



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.02.2019

PRONOUNCED ON : 12.03.2019

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.1943 of 2003

Ezhilarasan ...Appellant/Respondent/Plaintiff

Vs.

Subramaniam ...Respondent/Appellant/Defendant

Prayer: Second Appeal filed under Section 100 of C.P.C., against the judgment and decree dated 21.10.2002 in A.S.No.6 of 2002 on the file of the Subordinate Court, Chidambaram, reversing the judgment and decree dated 28.09.2001 in O.S.No.123 of 2000 on the file of the District Munsif-cum-Judicial Magistrate Court, Kattumannarkoil.

For Appellant : Mr.Srinath Sridevan

For Respondent : Mr.G.Pugalenth

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 21.10.2002 passed in A.S.No.6 of 2002 on the file of the Subordinate Court, Chidambaram, reversing the judgment and decree dated 28.09.2001 passed in O.S.No.123 of 2000 on the file of the District Munsif-cum-Judicial Magistrate Court, Kattumannarkoil.

3. The parties are referred to as per their rankings in the trial court for the sake of convenience.

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

- "(i) Whether a presumption of possession does not flow from the passage of title under a registered instrument?
- (ii) Whether the finding of Chellammal's possession in O.S.No.210 of 1976 (Ex.B-1) will not be res judicata in this suit?"



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

6. The suit has been laid by the plaintiff simplicitor for the relief of permanent injunction against the defendant. The plaintiff claims title to the suit properties based upon the settlement deed dated 15.05.1986 said to have been executed by his grandmother Chellammal. The defendant is the paternal uncle of the plaintiff. The relationship between the parties is not in dispute. It is found that the defendant Subramanian, Ramasamy, Poorasamy, the plaintiffs father, Maarimuthu Ammal and Anjalai are the children of Arunachalam and Chellammal. Alamelu is the wife of Poorasamy and mother of the plaintiff. It is also seen that Alamelu is the daughter of Marimuthu Ammal.

7. As above noted, the plaintiff claims title to the suit properties based on the settlement deed executed by Chellammal which document has come to be marked as Ex-A1 and according to the plaintiff following the same it is he who has been in the possession and enjoyment of the suit properties by obtaining the patta, paying kists, etc., and enjoying the same and the defendants recently came to the suit village and demanded the plaintiff to sell the second item of the suit properties in his favour and inasmuch as the plaintiff refused to accede to the same, according to the plaintiff, the defendants started interfering with his possession and enjoyment of the suit properties and hence, he has been necessitated to lay the suit for appropriate relief.

8. The defendant in his written statement has disputed the truth and validity of the settlement deed said to have been executed by Chellammal in favour of the plaintiff in respect of the suit properties and according to the defendant, Chellammal has no legal competency to settle the suit properties in favour of the plaintiff and the alleged settlement deed has not come into force and following the same, the plaintiff has also not enjoyed the suit properties as claimed by him and further according to the defendant including the suit properties he has levied the suit for partition against the plaintiff and others and the same is pending and furthermore, according to the defendant, as regards the alleged settlement deed said to have been executed by Chellammal in favour of the plaintiff, a panchayat was convened and in the said panchayat, certain portions of the suit properties had been handed over to the defendant and the defendant is enjoying the same and therefore, the defendant has challenged the case of the plaintiff that he has been in the exclusive possession and enjoyment of the suit properties following the settlement deed executed by them and also the defendant put forth the case that the plaintiff has no



cause of action and invented the false cause of action and laid the suit and hence, the suit is liable to be dismissed.

9. In the light of the abovesaid rival contentions putforth by the parties as regards their respective claim of title, possession and enjoyment of the suit properties and particularly, when the defendant has disputed the claim of possession and enjoyment of the suit properties by the plaintiff as averred in the plaint and on the other hand claims to be in possession and enjoyment of a portion of the suit properties, following the panchayat convened, with reference to the dispute concerning the same and the suit having been laid by the plaintiff simplicitor for the relief of permanent injunction alone, as rightly determined by the first Appellate Court, at the foremost, the plaintiff has to establish that he is in the possession and enjoyment of the suit properties as putforth in the plaint.

10. As abovenoted, the plaintiff claims title to the suit properties based upon Ex-A1 settlement deed said to have been executed by Chellammal. As could be seen from the document marked as Ex-B1, the suit register extract of O.S.No.210 of 1976, it is found that the abovesaid suit had been laid by Arunachalam and Chellammal against their children in respect of certain properties and in the said suit they are held to be the owners of the properties involved in the above said suit. As rightly determined by the first Appellate Court, there is no clear reference about the present second item of the suit properties as a subject matter of the above said suit. However, the first item of the plaint schedule properties of the present suit is shown in the plaint 'A' schedule properties in the abovesaid suit. When as per the decree passed in the abovesaid suit holding that Chellammal and her husband are the owners of the properties involved therein, prima facie, it is highly doubtful whether Chellammal is legally competent to settle the suit properties exclusively in favour of the plaintiff by way of Ex-A1 deed.

11. Be that as it may, as above noted the plaintiff has to establish that following Ex-A1 settlement deed, it is he who has been in the possession and enjoyment of the suit properties as claimed by him.

12. At the time when Ex-A1 settlement deed was executed, it is found that the plaintiff was a minor and the same had been executed in favour of the plaintiff represented by his guardian and mother Alamelu. For establishing his possession and enjoyment of the suit properties, particularly, the first item of the suit properties, the plaintiff has produced the documents marked as Exs-A2, A4-A9. Ex-A2 patta document is said to have



WEB COPY

been executed in the name of the plaintiff as regards the first item of the suit properties. On a bare perusal of the same, it is found to be dated 21.06.1990. However, the same does not bear the seal of the authority by whom the same is claimed to be issued. Furthermore, the plaintiff's father's name is only mentioned therein and the same is not in the name of the plaintiff and five items of properties are reflected in the document showing patta No.336 and furthermore, the document reads as if the patta originally stood in the name of chellammal, wife of Arunachalam and after amendment, the name of the plaintiff is shown as minor Ezhilarasu. However, no patta number is reflected against the name of the plaintiff in Ex-A2. In the suit register extract of O.S.No.210 of 1976, the patta number for the first item of the suit properties is mentioned as No.128, however, there is no entry in Ex-A2 that patta No.128 has been issued in the name of the plaintiff. Therefore, on the basis on Ex-A2 document, when the same does not reflect that the patta in respect of first item of the suit properties as reflected in Ex-B1 had been changed in the name of the plaintiff and furthermore the abovesaid document does not carry the seal of the authority by whom it has been issued, in such view of the matter, no safe reliance could be attached to Ex-A2 for holding that the plaintiff is in the possession and enjoyment of the first item of the plaint schedule properties. The plaintiff in his plaint would aver that he had been engaged in the cultivation in the first item of the suit properties by planting various crops and also bamboo and also planted other trees and enjoying the same and on the other hand during the course of evidence, the plaintiff has not deposed that he has been engaged in the cultivation of various crops and trees in the abovesaid first item of the suit properties as averred in the plaint. To establish that the plaintiff has been paying kists in respect of the first item of the suit properties, certain kist receipts have been projected by the plaintiff Ex-A4 kist receipt has not been issued in the name of the plaintiff rather it stands in the name of the plaintiff's father carrying several patta numbers. Similarly, Exs-A5 and A6 kist receipts are found to be issued in the name of one Kannaiyan on behalf of the plaintiff's father Poorasamy, the same reflects to have been issued in respect of patta No.699. Similarly, Ex-A7, the same stands in the name of the plaintiff's father and not shown to be pertaining to the first item of the suit properties. Only Ex-A8 stands in the name of the plaintiff and even therein the plaintiff has been shown only as a minor. As above noted in all the above said kists receipts, the patta number is only shown as 699, however, the plaintiff has not placed any acceptable record to hold that patta No.699 relates to the first item of the plaint schedule properties and in such view of the matter when as per Ex-B1, the patta number for the first item of the suit schedule properties is mentioned as 128 and when there is no document to disclose



that the abovesaid patta had been converted in the name of the plaintiff and when the kist receipts projected by the plaintiff are not shown to be related to the first item of the plaint schedule properties and as above pointed out the patta document projected by the plaintiff as Ex-A2 also does not clearly point out that the patta number had been changed in the name of the plaintiff, in such view of the matter, no safe reliance could be attached to the abovesaid documents for holding that the plaintiff is in the possession and enjoyment of the first item of the plaint schedule properties. Particularly, when the plaintiff claims that he has been engaged in the cultivation of the first item of the suit properties by rearing various crops and planting trees, etc., the best documents which should have establish his case would be the Adigal document and chitta extracts. For the reasons best known to him, the plaintiff has not endeavoured to place the abovesaid documents to establish his claim of possession and enjoyment of the first item of the suit properties. The plaintiff's mother examined as PW3 would claim that it is she who has been paying kist, however, no document has been placed to evidence that the plaintiff's mother has paid the kist on and behalf of the plaintiff and hence her evidence, as such, cannot be accepted and therefore as rightly determined by the first Appellate Court, the plaintiff has miserably failed to establish that he has any valid title and in the possession and enjoyment of the first item of the plaint schedule properties and the abovesaid determination of the first Appellate Court does not warrant any interference.

13. The second item of the suit schedule properties is a house sites consisting of a thatched house within specific boundaries. The plaintiff has not furnished the door number of the thatched house said to be located in the second item of the plaint schedule properties. Even in the plaint also he has not come forward with any plea as regards the door number of the thatched house located in the second item of the plaint schedule properties. In such view of the matter, when the plaintiff had failed to furnish the door number of the thatched house, his endeavours to mark certain tax receipts as Exs.A9-A12, A22 and A23, by itself, would not be sufficient to co-relate that the said tax receipts only pertain to the thatched house put up in the second item of the suit properties. The abovesaid tax receipts bearing the door No.569, at the foremost, the plaintiff has to prima facie establish that thatched house in the second item bears the door No.569 and the tax receipts projected by him relate to the said property. When from the evidence adduced by the plaintiff, it is seen that he along with his family members are residing elsewhere, it is highly doubtful whether the plaintiff would have been residing in the second item of the suit properties as claimed by him. Furthermore, when as per the evidence of the plaintiff the house structure found in the



second item is stated to be without any roofing and in a dilapidated condition, to say that the plaintiff is residing in the second item and enjoying the same by paying tax, etc., cannot be accepted straight away, particularly, when the tax receipts projected by the plaintiff are not shown to be related only to the thatched structure available in the second item of the suit properties. Therefore, merely from Ex-A3 patta, we cannot safely conclude that the second item of the suit properties has been in the possession of the plaintiff. In the light of the abovesaid position, the first Appellate Court has determined correctly and concluded that the plaintiff has miserably failed to establish that the second item of the suit properties in his valid possession and enjoyment, particularly, the same has been in his possession and enjoyment on the date of the filing of the suit.

14. The cause of action projected by the plaintiff to institute the suit against the defendant is that the defendant was residing elsewhere and recently came to the suit village and he demanded the plaintiff to sell the second item to him and on his refusal, it is pleaded by the plaintiff that the defendant started interfering with his possession and enjoyment of the plaint schedule properties. The same has been seriously challenged by the defendant. The documents projected by the defendant marked as Exs.B17-B22 would go to show that the defendant and his family members had been the residents of the suit village over a period of time and therefore, the case projected by the plaintiff that the defendant recently came to the suit village and demanded to sell the second item to him and on the plaintiff's refusing the same, he had started interfering with his possession and enjoyment of the suit properties and as it is found to be a false cause of action, the first Appellate Court has rightly considered the same and determined the case against the plaintiff.

15. As above noted, the plaintiff, at the foremost, has not established that Chellammal had the competency to settle the suit properties in his favour exclusively. When the same has not been established by the plaintiff by placing acceptable materials and as above noted, when the defendant has challenged the truth and validity of Ex-A1 settlement deed, in addition to that including the suit properties, the suit for partition levied by the defendant is pending and the same is not disputed, in such view of the matter, furthermore, the defendant has also putforth the case that in the panchayat convened as regards the rival claims of title to the suit properties, a portion of the suit properties has been allowed to be retained by him and also projected the Muchalika with reference to the same as Exs.B2 and B3 and furthermore, the parties have also approached the police for seeking the necessary protection against the other in their



peaceful possession and enjoyment of the suit properties, in such view of the matter, when the parties are loggerheads with reference to the claim of title to the suit properties one way or the other and when already the suit for partition is pending between the parties as regards the suit properties, in my considered opinion, in such view of the matter, the plaintiff should have levied the suit for seeking a declaration of title to the suit properties based upon the settlement deed said to have been executed in his favour by Chellammal. The plaintiff has not explained as to why he had not sought for the relief with reference to the declaration of title to the suit properties. At least the plaintiff should have endeavoured to amend the suit for including the relief of declaration for establishing his title to the suit properties based upon the settlement deed marked as Ex-A1. The plaintiff for the reasons best known to him has not sought for the relief of declaration of title to the suit properties. On that score also, as rightly pointed out, the plaintiff's suit is found to be not legally sustainable.

16. In the light of the abovesaid discussions, when the plaintiff has miserably failed to establish that he has been in the possession and enjoyment of the suit properties following Ex-A1 settlement deed by placing acceptable and reliable materials and when the documents projected by him are not shown to be related to the suit properties, it is seen that the first Appellate Court has correctly appreciated the materials placed on record in the matter, both oral and documentary and on a right analysis of the same and by giving acceptable and convincing reasons and conclusions, is found to have rightly rejected the plaintiff's case. Thus, no interference is called for to the judgment and decree of the first Appellate Court dismissing the plaintiff's suit.

17. The substantial questions of law formulated in the second appeal are accordingly answered against the plaintiff and in favour of the defendant.

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

Sd/-
Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

nsd



To

1. The Subordinate Court,
Chidambaram.

2. The District Munsif-cum-Judicial Magistrate,
Kattumannarkoil.

Copy to

The Section Officer, V.R.Section,
High Court, Madras.

+1cc to Mr.G.Pugalenthil, Advocate SR.No.23389

S.A.No.1943 of 2003

RSJ(CO)
GMY(03/09/2019)
GMY(17/09/2019)