

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[JUDGMENT RESERVED ON : 10.07.2019]

[JUDGMENT PRONOUNCED ON : 22.10.2019]

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

S.A.No.1917 of 2002

1. Krishnan
2. Vellayan
3. Madhu
4. Palanisami
5. Vasantha

... Appellants

... Vs ...

1. Vellaiyan
2. Kuppusami
3. Ayyasami
4. Chandran

... Respondents

Prayer : Appeal is filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 13.02.2002 made in A.S.No.93 of 2001 on the file of the learned II Additional District Judge, Salem, confirming the judgment and decree dated 19.02.2001 made in O.S.No.702 of 1995 on the file of the learned II Additional District Munsif, Salem.

For Appellants : Mr.T.Dhanasekaran
for Mr.N.Maninarayanan

For R-1 : Died

For RR-2 to 4 : Mr.S.Kalyanaraman

JUDGMENT

The second plaintiff and the legal heirs of the first plaintiff in the original suit are the appellants herein.

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

3. The original plaintiffs namely, Pachayee Ammal and Krishnan have filed the suit in O.S.No.702 of 1995 seeking for declaration of title, recovery of possession and for damages.

4. After trial, the said suit in O.S.No.702 of 1995 was dismissed by the learned II Additional District Munsif, Salem, on 19.02.2001. As against the order of dismissal, the original plaintiffs 1 and 2 have preferred an appeal in A.S.No.93 of 2002 before the learned II Additional District Judge, Salem. Pending the appeal in A.S.No.93 of 2002, the first plaintiff namely, Pachayee Ammal died and her legal heirs were brought on record as appellants 3 to 6. The learned II Additional District Judge, Salem, by judgment dated 13.02.2002, dismissed the said appeal in A.S.No.93 of 2002 by confirming the judgment and decree passed by the trial Court. As against which, the second plaintiff and the legal heirs of the first plaintiff in the original suit have preferred the present second appeal before this Court.

5. The second appeal was admitted by this Court on 29.11.2002 by framing the following substantial questions of law:-

"(i) Whether the alienation by a guardian can be ignored by a minor on attaining majority if the transfer is in violation of Section 11 of the Hindu Minority and Guardianship Act?

(ii) Whether a transfer by a guardian of minor's property without leave of the Court is valid and if not whether a minor must seek to set aside such a transfer?"

6. The relationship between all the parties is admitted by both sides and in this regard, there is no dispute. The suit properties, originally belonged to one Vellaiyammal alias Vellagoundachi, who was the wife of one Veeragounder. From the legal wedlock, the said Veeragounder and Vellaiyammal alias Vellagoundachi had one daughter namely, Sokkammal and she married to one Malaiyan and out of wedlock, they had two female children viz., Pachayee Ammal/first plaintiff in the suit and Kuppayee, who married to one Venkatachalam and they had begotten one male child viz., Krishnnan/second plaintiff in the suit. Annamalai Gounder is the father of the first and second defendants and grandfather of the third and fourth defendants.

7. As per the pleadings, it is seen that (i) a registered Sale Deed-Ex.A.1 was executed by Vellaiyammal alias Vellagoundchi in favour of her daughter Sokkammal on 14.04.1934, when she was a minor and her uncle namely, Chinnagounder was appointed as guardian under Ex.A.1.

(ii) Sokkammal married to one Malayan and the said Sokkammal predeceased her mother Vellaiyammal alias

Vellagoundachi. Thereafter, the entire land was looked after by Malayan and her mother, since they had no male issues. The first plaintiff/Pachayee Ammal and the second plaintiff's mother Kuppayee are the daughters of Sokkammal and Malayan.

(iii) Though the first plaintiff and her sister Kuppayee are the legal heirs of Sokkammal, based on the Settlement Deed in favour of their mother Sokkammal, they have filed the above suit for declaration of title, recovery of possession, mesne profits and for damages.

(iv) The defendants, taking advantage of the illiteracy of the plaintiffs and also the fact that there was no male heir in the plaintiff's family, gave the management of the family to their maternal uncle namely, Annamalai Gounder, who had misused the said position and executed the Sale Deed in favour of his two sons viz., Vellaiyan and Kuppusamy/first and second defendants in the suit. After coming to know about the same, the original plaintiffs have filed the suit.

8. The respondents herein, who are the defendants in the suit, have resisted the claim inter alia contending in the written statement that Ex.B1/Registered Sale Deed was executed by Malayan, (who is the husband of Sokkammal) in favour of one Annamalai Gounder (who is Malayan's elder sister's husband) on 31.05.1962. Therefore, they have stated that after the death of Annamalai Gounder, the defendants 1 and 2 being the legal heirs of the said Annamalai Gounder and the defendants 3 and 4, who are the grandsons of Annamalai Gounder are entitled to the said properties. The defendants have necessary Encumbrance Certificate and Revenue records. The plaintiffs are not in possession and occupation of the properties, which were covered under Ex.B1 with definite boundaries.

9. During the trial of the suit in O.S.No.702 of 1995, the learned II Additional District Munsif, Salem, has held that the suit properties are not identified with definite boundaries and they are bereft of details, and necessary documents were not placed for identification of the suit properties to correlate the old S.No.15 with that of new survey numbers. It is further held that the plaintiffs are minors, at the time of execution of Ex.B1/Sale deed by Malayan and they have not chosen to challenge the said alienation, after attaining majority and thus, they have not challenged the Sale Deed executed by the said Malayan at the time of execution of the said Sale Deed. The learned II Additional District Munsif, Salem, also held that the Encumbrance certificate for the period from 1962 to 1974 was not marked and hence, by assuming these reasons, dismissed the suit.

10. Aggrieved by the said Judgment and decree passed in O.S.No.702 of 1995, dated 19.02.2001, the second plaintiff and the legal heir of the first plaintiff have preferred an appeal in A.S.No.93 of 2002. Pending appeal, they have also filed interlocutory applications in I.A.Nos.1827 & 1828 of 2001 under Order XLI Rule 27 C.P.C., to receive the additional evidence and also to appoint an Advocate Commissioner to identify the boundaries of the suit schedule properties with the assistance of Town Surveyor. By a common judgment dated 13.02.2002, the learned Additional District Judge, Salem, has dismissed both I.A.Nos.1827 & 1828 of 2001 as well as A.S.No.93 of 2002 by holding that the plaintiffs' description of the suit properties is not identifiable, in the absence of any correlation being placed before the Court to identify the suit properties. Moreover, the plaintiffs have not let in any positive evidence, in respect of the allegations made in the plaint that the maternal uncle of the defendants was in management of the suit properties and the said Sokkammal and Malayan have no male issue in their family and further, held that the defendants have acquired the title of the properties and title of adverse possession and consequently, dismissed the Appeal Suit in A.S.No.93 of 2002. Hence, the present Second Appeal is preferred by the second plaintiff and the legal heirs of the first plaintiff and the second appeal was admitted by this Court on 29.11.2002, on the above stated substantial questions of law.

11. Heard the learned counsel appearing for the appellants and the learned counsel appearing for respondents 2 to 4.

12. On a perusal of records, it is seen that the original plaintiffs have filed a suit for declaration of title, recovery of possession and for damages. The suit properties are situated in Karadiyur Village, Yercaud Taluk, bearing S.No.43/1A2, Old Patta No.19, New Patta No.3 Hectares 1.52.5, R.S.No.43/78, Hectares 0.28.5, Old Patta No.17, New Patta No.114, old S.No.43/6 and its new S.No.43/6-B extent 1.94 acres with all easementary rights annexed thereto and trees and shrubs situated thereupon. The plaintiffs claimed title to the suit properties on the basis of the Settlement Deed, which is marked as Ex.A.1.

13. The respondents herein as defendants have resisted the claim by contending that the suit properties were purchased by Annamalai Gounder from Malaiya Gounder, S/o.Poochi Gounder under Ex.B.1-Sale Deed dated 31.05.1962 and thereafter, he had been enjoying the properties as full owner thereof by changing patta in his name and also paying kist to the Government. Pursuant to the document Ex.B.12-Will executed by Annamalai Gounder in favour of Ayyasamy and Chandran, who are the defendants 3 and 4 respectively, on 18.11.1982, the defendants 3 and 4 have been enjoying the suit properties as full owners thereof and thus,

the defendants have openly and continuously been enjoying the properties adverse to the plaintiffs interest and thus, they have perfected their title by adverse possession.

14. The relationship among the respondents 1 to 4/defendants 1 to 4 is, Annamalai Gounder is the father of the defendants 1 and 2 and the third defendant is the son of the second defendant and the fourth defendant is the son of the first defendant. The only document of title relied on by the plaintiffs to claim right over the suit properties is Ex.A.1-Settlement Deed dated 14.04.1934. As seen earlier, the plaintiffs have not described in the plaint as to within what four boundaries, the suit properties are situated. They have not furnished the boundaries within which the suit properties are stated to be located.

15. However, to the dismay, when the suit properties are not described with relevant boundaries and when nothing is found in Ex.A.1-Settlement Deed to show that it relates to the suit properties merely from the said document, it cannot be construed to the same relates to the suit properties.

16. It is to be stated that it has not been established by the plaintiffs that out of the above extents, how much land Vellaiyammal @ Vella goundachi owned in the said Survey numbers. Particularly, the plaintiffs have not established that Vellaiyammal @ Vella goundachi owned 4.50 acres of land in the said survey numbers with reference to specific boundaries as claimed by them. All this would only go to show that inasmuch as the plaintiffs are not at all aware of the extent of land owned by Vellaiyammal @ Vella Goundachi in the above said survey numbers, it is evident that they have come forward with the present case without any correct particulars regarding the suit properties. Apart from Ex.A.1, no other document of title has been placed by the plaintiffs to uphold their case. The properties described in Ex.A.1 have not been shown to be connected with or co-related to the suit properties. The document marked as Ex.A.2 does not contain the survey number. Therefore, it would not serve any purpose. When the only document marked as Ex.A.1 refers only to an extent of 2.50 acres and when the said extent has not been co-related to the suit properties as rightly contended by the defendants' counsel, the plaintiffs have failed to establish that the suit properties, as described in the plaint with reference to survey numbers and extents, are owned by Vellaiyammal @ Vella Goundachi.

17. It is seen from the records that no proof whatsoever has been placed by the plaintiffs to establish that the first plaintiff and her sister Kuppayee entrusted the lands to Annamalai Gounder and Annamalai Gounder managed the properties on their behalf as agent and trustee. Further, no material

whatsoever has been placed to show that Annamalai Gounder, at any point of time, had given usufructs and yields out of the properties to the first plaintiff and her sister Kuppayee. The second plaintiff, who was examined as P.W.1, had admitted that there are no evidence to establish the above aspects.

18. Thus, both the Courts below have rightly disbelieved the version of the plaintiffs that Annamalai Gounder was managing the suit properties and during such management, he had stealthily executed a Sale Deed in their favour and rightly rejected the plea of the plaintiffs. The respondents/defendants claiming to be in possession on their own right resisted the claim under Ex.B.1-Sale Deed in their favour. The second plaintiff as P.W.1, in his cross-examination, has admitted that the plaintiffs are aware of the fact that the suit properties belonged to them even in the year 1962. However, the plaintiffs have not taken any steps to file a suit for recovery of possession also assumes significance and thus, this Court finds that the plaintiffs were not able to ascertain the ownership of the properties and without any basis, they had claimed title to the properties, belonging to the defendants, purchased by their ancestors under Sale Deeds marked as Ex.B.1 to B.3 and thus, this Court finds that right from the year 1962 onwards, pursuant to Ex.B.1-Sale Deed, the defendants and their ancestors have been enjoying the suit properties as full owners thereof openly and continuously beyond the period stipulated by law and therefore, it can be seen that they have also acquired title to the suit properties by their long possession and enjoyment to the suit properties by adverse possession.

19. At this juncture, it is relevant to state that Ex.B.1-Sale Deed was executed by the father on behalf of the minor for legal necessity and to meet family expenses and after attaining majority, the minor has not chosen to challenge the Sale Deed. Considering the fact that the admission of P.W.1, as extracted supra, that even in the year 1962, the plaintiffs are aware about the Sale Deed, this Court is of the considered view that in view of the non challenge by the minor on attaining majority, about the Sale Deed, is also fatal to the case of the plaintiffs. Besides, on a perusal of the plaint, this Court finds that there is no pleading and there is no evidence and no argument seems to have been advanced before the Trial Court on the above facts touching upon substantial questions of law. Furthermore, no suggestion also has been made during the cross-examination of D.W.1 and D.W.2, which assumes significance and hence, this Court is of the considered view that both the substantial questions of law does not arise for consideration for the reasons stated supra. The judgment and decree passed by both the Courts below do not suffer from any irregularity or illegality warranting interference at this appellate stage.

Accordingly, the Second Appeal is devoid of merits and the same is liable to be dismissed.

20. In the result,

[i] The Second Appeal is dismissed.

[ii] The judgments and decrees passed by the First Appellate Court and the Trial Court are confirmed.

[iii] However, there shall be no order as to costs.

s/d-

Assistant Registrar (CO)

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Sub-Assistant Registrar

Jrl

To

1. II Additional District Judge,
Salem.

2. II Additional District Munsif,
Salem.

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