

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 21.06.2019

Judgment Pronounced on : 14.08.2019

CORAM : THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

S.A.No.699 of 2009

1.Gnanasoundari
2.Arokiadoss
3.Rani
4.Elizebeth
5.Mary Stella
6.Gabriel

.... Appellants /Appellants 2 to 7 /
Legal heirs of original plaintiff

Vs

1.K.S.Periyanayagam (Died)
2.K.P.Lourdu Mary
3.Senthamizh Mary
4.K.P.Chiristiraj ..Respondent/Respondent/Defendant

(Respondents 2 to 4 are brought on record as LRs of the deceased sole respondent viz., Periyanayagam Vide order dated 12.06.2019 made in CMP.Nos.8556, 8557 and 8559/2019 in SA.No.699/2009]

Prayer : Second Appeal filed under Section 100 of CPC against the judgment and decree passed of the learned Subordinate Judge of Panruti dated 26.11.2008 passed in A.S.No.20/2007, confirming the judgment and decree of the learned District Munsif of Panruti passed in O.S.No.156/1997 dated 14.2.2007, partly dismissing the suit.

For Appellants : Mr.R.Gururaj
For Respondents : Mr.R.Sunil Kumar

JUDGMENT

1.1 The plaintiff instituted a suit for declaration of title and consequential injunction, as concerning three items of immovable properties. The trial Court decreed the suit partially, when it confined the relief it granted to item No:1 alone. Aggrieved by the same, the plaintiff approached the first appellate court claiming title to items 2 and 3. This appeal was dismissed, consequent to which the plaintiff has now come before this Court with this appeal. Parties would be referred to by their rank in the trial court.

1.2 Initially, there was only a sole defendant, on whose death his legal representatives were brought on record as defendants 2 to 4.

2. The facts necessary to decide the present case may be briefly stated;

- The plaintiff had borrowed a certain sum of money on a promissory note from a certain Mariyaprakash Padayachi. For realising the said debt, the latter instituted O.S.No.354 of 1973 against the plaintiff. That Suit came to be decreed, and for executing the decree, the decree-holder (hence forth DH) laid E.P.No.246 of 1978 for attachment, and sale of the suit properties.
- Attachment was effected and the properties were brought to sale. The Execution Court ordered sale and as per Ex.A.1, the order sheet in E.P.No.246 of 1978, the sale was stated to have taken place on 19.01.1980. Thereafter, the Court posted the EP for confirmation of sale on 25.08.1980.
- In the meantime, the plaintiff paid the entire decreetal amount to the DH in O.S.No.354 of 1973 and thereafter, preferred E.A.No.223 of 1980 before the Execution Court to record full satisfaction and to set aside the sale. On 22.02.1980, E.A.No.223 of 1980 was allowed and the sale was set aside.
- It is in this scenario the plaintiff faced threat to his title from the defendant, and instituted the suit.

3. The defendant has filed a written statement contending that so far as item 2 and 3 are concerned, they never belonged to the plaintiff, that his son has purchased item 2 from one Chinnappan under Ex.B.1 sale deed dated 28.06.1984, and his wife had purchased item 3 from certain Gunasanthu Ammal Vide Ex.B.2 sale deed, dated 17.12.1979. In short, his case was inasmuch as the defendant's source of title was different, the plaintiff is not entitled to items 2 and 3.

4.The matter went to trial, and the plaintiff before the trial Court has relied chiefly on Ex.A.1 and Ex.A.2. The trial Court has held that so far as item 2 and 3 are concerned, the plaintiff has not established his title, and accordingly, dismissed the Suit. This conclusion of the trial Court was accepted by the first Appellate Court.

5.This appeal is admitted on the following substantial questions of law;

1)Were not the lower courts wrong in expecting title deeds for ancestral property?

2)Did not the lower courts commit gross error in failing to see that admissions are the best evidence?

6. The learned counsel for the appellants chiefly contended that the DH in O.S.354/1973 was the brother of the present defendant, and in the auction sale held in the process of execution of the decree in the said suit, the present defendant had participated, and in fact was the successful bidder. If the items 2 and 3 in the suit do not belong to the plaintiff, why should he bid the same in the court auction? The conduct of the defendant amounted to admission, and it binds him. Reliance was placed on the authority of the Apex Court in Dattatraya Vs Rangnath Gopalrao Kawathekar (dead) by Lrs., [AIR 1971 SC 2548 : (1972) 4 SCC 181].

7. The learned counsel for the respondents submitted:

- That of the two items, item 3 was purchased by the defendant under Ext.B-2 sale deed dated 17-12-1979, and item 2 was purchased on 26-06-1984 under Ext.B-1 sale deed. The Court auction sale had taken place on 19-01-1980. By the time the auction took place the defendant had purchased item 3 property. And, there is no case for the plaintiff that the attachment of the properties preceding the court auction sale was notified to the Sub Registry under Order XXI Rule 58A CPC. Therefore, the plaintiff cannot challenge Ext.B-2 sale.
- Secondly, so far as defendant's case is concerned, it is traced not to Mariaprakasam, the Judgement Debtor in O.S.354/1973, but to one Chinnappan and Gunasanthu Ammal, whose title to the suit property was never disputed by the plaintiff at any stage.
- Thirdly, even for establishing that these items of properties are his ancestral property, the plaintiff need to prove the same to preponderate a probability that item 2 and 3 are plaintiff's ancestral property, and that they have never been alienated at any point of time.
- Fourthly, except for Ex.A.1 and Ex.A.2, the execution proceedings, none of the documents produced by the plaintiff relate to item 2 and 3.
- Fifthly, mere participation in the auction would not constitute admission of plaintiff's title. After all, the plaintiff in O.S.No.354 of 1973, who brought the suit

properties to sale was none other than defendant's brother, and that the defendant himself had participated in the auction only in these circumstances.

- Sixthly, in a Suit for title, plaintiff has to show an independent title and must rely on the strength of his case and should not fall back on any weakness or other defendant's case.

8. There are two settled legal principles:

- No title can vest by admission, nor admission can convey title.
- Court auction sale does not carry any warranty of title.

If the case of the plaintiff is analysed, he rests title to items 2 and 3 to his ancestry, but to prove it, he relies on what he considers as an admission of the defendant. Here, what is available before the Court is not any statement of the defendant admitting the title of the plaintiff to these items of suit properties, but his participation in the court auction when these properties were brought to sale in the execution of the decree in O.S.354/1973. Whether this can amount to tacit admission? Here, reference shall be to the first of the legal principle. Secondly, bidding the properties in an auction is of no significance and here the second of the legal principles stated above has relevance. Ultimately, the plaintiff has to stand by his case, and his pleading that items 2 and 3 are ancestral properties needs to be sustained through his evidence. Now, what if the defendant had not participated in the court auction sale, but still claims title to these properties under Ext.B-1 and B-2 sale deeds? Will not the plaintiff be then under a burden to prove his case? This burden of proof does not get altered merely because the defendant had participated in the court auction, given the fact that there is no warranty of title to court-sale.

9. In conclusion, both the substantial questions of law fails, and appeal is dismissed, and the judgment and the decree of the learned Subordinate Judge, Panruti dated 26.11.2008 passed in A.S.No.20/2007 is hereby confirmed. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To:

1.The Subordinate Judge, Panruti.

2.The District Munsif, Panruti.

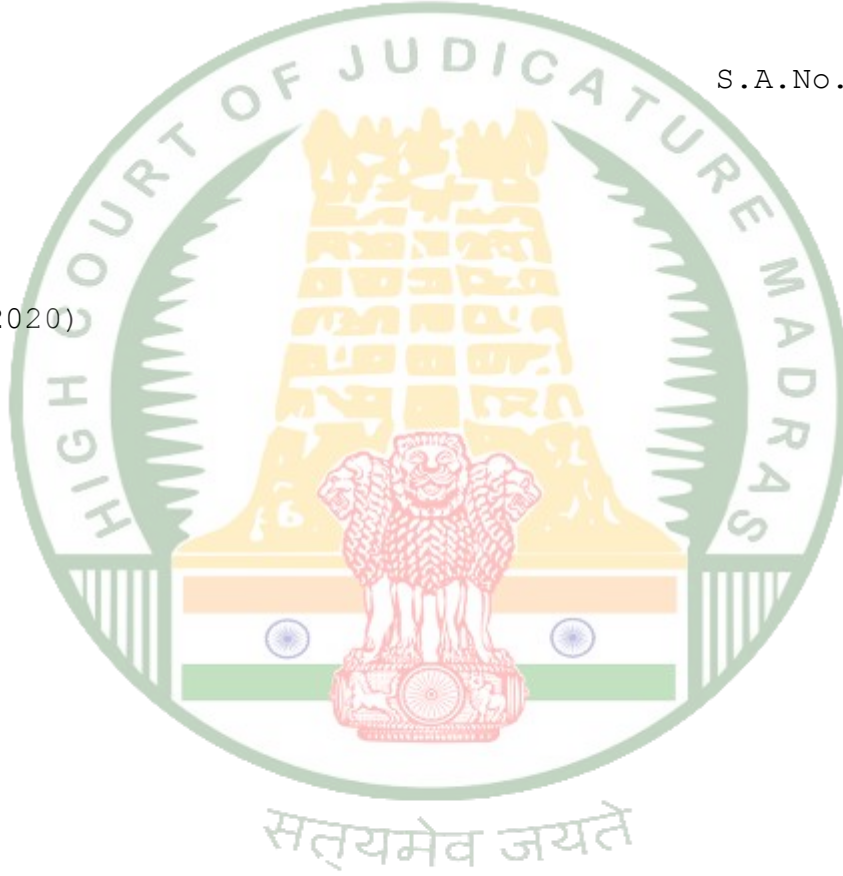
3.The Section Officer, VR Section, High Court, Madras.

+1 CC to Mr.R.Gururaj, Advocate sr 69804.

+1 CC to Mr.R.Sunil Kumar, Advocate sr 69280.

S.A.No.699 of 2009

NRL (CO)
SP(08/09/2020)



WEB COPY