

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.03.2019

PRONOUNCED ON : 04.04.2019

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.942 of 2006

Valarmathi,
D/o.Venugopal Naidu,
Govindapuram Village,
Hamlet of Karuvambakkam,
Tindivanam Taluk.

...Appellant/Plaintiff

Vs.

1. Nataraja Naidu (died)
S/o. Vasudevan Naidu,
Govindapuram Village,
Hamlet of Karuvambakkam,
Tindivanam.

2. Srinivasan,
S/o.Perumal Naidu,
Kuthamangalam Village,
Cheyyur Taluk.

3. Minor Lakshmi,
D/o.Srinivasan,
By guardian Srinivasan,
Kuthamangalam Village,
Cheyyur Taluk.

4. Kaveri,
W/o.Nararajan,
2nd street, Velu Nagar,
(Shrinivasa Nagar), Lake view road,
Perungalathor,
Chennai-600 063.

5. Jothi,
D/o.Nataraja,
Govindapuram Village,
Karuvambakkam post,
Tindivanam Taluk,
Villupuram District.

6. Anandan @ Mr.Andal Anandan,
D/o.Rajagopal Naidu,
Nolambur post,
Tindivanam,
Villupuram District.

...Respondents/Defendants
(R4 to R6 brought on records as LRS of the deceased R1 vide
order dated 08.02.2019 in M.P. 1/2019)

Second Appeal filed under Section 100 of C.P.C., against the
judgment and decree dated 30.11.2005 in A.S.No.45 of 2004 on the
file of the Principal Subordinate Court, Tindivanam, reversing
the judgment and decree dated 08.01.2004 in O.S.No.460 of 1997
on the file of the Additional District Munsif Court, Tindivanam.

For Appellant : Mr.R.Sunil Kumar
For Respondents: No appearance

JUDGMENT

Challenge in the second appeal is made to the judgment and
decree dated 30.11.2005 passed in A.S.No.45 of 2004 on the file
of the Principal Subordinate Court, Tindivanam, reversing the
judgment and decree dated 08.01.2004 passed in O.S.No.460 of
1997 on the file of the Additional District Munsif Court,
Tindivanam.

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

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

"(i) Whether the learned Subordinate
Judge did not err in construing the B
Schedule property as belonging to the joint
family, failing to note that the property
obtained through settlement from the mother
is a separate property of the Settlee and
does not partake the character of joint
family property?

(ii) Whether the finding of the Court
below that the property allegedly purchased
in the name of plaintiff's father was to
benefit him to secure employment in postal
department, failing to note that even if such
an intent were to be proved the vesting of
title on the purchaser could not be denied?

(iii) Whether the learned Subordinate Judge did not err in rejecting the plaintiff's suit for title through documents without a clear finding about how the defendant could non-suit the plaintiff without proof of a lawful mode of acquisition known to law?"

4. 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.

5. The suit has been laid by the plaintiff for the reliefs of declaration and possession in respect of the plaint 'B' and 'C' Schedule properties.

6. The plaintiff is the daughter of Venugopal Naidu. The first defendant Nataraja Naidu is the brother of Venugopal Naidu. The abovesaid relationship between the parties is not in dispute. The materials placed on record go to show that the plaint 'A' schedule properties belonged to Andal Ammal, wife of Vasudevan Naidu and the mother of Nataraja Naidu and Venugopal Naidu and she had executed a settlement deed settling the same in favour of her sons namely Nataraja Naidu and Venugopal Naidu by way of a registered settlement deed dated 06.04.1960 and the certified copy of the abovesaid registered settlement deed has been marked as Ex.A1. The parties are not at issue with reference to the abovesaid case. As could be seen from the materials placed on record, out of the four items of the plaint 'A' schedule properties, even as per the case of the plaintiff, the items 3 and 4 of the plaint 'A' schedule properties had been alienated both by Nataraja Naidu and Venugopal Naidu in favour of Parsmal Jain. The certified copy of the abovesaid sale deed dated 20.02.1964 has been marked as Ex.A2/B2. Furthermore, as could be seen from the certified copy of the sale deed dated 16.02.1970 marked as Ex.B3, it is found that even the 2nd item of the plaint 'A' schedule properties had been alienated by Nataraja Naidu and Venugopal Naidu in favour of one Dharmasanth Jain. The abovesaid fact has not been challenged by the plaintiff during the course of the evidence. It is thus seen that of the four items of the plaint 'A' schedule properties, the items 2 to 4 had already been alienated by the abovesaid two brothers and only the 1st item remains.

7. According to the plaintiff, in the oral partition effected between the abovesaid two brothers, the western half share in items 1 and 2 of the plaint 'A' schedule properties had been allotted to the share of Nataraja Naidu and the eastern half share of the items 1 and 2 had been allotted to the share of Venugopal Naidu. As abovenoted inasmuch as the item 2 of the

plaint 'A' schedule properties had already been alienated by the abovesaid two brothers by way of Ex.B3 sale transaction, the point to be determined in this matter is whether as put forth by the plaintiff, the item 1 of the plaint 'A' schedule properties had been divided between the two brothers in the oral partition.

8. The plaintiff has given the share allotted to her father Venugopal Naidu in the item 1 of the plaint 'A' schedule properties in the plaint 'B' schedule properties describing the same as the eastern share of 1.28 cents in R.S.No.140/5. Claiming title to the said property and recovery of possession, the plaintiff has laid the suit against the first defendant, in particular.

9. Further, according to the plaintiff, when the plaint 'C' schedule property had been acquired by her father Venugopal Naidu independently, it is stated that her father had acquired a total extent of 5 acres of land in R.S.No.140/6 by way of a sale deed dated 23.02.1964 marked as Ex.A3 and it is also further pleaded by the plaintiff that out of the same, 2.50 acres had been already been alienated by her father. That the 5 acres of land in R.S.No.140/6 had been acquired in the name of the plaintiff's father by way of Ex.A3 sale transaction is not in dispute. However, the first defendant would put forth the defence that inasmuch as the plaintiff's father got an employment in the postal department at that point of time, and as per the rules prevailing then, the plaintiff's father is bound to show his solvency in holding certain extent of properties, accordingly, it is stated that the 5 acres of land in R.S.No.140/6 had come to be acquired in the name of the plaintiff's father, however, the consideration had been paid for the same only out of the sale proceeds of the properties belonging to the family. In this connection, as could be seen from the sale transaction effected by way of Ex.A2/B2 sale deed dated 20.02.1964, it is found that by way of the abovesaid sale transaction, the properties belonging to the two brothers had been alienated to Parsmal Jain for a sum of Rs.1,800/- and therefore, it is seen that the two brothers would have derived the equal share in the sale consideration by way of the same amounting to Rs.900/- each, and only three days thereafter, the sale deed dated 23.02.1964 had come to be effected in the name of the plaintiff's father with reference to the 5 acres of land in R.S.No.140/6. It is further seen that the plaintiff's father had also mortgaged the said property acquired by him by way of Ex.A3 sale deed dated 23.02.1964 and the same had been mortgaged by way of Ex.A4 mortgage deed dated 12.03.1964. Both Exs.A3 and A4 having come to be registered on the same day one after the other, as could be seen from the document nos. of the concerned transactions, namely Ex.A3 is found to be styled as document No.372 and Ex.A4 is found to be styled as document No.373 and by

way of the abovesaid mortgage effected, it is found that Venugopal Naidu was in a position to obtain a sum of Rs.400/- and accordingly, it is seen that it is only Venugopal Naidu who had parted with the sale consideration for acquiring the property under Ex.A3 sale transaction and the same had been rightly determined by the Trial Court, on an appreciation of the materials placed on record and furthermore, as could be seen from the materials placed on record, it is only Venugopal Naidu who had discharged the mortgage debt and as rightly found and determined by the Trial Court, if Venugopal Naidu had not acquired the 5 acres of land under Ex.A3, there would have been no necessity for him to mortgage the said property by way of Ex.A4 mortgage deed and when the mortgage debt is also found to have been discharged by Venugopal Naidu himself, as could be seen from the endorsement found in the mortgage deed, in all, it is found that as determined by the Trial Court, the intrinsic evidence available in the abovesaid documents by themselves would go to disclose that it is only Venugopal Naidu who had acquired the 5 acres of land in R.S.No.140/6 by utilizing the sale consideration obtained by him by way of Ex.A2 sale transaction as well the mortgage amount received by him by way of mortgage transaction Ex.A4 and in such view of the matter, the contention put forth by the first defendant that Venugopal Naidu was not in a position to acquire the 5 acres of land in R.S.No.140/6 during 1964 as such, cannot be accepted and rightly discountenanced by the trial Court based on the appreciation of the abovesaid materials available on record. Inasmuch as Venugopal Naidu had acquired the 5 acres of land independently, on his own, it is found that, he, as a matter of right, had also alienated the extent of 2.50 cents out the same and the fact that Venugopal Naidu had alienated 2.50 cents of land out of the 5 acres is not put under challenge by the first defendant. If really the 5 acres of land had been the joint family property belonging to both the brothers as sought to be put forth by the first defendant, the first defendant would have challenged the sale transaction made by Venugopal Naidu in respect of the 2.50 acres of land out of the 5 acres of land and when it is found that there has been no challenge with reference to the same on the part of the first defendant and on the other hand, the first defendant had admitted the said sale effected by Venugopal Naidu, in all, would go to show that the 5 acres of land had been acquired only by Venugopal Naidu out of his own funds, as pointed out and discussed and no contribution had been given, on the part of the first defendant, in particular, for the acquisition of the said property as projected in the written statement.

10. The plaintiff has described the remaining 2.50 acres in R.S.No.140/6 as the plaint 'C' schedule property and claimed right to the same as the descendant of her father Venugopal

Naidu.

11. As abovenoted, according to the plaintiff, in the item 1 of the plaint 'A' schedule properties, in the oral partition effected between the two brothers, the western half share had been allotted to Nataraja Naidu and the eastern half share had been allotted to her father Venugopal Naidu.

12. Per contra, the case had been projected by the first defendant that in the family arrangement effected amongst the two brothers, the 5 acres of land which according to the first defendant had been acquired out of the joint family income, had been allotted to the share of Venugopal and towards his share, according to him, the first item of the plaint 'A' schedule properties had been allotted . It is thus found that even the first defendant has claimed that some arrangement had been effected amongst the brothers with reference to the division of the properties, however, as rightly discussed by the Trial Court, when the abovesaid arrangement/partition projected by the first defendant had not been established by placing acceptable and reliable materials and when it is found that the properties described in the plaint 'A' schedule properties had been equally settled in favour of the two brothers by their mother and of the said properties, the items 2 to 4 had been jointly alienated by the two brothers as pointed out and furthermore, when Venugopal Naidu had already acquired a job in the postal department and well placed in life, to say that he had been allotted more extent of land in the family arrangement i.e., the 5 acres of land towards his share and the first defendant had been allotted only 1.28 cents, the item 1 of the plaint 'A' schedule properties, as such, cannot be believed and accepted and the same had been rightly discountenanced by the Trial Court. It is thus found that with a view to resist the plaintiff's case one way or the other, so as to deprive the plaintiff from claiming any title to the suit properties, as such, the first defendant has come forward with the false theory of family arrangement as abovesaid and however, unable to substantiate the said plea with acceptable and reliable materials. On the other hand, as rightly found by the Trial Court, based on the available evidence, considering the fact that the mother had settled the properties equally to both the sons accordingly, it is found that in the oral partition effected amongst the two brothers, the western half share had been allotted to Nataraja Naidu and the eastern half share had been allotted to Venugopal Naidu. It is thus seen that the abovesaid determination of the Trial Court as regards the allotment of shares between the two brothers do not merit serious interference particularly, considering the fact that the same had been determined by the Trial Court on the right appreciation of the materials placed on record.

13. As regards the plaint 'C' schedule property, it is claimed by the plaintiff to be her separate property having derived from her father. Per contra, the defence had been put forth by the defendant that Venugopal Naidu was indebted to the Government by obtaining a loan and he had failed to discharge the loan and according to the first defendant, he had been directed by Venugopal Naidu's wife Suseela Ammal to discharge the said debt and take the plaint 'C' schedule property by himself and accordingly, it is the case of the first defendant that it is he who had discharged the loan incurred by Venugopal Naidu and accordingly, on the discharge of the same, he had taken the plaint 'C' schedule property and enjoying the same and in this connection, reliance is placed upon certain receipts projected by the first defendant marked as Exs.B4 to B11. However, as rightly determined by the Trial Court, considering the usufructs derived from the trees available in the plaint 'C' schedule property and considering the receipts marked as Exs.B4 to B11 in all, it is found that only by cutting the trees in the plaint 'C' schedule properties and deriving the income therefrom, the debt had been discharged by the first defendant and when the first defendant has failed to establish that he had discharged the debt on his own from his own money, as rightly determined by the Trial Court, the abovesaid defence version projected by the first defendant cannot be sustained. In addition to that, even assuming for the sake of arguments, that the first defendant had discharged the loan said to have been incurred by Venugopal Naidu, on that basis, it does not stand to reason and cannot be held that he would be entitled to claim the title to the plaint 'C' schedule property belonging to Venugopal Naidu. As rightly pointed out and determined by the Trial Court, the discharge of the loan said to have been incurred by Venugopal Naidu by the first defendant would not confer a valid title on the first defendant vis-a-vis the plaint 'C' schedule property and therefore, the claim of the title to the plaint 'C' schedule property projected by the first defendant on the abovesaid premise does not merit legal acceptance and liable to be rejected in toto.

14. Knowing fully well that the first defendant would not be entitled to claim a valid title to the plaint schedule properties, accordingly, it is seen that the first defendant has made a claim to the abovesaid properties on the plea of adverse possession. However, as rightly pointed out and determined by the Trial Court, the first defendant has not come forward with the clear case as to when from he had been exercising adverse title in respect of the plaint schedule properties against Venugopal Naidu or the plaintiff as the case may be and with reference to the same, absolutely there is no material worth acceptance placed on the part of the first defendant other than five receipts marked as Exs.B12 to B16. On the basis of the

abovesaid documents we cannot sustain the plea of adverse title projected by the first defendant. The party who is pleading the adverse title should establish the said fact. When the first defendant has failed to establish the abovesaid claim of title to the plaint schedule properties by exercising adverse ownership as per law and when with reference to same, there is no acceptable plea or evidence on the part of the first defendant, in such view of the matter, the claim of adverse title to the plaint schedule properties as put forth by the first defendant do not merit acceptance and rightly rejected by the Trial Court.

15. In the light of the abovesaid facts, the Trial Court, based on the materials placed on record, both oral and documentary, had assessed the same, both factual wise and legal wise, taking into consideration the intrinsic evidence available in the abovesaid documents and rightly held that it is only the plaintiff who has title to the first item of the plaint 'A' schedule properties as well as the plaint 'C' schedule property and accordingly, granted the appropriate reliefs in favour of the plaintiff. On the other hand, the first Appellate Court has failed to take into consideration the materials placed on record in the proper perspective and when discussing the materials projected by the plaintiff as to how her father had acquired the plaint schedule

properties, failed to assess the same factually as well as legally, erred in rejecting the same, by relying upon the defence version, despite there being no material supporting the defence version and in such view of the matter, the first Appellate Court had committed a total error in rejecting the plaintiff's case by setting aside the well considered judgment and decree of the Trial Court and in such view of the matter, the judgment and decree of the first Appellate Court being vitiated and suffering from perversity and also illogical, accordingly, are liable to be set aside. The substantial questions of law formulated in the second appeal are accordingly answered in favour of the plaintiff and against the defendants.

16. In the light of the abovesaid discussions, the judgment and decree dated 30.11.2005 passed in A.S.No.45 of 2004 on the file of the Principal Subordinate Court, Tindivanam are set aside and the judgment and decree dated 08.01.2004 passed in O.S.No.460 of 1997 on the file of the Additional District Munsif Court, Tindivanam are confirmed.

Accordingly, the second appeal is allowed with costs. Consequently connected miscellaneous petition, if any, is closed.

s/d-
Assistant Registrar (CS V)

True Copy

Sub-Assistant Registrar

nsd
To

1. The Principal Subordinate Judge,
Tindivanam.
2. The Additional District Munsif Judge,
Tindivanam.

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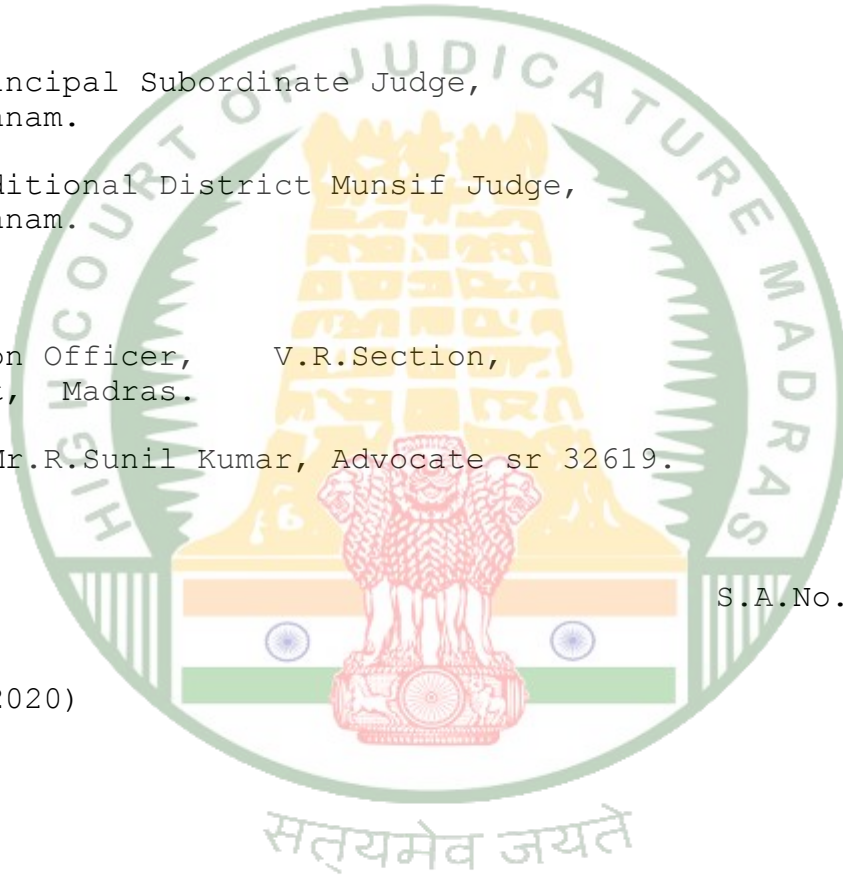
The Section Officer,
High Court, Madras.

V.R.Section,

+1 CC to Mr.R.Sunil Kumar, Advocate sr 32619.

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