

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 11.07.2019

CORAM

CORAM: THE HON'BLE MR.JUSTICE N.SESHASAYEE

S.A.NO.1445 OF 2004

Sabapathy ...Appellant/1st defendant

Vs

Kannappan (died)
2.Muthukumaran
3.Rani
4.K.Pachaiammal ...Respondents
[R2 and R3 brought on record as LRS of
the deceased sole respondent viz., Kannappan
Vide Court order DT 12.06.2019 made in CMP
NO.21919/2018 in SA NO.1445/2004(NSSJ)]
[R4 brought on record as LR of the deceased
R1 Vide Court Order dt.03.07.2019 made in
CMP 7097/19 in SA 1445/04(NSSJ)]

Prayer:- Second Appeals filed under Section 100 of Civil Procedure Code against the decree and judgment passed on 27.2.2004 in A.S.No.21 of 2000, on the file of Sub-Ordinate Court of Cheyyar by which it has partly allowed the Appeal preferred against the decree and judgement passed on 19.4.2000 in O.S.No.606 of 1993, on the file of Additional District Munsif Court, Cheyyar.

For Appellant : Mr.N.Kumar Rajan
For Respondents : Mr.V.Meenakshi Sundaram
for 2,3,4

JUDGMENT

A non issue has brought the first defendant in the suit before this Court in this second appeal.

2. The facts are: There are two items of suit properties. The first item is a plot of land in Sy.No.401, and the second item is a plot of agricultural land measuring 18 cents in Sy.No.400/3. It is stated that item 2 is to the north of item 1. The pleadings are very limited but, the substantial facts supporting the pleadings are available in evidence. For narrative convenience, the case of the rival parties would be described both in terms of their pleadings as well as evidence on record:

- The facts dates back to almost by a century. It relates to devolution of property of certain Veerasamy Gounder. Veerasamy Gounder had 5 sons, of whom, this Court is now concerned chiefly with the branches of one his sons Velu Gounder and Manicka Gounder. Velu Gounder predeceased Veerasamy Gounder leaving behind his widow Thaiammal and daughter Kanniammal. Thereafter, on 23.09.1922 Veerasamy Gounder had executed a registered Will (Ext.A1) bequeathing his undivided 1/5th right in the suit properties to his granddaughter Kanniammal. Kanniammal had five sons, of who, the plaintiff is one. The plaintiff and his four brothers subsequently partitioned the property that belong to them under Ext.A2, partition deed dated 05.06.1979. In the said partition, plaintiff was allotted A schedule property, and this comprises inter alia the suit properties herein. The plaintiff is in separate possession and in enjoyment of the properties allotted to him. While so, during UDA scheme patta came to be jointly issued to the plaintiff and the first defendant. This unexpected error in granting patta subsequent to UDR scheme has created a situation and the defendants took advantage of the same, and challenged plaintiff's title. Hence, the suit for declaration of plaintiff's title and for other ancillary relief.
- The defendants' contention is short and straight forward. Firstly, they do not oppose plaintiff's title derived under Ext.A1 Will and Ext.A2, partition deed. Secondly, the defendants do not claim any title over any of the two items of suit properties though any independent source. All that the defendants have pleaded was that in item 2, plaintiff was allotted only 8 cents under Ext.A2, partition deed and therefore, the plaintiff cannot claim title to entire 18 cents.

3. The dispute went before the trial Court, and after appreciating the evidence before it, the trial Court decreed the suit. Challenging the same, the first defendant went in appeal. The first Appellate Court confirmed the decree as regards item 1. So far as, item 2 is concerned, the first Appellate Court had gone by the description of property in A schedule allotted to the plaintiff in Ext.A2, partition deed, and decreed only 8 cents out of the entire 18 cents. It is in these circumstances, the first defendant has come forward with this appeal.

4. The appeal is admitted on the following substantial questions of law;

1. Whether the decree and judgment of the first Appellate Court is legally sustainable in not allowing the appeal in entirety inasmuch as the respondent has not produced any evidence to show that the suit properties belongs to him and he is

in possession of the same and has not identified the suit properties as per Exs.A1 and A2?

2. Whether the decree and judgment of the Court below is legally sustainable inasmuch they have failed to consider the evidence of DW1 and DW2 regarding possession of the suit properties?

5. The only point he canvassed by the learned counsel for the appellant was that when under Ext.A2, partition deed plaintiff was allotted only 8 cents out of 18 cents in Sy.No.400/3, and hence it is impermissible for the plaintiff to claim title over the entire property. He also supported the patta granted to him as correct.

6. Per contra, the learned counsel for the plaintiff/respondent, (who is now dead and now represented by his legal heirs) argued that there is no case for the first defendant in the written statement that he is entitled to any of the two items of suit properties from any independent source. His only contention was that the remaining 10 cents, which is not mentioned in Ext.A2, partition deed was allotted to the share of plaintiff's brother Arumugham. He argued that in Ext.A2, partition deed, Arumugham was allotted C Schedule and he was nowhere seen allotted to any portion of the property in Sy.No.400/3. He also added that patta would not confer title and an error committed by the Revenue Officials cannot be taken advantage of.

7. This Court opened this judgement with a statement that a non-issue as concerning the first defendant has brought him before this Court. Nowhere in the written statement has the first defendant claimed that he has some interest in any of the suit properties. On the other hand he has only batted for plaintiff's brother Arumugham with regard to second item of suit property. Ext.A2, partition deed nowhere states that Arumugham was allotted any portion or share in Sy.No.400/3. That is of no consequence as concerning this defendant.

8. There is only one property in Sy.No.400/3, and that belongs to the family of plaintiff and his brothers. And, if this property in Sy.No.400/3 has 18 cents within the stated boundaries, and if the same has not been allotted to any of the brothers in the partition, then necessarily it must be stated to have been allotted to the plaintiff. With no title in him, the second defendant cannot claim any right over the suit properties.

9. On the contention that under Ext.A2, plaintiff had obtained only 8 cents and not the entire 18 cents, this Court must necessarily consider the said description of the item two in Ext.A2 in terms of the extent is of no consequence, since

the property could be described in terms of other facts such as survey number, or boundaries. This error in describing the extent cannot confer any advantage to the defendant since he has no case in his written statement that he has title. He is not entitled to any portion of the suit properties. There is also merit in the fact that a patta is not a document of title, and if the defendant is not shown to have any right in any of the suit properties then, there is hardly any reason to include his name in the patta.

10. In conclusion, this Court does not find any merit in the appeal. The appeal is dismissed and the judgment in the decree and judgment passed on 27.2.2004 in A.S.No.21 of 2000, on the file of Sub-Ordinate Court of Cheyyar is hereby confirmed. No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

tsg
To:

- 1.The Sub-Ordinate Court,
Cheyyar.
- 2.Additional District Munsif Court,
Cheyyar.
- 3.The Section Officer
VR Section, High Court, Madras.

S.A.No.1445 of 2004

A.SK(13/02/2020)

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