

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[Reserved on :29.07.2019]

[Pronounced on :19.11.2019]

CORAM :

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

SA.No.425 of 2001

1.Govindasamy Naidu
2. Mari

... Appellants/Defendants

..Versus..

1. Corla Naidu (Deceased)
2. Gengammal
3. Krishnammal
4. Kamala
5. Susila
6. Yasoda
7. Thiruvenkadam
8. Vasantha
9. Krishnan
10. Sreenivasan
11. Santhanam
12. Manimegalai

... Respondents/Plaintiff and
LR's of the deceased plaintiff

(R2 to 12 brought on read an LR's fo the Deceased Sole
Respondent vide order of this court dt.31/01/2018
and made in CMP.No.780 to 782/18)

PRAYER: This Second Appeal has been filed under Section 100 of C.P.C., against the judgment and decree in A.S.No.109 of 1999 dated 31.03.2000 on the file of the Principal District Court, Dharmapuri at Krishnagiri, reversing the judgment and decree made in O.S.No.89 of 1997 dated 11.10.1999 on the file of the District Munsif cum Judicial Magistrate Court, Uthangarai.

For Appellants : Mr.S.Parthasarathy, Senior Counsel
For M/s.Sarvabhauman Associates

For R1 : Died

For R2 to R11 : Mr.M.Himavanth
For Mr.V.Raghavachari

For R12 : No appearance

JUDGMENT

The defeated defendants are the appellants herein.

2. The respondent herein filed a suit for declaration and bar injunction against the appellants.

3. The case of the plaintiffs are that:-

(i) the suit property bearing S.No.56/1 and Patta No.420, his father had three brothers, viz., 1) Maichari Nayakar 2) Kardi Nayakar and 3) Chenraya Naicker and his father is Culigan @ Chennappa Naidu and the suit property was enjoyed by his father Coligan and by way of a family arrangement, the suit property by a oral family arrangement was conveyed to the plaintiff who is the only son to his father 30 years prior to this suit and that Ex.A1 is the patta granted in favour of the plaintiff in 1974 and the patta number was given as '11'.

(ii) The plaintiff's father was paying kist marked as Exs.A2 to A6 and the kist receipt Exs.A7 to A28 would evidence his payment. The plaintiff had mortgaged the suit property which was redeemed under Ex.29. Ex.A3 is the Mortgage Deed in favour of Salamarthu Pattu Co-operative Society and Ex.32 is the joint patta issued to the plaintiff along with the first defendant. Against this issue of joint patta, the plaintiff had filed an appeal to Revenue District Officer who transferred to the District Revenue Officer issued to the plaintiff and notice marked as Ex.A31 calling upon him to attend the enquiry. Hence, filed this suit.

4. The case of the defendant as could be seen from the written statement and the witnesses of the defendants side are to the effect that (i) the suit property no doubt belonged to the joint family comprising the father of the defendant, father of the plaintiff and 2 others (ii) but defendant's case was that under a oral partition which took place 70 years ago, the suit property went to the share of the defendant's father and after the demise of his father, the suit property devolved upon the defendant's mother, brother and the defendant himself and by way of Ex.B2, partition deed dated 25.06.1952, the suit property fell to the share of the defendant and (iii) to prove the same, the defendant has examined as D.W.3, one Govinda Rao, the attesor of Ex.B2. (iv) Ex.B1 is the "A" Registry of the suit property of the year 1937 which stands in the name of the defendant's father marked as Ex.B3 dated 12.08.1986, a patta issued to the defendant (Patta No.57) with regard to the suit property and patta issued in favour of the defendant with regard to other properties marked as Ex.B4.

(v) It is the definite case of the defendant that after Ex.B3, the plaintiff obtain a joint patta Ex.A32, along with the defendant. (vi) The defendant relied upon Ex.B1, a public document to prove that the suit property was allotted to the defendant's father under the oral partition between the brother

70 years back,

(vii) The defendant also raised a contention that the suit has to be dismissed for non-joinder of necessary party namely the sons and daughter of the plaintiff who also admittedly have a right in the suit property.

5. During trial, on the side of the plaintiff, the plaintiffs are examined as P.W.1 and P.W.2 and marked Exs.A1 and A34. On the side of the defendants, the defendants are examined as D.W.1 to D.W.3 and marked Exs.B1 to B6.

6. On consideration of both oral and documentary evidence let in, the Trial Court has observed that Exs.A29 and Ex.A30 Mortgage Deed and Redemption of Mortgage Deed by the plaintiff are not binding upon the defendant and there is a clear variation between the UDR patta issued in the year 1986, under Ex.B3 and Ex.A2 issued in the year 1982 and Revenue proceedings also not found to be in favour of the plaintiff and non-production of the Patta Passbook regarding possession of the plaintiff, the Trial Court has rejected the case of the plaintiff and hence, the appeal.

7. During the First Appeal, the Lower Appellate Court has reversed the finding of the Trial Court by observing that Exs.A29 and Ex.A30-Mortgage Deed and Redemption of Mortgage deed is an amounts to act of ownership and the plea of adverse possession is attracted and therefore, decreed the suit and hence, the appeal by the defendants.

8. The above Second Appeal has been admitted on 23.03.2001 on the following Substantial Questions of Law:-

a) Whether the Lower Appellate Court was correct in Law in relying upon the revenue records to decree a suit for declaration of title overlooking the principle that revenue records will not prove title?

2) Whether the Lower Appellate Court was correct in law in decreeing the suit on the basis of Ex.A29 and A30- the mortgage deeds executed by the plaintiff in favour of 3rd parties, which are not binding on the defendants as they are not parties to the same?

3) Whether the Lower Appellate Court is correct in law in reversing the judgment of the Trial Court without adverting to the material evidence namely Ex.B1 and B2 which conclusively establish the oral partition pleaded by the appellants?

4) Whether the reversal of the decree by the Lower Appellate Court relying upon the inadmissible document Ex.A34 and eschewing from consideration admissible documents Ex.B1 and B2 is sustainable in law?

5) Whether the Lower Appellate Court is correct in law in not holding the suit bad for non-joinder of necessary parties who have a right in the suit properties?

9. The learned counsel for the appellants has made submissions in support of the Substantial Questions of law and the learned counsel for the respondent has made submissions in support of the judgement of the Courts below.

10. Heard both sides and perused the records.

11. The case of the respondent/plaintiff in brief case is that the father of the plaintiff and father of the defendant were brothers and the land in S.No.56/1 covered under patta No.420 is situated in Dharmapuri District, Uthangarai Taluk, Oolaipatti Village, measuring 1.05 acres with specified boundaries and the plaint schedule, plaintiff claims title to the property on the ground that in the oral partition, the suit Survey No. was allotted to him. While, the defendant claims that the suit property was allotted, his father followed by the act of ownership by the father of the defendant and the settlement Deed in favour of the family members thereafter upon to him.

12. After perusing Ex.A1, Patta which is standing in the name of the plaintiff. While, Exs.A2 to A6 are land receipts patta by the plaintiff's father and Exs.A7 to A28 are also standing in the name of the plaintiff.

13. It remains to be stated that Ex.A29 is the Mortgage Deed executed by the plaintiff in favour of one Subramania Chettiyar of Kallavi and thereafter, under Ex.A30 in the year 1961, the plaintiff along with his father are also executed the suit property in favour of Salamarathupatti Co-operative Society and raised the loan. However, on perusing the recital in Ex.A30, it is crystal clear that what was mortgage is only a Northern portion of the suit property assumes significance. The recital under Ex.A30 specifically refers to some other property on the Northern portion and half of the property also assumes significance. The recital under Ex.A30 also does not disclose the exclusive position of the plaintiff as per their case also assumes significance. At this juncture, it remains to be stated that Exs.A33 and Ex.A34 are relating to the legal proceedings and a Will alleged to have been executed by the father of the plaintiff in the year 1972.

14. As stated supra, the defendant/appellant in the witness box has categorically explained Exs.A2 to A6 that since his father is totally illiterate, he has remitted the amount through his elder brother and it appears that he has remitted the kist receipt in his name rather than the father of the defendant and it also to be stated that Exs.A29 and A30 which is projected by the plaintiff does not disclose the property in the suit nor his relationship with the defendant also assumes significance.

15. Thus, this Court finds that Ex.A1 is patta issued in the year 1974 and Exs.A12 to A28 are the Revenue Receipts being a Revenue record cannot be construed as proof of title. Furthermore, Exs.A29 and A30 for the reasons discussed supra are mortgage deed executed by the plaintiff and his father in favour of a third party and the same is not binding upon the defendant for the reasons to be discussed infra. One of the reason being the entire suit property is not included in Exs.A29 and A30 as extracted supra. Furthermore, it is to be stated that both these documents appear to have been came into existence based upon 1987 UDR patta namely Ex.A3 including the earlier patta issued solely and exclusively in the name of the defendant in the year 1986 under Ex.B3 and as such, Exs.A29 and Ex.30, the property seems to have been treated as a property of the plaintiff only based upon Ex.A32 UDR patta of the year 1987 and for the reasons discussed supra, this Court is of the considered view that the finding of the Trial Court is well considered and it has to be restored.

16. Yet another point issued is that much reliance has been placed upon Ex.A34, the Will alleged to have been by the father of the defendant/appellant and based upon the said schedule of the Will, it is projected as if the suit property does not belong to the father of the defendant. Since, it is same is not mentioned in the schedule of the Will in the cross-examination, D.W.1 has categorically stated that under Ex.A34 self-acquired property as has been conveyed merely because a property was not covered under Will, the same will not lead to an inference that the testator does not own the property. Since, in execution of the Will, it is open for the testator to give and bequeath his entire property under the Will or any of the property or anyone of the property of his choice legs and therefore, the Lower Appellate Court has committed a cross error in accepting the case of the respondent/plaintiff that non inclusion of the property in Ex.A34, Will is fatal to the case of the defendant and consequently, erred in hold that the defendant's father never possess the property is liable to be vacated. Furthermore, in order to act upon a Will, the Will has to be proved in the manner known to law has prescribed under Section 63 of the Indian Succession Act and Section 68 of the Indian Evidence Act.

17. Admittedly, the plaintiff though marked as Ex.A34-Will purported to have been executed by defendant's father has not examined any of the attesor and hence, on this ground also Ex.A34 is to be eschewed from consideration.

18. On the other hand, the appellant/defendant has specifically pleaded in the written statement that there was a oral partition as early as on 1970 years before the filing of the written statement and thereafter, patta was granted to the father of the defendant in the year 1983 and based upon the said patta in 1981, the defendant's father has been issued with re-settlement under Ex.A1 and in 1937, the patta was in the name of Chenniya Naicker namely the father of the defendant and from Exs.A2 to A6 only goes to show that they are prior in time has compared to Ex.A1 on the date of the UDR patta 1974. The patta for the suit property appears to be patta No.'11'. However, from Ex.B1 before 1971 the patta No.for the suit property is '43' and patta proceedings before the Revenue Competent Authority as could be seen from Exs.33 and 34 also goes against the plaintiff and supports the case of the appellant/defendant.

19. Furthermore, one of the attesor of Ex.B2 Partition Deed in the year 1982 was also examined as D.W.2 and based upon Ex.B2 the first defendant has been issued with patta under Ex.B3 on 12.08.1986 and patta after partition is Patta No.'57' as could be seen from Ex.B4 and thus, the Court finds that the defendant has exclusively demonstrated is derivative title from the father and it is found as per Ex.B2 Partition Deed, the property had been dealt with and the defendants have successfully proved the genuinesss of Ex.B2 by examining his attesor of Ex.B2 as D.W.2 in the manner known to law and as per Ex.A33, the District Revenue Officer, the Competent Authority also dismissed the claim of the plaintiff for exclusive patta.

20. Taking into consideration, Ex.B1 is the Settlement Register of the year 1977 is a public document which is standing in the name of the father of the defendant exclusively and conclusively proves the pleading of the defendant that in the partition, the property was allotted to the father of the defendant and thus only during the re-settlement in the year 1987 without hearing the father of the defendant, the name of the plaintiff's father was clandestinely added. While, Ex.B3 had clearly demonstrated that the UDR patta of the year 1986 is based upon Ex.B2 Partition Deed of the year 1982 which is in turn based upon the settlement deed of the year 1998 and accordingly, this Court holds that the finding rendered by the Lower Appellate Court is not sustainable-in-law and on the contrary, the material evidence namely Exs.B1 and B2 followed by the Revenue records categorically demonstrated the derivative title of the defendant's father in the oral partition and based upon is inadmissible document under Ex.A34, it appears that the Lower Appellate Court has decreed the suit

an erroneous premise and the same is liable to be vacated and all the findings are rendered by the Lower Appellate Court shall stands vacated and as that of Trial Court shall stands restored. Consequently, the suit shall stands dismissed. All the Substantial Questions of Law are answered in affirmative in favour of the appellants/defendants.

21. 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-IV)

//True Copy//

Sub Assistant Registrar

nvi

To

1.The Principal District Judge,
Dharmapuri at Krishnagiri

2.The District Munsif cum
Judicial Magistrate Court, Uthangarai.

Copy to:

The Section Officer,
VR Section, High Court,
Madras-104.

+1cc to MR.V.Raghavachari, Advocate SR.95870

S.No.425 of 2001

SV(CO)
CB(03/09/2020)