IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 01.07.2019

Judgment Pronounced on : 01.11.2019

CORAM:

THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

S.A.No.1458 of 2008
and CMP.No.1 of 2014 & CMP.No.21766 of 2018

Annamalai ..Appellant/ Plaintiff

Vs.

1.Dhanapal
2.Mattavettan

3.The State of Tamil Nadu
Rep. by the District Collector
Thiruvannamalai District.

4.The Special Tahsildhar
Land Acquisition
Tamil Nadu Road Development Scheme
Thiruvannamalai. ..Respondents/Defendants 3 & 4

Prayer :- Second Appeal filed under Section 100 of the Civil Procedure Code, preferred against the judgment and decree dated 08.08.2008 in A.S.No.27 of 2008 passed by the Principal Subordinate Judge, Thiruvannamalai, reversing the judgment and decree dated 30.01.2008 in O.S.No.170/2005 passed by the Additional District Munsif Court, Thiruvannamalai.

For Appellant : Mr.Sadasharam
Assisted by Mr.V.Kannan

For Respondents : Mr.T.R.Rajaraman [R1 & R2]
Mr.N.Manikandan
Govt. Advocate (C.S.) [R3 & R4]

JUDGMENT

The plaintiff who was successful in a suit for declaration of his title over the suit property before the trial Court, but lost part of the advantage derived before the trial Court in the first appeal preferred by the defendants, is the appellant herein.

Parties would be referred to by their ranks before the trial Court.

2. The dispute is over an extent of 3.67 acres in Survey No.68/5B of Vada Andapattu Village at Thiruvannamalai District. The plaintiff claims that the entire property is his, whereas the defendants 1 and 2 would say that the plaintiff was entitled to only 1.83½ acres on the northern half of the entire property. The plaintiff, therefore laid a suit for declaration of his title for an ancillary relief of injunction. As stated earlier, the first appellate Court modified the decree of the trial court and granted a decree only for half share of the plaintiff in the entire suit property, based on the admission of the defendants.

3. The facts on which the rival side positioned themselves in the suit may be stated :

- The plaintiff has come forward with a straight forward case. According to him, sometime in 1957, the entire suit property was assigned to his father Thangavel by the Government, and patta was granted to him in Patta No.101. Even since, Thangavel, along with him, the plaintiff was in possession of the property. They dug up a well at a considerable cost. Ext.A1 is a chitta, which refers to the assignment given to Thangavel in 1957, in patta No.101. In furtherance of his title, both Thangavel and his son (plaintiff) mortgaged the property with a certain Co-operative Society.

- While so, on 22.12.1976, Thangavel died and the patta that stood in his name was transferred to plaintiff in patta No.257. Ext.A6 is the chitta showing the same.

- According to him, the defendants 1 and 2, who are no way connected to the suit properties, but had fraudulently obtained some documents in collusion with the Village Administrative Officer for (a) obtaining drought relief and (b) for staking a claim in the compensation in the land acquisition proceedings regarding part of the suit property on the north-east.

Hence, the suit was laid for the reliefs earlier indicated.

4.1 The defendants 1 and 2 have filed their written statement. They travelled back by several years to 1920, when they pleaded that the suit property was originally assigned by the Government to a certain Panchiyammal sometime in the year 1922. That Panchiyammal had two sons namely Thangavel, the father of the plaintiff, and Rathinam, the father of the defendants 1 and 2. While so, to meet the marriage expenses of plaintiff's father Thangavel, Panchiammal created a possessory mortgage in favour of a stranger on 17.03.1926. This mortgage was later redeemed, but it deals with the property which is now described as a suit property. On the demise of Panchiyammal, the entire suit property devolved equally on her sons Thangavel and Rathinam.

4.2. Be that as it may, on 19.1.1942, both Thangavel and his brother Rathinam, mortgaged the property. This mortgage later was redeemed, but it indicates that the property was in co-ownership of both Thangavel and Rathinam. Subsequently, a partition had taken place, in which, Thangavel was allotted northern 1.83½ acres and Rathinam was given southern 1.83½ acres. (It was stated here that Rathinam had died some time in 1948, which fact was not in evidence).

4.3. Upon the oral partition referred to above, patta came to be issued in Patta No.101, marked as Ext.B5, and this was issued jointly in the names of both Thangavel and Rathinam's widow Vallammal. She had been paying property tax too. So far as the well goes, this was dug up by Thangavel in the portion allotted to him, and it does not lie on the southern side. After the demise of Vallammal in 2004, the southern share devolved equally on the defendants 1 and 2. They have been issued patta too.

5. The dispute went to trial and both sides adduced both oral and documentary evidence. The plaintiff has produced seven documents and are marked Exts.A1 to A7. The defendants have marked documents Exts.B1 to B30.
The trial Court decreed the suit. It relied on :

- Ext.A1, the chitta, shows that the property in patta No.101 stood in the name of Thangavel.

- Turning to the defendants evidence in Exts.B1 and B2, (on the basis of which the defendants 1 and 2 have projected their case that the suit property was not exclusively the property of Thangavel) it says that Ext.B1, mortgage deed executed by Panchiammal, she has indicated that it is her self-acquisition, and this is contrary to the defendants' statement that it was assigned to her by the Government. There is no evidence to indicate that the property indeed was assigned to Panchiammal. Turning to Ext.B2, the mortgage deed dated 19.01.1942, which was jointly executed to Thangavel and Rathinam, the trial Court has opined that there was no clarity as to the circumstances under which the said document came to be drafted. It also rejected the further argument of the defendants that in Ext.B2, Thangavel was stated to be the pattadar, because he was the elder of the two, who executed the document. And, this also goes counter to the foundational contention of the defendants that the land was indeed assigned to Panchiammal long before.

- Turning to several tax receipts produced by rival sides, it ultimately opted for the one filed by the plaintiff.

6. The first appellate Court however non-suited the plaintiff as regards the southern half and in so doing it rejected the very basis of the reasoning of the trial court, and preferred Ext.B1 and Ext.B2 over Ext.A1 and Ext.A2. In addition, it held that even though Ext.A1 would refer to Thangavel as pattadar under patta No.101, no documents of assignment was ever produced by the plaintiff to establish the title. Hence, the plaintiff is before this Court.

7. The appeal was admitted on the following substantial questions of law :

a) Whether the Lower Appellate Court is correct in decreeing the Appeal on merits by setting the appellant exparte?

b) Whether the Lower Appellate Court is correct in decreeing the Appeal on the ground that Ex.A1 is inadmissible in law?

c) Whether the Lower Appellate Court is correct in decreeing the Appeal on merits by preventing the appellant from invoking set aside petition under Order 41 Rule 21 of C.P.C?

Arguments:

8.1 The learned counsel for the plaintiff/appellant chiefly laid considerable emphasis on Ext.A1, chitta and Ext.A2, mortgage deed. Turning to Ext.B1, on which the first appellate Court placed reliance, he argued that nowhere in Ext.B1, it was recited that the property dealt with thereunder (suit property hereunder) was assigned to Panchiammal.

8.2 In the absence of any material forthcoming, it is necessary to infer that Panchiammal had dealt with the suit property without any title and this would be borne out by the fact that patta came to be issued to Thangavel, sometime in 1957 or 1958 (as there is some discrepancy in the order) in favour of Thangavel. If only patta had earlier been granted to Panchiammal, there was no need for an assignment to Thangavel in 1957. Secondly, Ext.B2 recites that patta was indeed granted only to Thangavel, which is consistent with the plaintiff's narrative of his case. When the plaintiff has established his title which could be related to Ext.A1 patta under assignment made in 1957, then the burden to establish that Panchiammal was assigned the property, even before

1926, is on the defendants 1 and 2, and they did not choose to discharge the same. On the demise of Thangavel, patta was transferred to Annamalai, the plaintiff herein, in patta No.257 as is seen from Ext.A6 patta. The preponderating probability affecting the case coupled with the failure of the defendants 1 and 2 to discharge their burden to prove that Panchiammal was the original assignee of land, go to establish that plaintiff indeed is the title holder to the property.

9. Per contra, the learned counsel for the defendants submitted:

- That admittedly the executant of Ext.B1 document was the paternal grandmother of the plaintiff, and the defendants 1 and 2, who are the grandsons of Panchiammal respectively through her sons Thangavel and Rathinam, and it is in continuity of this title, Thangavel and Rathinam came to be in possession.
- Secondly, Thangavel is the senior of the two brothers, and therefore, patta was granted in his favour. Ext.B2 here recites not only the fact that patta stood in the name of Thangavel, but also proceeded to recite that both Thangavel and Rathinam, the executants of the document are in joint enjoyment of the property mortgaged by them.
- Thirdly, the defendants allege an oral partition some time in 1972, and to establish the same they have produced Ext.B5, the patta passbook of patta No.101. It was given jointly in the names of Thangavel, and Rathinam's widow Vallammal. Why should the patta be jointly given to Vallammal, if Thangavel alone was the owner of the property.
- For few years, Vallammal had paid land tax (kist) for the property covered in patta No.101 and subsequently, she had also paid land tax for patta No.257, (Exts.B12 to B24)

When the evidence as has made available by both sides, if spread on a plane of logic, the case of the defendants create a greater probability of their case than the plaintiff.

10. The plaintiff would now argue, that the foundation for defendants' claim of title to southern half is the partition said to have taken place sometime in 1972, but this was not proved. Responding to the same, the defendants argued that Ext.B5, the joint patta issued in the names of Thangavel and Vallammal itself, is the testimony to prove the partition.

Discussion & Decision:

11.1 Whether the property was assigned to Thangavel sometime in 1957? Or, was it the property of his mother Panchiammal? Ext.B-1, mortgage deed dated 17-03-1926, indicates that Panchiammal asserted right over the suit property some 80 years prior to the suit. Whether Panchiammal was an assignee of the land from the Government, or, was she someone who had encroached the property and dealt with the property on the strength of her possession, might not be proved at this point of time. It therefore, requires to be ascertained as to how the parties herein, or to be specific, their immediate predecessors-in-title had conducted themselves in relation to the suit property, and it gains relevance.

11.2 Here, Ext.B-2, the mortgage deed dated in 1942, jointly executed by Thangavel and Rathinam, steals the spotlight. Having accepted his brother Rathinam as part-owner of the suit property in 1942, Thangavel need to explain a great deal as to how he excluded him in 1957. And, now that he is dead, his son, the plaintiff has to do the talking. But he does not. This has to be taken alongside Exts.B-3 to B-21 tax receipts which evidences payment of tax by Rathinam's widow (defendants' mother). Why should she pay it unless she has derived the right which Rathinam had in the property? And, why was it not objected to by the plaintiff or his father Thangavel?

12.Given the contextual setting, it would be logical to conclude that Thangavel only had part title to the suit property, and this has to be traced to the title of Pachiammal, since de hors this theory there is no justification for Rathinam joining Thangavel in executing Ext.B-2 mortgage in 1942. A chitta issued in Ext.A-1 loses its significance, for it is never considered a document of title.

13. This court will not interfere with the factual findings of the first appellate court, unless there is perversity in its line of reasoning which no reasonable man would ever adopt or approve. And, this court finds the reasoning of the first appellate court reasonable and acceptable. Necessarily if offers no need to interfere with it.

14.In conclusion, the appeal fails and the judgment and decree dated 08.08.2008 in A.S.No.27 of 2008 passed by the Principal Subordinate Judge, Thiruvannamalai, is hereby confirmed. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Principal Subordinate Judge,
Thiruvannamalai.

2.The Additional District Munsif,
Thiruvannamalai.

Copy To: The Section Officer, V.R.Section,
High Court of Madras, Chennai -104.

+1 cc to M/s.T.R.Rajaraman,Advocate Sr.No. 90481
+1 cc to M/s.V.Kannan,Advocate Sr.No. 90772
+1 cc to The Government Pleader Sr.No. 91291

AKM/03.01.2020/7P- 7C /

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S.A.No.1458 of 2008