

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.01.2019
PRONOUNCED ON : 08.01.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Second Appeal No.1486 of 2004

Srinivasan

...Appellant

Vs

Pitchaimuthu

... Respondent

Prayer:- Second Appeal has been filed under Section 100 of C.P.C., against the judgment and decree dated 22.01.2004 in A.S.No.83 of 2002 on the file of the learned Principal District Court, Villupuram confirming the judgment and decree dated 10.12.2001 in O.S.No.614 of 1998 on the file of the learned Principal District Munsif, Villupuram.

For Appellant : Mr.Usha Raman
For Respondent : Mrs.V.Srimathi

JUDGMENT

The plaintiff, who lost his suit for declaration and injunction before the courts below, is the appellant herein.

2.Case of the plaintiff, in brief, is as follows:-

The suit property and other properties described in the suit schedule and few other properties were inherited by the plaintiff through his father Rajamanika Gounder. The property originally belong to the joint family, consisting of Rajamanickam Gounder and his brother Natasa Gounder. After the lifetime of Natasa Gounder, partition took place between the family members of Rajamanickam Gounder and Natesa Gounder on 31.12.1975. The partition deed was duly registered. Under the partition deed 'A' schedule property was allotted to Rajamanickam and his wife Samboornam. 'B' schedule property was allotted to Ranganathan. 'C' schedule property was allotted to Sreenivasan (plaintiff). 'D' schedule property was allotted to Elumalai and 'E' schedule property was allotted to Krishnamurthy. Pursuant to the above partition deed, respective parties are in enjoyment and possession of their respective properties. The suit property is one of the property allotted to the share of the plaintiff parents namely Raja manickam and

Samboornam, which fall under 'A' schedule. After the death of the parents, the plaintiff and his 2 brothers divided among themselves the properties acquired by the parents under the partition deed dated 31.12.1975. The partition between the plaintiff and his two brothers was effected by means of a registered partition deed dated 19/10/1983. Under this partition deed, the suit property was allotted to the plaintiff. Since then, he is in enjoyment and possession of the suit property. The tile stands in his name. Kist for the suit property is paid by him. While so, the defendant claiming to have purchased a portion of the suit property from a person without title denying the right of the plaintiff. The defendant and his henchmen made an attempt to trespass upon the suit property on 20/11/1998. So, he preferred a complaint to the police to take action against the defendant and his henchmen. The Police has not taken action. Therefore, anticipating that the defendant with this men and money may repeat the attempt in future, the suit for declaration of title and permanent injunction.

3. Case of the defendant, in brief, is as follows:-

The suit property and the other properties initially owned by Periyasami Gounder. He had three sons. Rajamanicka Gounder, Natesa Gounder and Sadaya Gounder. Division of property took place between these brothers in the year 1958. The said Sadaya Gounder got his share in the properties of his father and got separated from the family. After settling few properties in favour of his daughter Govindammal, Sadaya Gounder was enjoying exclusively the remaining properties. 14 cents of land in S.NO 66/11 and 21 cents of land in S.No 66/14 alone were enjoyed in common between the 3 brothers since, it was a grove. Later, the grove got ameliorated. So, each of the brothers were enjoying 1/3rd in the 35 cents of land through oral arrangement.

4. After the above said partition between the three brothers in the year 1958, Natesa Gounder, through a registered will dated 13/03/1970, bequeathed few items of his properties to his grand son Kumar born through his senior wife. Since Kumar was minor at that time, he appointed Ranganathan (brother of the plaintiff) as guardian of minor Kumar. On the demise of Natesa Gounder, the Will came into force. The properties given under the Will were enjoyed by minor Kumar under the guardianship of Ranganathan. On attaining majority, the guardian handed over the possession of the property to Kumar and got released. The release deed was also duly registered through exchange deed dated 24.03.1986, the plaintiff has exchanged two properties with Kumar and one Sethu the brother's son of the plaintiff on 23/04/1986 purchased a vacant house site from Kumar which Kumar got under the Will Natesa Gounder. Later, the suit item

property and another property was sold to the defendant by Kumar under a registered sale deed dated 16/11/1998. Since then, the defendant has derived title and put in possession and enjoyment of the suit property. The plaintiff never in possession or enjoyment of the suit property. The claim of the plaintiff over the suit property under the partition deeds earlier between his father Rajamanickam and Natesa Gounder and later between the plaintiff and his 2 brothers are denied.

5.The trial court, from the deposition of DW-3 Govindammal d/o Sadaya Gounder and exhibits B-10 and B-12, which are respectively the registered Will of Natesa Gounder dated 13/03/1970 in favour of Minor Kumar and the registered settlement deed dated 11/07/1958 executed by Sadaya Gounder in favour of his daughter Govindammal held that the plaintiff has not come with clean hands and true facts. The plaintiff has suppressed the very fact that Periyasamy Gounder had another son by Sadaya Gounder apart from the plaintiff father Rajamanickam Gounder and Natesa Gounder. The partition between the 3 brothers prior to 1958 well found through Ex B-12 the settlement deed executed by Sadaya Gounder which contains the boundaries showing the properties of his brothers got under the partition. When division among the brothers have taken place prior to 1958 and acted upon by the parties, the alleged partition dated 31/12/1975 between family members of the two brothers (Rajamanickam Gounder and Natesa Gounder) alone in respect of their ancestral property without reference to the third brother Sadaya Gounder and Kumar who is one of the legal heirs of Natesa Gounder cannot confer title to the plaintiff.

6.Further, the trial court has also observed that the plaintiff had sufficient knowledge about the will executed by Natesa Gounder in favour of Minor Kumar and appointment of his own brother Ranganathan as guardian of the minor Kumar. Having accepted the Will, he has entered into exchange deed with Kumar in respect of the property which Kumar got through the Will.

7.Therefore, the trial court dismissed the suit for declaration of title and injunction holding that the defendant has derived title through the sale deed dated 16/11/1998 Ex.B-6 and in lawful possession and enjoyment of the suit property as lawful purchaser from its owner Kumar who has derived title under Ex.B-10 the Will of Natesa Gounder.

8.On appeal, the first appellate court has confirmed the trial court judgment and dismissed the appeal. Against the concurrent finding of the courts below, the present second

appeal is preferred.

9.The learned counsel for the appellant contended that the plaintiff has established the source of title through cogent evidence with reference to the deed of partition between the family members of the plaintiff and the defendants predecessor's in title under registered document dated 31/12/1975 and the family partition among the members of the plaintiff family under registered document dated 19/10/1983. Through kist receipts and Patta, the plaintiff has proved his possession. While so, the courts below have totally ignored Ex.A-1 and Ex A-2 which are proof of title and Ex A-3 to A-13 kist receipts which are proof for possession. The Patta and chitta issued by the competent revenue authorities also been ignored by the courts below.

10.It is also contended by the learned counsel for the appellant that Ranganathan who was named as Guardian in the Will of Natesa Gounder is a party to the partition deed Ex.A-1 wherein, the suit property is found to be allotted to Rajamanickam Gounder. While so, the courts below have erred in relying upon the Will of Natesa Gounder which was executed prior to division of properties among the co-owners. It is also contended by the Counsel that the Will Ex.B-10 not proved as per the requirement of Section 68 of the Indian evidence Act. Hence, it ought not to have relied upon.

11.Per contra, the learned counsel appearing for the respondent would submit that both the courts below have held against the plaintiff in respect of the fact averred by the plaintiff. Further, the courts below have also found and pointed out the material suppression of fact by the plaintiff regarding tracing of title in respect of the suit property in Ex.A-1 partition deed which has been entered between Rajamanickam Gounder, his wife and children along with Krishnamoorthy son of Natesa Gounder. Admittedly, Krishnamoorthy was not the only legal heir left behind by Natesa Gounder. During the his lifetime, Natesa Gounder has executed a Will and duly registered. On the demise of Natesa Gounder, the Will has come into force and acted upon. The plaintiff himself has exchanged some properties with Kumar recognising the right of Kumar derived through the Will. Therefore, the defendant who purchased the suit property from Kumar has absolute right and title over the suit property. The courts below have rightly declined to entertain the suit and dismissed the same. There is no substantial question of law involved in this case which requires any interference of the concurrent finding of the courts below.

12.This court considering the grounds of appeal has framed the following substantial questions of law for consideration:-

"1)Whether the Court below did not err in finding that the plaintiff had not established his title, when the plaintiff's cogent evidence through Ex.A.1 (31.12.1975) and A2 (19.10.1983) with kist receipts for the property established his title perfectly ?

2)Whether the Court below did not have rejected the evidence under A1 and A2 without finding that the so called will produced under Ex.B.10 (13.10.1970) had been validly proved as per the requirements of the Section 68 of the Indian Evidence Act ?"

13.Ex A-1 partition deed is dated 31/12/1975. The parties to this deed are Rajamanickam Gounder, his Wife Sampooram, his 3 sons Ranganatha Gounder, Srinivasan, Elumalai and one Krishnamoorthy who is the son of Rajamanickam Gounder deceased brother Natesa Gounder. As per this deed, during the life time of Natesa Gounder, the immovable properties were not divided among them and they were in common enjoyment. Natesa Gounder has left sole Krishnamoorthy as his sole legal heir. According to Ex A-1 partition deed, the suit property which is described as S.No. 66/11 with extend of 0.14 cents at Kandamangalam Village, Villupuram Registration District, is allotted to the father of the plaintiff Rajamanicka Gounder under 'A' schedule.

14.Ex A-2 is the partition deed dated 19/10/1983. The parties to the partition deed are the three sons of Rajalmanickam Gounder. This partition is in respect of properties left behind by Rajamanicka Gounder after alienating few of the properties which he got through the partition deed Ex A-1. This partition between the plaintiff (Srinivasan) and his 2 brothers Ranganathan and Elumalai is in supersession of the earlier partition deed dated 5/10/1983. Under 'B' schedule of this document, the suit property is allotted to the plaintiff. In Ex B-3 which is the partition deed entered by the plaintiff and his two brothers on 05/10/1983, reference about the suit property in S.No.66/11 is conspicuously absent. The reason for superseding this partition deed and executing a fresh partition deed within two weeks by including the suit property in the schedule of properties allotted to the plaintiff could easily be inferred. Ex.A-3 to A-13 are kist receipts issued in the name of the plaintiff, but, it does not indicate the survey

numbers for which the kist is paid. Therefore, while both Ex A-1 and Ex A-2 does not indicate that they were executed with consent and knowledge of all the stake holders in the estate of the deceased Periyasamy Gounder or a complete document involving all the legal heirs entitled to inherit the properties and in respect of all the properties available for division, Ex.A.1 cannot bind the defendnat and his vendor.

15.The documents relied by the defendant establishes the fact that, Periyasamy Gounder had three sons Rajamanickam Gounder, Natesan Gounder and Sadaya Gounder. They have divided the joint family properties much prior to 1958. One of the son Sadaya Gounder left the village after partition. The remaining sons Rajamanickam Gounder and Natesa Gounder were enjoying their respective shares in the property. Natesa Gounder had two wives. Through first wife, he had one daughter (Mangalakshmi) and through the second wife, he had one son (Krishnamoorthy). During his life time, he had executed a Will (EX B-10) and got it duly registered. This Will is dated 13/03/1970. Under this Will, Natesa Gounder has bequeathed properties under 'A' schedule to his son Krishnamoorthy born to his second wife and 'B' schedule properties to Minor Kumar, his grand son born through his first wife daughter Mangalakshmi. As per this Will, Kumar is allotted 4 cents out of 14 cents in common under S.No 66/11 and 7 cents out of 21 cents in common under survey no. 66/14. On 16/11/1998, the defendant has purchased these properties from Kumar under sale deed Ex B-6. In the recital of this deed, the title of the defendant vendor Kumar is traced to the Will of Natesa Gounder.

16.The plaintiff has laid the suit as if Kumar is a stranger to the property and whatever property he got was only through his maternal uncle Krishnamoorthy and the defendant claims right over the property through sale deed executed by Kumar, a stranger who does not have any right in the suit property. Whereas, the records before the court reveals that Ex A-1 partition deed is not between all the parties concerned. Ex A-2 is a document created to encompass the suit land along with the properties of the plaintiff and his brothers. The Will of Natesa Gounder Ex B-10, Exchange deed entered by the plaintiff and his wife with Kumar (the vendor of the defendant) Ex B-1, the sale deed executed by Kumar in favour of one Sethu s/o Ranganathan (brother's son of the plaintiff) Ex B-11, all clearly show that the Will of Natesa Gounder had never been disputed. In fact, by entering into an exchange deed, the plaintiff has expressly accepted Ex B-10. In such circumstance, when both the attesting witnesses were dead at the time of trial and the said fact being elucidated in the deposition of DW-2 Kumar, the question of not proving the Will as per the provision of Section 68 of the

Indian Evidence Act, does not arise.

17.The questions of law formulated in this Second Appeal are answered accordingly. In the result, the second appeal is dismissed with costs through out. The judgment of the First Appellate Court confirming the dismissal of the suit by the trial Court is upheld.

-s/d-
Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

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To

1.The Principal District Court,
Villupuram.

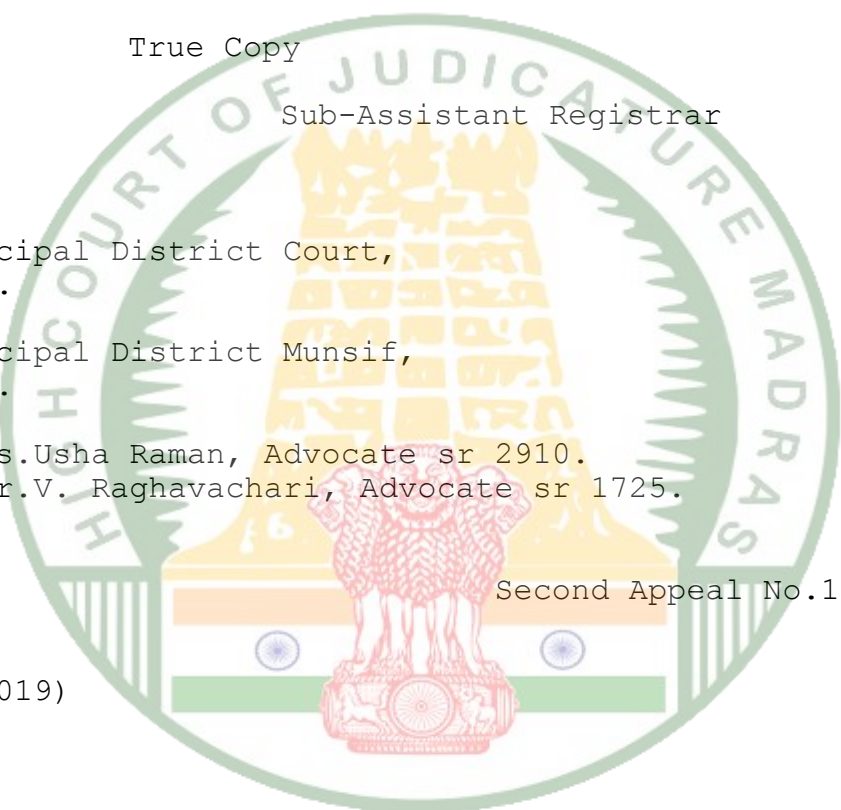
2.The Principal District Munsif,
Villupuram.

+1 CC to Ms.Usha Raman, Advocate sr 2910.

+1 CC to Mr.V. Raghavachari, Advocate sr 1725.

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VSNII (CO)
SP(07/02/2019)

The seal of the High Court of Judicature Madras is a circular emblem. It features a central golden temple gopuram (tower) with a red elephant standing in front of it. The elephant is facing left and has a red saddle. The gopuram is set against a background of a green and white striped banner. The words "HIGH COURT OF JUDICATURE MADRAS" are written in a circular path around the central image. Below the seal, the Sanskrit motto "सत्यमेव जयते" (Satyameva Jayate) is written in Devanagari script.

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