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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 12.10.2018
DELIVERED ON : 22.10.2018

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

S.A(MD)No.361 of 2018
and
C.M.P(MD)No.10235 of 2018

Maruthai Pandaram

.. Appellant/Appellant/
First Defendant

Vs.

1.Angammal
2.Kathirvel
3.Saraswathi
4.Lakshmi
5.Siva

.. Respondents 1 to 5/Respondents 1 to 5/
Plaintiffs

6.Angusamy

.. Sixth Respondent/ Sixth Respondent/
Second Defendant

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, 1908 against the Judgment and decree dated 10.07.2017 passed in A.S.No.32 of 2016 and A.S.No.41 of 2014 by the Sub Court (Camp), Thuraiyur, confirming the Judgment and decree dated 20.12.2013 passed in O.S.No.105 of 1998 on the file of the District Munsif Court, Thuraiyur.

For Appellant : Mr.H.Laxmi Shankar

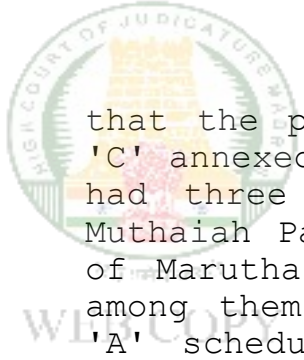
JUDGMENT

This second appeal is directed against the Judgment and decree dated 20.12.2013 passed in O.S.No.105 of 1998 by the District Munsif Court, Thuraiyur as confirmed in A.S.No.32 of 2016 [A.S.No.41 of 2014 on the file of Sub Court (Camp), Thuraiyur] vide Judgment and decree dated 10.07.2017, by the Sub Court, Thuraiyur.

2.The appellant herein is the first defendant in O.S.No.105 of 1998 on the file of the District Munsif Court, Thuraiyur. The respondents 1 to 5 are plaintiffs. Suit is for declaration and possession in respect of 'A' schedule property and mesne profits for use and occupation till handing over of possession.

<https://hcservices.ecourts.gov.in/hcservices/>

3.The case of the plaintiffs who are respondents herein is



that the property morefully described under Schedule 'A', 'B' and 'C' annexed to the plaint originally owned by Maruthai Pandaram. He had three sons, first by name Subban Pandaram, second by name Muthaiah Pandaram and third by name Angusamy. During the lifetime of Maruthai Pandaram, brothers divided the suit schedule property among themselves through panchayat. Subban Pandaram was allotted 'A' schedule property, Muthaiah Pandaram was given 'B' schedule property and Angusamy was given 'C' schedule property. Subban Pandaram is the first plaintiff in the suit, who died pending suit and his legal heirs are impleaded as plaintiffs 2 to 6. The first defendant, Maruthai Pandaram is the son of Muthaiah Pandaram. The second defendant is the third son of Maruthai Pandaram. The case of the plaintiffs is that the brothers have divided the property among themselves and were enjoying the respective portions without any disturbance for nearly 15 years. Muchalika also entered between them on 12.07.1975 indicating the division of property. While so, the first plaintiff left the village to make his earning at Nakireddipatty permitting his brothers to occupy 'A' schedule portion of the house. 10 years prior to suit, the second defendant vacated the house after constructing a new house in his land and started living in his new house. In the said circumstances, Muthaiah, father of the first defendant alone was occupying the suit schedule property. He promised to vacate 'A' schedule portion after the marriage of his daughters. However, on 05.01.1998, he died without handing over the possession of 'A' schedule property to the plaintiff. After the death of his father Muthaiah, the first plaintiff refused to vacate 'A' schedule portion of the house. Hence, after exchange of legal notices, the suit for declaration, possession and mesne profits has been instituted as against the first defendant.

4. In the written statement, the first defendant denied the partition through panchayatars and division of the suit schedule property as 'A', 'B' and 'C'. He also denied the so-called muchalika entered between the brothers on 12.07.1975.

5. According to the first defendant, the suit property was never been divided into three portions. The entire suit schedule property were under the possession of the first defendant's father for more than 30 years and he along with his family inclusive of the first defendant, were in enjoyment and possession after paying due house tax and electricity charges. After the death of Muthaiah, first plaintiff being his legal heir and male descendant, continued to enjoy the suit property. The first plaintiff long back left the village for eking his life and while leaving the village permanently, he received Rs.1,000/- in cash from his father Muthaiah and relinquished his right over the property. He got permanently settled at Nakireddipatty. Thereafter, Muthaiah, the father of the first and second defendants agreed to improve the respective portion separately and enjoying independently. Thus, in exclusion of the first plaintiff, the suit property has been enjoyed continuously without any disturbance by the first and second defendants.



6. It is averred in the written statement filed by the first defendant that the suit is engineered by the second defendant, since the area divided and enjoyed by the first and second defendants is not equal. After the death of his brother Muthaiah, the second defendant having grudge over the first defendant for enjoying larger extent of land in the suit schedule property had insisted his brother, the first plaintiff to institute the suit.

7. The second defendant has remained *ex parte*.

8. Based on the pleadings, the Trial Court has framed six issues

9. Apart from the evidence of the plaintiff, the Trial Court has also relied upon the admission of the first defendant in the cross-examination that after the death of Maruthai Pandaram, the suit property was divided in which the plaintiff was allotted northern portion of the property and the southern portion was allotted to his paternal uncle. The middle portion was allotted to his father. It is also admitted by the first defendant that he got electricity service connection for the middle portion and he is enjoying the facility by extending the wire to the northern portion. One of the witnesses for the plaintiff (P.W.2) has also deposed to the effect that three sons of Maruthai Pandaram were occupying three portions of the house till Subban Pandaram (first plaintiff, deceased) left the village and vacated the house. So, considering this admission and the positive evidence let in by the plaintiff, the contention of the first defendant that the first plaintiff received Rs.1,000/- from his father and left the village and the house permanently, were held to be false. So, the Trial Court has allowed the suit as prayed for.

10. Aggrieved by that, the first defendant has preferred appeal suit before the Sub Court, Thuraiyur. The following points for consideration have been framed by the lower appellate Court:

(i) Whether 'A' schedule property was allotted to the first plaintiff in the family partition?

(ii) Whether in 'A' schedule property, first defendant's father and after his demise the first defendant is in enjoyment as permissive occupant?

(iii) Whether the first plaintiff is in occupation of 'A' schedule property as a tenant?

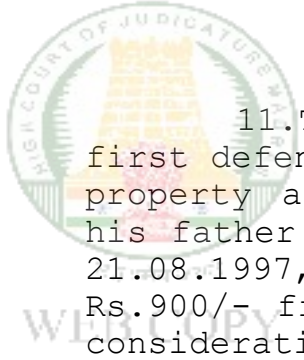
(iv) Whether the first plaintiff has any title over 'A' schedule property?

(v) Whether the plaintiff is entitled for declaration and possession in respect of 'A' schedule property?

(vi) Whether the Judgment and decree of the Trial Court are liable to be set aside?

(vii) Whether the appeal suit is liable to be allowed?

(viii) What other relief?

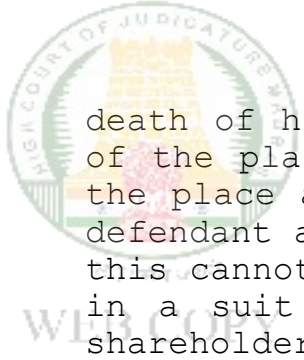


11. The evidence let in by the parties as well as plea of the first defendant that the plaintiff handed over the possession of the property after getting consideration of Rs.1,000/- and thereafter his father bequeathed the property in his favour through Will dated 21.08.1997, the admission of the first plaintiff that he received Rs.900/- from the father of the first plaintiff, but denying it as consideration for the property were all re-appreciated and considered by the lower appellate Court. Relying upon the Judgment reported in **2014 SAR(Civil) 1991** in the matter of **Union of India v. Vasavi Cooperative Society Limited and Others**, the lower appellate Court has held that the plaintiff has succeeded in proving his title through his pleadings and evidence besides the admission of D.W.1. Holding that the first defendant though pleaded that the property which was purchased by his father for sale consideration of Rs.1,000/-, the first defendant had not produced that document, the lower appellate Court, therefore held that the Judgment of the Trial Court granting declaratory relief and possession of the plaintiff is sustainable.

12. The learned counsel appearing for the appellant/first defendant would canvass that the plaintiff has failed to prove his title and admittedly he is not in possession. In the said circumstances, no decree for declaration in favour of the plaintiff who failed to justify his inconsistent stand about his status as well as the status of the first defendant viz-a-viz 'A' Schedule property ought to have been given. Having failed to prove his title and having taken three different stands regarding the status of the first defendant as a trespasser, lessee and permissive occupant at three different stages, which is destructive to each other, falsifies his claim and his case to fall on its own demerits. However, the Courts below have failed to appreciate Ex.A.6 properly. Mere a stray answer made during the cross-examination of D.W.1 and recital in Ex.A.6, cannot be a reason for declaring the plaintiff as owner of 'A' schedule property.

13. The learned counsel appearing for the appellant/first defendant would further submit that the Courts below have committed error in placing the burden of proof on the first defendant in the suit for declaration and recovery of possession, especially when the plaintiff had come up with inconsistent and contradictory pleas.

14. On considering the pleadings, evidence in support of the respective parties and the admission of D.W.1 coupled with the recital of Ex.A.6, this Court finds that there is no substantial question of law involved in this second appeal. The plea of the plaintiff that the father of the first defendant was initially a permissive occupant, immediately after he left the village for livelihood, first defendant father later agreed to pay Rs.30/- (Rupees thirty only) per month as rent and also promised to hand over the possession immediately after his daughters marriage, is established through testimony and conduct of the parties. After his



death of his brother, the first defendant who is the brother's son of the plaintiff had refused to vacate the place, but had occupied the place after the death of his father. This has led to term the defendant as a permissive occupier turned lessee, turned trespasser, this cannot be taken as a mutually destructive plea by the plaintiff in a suit for declaration and possession, when they are natural shareholders of the suit property.

15. For the above said reason, this Court finds no reason to interfere with the well-considered Judgments of the Courts below. Hence, for want of substantial question of law, this Court second appeal is liable to be dismissed.

16. As a result, this second appeal is dismissed. The Judgment and decree dated 20.12.2013 passed in O.S.No.105 of 1998 by the District Munsif Court, Thuraiyur as confirmed in A.S.No.32 of 2016 [A.S.No.41 of 2014 on the file of Sub Court (Camp), Thuraiyur] vide Judgment and decree dated 10.07.2017 by the Sub Court, Thuraiyur, are confirmed. In the light of the relationship between the parties, no order as to costs. Consequently, connected Miscellaneous Petition is dismissed.

Sd/-
Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar (CS-IV)

To

1. The Subordinate Judge (Camp),
Thuraiyur.

2. The District Munsif,
Thuraiyur.

+ 1 CC TO Mr.H.LAKSHMI SHANKAR, ADVOCATE IN SR No. 91083

SMN

TE/BK/SAR-4 : 31/12/2018 : 5P/4C

JUDGMENT MADE IN
S.A(MD)No.361 of 2018 and
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