The averments made in the written statement filed by the second defendant and adopted by the first defendant are in brief as follows:-

It is false to state that the suit property originally belonged to the plaintiff's father and after his death, the plaintiff succeeded to the suit property and he was in possession and enjoyment of the same. It is also false to state that the plaintiff has entrusted the suit property with the first defendant and went to Punjab for eking out his livelihood. It is also false to state that later on, he came to know that the second defendant entered into the suit property and he made request to surrender possession of the suit property and the defendants refused the same. The suit property originally ancestral property of the first defendant. The first defendant has sold the suit property to one Sengoda gounder. After the death of Sengoda gounder, his wife and his children have sold the suit property to the second defendant through a registered sale deed dated 16.06.1981 for a valid consideration of Rs.5,840/-. From that date onwards, the second defendant has been in possession and enjoyment of the suit property by paying Kist etc., The plaintiff has no right what so ever in the suit property. Hence, defendants prayed to dismiss the above suit.

5.Based on the aforesaid averments, the learned Additional District Munsif has framed necessary issues and tried the suit. During trial, on the side of the plaintiff, the plaintiff examined himself as P.W.1 and also examined one Venugopal as P.W.2. He also marked Ex.A1 as exhibit. On the side



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The learned counsel for the appellant/plaintiff has submitted that the suit property is the ancestral property of the plaintiff. He further submitted that Ex.A1 Adangal would show that the patta for the suit property stands in the name of the plaintiff's paternal uncle, namely, Govindaraja and after his death, the plaintiff succeeded to the suit property, but the Courts below failed to appreciate the evidence in a proper perspective and came to the conclusion that the plaintiff has not produced any document to show that he is the owner of the suit property. He further submitted that the Courts below failed to consider that the defendants did not produce any documentary evidence to show that the suit property was the ancestral property of the first defendant. He further submitted that the courts below failed to consider that the second defendant has not produced the original sale deed, which was said to have been executed by the first defendant in favour of one Sengoda



gounder, but on the contrary, he has produced only a registration copy of the sale deed and that too after cross examination of D.W.1 and hence no reliance can be placed upon the said document. He further submitted that the oral evidence of the plaintiff and P.W.2 would clearly establish that the suit property was the ancestral property of the plaintiff and therefore he prayed to set aside the judgments and decrees passed by the Courts below and decree the suit as prayed for.

10. In the plaint, the plaintiff has stated that the suit property originally belonged to his father namely, Chinnapparaja and after his death, he succeeded to the suit property and he was in possession and enjoyment of the suit property, till the second defendant had entered into the suit property in the year 1981. But, while examining himself as P.W.1 he has stated that the suit property was the ancestral property and his father and his Paternal uncle namely, Govindaraja have been in possession and enjoyment of the same. In support of the said contention, he has produced an Adangal extract and marked as Ex.A1. In Ex.A1, it is stated that for the Fasali No.1377 one Govindarajulu and others were in possession of the suit property; for Fasali Nos.1379 to 1984, it is mentioned that one Govindaraja was in possession of the suit property. Since in Ex.A1 it is stated that one Govindaraja was in possession of the suit property for some of the Fasalis, it appears that the plaintiff has changed his stand and took a plea that the said Govindaraja was his paternal uncle and the said Govindaraja and his father were in possession and enjoyment of the suit property. There is no evidence to show that the said Govindaraja is the paternal uncle of the plaintiff. Further it is not stated in Ex.A1 that the plaintiff's father Chinnapparaja has been in possession and enjoyment of the suit property. The plaintiff has not produced any other documentary evidence to show that the suit property was his ancestral property. Further, he has not produced any document to show that either his father or himself were in possession of the suit property at any point of time.

11. It is seen from Ex.B4 (Registration copy of the sale deed dated 10.04.1973) that the first defendant and his sons have executed the sale deed in favour of one Sengoda gounder in respect of the suit property on 10.04.1973 and from that date onwards, he was in possession and enjoyment of the suit property. In Ex.A1 itself, it is stated that for Fasali No.1385, Sengoda gounder was in possession and enjoyment of the suit property and that being so, the contention of the plaintiff that he was in possession and enjoyment of the suit property till the second defendant had entered into the suit property in the year 1981 cannot be true.



12.Ex.B1 would show that the wife and children of the said Sengoda gounder have sold the suit property to the second defendant on 16.06.1981. Ex.B2 is the patta, which stands in the name of the second defendant and Ex.B3 series is the kist receipts. A perusal of Ex.B3 series would show that the second defendant's vendors have paid kist from the year 1974 onwards and thereafter, the second defendant has paid kist. The aforesaid documents would show that from the year 1973 onwards, the vendors of the second defendant were in possession and enjoyment of the suit property and from the date of Ex.B1, the second defendant has been in possession and enjoyment of the suit property.

13.It is true that the first defendant has not produced any documentary evidence to show that the suit property was his ancestral property. Since, this is a suit for declaration of title, it is for the plaintiff to establish his title over the suit property by producing documentary evidence. In this case, the plaintiff did not produce any document to show that the suit property was his ancestral property. As already pointed out that in Ex.A1, neither his name nor his father's name found place. The said document stands in the name of one Govindaraja. The plaintiff has claimed that the said GovindaRaja is his paternal uncle, but he has not produced any documentary evidence to show that the said Govindaraja was his paternal uncle. Further, he has not produced any documentary evidence to show that he was in possession of the suit property at any point of time. On the contrary, the defendants have produced the sale deeds, patta and kist receipts to substantiate their case.

14.Under the said circumstances, this court is of the view that merely because the second defendant has not produced the original sale deed and he has produced only a registration copy of the sale deed and that too after cross examination of D.W.1 would not cause any prejudice to the plaintiff.

15.For the above said reasons, this court is of the view that the Courts below have rightly dismissed the plaintiff's claim. In view of the above, this Court cannot interfere with the concurrent findings rendered by the Courts below. Accordingly, the substantial questions of law are answered against the appellant/plaintiff.

15.In the result, the second appeal is dismissed. No costs.

Sd/-

Assistant Registrar(CS VIII)

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Sub Assistant Registrar



1.The Learned Sub Judge,
Kallakurichi.

2.The Learned Additional District Munsif,
Kallakurichi

S.A. No.27 of 2001

SSV(CO)
GSP(05/07/2018)