

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[Reserved on :19.08.2019]

[Pronounced on : 11.12.2019]

CORAM :

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Second Appeal No.1731 of 2001

Srirangan ... Appellant/ Respondent/Plaintiff
Versus

1.Sagadevan Naicker (died)
2.Kannabiran @ Durai
3.Ravi
4.Dayalan
5.Sekar
6.Dilli Babu
7.Kalaiselvi

... Respondents/ Appellants/ Defendants

[R6 & R7 brought on record as LR's of the deceased
R1 vide order of Court dated 02.04.2019 made in CMP.No.4244
of 2019]

PRAYER: This Second Appeal has been filed under Section 100 of C.P.C., against the judgment and decree in A.S.No.47 of 2000 dated 16.07.2001 on the file of the Principal District Judge, Chengalpattu, by reversing the well considered judgment and decree made in O.S.No.41 of 1996 dated 28.06.2000 on the file of the Principal District Munsif, Thirukkalkundram.

For Appellant : Mr.V.Ragahavachari

For Respondents : Mr.K.Hariharan (for R2 to R7)

JUDGMENT

The plaintiff in the original suit is the appellant herein.

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

3.The appellant is the plaintiff in O.S.No.77 of 1989 on the file of the District Munsif Court, Chengalpattu and subsequently, it was renumbered as O.S.No.41 of 1996 before the District Munsif Court, Thirukalukundram. The suit was filed, seeking the relief of permanent injunction against the first defendant/Sahadeva Naicker and others in the suit property of 0.3 cents out of 26 cents measuring about 1,200 cents with boundaries as stated in the schedule.

4.The brief facts that are necessary to determine the appeal are as under:-

The relationship between the parties are that

(a) Chinnasamy Naicker and Balakrishnan Naicker are brothers.

(b) Rajamanickam, Varadappa Naicker, Rangasamy, first defendant Sagadevan, Arumugam are the sons of Chinnasamy Naicker. The defendants 2 to 5 are the sons of the first defendant.

(c) The plaintiff's father Narasimman and his brother Ramanjulu are the sons of Balakrishna Naicker. Perumal and Chandrababu are the sons of Ramanujulu.

(d) The plaint proceeds, on the basis that the plaintiff got the suit property in exchange of his land bearing Survey No.146/7 measuring 9 cents and 22 cents in Mahabalipuram Village. According to the plaintiff, the share was allotted to his father by way of partition between his father Narasimma Naicker and his brother Ramanjulu Naicker, who is father of Perumal and Chandrababu and the registered Partition Deed dated 25.03.1962 was marked as Ex.A2.

5.Further, the plaintiff averred that under the Exchange Deed / Ex.A6, which contains the suit land, he had obtained title. The Exchange Deed was executed by his cousins Perumal and Chandrababu. In the document Ex.A6/ Exchange Deed, the said Perumal and Chandrababu recited that they have got the suit property from their father and an accumulation of the above genealogy connected with possessory right of the plaintiff, the plaintiff seeks the relief of injunction based upon his possessory right.

6.The respondent/defendant resisted the suit challenging the Exchange Deed on the ground that in the absence of any title deed in favour of Perumal and Chandra Babu or their father, Ex.A.6-Exchange Deed does not confer any right or possessory right upon the plaintiff. It is further contended that as per the document Ex.B.1, there is a clear recital about both the boundaries of the suit property. Therefore, the case of the plaintiff is to be rejected.

7.Before the Trial Court, the plaintiff examined himself as PW.1. Wife of the plaintiff's paternal uncle Ramanujulu viz., Hemavathy ammal examined as PW.2 and one Amalanathan examined as PW.3, who spoken about the possession and enjoyment of the suit property by the plaintiff along with PW.2/Hemavathy ammal. Amalanathan is one of the sons of Chandrababu, (who is one of the party in the Exchange Deed/Ex.A6) was examined as PW.4 and documents Ex.A1 to A7 were marked. On the side of the defendants, the first defendant was examined as DW.1 and one Loganathan was examined as DW.2 and the plaintiff's brother, N.Karnan was examined as DW.3. The Court exhibits were marked as Exs.C1 and C2.

8.On consideration of both oral and documentary evidence, the Trial Court has decreed the suit, thereafter on appeal was preferred by the defendant in A.S.No.47 of 2000, the appeal was allowed and the suit was dismissed. Hence, the Second Appeal.

9.The Second Appeal was admitted on 15.11.2001 by framing the following substantial questions of law:-

"i) Whether the finding of Lower Appellate Court that Ramanjulu Naicker has no right in S.No.137/15 is not perverse and against evidence of DW.1?

ii) Whether the Lower Appellate Court is right in rendering a finding against admission (DW.1)?

iii) Whether admitted facts requires proof?

iv) Whether the judgment of Lower Appellate Court is not against Section 58 of Indian Evidence Act, inasmuch as it had ignored the categorical and clear acceptance of title by DW.1?

v) In the absence of cross examinations as regards the Ex.A1 by the defendants as regards the title of PW.2 and PW.4, would it not amount to acceptance of a fact?

vi) When the Judgment of Lower Appellate Court is not against the principles laid by Madras High Court in 1996 1 MLJ Pg 10 (NRC) & 1983 Cal Pg 337?

vii) Whether the finding of Lower Appellate Court is justified in casually reversing the findings of trial court without disclosing the area of error committed by the trial court?

viii) Whether the judgment of Lower Appellate Court is not against the principles laid down by the Supreme Court in 2000 SCW Pg 723?"

10.Heard the submissions of the respective counsel on the substantial questions of law. Learned counsel for the appellant made his submissions in support of the substantial questions of law, while the learned counsel appearing for the respondents 2 to 7 made his submissions in support of the judgment of the Lower Appellate Court.

11.On perusal of Ex.A2/Partition deed, dated 25.03.1962 of the Ramanjulu Naicker and Narsimmalu Naicker recitals therein, it does not deal with the Survey No.137/15, while the plaintiff/appellant claiming that 0.3 cents out of undivided share of 0.26 cents in Survey No.137/15, the property was admittedly not identified, but it was described only with the boundaries.

12.On perusal of Ex.A7/ a registered partition deed entered into between Srirangan (plaintiff), Kannayiram, Sagadevan and Kannan on 17.04.1988, which deals with the southern portion of suit in extreme of Survey No.137/15 at Thirukalukundram road, but not on the northern side of the field. The boundaries recited therein also appeared to be does not tally with the other documents or oral evidence.

13.Further, it is not known as to how the plaintiff has alone has got the eastern 0.11 cents, out of 22 cents in Survey No.146/7 under the Exchange Deed/Ex.A6. Though the plaintiff exchanged the land on eastern 11 cents out of 22 cents, in Survey No.146/7, Mahabalipuram Village to the suit property, as

per the Exchange Deed/Ex.A6, dated 19.11.1986, nothing is mentioned about the land exchanged in the partition deed/Ex.A7 dated 17.04.1988 between the brothers; that the land exchanged by the plaintiff namely, eastern 11 cents, out of 22 cents in Survey No.146/7 Mahabalipuram Village was already allotted to the share of the plaintiff. Even the plaintiff's brother, who was examined on the side of the defendant as DW.3/Karnan, was not cross-examined on that aspect.

14.On perusal of the schedule of the property as contained in Ex.A7/Partition deed, the Lower Appellate Court has come to the conclusion that no property in suit Survey number was obtained under the partition deed by the plaintiff's, paternal uncle Ramanujulu and it is obtained only from Chandrababu and Perumal under Exchange Deed/Ex.A6. It remains to be stated that no anterior document to show as to how Chandrababu and Perumal got the title of the suit property. Admittedly their father viz., Ramanjulu Naicker was not allotted any share in the said Survey No.137/15 and the attention of this Court is drawn to the recital under Ex.A6, wherein, the property is described as ancestral in nature and further no document or any evidence of patta or chitta are filed to show that the plaintiff's paternal uncle Ramanajulu Naicker got the suit property either by acquisition or ancestrally and thereafter, his sons Chandrababu and Perumal could not have either derived title or possession over the suit has also assumes significance.

15.On combined reading of Ex.A6/ Original registered Exchange Deed between Srirangan, Perumal and Chandrababu and Ex.B1, it shows that Perumal and PW.4/Chandrababu sons of Ramanajulu Naicker, and the paternal uncle of the plaintiff, who had no right or any share in the Survey No.137/15. Admittedly, as per Ex.B3, the plaintiff's wife Parvathi ammal pruchased 3 cents in Survey No.137/15 at Mahabalipuram Village from the first defendant (brother of Rangasamy Naicker) wherein the northern boundary was shown as the plaintiff/Sriranga Naicker's Punja land. Furthermore, this Court finds that in Ex.B3, the plaintiff's father Narasimman and his paternal uncle Ramanujulu have attested the document assumes significance, in view of the dispute revolving around in the document.

16.Thus, this Court finds that while the plaintiff/appellant claims title to the property by virtue of Ex.A6/Exchange Deed, the person, said to have been given exchange namely, Chandrababu and Perumal, (who are the sons of Ramanujulu Naicker) for that there is absolutely no scrap of paper or evidence to substantiate their title to the suit property.

17.Admittedly, PW.4, deposed that they had obtained the property by way of Kurchit (as well as PW.2/Hemavathi ammal was not acquired knowledge on those aspects). The entire case of PW.4 rests on the Exchange Deed/Ex.A6. The person, who has given lands in exchange, viz., Chandrababu and Perumal have not demonstrated their title over the suit property. However, on the contrary, as per Ex.B3/sale deed, which was in favour of Parvathy ammal, (who is wife of the plaintiff) and the said

Narsimman and Ramanujulu are attestors also assumes significance. Though PW.4 would depose that he is enjoying the property ancestrally, he has not filed any document to show his possession since 1962. Further deposed that there was a Kurchit evidencing partition between him and Perumal, which is said to have been handed over to the plaintiff, however, for the reasons best known to him, the same was not marked by the plaintiff. This part of evidence of PW.4 also goes against the plaintiff. Thus, this Court finds that the substantial questions of law Nos.1 and 2, do not arise for consideration.

18. On appreciation of the evidence of DW.1, there is no such admission as pleaded by the appellant. DW.1 has clearly spoken about the description of the property enjoyed by the defendants and his version regarding Ex.A1, Ex.A6 /Exchange Deeds and Ex.A7/partition deed is not amount to admission. They are only referring to south most portion of the middle portion and not on the northern side portion and hence, the 4th substantial question of law also does not arise, for consideration.

19. It is to be noted that both PW.2 and PW.4/Chandrababu themselves have not acquired title to the land that is over the partition of the land in Survey No.137/15 and their version is not supported by any of the evidence. Though both of them spoken about the Kurchit for partition, the same was not marked before the Court, and therefore, the 5th substantial question of law also does not arise for consideration.

20. After considering the documentary evidence viz., Ex.A6 /Exchange Deed and Ex.A7 /Partition deed and also taking note of Ex.B1 /partition deed, which is anterior in point of time i.e., dated 16.03.1962, wherein, the title of the defendants in the lands on Survey No.146/7, it is a cultivate land, which is in Survey No.137/15 and the same is partitioned among the first defendant's brother and the same was dealt with by him and corroborate, about the mode and manner of the division of the property as reflected in Ex.B2/Rough plan. It remains to be stated that the above partition deed was accepted by the respective father of the plaintiff and his cousins Chandrababu and Perumal also tally with the Exs.B1 and B2.

21. After going through the deposition of DW.3/Karnan, who is none other than brother of the plaintiff (who is also a party in Ex.A6) and his version also lends support and stands corroboration in support of Ex.B1/partition deed followed by the Patta and Revenue records. Ex.B3, B4 and Exs.C1 and C2 / Commissioner's report have also lends support of the case of the defendants.

22. It is to be noted that in the Advocate Commissioner's plan Ex.C2 (second rough plan) ADFE is the land of plaintiff, in which, there is a hotel being in the southern most. North of that land EFCH is the plaintiff's brother Kannayiram's site and north of that land HGJI is the plaintiff's brother Kannayiram's house and north of Kannayiram's house IJKL is the plaintiff's

wife Parvathi ammal's site, north of Parvathy ammal's site KLMN is the plaintiff's brother Sagadeva Naicker's house and further north MNOP is the plaintiff's brother Sagadeva Naicker's vacant site, which property does not tally with the suit property as shown in the Commissioner's plan II Ex.C2 and the description as such only refers to the property purchased by the plaintiff's wife Parvathi ammal under the deed Ex.B3, dated 17.09.1979.

23. Merely because the first defendant's elder brother Arumugam figured as identifying witnesses in the Exchange Deed/Ex.A6, it cannot be said that the property exchanged under the deed was the suit property owned by the plaintiff's paternal uncle Ramanujulu and his sons Perumal and PW.4, Chandrababu, since it is well settled that identifying witness is different from attesting witness.

24. On the plea of adverse possession, it is the definite case of the plaintiff that before execution of Ex.A6 /Exchange Deed, his predecessors in title namely his paternal uncle Ramanujulu's sons Perumal and Chandrababu and Ramanujulu's wife Hemavathy ammal or Ramanujulu were in enjoyment of the suit property. However, there is no iota of evidence to prove the same. Though the plaintiff, PW.1 in his evidence has stated that he is in enjoyment of the suit property for the past more than 20 years and perfected title by adverse possession, it is not proved in the manner known to law. The evidence of Ramanujulu's wife, PW.2 (Hemavathi ammal) is also not clear on that aspect.

25. The plaintiff has not let in any positive and legally acceptable evidence to show that after Ramanujulu Naicker and thereafter his wife PW.2, his sons PW.4 and Perumal were in possession before execution of Ex.A6 /Exchange Deed. Hence, the other substantial questions of law also does not arise for consideration. By viewing from any angle, the finding rendered by the Lower Appellate Court that the plaintiff is not entitled for injunction in respect of the suit property on the basis of alleged Exchange Deed/Ex.A6 is just and proper. Thus, all the substantial questions of law stands negatived and the Second Appeal is liable to be dismissed.

26. In the result, the Second Appeal is dismissed by confirming the judgment and decree in A.S.No.47 of 2000 dated 16.07.2001 on the file of the Principal District Judge, Chengalpattu. No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

To

1.The Principal District Judge, Chengalpattu.

2.The Principal District Munsif, Thirukkalikundram

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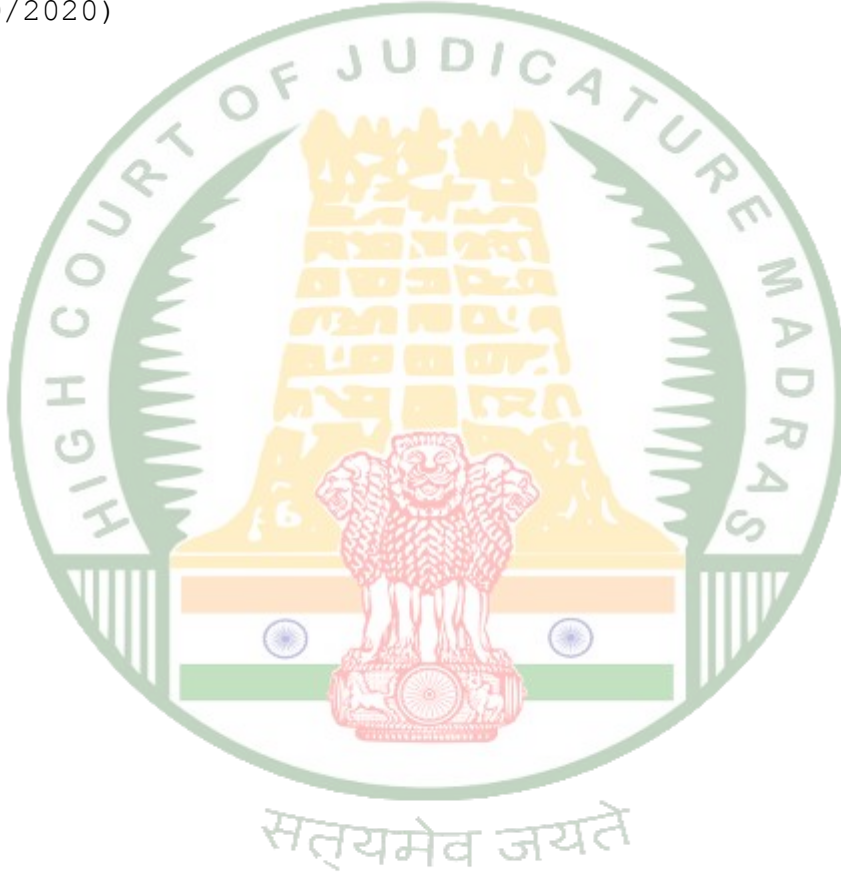
The Section Officer, VR Section, High Court, Madras.

+lcc to Mr.V.Raghavachari , Advocate SR.No. 103076

+lcc to Mr.K.Hariharan , Advocate SR.No. 103199

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A.SK(04/09/2020)



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