



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.04.2018

CORAM :

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THE HONOURABLE MR.JUSTICE S.S.SUNDAR

S.A.(MD)No.117 of 2018

and

C.M.P.(MD)No.3083 of 2018

Rengarajan : Appellant/Appellant/1st Defendant

-Vs-

1. Thirumalai Velayutham
2. Vasanthi
3. Meenakshi
4.Ulaganayaki

: Respondents 1 to 4 / Respondents
/ Plaintiffs 2 to 5

5.Madhivanan
6.Arumugam
Chitharthan (Died)
7.Gomathi
8.Kanagasabapathy
9.Chellaperumal
10.Chellammal
11.Lakshmi
12.Chella Gomu
13.Pechiammal
14.Rajam
15.Gomathi Ammal
R.Muthulakshmi (Died)
16.Bagavathi @ Saroja
17.Sivagaminathan

: Respondents / Respondents
/ Defendants 2 to 13
/ Lrs of deceased 7th Respondent
/ Respondents 17 to 19

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 14.12.2017, passed in A.S.No.64 of 2010 on the file of the Principal Subordinate Judge, Tirunelveli, partly modifying the judgment and decree dated 10.02.2010, passed in O.S.No.309 of 2005 on the file of the Principal District Munsif Court, Tirunelveli.

**JUDGMENT**

The first defendant in the suit in O.S.No.309 of 2005, on the file of the Principal District Munsif Court, Tirunelveli, is the appellant in this appeal.

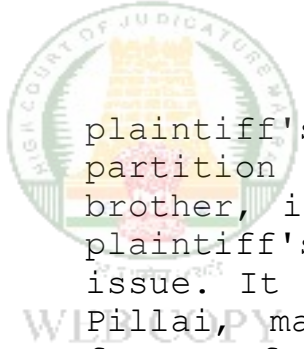
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2.The respondents 1 to 4, are the legal heirs of the first plaintiff, who died pending suit and they are plaintiffs 2 to 5. The filed the suit in O.S.No.309 of 2005, on the file of the Principal District Munsif Court, Tirunelveli, for declaration of title and permanent injunction restraining the 1st defendant from interfering with the peaceful possession and enjoyment of the suit property and in the alternative for recovery of possession if in case the Court comes to the conclusion that the first defendant is in possession of the property.

3.The case of the plaintiffs in the suit is as follows:

3.1.The suit property originally belonged to father of the first plaintiff and brother of his father. In a partition under a registered partition deed, dated 09.11.1941, the first plaintiff's father was allotted 1st schedule properties and the suit property is the 7th item of 1st schedule in the partition deed. After partition, the first plaintiff's father was in possession of the suit property, as absolute owner and the patta was also transferred to his name. The first defendant, who is working as a Village Administrative Officer, taking advantage of his official position, created false records and fabricated the Government records to have patta changed in his name. The first defendant obtained a fraudulent registered document dated 18.02.1982, from one Subbiah Pillai, as if the suit property was conveyed in favour of the first defendant. In the year 2003, the first defendant started claiming title to the suit property on the basis of the document dated 18.02.1982. After coming to know about the vexatious transaction, in 2003, the plaintiffs came to know further that the first defendant has also changed patta in his name. Thereafter, the plaintiffs filed a petition before the District Collector, on 21.06.2004 and the same was forwarded to Revenue Divisional Officer, Tirunelveli and he passed an order on 24.03.2005, declining to cancel the transfer of patta, which was in favour of the first defendant. It was only on account of delay, the revenue officials did not cancel the wrongful entry, granting patta in favour of the first defendant. Though patta is not a document of title, the plaintiff, in view of the conduct of the first defendant, is constrained to file the suit.

4.In the written statement, the first defendant claims exclusive title to the property on the basis of the sale deed alleged to have been obtained from one Subbiah Pillai. The fact that the suit property originally belonged to the first



plaintiff's father, by name, Malayappa Pillai, by virtue of the partition effected between the said Malayappa Pillai and his brother, is not in dispute. However, it is stated that the first plaintiff's father had a sister, by name, Ananthammal, who had no issue. It is further stated that the plaintiffs' father Malayappa Pillai, made an oral gift of the plaint schedule property in favour of his sister during his life time in the year 1957. It is further stated that the said Ananthammal accepted the gift and took immediate possession of the plaint schedule property.

5. It is the further case of the first defendant that subsequently, the said Ananthammal adopted one Subbiah Pillai as her son, who was then a minor. After the demise of the said Ananthammal, it is stated that the plaint schedule property devolved upon her adopted son, by way of intestate succession. It is the case of the first defendant that the said Subbiah Pillai, sold the property to the first defendant under a registered sale deed dated 18.02.1982. Even in the written statement, anticipating that the plaintiffs might rely upon revenue records, which stood in the name of Sadagopan, it is pleaded as follows:

"In the said sale deed, the vendor Subbiah Pillai made a reference to the patta which stood in the name of the plaintiff's grand father whose name is also Sadagopan. It is submitted that the Sadagopan referred to in the sale deed dt.18.02.182 is not the plaintiff herein".

6. The first defendant also pleaded adverse possession and in paragraph 5 of the written statement, the pleading in relation to adverse possession by the first defendant is as follows:

"5. The defendant submits that even assuming, but without conceding, that the plaintiff had any interest in or title to in the plaint schedule property as alleged, his title stands extinguished as the Defendant has perfected his title to the property by remaining in open, uninterrupted, peaceful and continuous possession of the schedule property for more than 22 years".

7. The first defendant has also raised a plea that the suit is barred by limitation. The other plea with regard to the reliefs claimed by the plaintiffs is that the suit is not maintainable without impleading the other legal heirs of the said Malayappa Pillai, who are not parties. Since the other legal heirs of the three sisters of the first plaintiff were also impleaded, the said plea that the suit is bad for non joinder of necessary parties was not pressed. The trial Court after finding that the plaintiffs have full possession and enjoyment of the suit property, held that the plaintiffs have proved title and enjoyment and therefore, ~~decided the suit for declaration of title and consequential injunction.~~ Aggrieved by the same, the first defendant / appellant



herein, filed an appeal in A.S.No.64 of 2010, on the file of the Principal Subordinate Court, Tirunelveli. The lower appellate Court also held title in favour of the plaintiffs and found that the suit is not barred by limitation holding that the appellant has neither proved his title nor enjoyment and negated the plea of adverse possession. Aggrieved by the same, the appellant has preferred the above second appeal. In the memorandum of grounds, the learned Counsel for the appellant has raised the following substantial questions of law for consideration:

(a) Whether the Courts below are correct in law in decreeing the suit by declaring that the plaintiffs are the absolute owners of the property and granting injunction when no evidence is produced by the plaintiffs to prove their possession and inheritance of the suit property after the death of Malayappa Pillai?

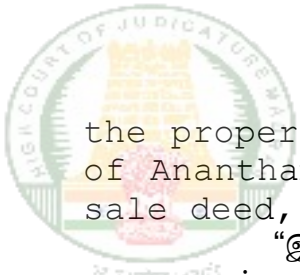
(b) Whether the Courts below are correct in law in holding that Ex-B1, registered sale deed dated 18.02.1982, is a created and forged one on mere assumption and presumption?

(c) Whether the Courts below are correct in law in decreeing the suit on finding the weakness of the defendants case, when it is settled proposition that the plaintiff has to prove his case upon his own pleadings and not by the fall back of the defendant?

(d) Whether the Courts below are correct in law in not considering the Patta, tax receipts stands in the name of Defendant to prove his prolonged possession for past more than 25 years adverse to the plaintiff's right?

(e) Whether the Courts below is correct in law in holding that the suit is filed within the statutory period of three years when the plaint is silent about the period on when the plaintiffs gets the knowledge about the execution of Ex-B1?

8. In this case, the plaintiffs have proved that the suit property belonged to the first plaintiff's father Malayappa Pillai, by virtue of a registered partition deed and the same is not in dispute. The registered partition deed, dated 09.11.1941, is also marked as Ex-A1. The case of the appellant that the first plaintiff's father had earlier made an oral gift in favour of his sister, one Ananthammal, was not proved by any independent evidence. The appellant's vendor claims to be the legal heir of the said Ananthammal on the basis that he was adopted by Ananthammal. Both the Courts below have concurrently held that the appellant has not proved that his vendor is the adopted son of Ananthammal. It is true that the appellant has produced the document, namely, the sale deed, alleged to have been executed by one Subbiah Pillai, in favour of the first defendant under Ex-A2, which is also marked as Ex-B12. As per the document Ex-B12, the vendor of the first defendant / appellant did not claim title to



the property on the basis of the oral gift and as the adopted son of Ananthammal. The trial Court has extracted the recitals in the sale deed, Ex-B12, as follows:

“இதன் தபசில் சொத்தின் பட்டா முன் சுவாந்தாரான சடகோபன் அவர்கள் பெயரில் இருந்து வருகிறது. அவ்விதமுள்ள ஷை பட்டாவை என் பெயரில் நான் மாற்றி பெறவேண்டியதாயிருந்தும் இதுவரை என்னால் என் பெயரில் மாற்றிப் பெறப்படவில்லை”.

9.The document Ex-A1, namely, the registered partition deed is not in dispute. When the appellant claims title on the basis of the sale deed under Ex-A2, the appellant is bound to prove that his vendor had title. The revenue records produced before this Court would show that the property stood in the name of Malayappa Pillai, the first plaintiff's father and that the same was changed in the name of first plaintiff later. Even in the document Ex-B12, it is stated that patta for the property stands in the name of Sadagopan, the first plaintiff. Having regard to these circumstances, the findings of the trial Court regarding title of the property cannot be faulted. It is admitted that in the sale deed, under Ex-B12, there is no reference to the oral gift in favour of the said Ananthammal. As a matter of fact, the first defendant's vendor did not claim title as the adopted son of Ananthammal. It is to be further seen that the appellant has claimed title through his vendor who has stated that the suit property is his self acquired property. In these circumstances, it is evident that the case of the appellant relying upon Ex-B12, is fraudulent. Hence, this Court has no hesitation to hold that the appellant has not proved his title.

10.As regards Ex-B1 and Ex-B12, having regard to the findings of the Courts below and the case of appellant is contrary to the recitals found in the document, this Court is unable to accept the case of appellant. In the absence of any evidence to prove that the appellant's vendor was the adopted son of Ananthammal and that Ananthammal got the property by way of oral gift, this Court is unable to take a different view and uphold the finding that the document Ex-B12 is a concocted document, fabricated only for the purpose of claiming title to the property. Admittedly, in this case, evidence and documents would show that the appellant's vendor was not shown as the owner in the revenue records. It is only on the basis of the documents Ex-B1 and Ex-B12, the appellant claims right and got his name included in the revenue records such as patta. This entry, though challenged by the plaintiff, on account of long delay, it appears that the Revenue Divisional Officer, declined to entertain the request of the plaintiff to change the patta in favour of the plaintiff. However, the fact that the name of first plaintiff was shown in the revenue records can be deduced. It is contended that the name Sadagopan found in the revenue records, was referable to the grandfather of first plaintiff. From the document Ex-A10, it is seen that the first plaintiff has been shown as the owner of the suit property in a



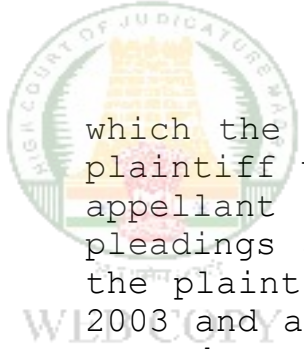
sale deed, which is in favour of appellant in respect of the property on the eastern side. The trial Court has found that Ananthammal died in the year 1947 and disbelieved the case of adoption. Based on evidence, the Courts below have also expressed their view with regard to the invalidity of the document, Ex-B12 and the right, title and interest of the appellant's vendor, who had executed the document Ex-B12.

11. With regard to the third substantial question of law, the trial Court as well as the lower appellate Court has accepted the case of the plaintiff on the basis of the documents adduced by the plaintiff and the admitted facts. The appellant himself admitted the title of the first plaintiff's father. It is only on the basis of alleged oral gift in favour of the sister of the plaintiff's father, the appellant claims title to the property. Hence, it is not on the weakness of the defendant's case the Courts below have accepted the case of the plaintiff, but on the admitted facts and evidence. In this case, as pointed out earlier in the written statement, the plea of defendant in paragraph 5 is as follows:

"5. The defendant submits that even assuming, but without conceding, that the plaintiff had any interest in or title to in the plaint schedule property as alleged, his title stands extinguished as the Defendant has perfected his title to the property by remaining in open, uninterrupted, peaceful and continuous possession of the schedule property for more than 22 years".

12. From the above, it is clear that the appellant has not even pleaded adverse possession in the manner required in the law. First of all, there is no plea that possession of the appellant is adverse or hostile. There is no animus, which is an essential ingredient and the same has not been pleaded. In these circumstances, the claim of the appellant seeking title by adverse possession cannot be accepted. The trial Court has also found based on good reasoning not to believe the case of the appellant that he is in possession of the suit property. Even in Ex-B12, it is admitted that patta stood in the name of first plaintiff. Though it is pleaded otherwise by the appellant, the admitted facts and records coupled with evidence prompted the Courts below to hold otherwise. When the document Ex-B12 is invalid and the suit property is a vacant land, the plaintiffs' case that they are in possession can be accepted. Mutation of records on the basis of an invalid document is unauthorised. In other words, Ex-B12, executed by a person, whose name was not there in revenue record cannot be the basis to change patta in the name of appellant and the patta which was obtained fraudulently cannot be relied upon to prove possession.

13. The last substantial question of law is about the period of limitation. The first plaintiff has stated that he filed the suit, immediately, after he came to know about the sale deed, under



which the appellant claims title. It is the specific case of the plaintiff that he came to know about the sale deed under which the appellant claimed title in 2003. This Court, going by the pleadings and evidence on record accept the plaintiffs' case that the plaintiffs came to know about the sale deed, under Ex-B12, in 2003 and about the change of revenue records in 2004. There is no record or evidence to show that the plaintiff had knowledge about the sale deed or the appellant's claim over title based on the revenue entries much earlier. Merely because, the appellant has obtained patta in his favour on the basis of a fraudulent document, the Courts cannot be persuaded to find possession on the strength of patta. Oral gift is invalid and cannot be believed. Having regard to the admission of appellant that the suit property belonged to the first plaintiff's father, he is entitled to succeed to the estate of his father and this Court has no reason to disbelieve the case of the plaintiffs, who have proved title, which gives them cause of action. Having regard to the concurrent findings of Courts below, this Court is unable to find any other substantial question of law for consideration.

14. As a result, this second appeal is dismissed and the judgment and decree, dated 14.12.2017, passed in A.S.No.64 of 2010 on the file of the Principal Subordinate Judge, Tirunelveli, partly modifying the judgment and decree dated 10.02.2010 passed in O.S.No.309 of 2005 on the file of the Principal District Court, Tirunelveli is confirmed. Since the respondents / plaintiffs are not heard and the first appeal has been partly allowed giving a joint declaration, anticipating another appeal by plaintiffs, this Court makes it clear that it has not expressed any opinion on any other issue that may arise between plaintiffs and other respondents. However, there is no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar

To

1. The Principal Subordinate Judge, Tirunelveli.
2. The Principal District Munsif Court, Tirunelveli.
3. The Section Officer, Vernacular Records,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+ 1 CC TO Mr.G.PRABHU RAJADURAI, ADVOCATE IN SR No. 61577
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TE/SV-MMS/SAR-1 : 06/065/2018 : 7P/6C

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Judgment made in
S.A. (MD) No.117 of 2018
16.04.2018