

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 13.06.2019

JUDGMENT PRONOUNCED ON : 22.10.2019

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

S.A.No.1272 of 1999

1.N.M.Karunanidhi
2.Thigarajan
3.M.Ramalingam
4.K.Samidurai

... Appellants/Plaintiffs

...Versus...

1.T.Subramanian
2.T.Shanmugham
3.Muthukumarasami
4.Ravi
5.Rajammal
6.K.Sakunthala

... Respondents/Defendants 7, 8 & 1 to 4

PRAYER: This Second Appeal has been filed under Section 100 of C.P.C., against the judgment and decree in A.S.No.1 of 1998 dated 23.07.1998 on the file of the Principal Sub-Judge, Myladuthurai, reversing the judgment and decree made in O.S.No.128 of 1985 dated 25.11.1997 on the file of the District Munsif, Sirkali.

For Appellants :: Mr.K.M.Ramesh
for M/s.Row and Reddy

For Respondents :: No appearance

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J U D G M E N T

The plaintiffs are the appellants herein.

2. For the sake of convenience, the parties are referred to as per ranking before the Trial Court.

3. The plaintiffs have filed the suit for partition and recovery of possession on the ground that the suit property is a Natham property and the same belonged to one Veerammal, wife of Veerasami, the paternal aunt of the first plaintiff and

Krishnamoorthy-father of the first defendant. An extent of 18 cents is recorded to be belonging to and in the enjoyment of the said Veerammal in Government records. The said Veerammal was in enjoyment of the said 18 cents as her absolute property till her death.

4. The said Veerammal had no issues and she died intestate leaving behind her, her only brother Kalvarayan, the father of the first plaintiff and the grand father of the first defendant herein as her sole heir. Kalvarayan was in enjoyment of the said 18 cents treating the said property as his own till his death. Kalvarayan died intestate about 15 years back, leaving behind him his only sons Krishnamoorthy, the father of the first plaintiff and the defendants 1,2 and 4. The first plaintiff and Krishnamoorthy had been in joint possession of the suit property. Out of the extent of 18 cents in the suit property, 8 cents was given to one Pattu Chettiar on the North Western corner and the same is in the possession of his family members, Selvakumaran. Hence, this suit relates only to 10 cents being the remaining extent as belonging to the first plaintiff and Krishnamoorthy. Krishnamoorthy died leaving behind him, his sons, the defendants 1 and 2, his wife 3rd defendant/defendants 1 to 4 are entitled to the share of Krishnamoorthy.

5. The 5th plaintiff has no manner of right in the suit property, as the fifth plaintiff has got divided and was living separately even during the life time of the 1st plaintiff. However, to avoid unnecessary contentions, fifth plaintiff is also impleaded in the suit as a party plaintiff.

6. It is alleged that the fifth defendant trespassed over 'B' schedule property, which is only a portion of 'A' schedule property, only after suit. Therefore, an amendment of prayer was sought to include for recovery of possession of 'B' schedule property from defendants 6 to 8 who had no better right over B schedule property than fifth defendant who has no right and the plaintiffs 2 to 5 are entitled to recovery of 'B' schedule property from defendants 6 to 8.

7. The respondents/defendants resisted the suit on the ground that the said Veerasamy had a second wife Muthammal and her brother is Kannu Chettiar who died long back. 8 cents of the suit property is recorded in the name of Kannu Chettiar. He left behind him 3 sons, Pattu Chettiar, Govindaswamy (who died 10 years back) and the 5th defendant herein. The 5th defendant is having his residence on the North of the pathway.

8. The 7th defendant filed a separate written statement wherein, he had the disputed the relationship of Veerammal with Veerasamy. He pleaded that Veerasamy had a first wife, but Veerammal was not the first wife. She is invented by the plaintiff to suit his case. Even if 18 cents of property stood in the name of Veerammal, it does not relate to the suit

property.

9. In the reply statement filed by the plaintiffs and they are specifically averred that the suit property belonged to Veerammal, the paternal aunt of the plaintiff, and plaintiff claims partition only on that basis. The property East of suit property belongs to plaintiff and his sons alone and the said property is not divisible with any third party. The property on the North of the road was allotted to plaintiff under oral partition between him and his brother Krishnamoorthi and the said property in the possession of plaintiff belongs to him exclusively and his brother has no right thereon. The suit property alone is divisible property for which this suit is filed.

10. Before the Trial Court, necessary issues have been framed and during trial, on the side of the plaintiffs, the plaintiffs are examined as P.W.1 to P.W.3 and marked Exs.A1 and A8. On the side of the defendant, the defendant was examined as D.W.1 and marked Exs.B1 to B4.

11. On consideration of both oral and documentary evidence, the learned District Munsiff has decreed the suit as prayed for.

12. Aggrieved against the same, the defendants 7 and 8 preferred A.S.No.1/98 before the learned Principal Sub-Judge, Myladuthurai and by a judgment dated 23.07.1998, the appeal preferred by defendants 7 and 8 was allowed and hence, the present Second Appeal by the plaintiffs.

13. The Second Appeal has been admitted on 04.12.2000 on the following Substantial Questions of Law:-

(i) Whether the finding of the Lower Appellate Court are vitiated by its failure to consider Exs.A1,A6,A7 and A8 corroborating the oral evidence of P.W.1 to 3, to uphold the claim of the appellants for partition?

(ii) Whether the findings of the Lower Appellate Court are vitiated by its erroneous consideration of the contentions raised by the respondents regarding title to the property and failed to establish the said contentions, especially when the appellants discharged their burden of proving the title to the property by the production of documentary evidence, evidencing possession documentary evidence, evidencing possession?

(iii) Whether the findings of the Lower Appellate Court are vitiated by not considering when the respondents claim is only in respect of B schedule property and as such the appellants are entitled to half share in A

schedule which is not in dispute?

14. Heard the learned counsel for the appellants. None appears for the respondents.

15. The suit property, 'A' schedule is 10 cents of land in R.S.No.147/1 Noikuppai village and the 'B' schedule property is 3 cents out of the said 10 cents.

16. The first plaintiff-Karunanidhi and other plaintiffs have preferred O.S.No.128/85 before the Trial Court for a decree of partition on the ground that one Veerammal, W/o.Veerasamy had 18 cents. After selling, 8 cents to one Pattu Chettiar, balance 10 cents is the 'A' schedule property and pending suit, the 5th defendant trespassed into 3 cents of land, which is the 'B' schedule property and hence, sought the relief of recovery of possession.

17. The plaintiffs claim derivative title from the said Veerammal. The defendants 1 to 4 are the plaintiff's father's brother's son and daughters and hence, the plaintiffs sought for partition of the property. As per the written statement the defendants 1 and 2 claimed only 3 cents of land, which is only part of 'B' schedule property, which itself is a part of 'A' schedule property. Pending suit, the first plaintiff Muthayyan died and his legal representatives continued the proceedings.

18. It is seen from the records that the entire case of the plaintiffs rested on Ex.A1, proceedings of the Taluk Inspector dated 27.02.1978 with the sketch annexed thereon. The presence of the Muthayyan Chettiar and Thangarasu was also noted there. The 5th defendant is also appears to have been present in the said proceedings.

19. It is seen that this is a proceeding executed by the Revenue Officer, whereby, he has expressed the private rights of the parties and the land is a patta land as per Ex.A6. Krishnamoorthy-father of the defendants 1 to 4 by a sale deed dated 01.08.1971 has sold 4 cents of land to the Kalyani Ammal representing his interest. So also, the first plaintiff has sold his share of 4 cents of land to the said Kalyani Ammal under Ex.A7 settlement deed dated 10.02.1985. This is how the Kalyani Ammal has obtained 8 cents land. The defendants have not disputed Exs.A6 and A7 deeds in favour of the said Kalyani Ammal.

20. It remains to be stated that as per Ex.A8 Adangal, 8 cents land stands in the name of Muthayyan Chettiar. Another 8 cents of land in favour of Kannu Chettiar. Another 8 cents of land in favour of Pattu Chettiar and Govinda Chettiar had 9 cents. While, Vaidhyalingam had 7 cents of land and Veerammal had 18 cents of land in her possession by way of patta.

21. It is a specific case of the plaintiffs that the Veerammal out of her 18 cents, has sold 8 cents to Vaidhyalinga Chettiar and over the balance of 10 cents land, plaintiffs 1 to 5 and defendants 1 to 4 who are in joint possession and enjoyment, are claiming right through the very same Veerammal and thus, this Court finds that the plaintiffs have successfully demonstrated the source of title of the said Veerammal and her joint patta along with other joint patta under Ex.A8. Besides the father of the defendant and the father of the plaintiff have also exercised right of ownership, having derived their title from Veerammal, as could be seen from Ex.A6 and Ex.A7 and thus, I find that the Lower Appellate Court has committed an error in over looking Ex.A1 and the evidence of P.W.1 to P.W.3 and hence, the said finding of the Lower Appellate Court hereby stands vacated. The plaintiffs/appellants have established title to the suit property by virtue of the clear evidence of P.W.1 to P.W.6 which stands duly corroborated by the documentary evidence of Exs.A1,A6, A7 and A8.

22. Yet another point is that as per Ex.A1, the proceedings of the competent authority, patta has been duly given to various persons, including Veerammal from whom the plaintiffs claim title.

23. In the instant case, the Revenue proceedings have been issued in favour of the said Veerammal to an extent of 18 cents. Subsequently, the same has been duly sold under Ex.A6 and A7. Furthermore, supported by Ex.A8 and thus, this Court has no hesitation to hold that the plaintiffs/appellants have established the title and possession over the suit property and consequently, they are entitled to the relief as prayed for.

24. At this juncture, it is pertinent to note that under Ex.B1, which is a copy of the judgment in A.S.No.118/94 on the file of the learned Principal Sub-Court, Myladuthurai, the Court has only ordered for re-trial of the proceedings before the trial Court and no judicial adjudication has taken between the parties, much less as to the title of the plaintiffs or as to the evidenciary value of Ex.A1. Ex.A1, being the revenue proceedings taken as early as on 1.3.1978, much before the dispute arose between the parties, when all the parties were duly present at the time of the inspection by the competent authority coupled with the fact as evidenced from Exs.A6 to A8, this Court holds that the finding rendered by the Lower Appellate Court on Ex.B1 has no legal legs to stand and, accordingly, the same is vacated. Consequently, it is held that as per Ex.A1 coupled with Exs.A6 and A7, the plaintiffs have demonstrated their derivative title from Veerammal and hence, the finding rendered by the Lower Appellate Court is vacated.

25. It remains to be stated that the defence of the defendants is that the Vaidhyalinga Chettiar is in possession of the property and the same was admitted by D.W.1 in the cross-examination. However, no documents have been produced to

substantiate the said plea. Furthermore, the claim of the defendants 7 and 8, who preferred the appeal before the Lower Appellate Court, who are the legal representatives of the deceased 5th defendant, is on the basis of inheritance through one Mannu Chettiar. However, the same is only in respect of 3 cents, the same has not been established by any positive acceptable evidence and hence, viewed from any angle, the judgment of the Lower Appellate Court is not sustainable in law.

26. In the result,

(i) This Second Appeal is allowed.

(ii) The judgments and decrees of the First Appellate Court is set aside and the judgment and decree passed by the trial Court is restored.

(iii) No costs.

Sd/-

Assistant Registrar(CS-VI)

//True copy//

Sub Assistant Registrar

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To

1.The Principal Sub-Judge, Myladuthurai

2.The District Munsif, Sirkali.

+lcc to M/s.Row and Reddy, Advocate SR.No.89292

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