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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 17.07.2018

CORAM :

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**
S.A(MD) No.8 of 2018

and
C.M.P. (MD) No.258 of 2018

1.Valliammal
2.Ramu
3.Kaliammal
4.Ramalakshmi ... Appellants/ Appellants/Plaintiff

vs.

1.Velammal
2.Subramanian
3.Sankaralingam
4.Arumugasamy
5.Samuthiram
6.Muthulakshmi
7.Mariyappan ... Respondents / Respondents/Defendants

Prayer:-Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the decree and judgment passed in A.S.No.62 of 2014 on the file of the Subordinate Judge, Sankarankovil, dated 16.02.2016 confirming the decree and judgment passed in O.S.No.328 of 2011 on the file of the Principal District Munsif Court, Sankarankovil dated 02.12.2013.

For Appellants : Mr.R.Murugappan
For Respondents : Mr.R.J.Karthick

JUDGMENT

The plaintiffs in the suit in O.S.No.328 of 2011 on the file of Principal District Munsif Court, Sankarankovil, are the appellants in this second appeal.

2.The suit in O.S.No.328 of 2011 on the file of Principal District Munsif Court, Sankarankovil, was filed by the plaintiffs for declaration that the suit property is the absolute property of the plaintiffs and consequential permanent injunction restraining the defendants from interfering with the plaintiffs' possession and enjoyment over the suit property.

3.The case of the appellants in the suit in O.S.No.328 of 2011 are as follows:

<https://hcservices.ecourts.gov.in/hcservices/>
(1) The suit property originally belonged to one Murugan, S/o.N.Karuppanan. The said Murugan is the father of the first



plaintiff's mother and the father of grandmother of plaintiffs 2 to 4. Patta was issued to the said Murugan and the said Murugan died leaving behind his two daughters by name, Thirumeni and Aavudai. In the oral partition between Thirumeni and Aavudai, the suit properties were allotted to Thirumeni, who enjoyed the same absolutely.

(ii) After the death of Thirumeni, the suit properties were inherited by her two daughters, namely, the first plaintiff and Karuppi, the mother of plaintiffs 2 to 4 and two sons by name, Sanmugavel and Karuppasamy. In an oral partition among the daughters and the sons of Thirumeni, the suit properties were allotted to the shares of the first plaintiff and the mother of plaintiffs 2 to 4 by name, Karuppi. The patta was granted in favour of the first plaintiff and the mother of the plaintiffs 2 to 4. The mother of plaintiffs 2 to 4 died leaving behind them as legal heirs. Therefore, the suit properties are the common properties of plaintiffs 1 to 4. The defendants have no right or enjoyment of any portion of the property at any point of time.

(iii) However, on 30.09.2011, the defendants encroached into the suit properties and made an attempt to make it as plots and the said attempt was thwarted by the plaintiffs. The defendants proclaimed before the village people that they are the title holders of the suit property and the plaintiffs came to know the same and found that the defendants colluding with revenue officials, changed the patta and other revenue records in respect of the suit property in their favour fraudulently. However, the plaintiffs have taken action to change the patta in their favour. The mutation in the revenue records is fraudulent and not binding on the plaintiffs and based on such improper entry in the revenue records, the defendants cannot claim any right over the suit properties. However, the defendants are trying to alienate the properties and to interfere with their peaceful possession and enjoyment of the suit properties. Despite the conduct of the defendants being condemned by the village elders, the defendants are likely to encroach into the suit properties and hence, the suit.

4. The defendants 1 to 6 filed a written statement specifically denying all the averments in the plaint. The plaintiffs were put to strict proof of all averments in the plaint. It is the case of the defendants that the property in S.No.675/5 measuring an extent of 0.63.0 hectares is originally the ancestral property of one Karuppan, who was in enjoyment of the properties. He died intestate leaving behind his sons namely, Murugan, Sankarapandi (father of the first defendant) and Subban as his legal heirs.

<https://hcservices.courtservice.gov.in/> 5. The sons of Karuppan were in joint enjoyment of the property in S.No.675/5. It is further stated that they have entered into an oral partition by which, an extent of 0.61.0 ares in S.No.675/3



was allotted to Murugan (I item of suit property) and an extent of 0.58.0 in S.No.675/4 was allotted to the father of the defendants 2 to 7 by name Sankarapandi (II item of suit property).

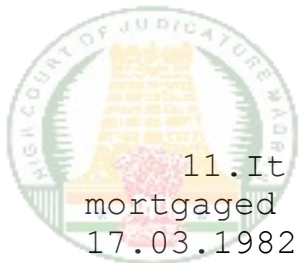
6.It is further stated that the lands in S.No.675/5 was allotted to the third son of Karuppan. It is further stated that after the partition, the third son of Karuppan, was enjoying the properties allotted to him as absolute owner.

7.The son of the original owner Karuppan namely, Murugan married one Sivagananam and then one Valmarathi @ Ramu as his second wife and there was no children for them. The contention in the plaint that there were two daughters to the said Murugan by name, Thirumeni and Aavudai is specifically disputed by the defendants. It is stated that Thirumeni and Aavudai are not the legal-heirs of the said Murugan. It is also the case of the defendants that the said Murugan executed a settlement deed dated 04.05.1971 in respect of 1.52 Acres in S.No.675/3 (suit I item) in favour of the father of defendants 2 to 6 by name, Periaganapathi and one Chinnaganapathi, who is the father of seventh defendant.

8.It is also the case of the defendants that during the life time of Murugan, Periaganapathi and Chinnaganapathi were helping him and took care of his needs by providing food and attendance and therefore, the said Murugan executed the above settlement deed and by virtue of the same, the said Periaganapathi and Chinnaganapathi were jointly enjoying the property. It is further stated that after the death of Periaganapathi and Chinnaganapathi, defendants 1 to 7 were jointly enjoying the property and patta No.4514 which is a joint patta stood in the name of defendants 1 to 7.

9.It is contended by the defendants that the suit II item in S.No.675/4 was allotted to Sankarapandi exclusively in the oral partition and that after his life time, the property was inherited by the first defendant's husband, who is the father of defendants 2 to 6 and the father of seventh defendant. It is further stated that the said Periaganapathi and Sinnaganapathi entered into a oral partition by which the suit II item was allotted to Periaganapathi and patta was also given to him.

10.It is further stated that the said Periaganapathi died leaving behind his wife / first defendant and his children namely, defendants 2 to 6. Hence, it is stated that separate patta was granted in respect of suit II item in favour of defendants 1 to 6. It is also stated that the other son of Karuppan by name Subban also gave the property in favour of Periaganapathi / father of defendants 2 to 6. Hence, the property in S.No.675/5 was in enjoyment of Periaganapathi and the defendants 1 to 6 inherited the same jointly from Periaganapathi. It is stated that patta was also transferred in the name of defendants 1 to 6 in respect of S.No.675/5.



11. It is further stated that the suit Items I and II was mortgaged by Periaganapathi under a registered mortgage deed dated 17.03.1982 in favour of one Lakshmiammal, and that the same was redeemed on 15.06.1987. Therefore, it was contended that the suit items I and II were in possession and enjoyment of the defendants 1 to 7 and their predecessors in interest for more than 75 years continuously without any interruption. The defendants 1 to 7 also pleaded adverse possession by virtue of their continuous possession claiming exclusive right as owners of the property for more than the statutory period.

12. The case of the plaintiffs that they are in enjoyment of the properties is specifically disputed and it is stated that patta was granted in favour of defendants jointly by the Thasildhar, during Jamabandhi about five years back. It is further stated that the joint patta was issued in respect of the suit I item and that separate patta was granted to the defendants in respect of suit II item.

13. Before the trial Court, the plaintiffs marked Ex.A.1 to Ex.A.4 and examined the first plaintiff as P.W.1. The fourth defendant was examined as D.W.1 and one Sekar was examined as D.W.2 on the side of defendants apart from marking Ex.B.1 to Ex.B.15.

14. Having regard to the fact that the dispute is regarding title, the trial Court framed necessary issues and held that the plaintiff first schedule property in S.No.675/3 was allotted to the said Murugan and that the suit second schedule property in S.No.675/4 and the property in S.No.675/5 were allotted in favour of Sankarapandi and Subban respectively. The trial Court has also found that the properties allotted to the said Murugan in the partition was subsequently settled in favour of sons of Sankarapandi by the document namely, settlement deed under Ex.B.1, dated 04.05.1971. Since the document Ex.B.1 was executed 30 years ago, the genuineness of the transaction was upheld by the trial Court. The fact that the said settlement deed was also acted upon is seen from the subsequent mortgage that was in the year 1983.

15. Ex.B.5 is the patta in respect of the plaintiff first and second schedule properties in the name of the defendants 1 to 6. Ex.B.6 is the series of patta in respect of the plaintiff first schedule property in the name of the defendants 1 to 7. Ex.B.7 is the patta in respect of the plaintiff second schedule property in the name of the defendants 1 to 6. On the basis of Ex.B.5 to Ex.B.7, the trial Court found that the defendants 1 to 7 have established their right in respect of the suit properties. Since the defendants 1 to 7 proved that they are the legal heirs of Sankarapandi, the title of the defendants was upheld by the trial Court while dismissing the suit.



16. Even though, the plaintiffs' stake their claim as the legal heirs of one Murugan, the trial Court found that the plaintiffs have not produced any document to prove that they are the legal heirs of the deceased Murugan. It is further observed that no one to speak about the relationship of the plaintiffs with the said Murugan, was examined by the plaintiffs to prove their case. The defendants were found to have established their title and possession in respect of the suit properties. Therefore, the suit was dismissed by the trial Court. Aggrieved by the judgment and decree of the trial Court in O.S.No.328 of 2011, the plaintiffs have preferred an appeal in A.S.No.62 of 2014 on the file of Subordinate Court, Sankarankovil. The appellate Court also found that the plaintiffs have not proved that they are the legal heirs of the said Murugan by establishing the genealogy. The specific case of the defendants in the suit that the said Murugan had two wives, but died without any issue was accepted by the lower appellate Court.

17. The plaintiffs have not produced any independent witness to prove their relationship. The plaintiffs' case is that Thirumeni and Aavudai are the children of the second wife of Murugan by name, Valmarathi @ Ramuammal. However, no document or independent witness was examined to prove their case. The defendants have produced Ex.B.3, a document of sale executed by Valmarathi @ Ramuammal in favour of one Shanmugavel. The said Valmarathi @ Ramuammal described herself in the said document as wife of Murugan. The purchaser by name, Shanmugavel is the son of Thirumeni and the plaintiffs admitted that one Sellan is the husband of Thirumeni. Though the plaintiffs' genealogy would lead to the position that the said Shanmugavel is the grandson of Ramuammal, the sale deed which has been marked as Ex.B3 does not disclose such relationship between Shanmugavel and Ramuammal. Hence, relying upon the document Ex.B3, the appellate Court found that the plaintiffs' case that they are the legal-heirs of Murugan cannot be believed.

18. The lower appellate Court further relied upon the documents filed by the defendants and found that Murugan is the son of Karuppanan and that there were two other brothers to the said Murugan. Since the relationship between the Murugan and his two brothers is also admitted by the plaintiffs during cross-examination, the lower appellate Court also held that the case of the defendants is acceptable.

19. The mortgage deed dated 23.12.1983 is also relied upon by the lower appellate Court. Since the recital of the document clearly proved the relationship between the parties as pleaded by the lower appellate Court accepted the said document Ex.B.1 as a bona fide transaction by which Murugan has settled all his rights in respect of the suit I item in favour of



Periaganapathy and Sinnaganapathy. Since the plaintiffs have failed to establish their title or enjoyment, the lower appellate Court has confirmed the findings of the trial Court. Aggrieved by the concurrent findings of the Courts below, the above second appeal is filed by the plaintiffs.

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20. In the memorandum of appeal, the following substantial question of law have been raised by the appellants, which is extracted hereunder:

SUBSTANTIAL QUESTION OF LAW

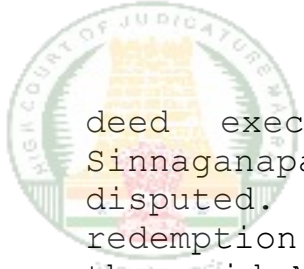
(a) Whether the appellants / plaintiffs establish their possession and enjoyment of the property and title of the property through Exs.A1 to A4.

(b) Whether the defendants / respondents oral and documents evidence R/w their Exs.B5 to B7 to prove the title of the property in their name?

(c) Are the conclusions and reasons for granting the relief to the defendants / respondents on the basis of their counter claim is acceptable under the provisions of the law of evidence.

21. The first question of law is about the documents relied upon by the plaintiffs. The plaintiffs have filed Ex.A.1 to Ex.A.4. Ex.A.1 is the settlement register showing that one of the suit item is in the name of Murugan. It is not in dispute that Murugan is the son of Karuppanan and he is entitled to the suit properties along with his two brothers by name Sankarapandi and Subban. Hence, this document does not contradict the case of the defendants. Ex.A.2 is the Adangal extract. Ex.A.3 is the patta book and Ex.A.4 is the kist receipt dated 30.03.1999. Except Exs.A1 to A4, no other document was filed. Though the plaintiffs have produced patta, the patta and revenue documents apart from title deeds produced by the defendants would clearly show that the defendants' case is more probable. When there is a rival claim regarding title, patta cannot be considered as a document of title and it has been held so in several precedents by this Court. The specific findings of the Courts below that the plaintiffs have failed to establish their relationship with Murugan and they have not proved that they are the legal-heirs of Murugan are based on substantial evidence. As against the document filed by the defendants in this case to prove their title and possession, the document Ex.A.1 to Ex.A.4 are not sufficient to establish the title of plaintiffs' to the suit properties.

22. The second question of law has no substance. The Courts below have considered several documents including the settlement



deed executed by Murugan in favour of Periaganapathi and Sinnaganapathi. The execution of the document and Ex.A1 is not disputed. The mortgage deed under Ex.B.2 and the subsequent redemption would also show that the settlement deed executed by the said Murugan, was acted upon. The document Ex.B3 falsifies the case of plaintiffs that they are the legal-heirs of Murugan. The mortgage deed under Ex.B4 dated 09.02.1919 further proves the case of the defendants regarding relationship. The plaintiffs admitted that the said Murugan had two other brothers and that they are the children of one Karuppanan.

23.Having regard to the fact that the suit property was mortgaged even during the life time of the father of Murugan, the contention that the suit property belonged to the said Murugan exclusively cannot be believed. The partition between Murugan and his brothers has been accepted by the Courts below based on the recitals of documents and other evidence. The revenue documents produced by the defendants namely, Ex.B.5-U.D.R. Patta for Patta No.1150 and Ex.B.11-kist receipts would certainly prove the title and enjoyment of the suit properties by defendants as contended by them.

24.The findings of the Courts below regarding title in favour of defendants is not only on the basis of Ex.B.5 to Ex.B.7, but on appreciation of all the documents filed by the defendants.

25.The third question of law conveys no meaning as there is no counter claim in this case by the defendants. Both the Courts below have dismissed the suit as the plaintiffs have miserably failed to establish their case of title. No relief was granted to the defendants in the suit. Hence, there is no substance in the third question of law raised by the appellants. Since the findings of the Courts below are on the consideration of relevant materials and appreciation of entire evidence, this Court has no reason to interfere with the judgment and decree of the Courts below.

26.As a result, this second appeal is dismissed and the judgment of the Subordinate Court, Sankarankovil in A.S.No.62 of 2014, confirming the judgment and decree of the learned Principal District Munsif, Sankarankovil in O.S.No.328 of 2011 is confirmed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(RTI)

/True Copy/



To

1. The Subordinate Judge,
Sankarankovil.

2. The Principal District Munsif,
Sankarankovil.

Copy to

The Section Officer, (2 copies)
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.R.Murugappan, Advocate Sr.No.73478
+1cc to Mr.R.J.Karthick, Advocate Sr.No.73647

MM

VB/SKN/SAR1/10.08.2018/8P/7C

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