



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

S.A. (MD) No.515 of 2017

Chinnapillai @Chinnaoli (Died)
Alagan (Died)

1.A.Nallusamy

(2nd and 3rd respondents in A.S.No.81 of 2004 were
impleaded as L.R of the 1st respondent/plaintiff as
per order passed in I.A.No.247 of 2005 dated
20.02.20016)

Amended as per order in I.A.No.46 of 2006,
dated 17.03.2006

...Appellant/Respondent / Plaintiff

-Vs-

N.Chinnan

...Respondent/Appellant/Defendant

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code, against the judgment and decree of the learned Subordinate Judge, Sivagangai, dated 08.02.2011 passed in A.S.No.81 of 2004 allowing the said appeal by dismissing the decree and Judgement of the District Munsif Court, Thiruppathur in O.S.No.23 of 1998 dated 30.06.2004 by partly allowed as regards 'A' schedule property alone.

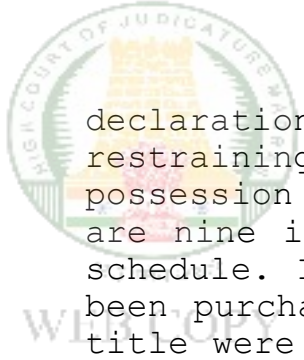
For Appellant : Mr.T.Josephjeyakumar

For Respondents : Mr.Al.Kannan

JUDGMENT

The plaintiff in the suit in O.S.No.23 of 1998 on the file of the District Munsif Court, Thiruppathur, is the appellant in this appeal.

2.The plaintiff has filed the suit in O.S.No.23 of 1998 before the District Munsif Court, Thiruppathur, for the relief of



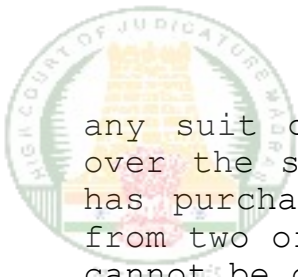
declaration of title and for consequential permanent injunction restraining the respondent herein from interfering with the peaceful possession and enjoyment of the suit properties. The suit properties are nine items in the suit 'A' schedule and two items in suit 'B' schedule. It is admitted that the suit 'A' schedule properties have been purchased by the father of the plaintiff and the documents of title were marked as Ex.A1 to A3. The defendant is a purchaser from the other sons of plaintiff's father.

3.It is the case of the plaintiff that the father of the plaintiff though purchased the properties under Ex.A1 to Ex.A3, he orally gifted the property in favour of the plaintiff. It is the further case of the plaintiff that the suit 'B' schedule properties were purchased by the plaintiff himself in the name of his father.

4.It is the further case of the plaintiff that pursuant to the oral gift in respect of the 'A' schedule property, patta was transferred in the name of the plaintiff in the year 1987. Alleging that the suit 'A' schedule properties originally belong to the appellant's father and by virtue of oral gift made by the appellant's father in her favour, the appellant claimed exclusive title in respect of 'A' schedule properties. Though the suit was originally decreed by the trial Court, in the appeal that was preferred by the defendant in A.S.No.53 of 2003 on the file of Sub Court, Sivagangai, the matter was remitted back after setting aside the Judgment and Decree of the trial Court. After remand, it appears that the trial Court decreed the suit as prayed for in respect of 'A' schedule and 'B' schedule properties. Aggrieved by the findings of the trial Court, the defendant has preferred an appeal in A.S.No.81 of 2004, before the Sub Court, Sivagangai. The lower appellate Court partly allowed the appeal in respect of 'A' schedule properties. The lower appellate Court has also confirmed the findings of the trial Court regarding 'B' Schedule as the defendant did not dispute the title of plaintiff in respect of 'B' Schedule. Aggrieved by the Judgment and Decree of the lower appellate Court, the present appeal has been preferred.

5.The learned counsel appearing for the appellant submitted that patta in respect of the suit properties was transferred in favour of the appellant in the year 1987 and that the same would show that the plaintiff is in exclusive possession and enjoyment of the properties as absolute owner. But the document Ex.A4 would show that the patta was issued only in the year 1991.

6.It is further stated that in a partition that was effected among the parties under Ex.A13, dated 03.10.1960, the suit 'A' schedule properties were not included. It was further stated by the learned counsel for the appellant that the document under Ex.A13 would further show that the parties have agreed that except this property, no other properties are kept in common. It is also submitted by the learned counsel for the appellant that the other brothers of the plaintiff have no objection and they have not filed



any suit questioning the plaintiff's exclusive title or enjoyment over the suit properties. It is further stated that the respondent has purchased only an undivided half share in the suit properties from two of the legal heirs and that the suit filed by the appellant cannot be dismissed in entirety.

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7. The learned counsel for the appellant has raised the following substantial questions of law in the memorandum of grounds:

"a. Whether the plaintiff/Appellant had enjoyed the suit property more than the statutory period of limitation?

b. Whether the plaintiff/Appellant is entitled to the 'A' schedule property by adverse possession in view of her continuous enjoyment more than a statutory period of limitation?

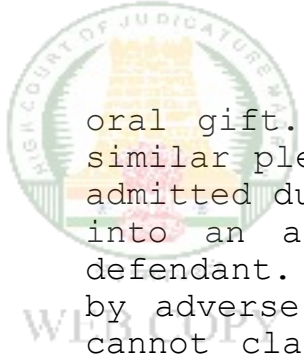
c. Where the defendants are estopped from denying the title of the plaintiff over 'A' schedule property when the Ex.P13 the partition deed executed in between the four sons of Sehngan is admitted as a true and genuine document?"

8. It is admitted in this case that the properties were originally purchased by the father of the plaintiff under Ex.A1 to A3. The documents Ex.A1 to A.3 are in respect of suit 'A' schedule. The case of exclusive title put forth by the plaintiff/appellant is on the basis of oral gift. Though the oral gift is pleaded, no evidence is adduced to prove the oral gift. It is settled law that a transfer in respect of immovable property can be effected only by a registered instrument. The oral gift is not valid in the eye of law. The plaintiff cannot claim title by the oral gift. It has to be established by proper evidence that the plaintiff is in possession and enjoyment of the property as an exclusive owner. The plaintiff also on the strength of his possession and enjoyment over the suit property for a long number of years, claims title. The plaintiff has to plead and prove that his possession is hostile and adverse to the real owner to claim title by adverse possession. To prove adverse possession as against the defendant, the plaintiff has to raise proper plea and prove by sufficient evidence.

9. This Court is unable to see any plea or evidence to substantiate that the plaintiff has prescribed title as against the other co-owners or the defendant, the purchaser from two other sharers. Merely by pleading continuous possession for a long number of years, it cannot be said that the plaintiff has prescribed title by adverse possession.

10. The contention of the learned counsel for the appellant that the defendant cannot deny the title of the plaintiff in respect of the suit 'A' schedule properties by virtue of Ex.A13 partition deed has no substance.

11. Merely because the suit 'A' Schedule properties are not included in the partition that was effected among other sharers, it cannot be concluded that the plaintiff got the property by way of a



oral gift. What happens, if any other sharer comes forward with similar plea that the suit item was given to him exclusively. It is admitted during evidence that the brothers of plaintiff have entered into an agreement of sale with the plaintiff's father and the defendant. The plaintiff has not raised proper plea to claim title by adverse possession. The plaintiff is only entitled a share and cannot claim exclusive title. Hence, the suit for declaration of title in respect of plaint 'A' schedule and consequential injunction is liable to be dismissed. The lower appellate Court has rendered findings after considering the pleading and documents in a proper perspective. The legal position is properly applied. This Court do not find any substance in any of the question of law raised.

12.As a result, this Second Appeal is dismissed and the Judgment and Decree in A.S.No.81 of 2004 on the file of the Subordinate Judge, Sivagangai is upheld. No order as to costs.

Sd/-
Assistant Registrar(T&P)

/True Copy/

Sub Assistant Registrar

To

1. The Subordinate Judge,
Sivagangai District.
2. The District Munsif,
Thiruppathur

Copy to:

The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

+ 1 cc TO Mr.V.R.Shanmuganathan , Advocate in SR No. 59772

msa
AE/RSK/SAR1/21.05.2018/4P/6C

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