

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :04.04.2019

PRONOUNCED ON:26.04.2019

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.581 of 2007

and

M.P.No.1 of 2007

1.Allimuthu

2.Velumani

3.Senthil

... Appellants/Appellants/Defendants

Vs.

Rajamani

... Respondent/Respondent/Plaintiff

Prayer:

Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree dated 30.08.2006 made in A.S.No.9 of 2006 on the file of the Subordinate Court, Mettur confirming the judgment and decree dated 28.02.2005 made in O.S.No.460 of 1998 on the file of the District Munsif Court, Mettur.

For Appellants : Ms.Zeenath Begam
for Mr.V.Rajesh

For Respondent : Mr.A.John Britto

J U D G M E N T

Challenge in this second appeal is made to the judgment and decree dated 30.08.2006 passed in A.S.No.9 of 2006 on the file of the Subordinate Court, Mettur, confirming the judgment and decree dated 28.02.2005 passed in O.S.No.460 of 1998 on the file of the District Munsif Court, Mettur.

2. The Second appeal has been admitted on the following substantial questions of law:

1. Whether the plaintiff has not sought for declaration of his title to the suit property, though the same is in dispute and confined the prayer only for permanent injunction, whether it is proper for the Courts below to render a finding on title.
2. In the absence of proof of possession of the suit property on the date of suit, whether the Courts below are right in granting the decree for permanent injunction.

3. Considering the scope of the issues involved between the parties as regards the subject matter is lying in a narrow compass, it is unnecessary to dwell into the facts of the case in detail.

4. For the sake of convenience, the parties are referred to as per the rankings in the trial court.

5. Suffice to state that the suit has been laid by the plaintiff for the relief of permanent injunction.

6. The plaintiff is the daughter of Muthusamy. The first defendant is the son of Muthusamy. The second defendant is the wife and the third defendant is the son of the first defendant. The relationship between the parties as abovestated is not in dispute. The plaintiff claims title to the suit property based on the Will dated 12.09.1995 executed by Muthusamy in her favour marked as Ex.A1. According to the plaintiff, pursuant to the Will, after the demise of her father Muthusamy, it is she who has been in the possession and enjoyment, by paying Kists, taxes, water charges, service charges etc., and the defendants have no right, title or interest over the suit properties and on the other hand, the defendants attempted to interfere with her possession and enjoyment, hence according to the plaintiff, she has been necessitated to lay the suit for appropriate reliefs.

7. The defendants challenged the Will marked as Ex.A1 under which the plaintiff claims title to the suit property. According to the defendants, the suit property is the ancestral property and therefore Muthusamy is not competent to execute the Will in respect of the same in favour of the plaintiff under Ex.A1 Will and thereby also contended that the suit property is not in the possession and enjoyment of the plaintiff pursuant to the alleged Will as claimed in the plaint and on the other hand, claimed that the suit property is in the possession and enjoyment of the defendants and accordingly prayed for the dismissal of the plaintiff's suit.

8. As rightly determined by the Courts below, considering the nature of the suit levied by the plaintiff against the defendants claiming that she is in the possession and enjoyment of the suit property pursuant to Ex.A1 Will, at the foremost, the plaintiff should establish her possession and enjoyment of the suit property and inasmuch the defendants had also thrown a challenge to the truth and validity of Ex.A1 Will, on the basis of which the plaintiff claims title to the suit property, as rightly pointed out by the Courts below, the plaintiff is also required to establish that Muthusamy is competent to execute the Will in her favour as putforth in the plaint.

9. As abovenoted, according to the defendants, the suit property is the ancestral property and therefore Muthusamy is not competent to bequeath the same in favour of the plaintiff under Ex.A1 Will. However considering the chitta and adangal extracts marked as Exs.X3 and X4 in the matter as well as the evidence of P.W.4, it is found that the suit property had come to be recorded only in the name of Muthusamy during the Natham land tax scheme and accordingly the patta in respect of the suit property having been originally issued only in favour of Muthusamy and in such view of the matter to say that the suit property is the ancestral property of Muthusamy and enjoyed by his ancestors, without there being any document to establish the same prima facie, as rightly held by the Courts below, on the basis of the documents marked as Exs.X3 and X4 coupled with the evidence of P.W.4, the Assistant working in the Tahsildar office, Mettur dam, it could be gathered that Muthusamy had acquired the tittle to the suit property by way of the patta issued during the Natham land Tax Scheme and enjoying the same and therefore it could only be held that the suit property is the absolute property of Muthusamy. The above fact has also been admitted by D.W.2 Manickam examined on behalf of the defendants and D.W2 would admit that Muthusamy on coming to Mettur, acquired the property and also put up thatched house in the promboke land by encroaching the same and enjoying the said property and in such view of the matter, when it is found that , it is only Muthusamy who had put up the super structure in the suit property and enjoying the same and accordingly the patta had also been issued in his favour and when there is no document projected on the part of the defendants to show that the suit property had been enjoyed as the ancestral property by the ancestors of Muthusamy at any point of time and when the documents projected by both the plaintiff as well as the defendants would go to show that it is only Muthusamy who had been enjoying the suit property and the superstructure putup thereon by paying taxes, water charges, service charges etc., in all, it is evident that the suit property is the separate

property of Muthusamy and he would be competent to execute the Will as he desires with reference to the same.

10.As regards the proof of Will, the plaintiff has examined the attesor of the Will as P.W.2 and P.W.2 had tendered evidence detailing as regards the execution of Ex.A1 Will by Muthusamy and the attestation of the attestors and had also deposed about the revocation deed executed by Muthusamy on the same date cancelling the earlier Will executed by him in favour of the third defendant and his brother Kaliappan and the Courts below had rightly appreciated his evidence and naturally accepted his testimony for upholding the truth and validity of the Ex.A1 Will. Buttressing the evidence of P.W.2, P.W.3 Ramasamy, the Assistant working in the Sub Registrar's office, Mettur had also deposed about the revocation deed executed by Muthusamy on 12.09.1995 marked as Ex.X1 and also testified the execution of Ex.A1 Will by him on the same date and also deposed about the attestation of the said documents by the attestors concerned in the Registrar's office and accordingly the Courts below had also relied upon the evidence of P.W.3 for accepting the case of the plaintiff that Ex.A1 Will had come to be executed by Muthusamy in her favour after revoking the earlier Will executed by him in favour of the third defendant and his brother and in such view of the matter, the defence putforth by the defendants that Muthusamy is not competent to execute the Will Ex.A1 and that the Will had not been executed by him, as such, cannot be countenanced in any manner and accordingly the abovesaid defence version of the defendants had been rightly disbelieved and rejected by the Courts below.

11. In this matter, the defendants have projected the patta marked as Ex.B2 in favour of the third defendant and his brother Kaliappan and as rightly found and held by the Courts below, the abovesaid patta as well las the subsequent tax receipts etc., in the name of the third defendant and his brother had emanated following the execution of the Will in respect of the suit property by Muthusamy in the earlier occasion in their favour and when the materials placed on record go to show that the earlier Will executed by Muthusamy had been revoked by him as abovenoted and Muthusamy had bequeathed the suit property in favour of the plaintiff under Ex.A1 Will, in such view of the matter, the patta document and the tax receipts projected by the defendants in the name of the third defendant and Kaliappan would serve no purpose to uphold their case in any manner. On the other hand, when the evidence adduced on the part of the plaintiff as abovenoted and the documents projected by the plaintiff as well as the defendants cumulatively seen, would only go to point out that the suit property had been enjoyed by Muthusamy and pursuant to Ex.A1 Will, after the demise of Muthusamy, the same has been enjoyed by the plaintiff

and in such view of the matter, the case of the defendants that the plaintiff has no title, possession and enjoyment of the suit property cannot at all be accepted and rightly disbelieved by the Courts below.

12. Most of the documents projected by the defendants stand in the name of Muthusamy. Further on the side of the defendants, the documents in the name of the third defendant are also found to have been projected, which had emanated after the institution of the suit and the documents standing in the name of the third defendant and Kaliappan having emanated based on the earlier Will executed by Muthusamy and when the same had come to be revoked by Muthusamy as above pointed out, the abovesaid documents would be of no use to sustain the defence version and therefore it is found that the suit property is not in the possession and enjoyment of the defendants as putforth by them. As rightly pointed out by the Courts below, when the suit property had been originally assigned in the name of Muthusamy, it does not stand to reason as to how the same had come to be changed in the name of the third defendant and Kaliappan and with reference to the abovesaid factor, the defendants have also not endeavored to examine the Panchayath officials to sustain their case.

13. The service connection is found to be in the portion of the first defendant and on that basis, the contention has been raised that it is only the defendants who are in the possession and enjoyment of the suit property. Considering the fact that Muthusamy had been peacefully enjoying the suit property with his family and thereafter when subsequently the parties had separated and in such view of the matter, when the parties were together, it is natural for securing the service connection in the name of the first defendant, S/o of Muthusamy and on that score it cannot be held that the suit property absolutely belong to the first defendant as such. On the other hand, as rightly pointed out by the Courts below considering the documents projected by the plaintiff in entirety, it is evident that it is only the plaintiff who is in the legal possession and enjoyment of the suit property and accordingly the Courts below are found to be justified in upholding the plaintiff's case.

14. Considering the nature of the suit as well as the fact that the plaintiff has sought the relief of permanent injunction based on her possession and enjoyment and the plaintiff has also established her legal possession and enjoyment of the suit property based on Ex.A1 Will and when the defendants have not projected any valid contra title to the suit property in any manner and when the question of title could also be gone into incidentally in a suit for permanent injunction only for adjudicating the legal possession of the suit property

by the rival parties concerned and accordingly the suit property is found to be only in the legal possession and enjoyment of the plaintiff as projected by her in all, it is seen that on the facts and circumstances of the case, there is no need on the part of the plaintiff to seek for the declaration of title to the suit property for claiming the reliefs prayed for. Therefore the contention put forth by the defendants' counsel that the suit laid by the plaintiff without seeking the declaration of title is not maintainable, as such, cannot be accepted. Considering the fact that the plaintiff has established her legal possession and enjoyment of the suit property as above pointed out and rightly determined by the Courts below, the Courts below are found to be fully justified in granting the relief of permanent injunction as prayed for by the plaintiff. The substantial questions of law formulated in the second appeal are accordingly answered in favour of the plaintiff and against the defendants.

15. The counsel for the defendants in support of her contentions placed reliance upon the decision reported in 2016 (5) LW 211 [Sekar Vs. Ganesan rep. By his power agent, Thiruvengadam]. The principles of law outlined in the abovesaid decision are taken into consideration and followed as applicable to the case at hand.

16. In conclusion, the second appeal fails and is accordingly dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CCC)

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Sub Assistant Registrar

To

1. The Subordinate Judge,
Subordinate Court,
Mettur.

2. The District Munsif,
District Munsif Court,
Mettur.

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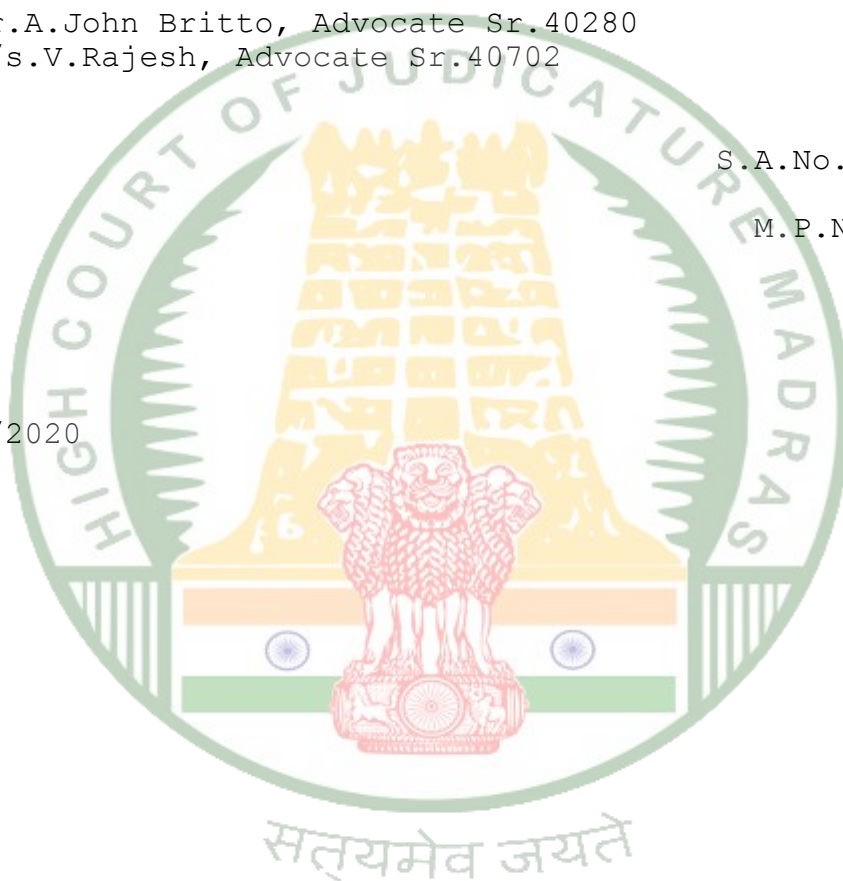
The Section Officer,
VR Section,
High Court,
Chennai.

+1cc to Mr.A.John Britto, Advocate Sr.40280

+1cc to M/s.V.Rajesh, Advocate Sr.40702

S.A.No.581 of 2007
and
M.P.No.1 of 2007

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