IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED : 03.07.2019

CORAM

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

S.A.NO.1034 OF 2004

1. M.K.Ramakrishnan (Died)
2. R.Narayanan
3. Shanthi
4. R.Ramadass
5. Anusuya
6. R.Krishnamoorthy
7. R.Rajendran
8. R.Nandagopal
9. R.Karthikeyan
10. Meenakumari
11. R.Duraibabu ... Appellants/Defendants

(Appellants 3 to 11 brought on record as legal representatives of the deceased 1st appellant vide order of Court dated 25.06.2019 made in C.M.P.No.3073 of 2019 in S.A.No.1034 of 2004 (NSSJ)

versus

R.Mohan (Deceased)
1. Dhanam Ammal
2. Nirmala
3. Sharmila
4. Premila
5. Ravi Mohan

(Respondents impleaded as per Order in I.A.No.217 of 2003 dated 15.07.2003).

... Respondents/Plaintiffs



Prayer:

Second Appeal is filed under Section 100 of code of Civil Procedure against the judgment and decree dated 29.08.2003 passed in A.S.No.36 of 2001 by the Additional Sub-Judge, Chengalpattu, reversing the Judgment and Decree dated 17.10.1995 passed in O.S.No.298 of 1993 by the District Munsif, Tambaram.

For Appellants : Mr.A.Palaniappan

For Respondents: Mr.I. Abrar Md.Abdullah
for Mr.M.Sudhakar

JUDGMENT

The defendants, who are successful before the trial Court, but suffered a reversal in the First Appellate Court in a suit for declaration of title and injunction and recovery of possession of the suit property, has approached this Court with this second appeal. Parties would be referred to by their ranks before the trial Court.

2. The suit property is a Grama Natham property in S.No.148/1 and comprises of the vacant site plus a house bearing Door No.4. The plaintiff's father Ranganathan Pillai was in possession of this property. After his demise it devolved on the plaintiff, and he allowed the defendants to be in permissive occupation of the suit property, that when the defendants claimed title to the suit property de hors the jural relationship herein above stated, the plaintiff was constrained to lay a suit for the relief already indicated above.

3. In the written statement, the defendants alleged that a certain Pappathi Ammal was in occupation of the suit property, and she had possessory title over the property and upon her demise, the property devolved on the 1st defendant, her son. The first defendant also claimed that he has been in possession of the property and that the building in the suit property was assessed to property tax in his mother's name. The 2nd defendant is the son of the 1st defendant and was living on the rear side of the same site.

4. The dispute went to trial. The plaintiff examined himself as PW1 and examined two other witnesses as PW2 and PW3. He produced the documents Exts.A1 to A15. Both the defendants examined themselves respectively as DW1 and DW2 and they produced Exts.B1 to B22.

5. The trial Court held that the suit property was the property of Papathiammal, and it based its conclusion on the following facts:

- The cumulative effect of Exts.B3, B4, B5, and B11, all of which are tax receipts in the name of Pappathi Ammal for the years 1970 and 1972, followed by Ext.B1 property tax demand notice for the second quarter in 1978-79, besides the proceedings of the Commissioner of Tambaram

Municipality transferring the assessment of property tax from Pappathi Ammal to her son, the 1st defendant.

- PW1 had admitted that Pappathi Ammal had only one property in the said street

When the case reached the first appellate court, it reversed the finding of the trial court solely on the testimony of DW1, where he had stated that Pappathi Ammal had no property.

6. This appeal was admitted on the following substantial question of law.

> ''Whether the plaintiffs have established that they have got a right over the suit property and that they are entitled to a decree for declaration of title to the suit property and entitled to injunction as prayed for?''

7.1 The learned counsel for the appellants submitted that it is not so much about the oral testimony of the witnesses that matters, but is all about appreciating the entire evidence available on record for arriving at the most probable view that would be critical. If that is done, that advantage in the litigation would tilt in favour of the defendants/appellants, argued the counsel.

7.2 Elaborating the arguments, the learned counsel submitted that the parties are close relatives. Pappathi Ammal had a daughter and a son. Her daughter was married to plaintiff's father. In other words, Papathai Ammal was plaintiff's maternal grandmother. Plaintiff's mother died some time in 1952, whereupon, to help the plaintiff, and his widower-father, Pappathi Ammal joined to help them. It is how she came into occupation of the suit property and the property tax was assessed in her favour. This aspect, and the circumstance under which Pappathi Ammal happened to come to Tambaram, and how later the property tax was assessed in her name have been totally ignored by the courts below. If the effect of the entire evidence is taken into account, it creates a preponderating probability of the truth to the defendants' case, submitted the learned counsel.

8. Per contra, the learned counsel for the plaintiff/respondent argued that it has come in evidence of DW1 wherein he has made a categorical statement that Pappathi Ammal had never possessed any property in Tambaram, and hence whatever property that she was in occupation must only be the property of the plaintiff. Therefore, the First Appellate Court has decided the issue correctly. In the process, it also took into account

Exts.A1 and A2, both of which are the mortgage deed pertaining to the property.

9. This Court opens its discussion with a note of disappointment and the disappointment is over the quality of plaintiff's pleadings, though the quality of defendants' pleadings too did not lag far behind. The plaint, to this Court, is a master piece in concealment of facts. Here is a situation where the plaintiff had lost his mother as early as in 1952, which had created a situation where the plaintiff, who should then be in his late teens, requiring care. Pappathi Ammal, his maternal grandmother, therefore had joined the family with her son, the 1st defendant to care the plaintiff and his father (son-in-law of Pappathi Ammal). This is, to reiterate, has happened sometime in 1952. Here, PW1 has deposed that Pappathi Ammal had stayed with him from 1954 and till her death in 1980, and this must be contextually understood. Not one of these facts are pleaded in the plaint.

10. It is in this circumstance, the earliest of the property tax receipts produced by the defendants in Exts.B10 and B11 become critical. They are the tax receipts of the year 1970. If Pappathi Ammal had been only in the care of plaintiff right from 1954 to 1980, then how the property tax came to be assessed in the name of Pappathi Ammal in 1970, unless she had independent right over the property. If only her possession was permissive, then does it not, the ordinary course of human conduct guiding this Court, require an explanation from the plaintiff as to how the property tax for the building in the suit property came to be assessed in her name during that period. This court hears not the silence of the plaintiff, but an utterly misleading allegation that the defendants (with no reference to maternal grandmother Papathi Ammal) are his permissive occupants from 1984. But that precisely was the year when the Tambaram Municipality mutated the property tax assessment Register in the name of the 1st defendant under Ext.B12 proceedings.

11. The preponderating effect of the documentary evidence tilts probability towards the defendants' case. Now, could a solitary statement of D.W.1 that Papathi Ammal did not possess a property in the street where the suit property is situated, without anything more, be adequate to deflect a conclusion from the most probable course that the totality of the evidence suggests? This Court finds, an oral statement, in the face of the much stronger documentary evidence of greater reliability, appears as a stray sentence in the pack of evidence, and doest not merit much. And, the plaintiff, to succeed in his case, has to back his pleading with reliable evidence, and cannot pick holes in the defendant's case to sustain his action.

12. In the result, this Second Appeal is allowed and the judgment and decree dated 29.08.2003 passed in A.S.No.36 of 2001 by the Additional Sub-Judge, Chengalpattu is set aside. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

ssn

To

1. The Additional Sub-Judge,
   Chengalpattu.

2. The District Munsif,
   Tambaram.

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

+1cc to Mr.A.Palaniappan, Advocate, S.R.No.55586

S.A.No.1034 of 2004

CA(CO)
CS/09/12/2019