

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 26.07.2019

JUDGMENT PRONOUNCED ON : 01.11.2019

CORAM :

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

S.A.NO.139 OF 2004

Ganapathy

... Appellant/Appellant/
Plaintiff

Vs

1.Ayyaswami
2.Radhakrishnan
3.Alagar
4.Thaiyal Nayaki (Deceased)

.... Respondents/Respondents/
Defendants

5.Kamala
6.Malarkodi

(Respondents 5 and 6 are brought on record as L.Rs of the deceased fourth respondent Vide Order of Court dated 10.07.2012 made in CMP.No.344 of 2012 in S.A.No.139/2004)

Prayer :- Second Appeal filed under Section 100 of CPC, against the decree and judgment of the Court of the Additional District Fast Track Judge, Ariyalur, made in A.S.No.116 of 2002 dated 21.11.2002, confirming the decree and judgment of the Court of the District Munsif, Jayamkondam made in O.S.No.326 of 1990 dated 29.02.1996.

For Appellant	: Mr.M.V.Krishnan
For Respondents	: Mr.K.A.Vimal Kumar for M/s.Sarvabhauman Associates [for R1 to R3, R5 & R6]

JUDGMENT

The plaintiff in a suit for declaration of title over the suit property, which he lost before the Courts below, has come forward with this second appeal. Parties would be referred to by their rank before the trial Court.

2.The case of the plaintiff is that the suit property originally belonged to one Nadi Ammal. Some 30 years prior to the institution of the suit she had left to Singapore, after selling the suit property to the plaintiff's father, Arunachalam for a sale consideration of Rs.1,000/-. Alleging that he faces obstructions from the defendants, plaintiff has laid the suit for declaration of title and for other ancillary relief.

3.1 The defendants however, say that the suit property originally belonged to one Chellappa Padayachi, that he had four sons namely, Saminatha Padyachi, Ponnusamy Padayachi, Appaswamy Padayachi and Arunachala Padyachi. However, this Court is now concerned only about Ponnusamy Padayachi and Arunachala Padyachi.

3.2 The defendants would allege that some time after the demise of Chellappa Padayachi, his four sons had orally partitioned the suit property, in which, the suit property and the other properties came to be allotted to Ponnusamy Padayachi, and that Ponnusamy Padayachi was married twice, first to Chinnamani Ammal and then to Naadi Ammal. And he had no issues through any of his two wives. After the demise of Ponnusamy Padayachi, revenue record came to be mutated for some properties in the name of Chinnamani Ammal, his first wife, and for few others in the name of his second wife. On Naadi Ammal's death, her husband's heir namely his first wife Chinnamani Ammal succeeded to the property of Naadi Ammal. Thereafter, she executed a sale deed dated 01.12.1975 in favour of one Maharajan. On Maharajan's death, the property devolved on his mother Thaiyalnayagi Ammal. Subsequently, Thaiyalnayagi Ammal died and the properties devolved on the first defendant and his two sons, defendants 2 and 3.

4.The dispute went to trial and both sides adduced oral and documentary evidence before the Court. Both the Courts below felt convinced about the case of the defendants and dismissed the suit.

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

1. Whether on the facts of the case when both the parties agree that the suit property originally belonged to Naadi Ammal and the plaintiff's father Arunachalam is the only brother of her deceased husband Ponnusamy, a member of the joint family, the family agreement under which the suit property was left in the absolute possession and enjoyment of Arunachalam, the transaction cannot be rejected on the ground that there was no registered sale deed.

ii) Whether the Courts below ought to have held that the defendants' vendor Chinnamani Ammal who is not the legally wedded wife of Ponnusami had no title to convey the suit property to the first defendant's son under Ex.B.1?.

iii) Whether the patta granted to the plaintiff and the entry in the settlement register and the kist receipts from 1964 onwards proved the prescriptive title to the plaintiff?

6.The learned counsel for the appellant would argue that the first wife is not the successor of the second wife, and when Naadi Ammal died, in the absence of her husband, immediate blood relations are his brothers, and inasmuch as the plaintiff is the son of one of his brothers, he is entitled to succeed to the suit property.

7. In response, the learned counsel for the respondents submitted that when Ponnusamy Padayachi died, his class-I heir is his first wife Chinnamani Ammal. The fact that she had accepted Ponnusamy Padayachi's marriage to Naadiammal, is no answer to hold that Naadiammal too gets right to Ponnusamy Padayachi's property. Secondly, so far as the pleading goes, no way the plaintiff has traced the history of the property and the only contention was that, Nadiammal is the owner of the property, and except patta which is never considered as a document of title, there is hardly any document forthcoming to substantiate how Naadiammal became entitled to the suit property. Inasmuch as Chinnamani Ammal is the class-I heir of Ponnusamy Padayachi, she gets a valid title, and this she transferred to the first defendant's deceased son Maharajan under Ext.B1, sale deed, dated 01.12.1975. While so, a complaint has been preferred to the Legal Services Authority, wherein the plaintiff has admitted that the defendants are in possession. This would imply that right from the date of Ext.B1 till laying the suit, the defendants have been in continuous possession of the suit property.

8.1 The case of the plaintiff was founded on the premise that the suit property belonged to a certain Nadiammal, and on an assertion that Nadiammal has sold the suit property to his father orally for a consideration of Rs.1000/-. It is an undisputed fact that Ponnusamy had taken Nadiammal as his second wife even when his first wife Chinnamani Ammal was still living. Therefore, how Nadiammal could succeed to Ponnusamy's estate itself is questionable. And, it is an admitted case that Ponnusamy died intestate. It is in this setting, the plaintiff has laid a suit for declaration of his title and for ancillary

reliefs based on an oral sale of the suit property in favour of his father by Nadiammal. This pleading, this Court cannot countenance. The plaintiff therefore, has a faulty start to his litigation. And, it is incapable of correction at any stage later, as there is fundamental misconception in conceptualising his title. But he has pleaded adverse possession as a second line of offence. But, he again has traced it to the oral sale in favour of his father, since he pleads that his father was in adverse possession since the date of oral sale. This again is untenable in law. Necessarily, the plaintiff fails on his claim of title.

8.2. Once the plaintiff has lost on his plea of title, it follows that his claim of possession based on UDR patta cannot be relied on as providing title.

10. In conclusion, this court does not find merit in the appeal, and hence, the appeal is dismissed, and the judgment and decree of the Additional District Fast Track Court, Ariyalur, made in A.S.No.116 of 2002 dated 21.11.2002, is hereby confirmed. No costs.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

ssb/ds

To:

1. The Additional District Fast Track Judge,
Ariyalur .
2. The District Munsif,
Jayamkondam .
3. The Section Officer
VR Section, High Court, Madras.

+1cc to M/s.Sarvabhauman Associates, Advocate, S.R.No.90620

S.A.No.139 of 2004

PPA (CO)
CS/03/02/2020