

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 05.10.2018

Judgment Pronounced on : 25.01.2019

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

A.S.No.59 of 2013

and

MP.No.1 of 2013, MP.No.1 of 2014 and
CMP.No.15510 of 2016 in AS.No.59 of 2013

T.A.Narayanan

... Appellant/1st Petitioner

Vs

- 1.Lt.Col.T.A.Parthasarathi, (Retd.,)
Padma Parathasarathi (Deceased)
- 2.Sita Vijayaraghavan
- 3.Smt.Lakshmi Raghavan
- 4.Smt.Rohini Desikamani
- 5.Smt.Seetha Krishnamachary
- 6.Nalini Rajamanickam
- 7.Smt.Kalyani Parthasarathy
8. Sri.P.Vasudevan
9. T.A.Gopinath
10. Lt.Col.T.A.Ranganathan
11. T.A.Vasudevan (Died)
12. Sumathi Sundara Rajan (Deceased)
Revathi Vasudevan (Deceased)
13. Pankaja Chari
14. Prema Acharya
15. A.Sampath
16. Sudha Narayanan
17. Mrs.Geetha Rangarajan
18. Kamala (Kala) Selvaraj
19. Nirmala Krishnan
20. Corporation of Chennai,
Represented by its Commissioner,
Ripon Buildings,
Chennai-600 003.

- 21.Prabha Gopal
22. Mrs.Malathi Raghavan
23. Mrs.Vimala Rangaswamy
24. Mrs.Leela Cheryan
25. Mrs.Geetha Nayak

26. Mr.Ravi Sunderrajan
27. Mr.Surendra Sunderrajan

... Respondents/
Plaintiffs 1,3,4 to 10/
Defendants 3 to 14

*(Respondents 22 to 27 brought on record as Lrs of the deceased R12 viz., Sumathi Sundararajan vide order of Court dated 28.09.2018 made in C.M.P.No.7773 of 2017 in A.S.No.59 of 2013 (NSSJ)

** Respondents 22 to 27 Lrs of the deceased R11 viz., T.A.Vasudevan vide order of Court dated 05.10.2018 made in C.M.P.Nos.17722, 17726 & 17728 / 2018 in A.S.No.59 of 2013.

***R28) Vinita Pell W/o Mr. Joseph Leslie Pell No.67, Flametree Boulevard, Harrisdale WA L 6112, Australia**

***R29) Sheila Alley
No.1, Armstrong Street, (Po Box No.163)
Cranbrook WA 6321 Australia**

***R30) Rebecca Khan
No.5, Beltana Stret Harrisdale,
WA 6112 Australia**

***R31 Susan Vasudevan
No.126 Acanthus Road, Willetton,
WA 6155 Australia**

***RR28 to 31 including as LRS of the deceased R11 (11th Respondent) vide Court order dated 25/07/2019 made in AS No.59/2013.**

Prayer :- First Appeal filed under Section 96 of C.P.C., to allow this appeal and set aside the judgment and decree dated 20.07.2011 made in O.S.No.11749 of 2010 on the file of the Additional District Judge, II Fast Track Court, Chennai.

For Appellant : Mr.S. Udayakumar

For Respondents: Mr.S.Raghunathan
[R2, R8 to R10, R12, R13 & R21]

Dr.C.Ravichandran [For R20]

JUDGMENT

The first defendant in O.S.No.11749 of 2010 on the file of Fast Track Court No.II, Chennai (previously C.S.725 of 2003 before this Court) has preferred this appeal. The suit is laid for partition and other ancillary reliefs and the same came to be decreed.

2.1 A certain Ananthachariyar and Janakiammal had 13 children. Plaintiffs 1 to 3 and 10, defendants 1, 3 to 8 are 11 are their surviving children. Of the other two one is Kalyani Aravamudhan. She is dead and her heirs are defendants 9 to 13. The sixth defendant had died during the pendency of the proceedings and her legal heirs are impleaded as respondents 22 to 27.

2.2 One of the left out children of the Ananthachariyar and Janakiammal is Raghu. It is his property for which others are now litigating. Parties would be referred to by their rank before the trial court. So far as the second defendant as was originally ranked in the suit has since been transposed as 10th plaintiff, henceforth he would be referred to as the 10th plaintiff

3. The brief facts are that :

- The suit schedule property is described as a plot measuring one ground and 1,302 sq.ft. with a residential building thereon situated at Kilpauk, Chennai. Raghu was working in Indian Air Force and this property was purchased by him. This goes as an admitted fact. While so, the family received a message from the Air Force that on 18.4.1965, Raghu had died and that he had executed a Will dated 06.2.1964. This Will is available on record as Ext.A-1. It was not probated. Under this Will, Raghu had bequeathed the suit property in favour of his mother Janakiammal. On the demise of Janakiammal, the property devolved on all her surviving children who are already been indicated above and Kalyani Aravamudham. Each one would be entitled to 1/12th share in the suit property.
- The first defendant, the appellant herein was working in the U.S. Later he returned to India and began to stay in the suit property. Defendants 2 and 3 were then living in Chennai, and they too joined him and they stayed together. Subsequently, the second and the third defendants moved out of the suit property and the first defendant alone continued to live there.

- While so, all the co-sharers except the first defendant came to know that the latter had changed the property tax assessment of the suit property in his name. On enquiry, they came to know the first defendant had claimed: a) that subsequent to Ext.A1, Will, on 19.12.1964, Raghu had executed another Will under which he had granted life estate in favour of his mother Janakiammal and the remainder estate exclusively to the first defendant, that on 30.6.1998, the first defendant, the tenth plaintiff and the third defendant entered into a Memorandum of Understanding (MoU, Ext.B1), that the first defendant would probate the alleged Will dated 19.12.1964; b) that notwithstanding the fact that he became the sole legatee to take the property absolutely after the life time of his mother Janakiammal, he was willing to share the property equally with the third defendant and the tenth plaintiff; c) that the first defendant took the property absolutely and will pay his other two brothers, their share of the value of the property.
- The Will dated 19.12.1964 does not exist and the MoU, Ext.B1 is fraudulently created to defeat the right of the other co-sharers of the first defendant.

4.1 The tenth plaintiff (originally the second defendant) is one of the parties to Ext.B1 MoU, and has filed the written statement, which in essence supports the case of the plaintiffs. He would say the suit property was successively in occupation of one or the other of the co-sharers, and that he had never seen the Will dated 19.12.1964, and he did not believe that his brother Raghu had ever executed one such.

4.2 Admitting that the suit property was purchased by his brother, Raghu and denying the plaintiff's title to claim partition, the first defendant/appellant would plead that Raghu had executed a Will dated 19.12.1964, under which the testator had granted life estate to his mother Janaki Ammal and reminder estate to him, that he was working in the USA from 1978-1993, that on his return, the second defendant who was then occupying the suit property vacated and delivered the vacant possession to him, and that when he left for the U.S.A., he had left all the original documents pertaining to the suit property including the original Will dated 06.02.1964 (alleged second Will of Raghu) to the second defendant (now the 10th plaintiff). It is hence, when Janakiammal died, he became the absolute owner of the suit property, and on this basis, defendants 1 and 3 and the 10th plaintiff entered into a MoU. The plaintiffs have lost all the rights in the suit property as they have been completely ousted of their rights in the suit property.

5.1 During trial, for the plaintiffs, the 10th plaintiff was examined as P.W.1. To re-emphasis it, he was originally arrayed as the second defendant in the suit. For the defendants, first defendant alone was examined. For the plaintiffs, they have produced ExtA1 to A11 of which Ext.A1 is a Will dated 06.2.1964. For the first defendant the primary document, he relied on is Ext.A11.

5.2 The trial Court decreed the suit as prayed for. But what is significant about its judgment is the proceedings that it has recorded in paragraph No.6 of its judgment. It has recorded that on 07.3.2011, the first defendant had filed an additional written statement and the plaintiffs had filed I.A.30/11 to reject the same and this was allowed and challenging the same, the first defendant had filed CRP.1974/2011. Since no stay was passed by this Court in the said CRP, the trial Court had heard the arguments of the plaintiffs and adjourned the case for the first defendant's argument to 28.4.2011, 9.6.2011, 11.6.2011, 15.6.2011, 27.6.2011 and finally to 01.7.2011. As the trial Court was informed that this Court had reserved CRP.1974/2011 for pronouncing orders, the case was again adjourned to 06.7.2011. On that date, the Court was informed that the said CRP was dismissed on the previous day, and the first defendant would then submit that he was proposing to prefer a Special Leave Petition before the Hon'ble Supreme Court and as the first defendant did not come forward to argue the matter, the trial Court reserved the case for pronouncing judgments to 18.7.2011. However, the first defendant would again file three applications in I.A.No.88/2011, I.A.No.89/2011 and I.A.90/2011 for re-opening the case, for receiving an additional written statement and for producing of certain documents. As the trial Court finds that this is a deliberate dilatory tactics adopted by the first defendant, it rejected all the applications and proceeded to pronounce the judgment.

5.3 In its judgment, it essentially relied on the non-production of the alleged Will dated 19.12.1964 on the basis of which, the first defendant claims absolute title in the property. This is now a challenge.

6. Points for consideration :

Whether the first defendant had perfected title by adverse possession of the suit property?

7. The learned counsel for the appellant argued that:

a) the Trial Court has not afforded the first defendant an opportunity to put forth his case.

b) Secondly, the plaintiff's case is founded on Ext.A1, Will but the same has not been probated.

c) At any rate the plaintiff has been in long continuous possession and the trial Court ought to have granted the first defendant the right to produce such documents as would be necessary to substantiate his plea of adverse possession.

8. Without even any need to refer to the arguments and the several authorities of the appellant herein, it can be stated straight away that :

(a) the fact that Ext.A1 was not probated is immaterial, since even de hors the same, Janakiammal is a class-I heir of Raghu, since he died unmarried. Therefore, on the demise of Janakiammal, necessarily the properties would devolve on her children. It is only to exclude the other sharers, the first defendant has invented a Will dated 19.12.1964 said to have been executed by Raghu. This document was not produced and contrary to his pleading in the written statement, he could not even establish that it was left in the custody of the tenth plaintiff (originally second defendant).

(b) The case of the appellant is not strictly founded on adverse possession or to be more precise in the context, on a plea of ouster, but also on title. A claim of exclusive ownership in a property on the basis of exclusive title in oneself and the plea founded on ouster or adverse possession cannot co-exist and here the pleading mutually kill each other.

(c) Even de hors the appellant's claim of title, based on a Will dated 19.12.1964, if he has not established adverse possession per se. Here the appellant would contend that his additional written statement claiming adverse possession has not been taken on file, but that is not going to advance his case since he has already taken a plea of ouster in para 11 of his written statement. This apart, even according to the first defendant he had arrived in India permanently only in 1993, that Ext.B1 (MoU) has come into existence in 1998, and the suit itself is laid in 2010. The sequence does not indicate that notwithstanding few tax receipts that which he has now required to be taken on file, there is hardly any material available on record to prove that he had perfected title by ouster/adverse possession.

9. Looking from every conceivable angle, there is nothing to indicate that there is any merit in this appeal . In this context, the appellant has filed MP.No.1 of 2014, to receive additional documents. The most critical documents which may tilt the decision in his favour, if at all any, is the Will dated 19.12.1964. That is not one of the documents in this miscellaneous petition. This is understandable since even right at the inception he has pleaded that the said Will is seen in the custody of the tenth plaintiff, which he denied, even in his written statement that he has filed before his transposition.

10. In the result, the appeal is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Ds

25/01/2019

This Case having been listed under the Caption 'for Being mentioned' at the instance of the Counsel for the Respondents for impleading the LRS of the Deceased 11th Respondent and in pursuance of the Judgment dated 25/01/2019 this Court passed the order for impleading the LRS.

It is mentioned by the learned counsel for the respondents that while this Court has ordered impleadment of the legal heirs of the deceased 11th respondent, the same has not been carried out in the appeal memorandum and consequently, their names do not figure either in the judgment or in the decree. The learned counsel also made a fair statement that there has been a mistake on his part in referring the legal representatives by a rank which has already been assigned to another set of proposed respondents, who were brought on record Vide another application, consequent to the demise of another respondent.

2. The said defect is now addressed. This Court was informed that the copy of the judgment A.S.No.59 of 2013 has not been obtained by the counsel, as the Registry is in a fix as to how to introduce a correction in drafting a decree, when the same was not there in the cause-title of the appeal memorandum and in the appeal judgment in A.S.No.59 of 2013.

3. The Registry is now directed to amend the cause-title by including respondents 28 to 31 (viz., Mrs.Vinita Pell, Mrs.Sheila

Alley, Ms.Rebecca Khan and Ms.Susan Vasudevan) as legal heirs of the deceased 11th respondent as per the order of this Court in CMP.No.17722/2018 dated 05.10.2018. A direction is further given to correct the judgment and a decree be drafted and copies thereof are issued within a period of 15 days from today.

Ds

25/07/2019

Sd/-
Assistant Registrar(CS-IV)
Dated:20/05/2019

*Corrected as per the Order
of this Court dated 25/07/2019
in AS No.59 of 2013

Sd/-
Assistant Registrar (CO)
Dated:02/08/2019

//True Copy//

Sub Assistant Registrar

To:

1.The Additional District Judge,
Fast Track Court-II,
Chennai.

To be substituted the
order already despatched
On 24/07/2019

2.The Section Officer,
V.R.Section,
High Court, Madras.

+2 cc to Mr.S.Raghunathan, Advocate, Sr.No. 5979 (30.07.2019)
+1 cc to Mr.S.Udhaya Kuamr, Advocate, Sr.No. 5998

kk(co)
CSL/23.07.2019
srg 05/08/2019

Judgment in
A.S.No.59 of 2013

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