

IN THE HIGH COURT OF JUDICATURE AT MADRAS
JUDGMENT RESERVED ON : 03.10.2019

JUDGMENT PRONOUNCED ON : 15.10.2019

CORAM

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.275 of 2019
and
C.M.P.No.4065 of 2019

Dhanapagayam ..Appellant/Defendant

Vs.

1.P.Ramalingam
2.P.Manikandan ..Respondents/Plaintiffs

PRAYER: Second Appeal filed under Section 100 of C.P.C., to allow the Second Appeal by setting aside the judgment and decree dated 24.08.2018 passed in A.S.No.64 of 2017 on the file of the II Additional District Judge, Chidambaram and reversing the judgment and decree passed on 05.04.2017 in O.S.No.34 of 2014 on the file of the Subordinate Judge, Chidambaram.

For Appellant : Mr.P.jagadeesan

For Respondents: Mr.M.Muruganathan

J U D G M E N T

The defendant in O.S.No.34 of 2014 who succeeded in getting the suit for declaration and recovery of possession filed by the respondents dismissed by the trial court, upon its reversal by the lower appellate court has come forward with this Second Appeal.

2. The suit was originally filed as O.S.No.260 of 2010 on the file of the District Munsif Court, Chidambaram seeking permanent injunction. After the written statement was filed, the plaintiffs sought for an amendment of the plaint to include the reliefs of declaration of title and recovery of possession. On the said amendment being allowed, the suit was transferred to the Subordinate Court, Chidambaram and numbered as O.S.No.34 of 2014.

The case of the plaintiffs is as follows:-

3. The property measuring 20 cents in S.No.71/2 situate at Mela Street/ School Street, Vilagam Village, Chidambaram Taluk originally belonged to one Natarajan S/o. Gnana Sambandam Pillai. On 07.10.1979 the plaintiffs' father Pakkirisamy entered into an agreement of sale in respect of the suit property with the said Natarajan Pillai. The sale price was fixed at Rs.1250/- and the same was paid on the date of the agreement itself. Pakkirisamy was also put in possession of the property. After the said agreement, Pakkirisamy put up a thatched house and was living there along with his family members.

4. Pakkirisamy died on 27.07.2002 and his wife Kanagam died on 03.01.2005. After the death of Pakkirisamy and Kanagam, the plaintiffs purchased the suit properties from Natarajan Pillai under two sale deeds dated 21.10.2010. The defendant who is the brother's wife of Pakkirisamy was asked to look after the suit property and other properties belonging to the plaintiffs situate in Vilagam Village. Mis-using the said position as a care taker, the defendant required Natarajan Pillai to execute a sale deed in her favour. Upon coming to know about the demand made by the defendant, the plaintiffs purchased the property from Natarajan Pillai under two sale deed as stated supra.

5. Enraged by the fact that the plaintiffs have purchased the property from Natarajan Pillai, the defendant attempted to trespass into the property which resulted in the plaintiffs suing for the relief of permanent injunction. Claiming that the defendant trespassed into the property and the defendant chose to deny the title of the plaintiffs, hence, the plaintiffs sought for amendment seeking declaration of title and recovery of possession.

6. The defendant resisted the suit contending that she is the wife of Pakkirisamy and Kanagammal was the concubine of Pakkirisamy. The defendant would also contend that the Pakkirisamy's father Pavadai served as a Pannaiyal under Natarajan Pillai. In recognition of his service, Natarajan Pillai had allowed Pavadai to occupy the suit properties. On the death of Pavadai, Pakkirisamy who is the youngest son of Pavadai continued in possession of the property.

7. The defendant would also claim that as the legally wedded wife of Pakkirisamy she and her children were living in the suit property. The plaintiffs who were aware of the possession of the defendant had purchased the property from Natarajan Pillai only with a view to evict the defendant and occupy the property. The claim that Pakkirisamy entered into an agreement with Natarajan Pillai on 07.10.1979 was also denied by

the defendant. It was also claimed that the suit is barred by limitation.

8. A reply statement was filed by the 2nd plaintiff specifically denying the claim that the defendant is the wife of Pakkirisamy and her children viz., Kasthuri and Murugan are the daughter and son of Pakkirisamy. It is also claimed that Duraisamy is the husband of the defendant and Kasthuri and Murugan are daughter and son of Dauraisamy.

9. The trial court upon consideration of the evidence on record concluded that the sale agreement dated 07.10.1979 has not been proved in accordance with law. The learned trial Judge also concluded that the fact that the sale deeds dated 21.10.2010 in favour of the 2nd plaintiff and 22.10.2010 in favour of the 1st plaintiff will not confer title on the plaintiffs inasmuch as they are for a lesser value.

10. On the above said findings the learned trial Judge dismissed the suit. The learned trail Judge also concluded that though the defendant was in possession even prior to the institution of the suit, the plaintiffs had falsely claimed that she trespassed during the pendency of the suit. Aggrieved the plaintiffs filed an appeal in A.S.No.64 of 2017 before the II Additional District Court, Chidambaram.

11. The lower appellate court upon reconsideration of the evidence on record concluded that Ex.A1 agreement dated 07.10.1979 is true and valid. The lower appellate court also found that the claim of the defendant that she is the wife of Pakkirisamy is false. On the status of the plaintiffs the lower appellate court considered the evidence on record and concluded that the Kanagammal was a legally wedded wife of Pakkirisamy and the plaintiffs 1 and 2 were the sons born to Pakkirisamy and Kanagammal.

12. The lower appellate court also took note of the documentary evidence viz., Ex.A20 dated 01.10.2002 addressed to Kanagammal by the Assistant Director of Ex-servicemen Welfare, Cuddalore District, marriage invitation of the 2nd plaintiff and the settlement deed dated 30.06.1969 executed by Pakkirisamy in favour of the plaintiffs which described them as his sons.

13. The lower appellate court also concluded that the defendant was the wife of Duraisamy based on her claim made by her in criminal complaint lodged by her which was taken on file by the learned Judicial magistrate-I, Chidambaram in C.C.No.646 of 1980.

14. On the aforesaid findings, the learned appellate Judge concluded that the plaintiffs have established their title and the defendant has not proved her claim that she is the legally wedded wife of Pakkirisamy or that she is in possession of the property exercise of any independent right. On the aforesaid findings, the lower appellate court reversed the judgment and decree of the trial court and decreed the suit as prayed for. Aggrieved the defendant is on appeal.

15. I have heard Mr.P.Jagadeesan, learned counsel appearing for the appellant and Mr.M.Muruganathan, learned counsel appearing for the respondents/ caveators.

16. Mr.P.Jagadeesan, learned counsel appearing for the appellant would vehemently contend that the defendant is the wife of Pakkirisamy and that her children Kasthuri and Murugan were born to her through the said Pakkirisamy. It is also the contention of Mr.P.Jagadeesan, learned counsel appearing for the appellant that the lower appellate court was not right in not considering the plea of adverse possession raised by the defendant.

17. I have considered the submissions of the learned counsel for the appellant. The lower appellate court has concluded that the plaintiffs are the sons of Pakkirisamy and Kanagammal and that Kanagammal is legally wedded wife of Pakkirisamy. The said finding is based on unimpeachable documentary evidence available in the form of identity card issued by the Board for Ex-servicemen Welfare as well as the settlement deed executed by Pakkirisamy in favour of the plaintiffs as early as on 30.06.1969 describing them as his sons and appointing their mother Kanagammal as their guardian.

18. Even in the criminal complaint lodged by her which was taken on file as C.C.No.646 of 1980, the defendant has specifically claimed that she is the wife of Duraisamy and Pakkirisamy is her husband's brother. However, the criminal court had come to the conclusion that Kasthuri and Murugan were born to the defendant through Pakkirisamy.

19. As rightly pointed out by the lower appellate court, the said determination of the marital status by the criminal court cannot bind the civil court. Once it is found that Pakkirisamy had married Kanagammal and the plaintiffs were born out of the said marriage it is for the defendant to prove the marriage between herself and Pakkirisamy and the paternity of the two children viz., Kasthuri and Murugan through proper evidence. In fact such evidence is totally lacking in the case on hand.

20. No doubt certain house tax receipts were produced as Ex.B3 to Ex.B5. All those receipts have emanated after the filing of the present suit. The first of the receipts is dated 01.03.2013. Per contra the plaintiffs have produced Ex.A13 to A18 which are receipts for payment of electricity charges which are for the period prior to the suit. The house tax receipts which stand in the name of Pakkirisamy have also been produced for the years 1992-2000 as Ex.A8 and Ex.A9. The letters received from the Army Central Welfare Funds viz., Ex.A4 and the identity card issued by the Ex-servicemen Welfare Board Ex.A19 conclusively establish that Pakkirisamy was married to Kanagammal and she was recognized as wife of Pakkirisamy by his employer.

21. On the other hand there is no evidence except the oral evidence of the 1st defendant to establish the so called marriage between her and Pakkirisamy and the paternity of the two children born to her. The lower appellate court had upheld the validity of the two sale deeds viz., Ex.A2 and Ex.A3 dated 21.10.2010 and 22.10.2010 executed by Natarajan Pillai in favour of the plaintiffs on the ground that deficiency in the sale consideration cannot be considered as a vitiating factor.

22. No doubt true there is a stray observation by the criminal court in the judgment in C.C.No.646 of 1980 to the effect that the defendant is the wife of Pakkirisamy, but it should also be noted that the defendant had claimed in her complaint that she had married only Duraisamy and she is wife of Duraisamy who is the brother of Pakkirisamy.

23. In the course of evidence before the criminal court she has deposed that she had married Pakkirisamy and after Pakkirisamy joined army in 1942 she started living with Duraisamy. The finding of the criminal court is contrary to the evidence of the defendant herself. Hence, the said finding cannot bind the civil court in deciding the question of status or relationship. In fact the criminal court has dismissed the complaint and acquitted the accused viz., Pakkirisamy. The offence alleged against Pakkirisamy was one of trespass. The criminal court had found that the complainant viz., appellant herein was not in possession of the property and as such there was no question of trespass.

24. The lower appellate court as a final court of fact had concluded that the claim of the defendant that she had married Pakkirisamy has not been established. It has further found that the plaintiffs have established that they are the children of Pakkirisamy and they have obtained a sale deed from the rightful

owner viz., Natarajan Pillai. Therefore, the lower appellate court had rightly upheld the title of the plaintiffs and had decreed the suit.

25. Though the learned counsel for the appellant would urge several contentions including the one of adverse possession, I find that the lower appellate court has adverted to the entire evidence on record and has arrived at a factual conclusion that the defendant has not perfected title by adverse possession also. The findings being factual in nature, I do not think that I can interfere with the said findings sitting in the Second Appeal. I do not see any question of law much less a substantial question of law to enable me to entertain the Second Appeal.

26. Hence, the Second Appeal is dismissed without being admitted. No costs. Consequently, the connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

dsa

To

1.The II Additional District Judge,
Chidambaram.

2.The Subordinate Judge,
Chidambaram.

+1cc to Mr.P.jagadeesan, Advocate SR.No.85866

+1cc to Mr.M.Muruganathan, Advocate SR.No.86969

S.A.No.275 of 2019

SAI (CO)
GMY (10/02/2020)