

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.03.2019

PRONOUNCED ON : 21.03.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A.No.1292 of 2005

Panchalai

...Appellant/Plaintiff

Vs.

1. Pandiyan

2. Jaya

...Respondents/Defendants

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree of the Additional District Judge's (Fast Track) Court at Kallakuruchi dated 29.08.2005 in A.S.No.97 of 2004 confirming the judgment and decree of the II Additional District Munsif Court at Kallakuruchi dated 27.02.2002 in in O.S.No.729 of 1997.

For Appellant : Mr.P.Valliappan

For Respondents: Mrs.Mythili Suresh
for M/s. Sarvabhauman Associates.

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 29.08.2005 passed in A.S.No.97 of 2004 on the file of the Additional District Judge/Fast track Court, Kallakuruchi, confirming the judgment and decree dated 27.02.2002 passed in O.S.No.729 of 1997 on the file of II Additional District Munsif Court, Kallakuruchi.

2. The second appeal has been admitted on the following substantial questions of law.

"a) When Exs.A1 to A13 namely kist receipts, electricity receipts, house tax receipts and notice from Tahsildar regarding patta would prove the exclusive possession of the appellant on the date of the suit, whether the courts below are justified in dismissing the suit for bare injunction?

b) When the appellant had perfected title by a clear act of ouster, whether the courts below are correct in law in non suiting the appellant on the basis of the earlier proceedings under Exs.B1 to B4?"

3. Considering the scope of the issues involved between the parties as regards the subject matter lying in a narrow compass, it is unnecessary to dwell into the facts of the case in detail.

4. The Parties are referred to as per their rankings in the trial Court for the sake of convenience.

5. The suit has been laid by the plaintiff simplicitor for the relief of permanent injunction against the defendants. The plaintiff traces her title to the suit properties and consequent possession and enjoyment of the same through her mother Palayee Ammal, wife of Chinna Mooppar. According to the plaintiff, the suit properties originally belonged to her mother. After her demise, she being her only heir and daughter, become entitled to the suit properties and in the possession and enjoyment of the same. Further, according to the plaintiff, she had obtained the service connection and granted patta and enjoying the same by paying kists, tax, service charges, etc., and thereby prescribed title to the suit properties by way of the adverse possession and the defendants, without any entitlement, right or interest, interfered with her possession and enjoyment and hence stated that she had been necessitated to lay the suit for appropriate relief.

6. The defendants, in their written statement, contended that the plaintiff had suppressed the earlier suit between the plaintiff and the second defendant in O.S.No.314 of 1975, a suit for partition, whereunder, it has been held that the plaintiff's mother Palayee Ammal is entitled to only half share in the suit properties and the remaining half share had been held to be belonging to the second defendant and her mother Yesodai Ammal and it is pleaded that the plaintiff had an elder brother Kannan who died leaving behind the defendants as his legal representatives and accordingly, in the suit laid in O.S.No.314 of 1975, the second defendant and her mother Yesodai Ammal are declared to be entitled to half share in the suit properties and the remaining half share is held to be belonging to the plaintiff's mother and further according to the defendants, on the death of Palayee Ammal, her half share in the suit properties devolved upon the plaintiff and the second defendant and thus it is stated that the second defendant and her mother are together entitled to $\frac{3}{4}$ share in the suit properties and therefore, the relief of permanent injunction sought for by the plaintiff against the defendants is totally untenable and there

is no cause of action for the suit and hence the suit is liable to be dismissed.

7. Based on the materials projected, the courts below were pleased to dismiss the plaintiff's suit. Impugning the same, the second appeal has been preferred.

8. Considering the materials placed on record, it is found that, in the suit in O.S.No.314 of 1975, the partition suit laid by the second defendant and her mother against Palayee ammal, the plaintiff and another in respect of the suit properties and other properties, the suit ended in favour of the second defendant and her mother declaring that, in particular, they are entitled to half share in the suit properties and their share in the plaint 'A' schedule properties and 'B' schedule properties had also been declared in the said suit. As against the judgment and decree passed in the abovesaid suit, the first appeal in A.S.No.162 of 1981 had been preferred by Palayee Ammal and others and in the first appeal, the judgment and decree of the trial court declaring half share of the second defendant and her mother had been upheld and only the judgment and decree of the trial court as regards the plaint "A" and "B" schedule properties had been set aside. Thus, it is found that, by way of the abovesaid proceedings, the second defendant and her mother are held to be entitled to half share in the suit properties. In such view of the matter, the claim of the plaintiff that she had acquired absolute right over the suit properties after her mother, as her only heir, as such, cannot be countenanced in any manner. As rightly put forth by the defendants' counsel, the plaintiff had completely suppressed the abovesaid proceedings in the present suit as put forth by the defendants and seem to have laid the false claim of exclusive right to the suit properties through her mother Palayee Ammal. When Palayee Ammal has not been held to be entitled to the suit properties absolutely in the abovesaid partition suit and the second defendant and her mother are held to be entitled to half share in the suit properties, it does not stand to reason as to how the plaintiff could claim exclusive title and possession and enjoyment of the suit properties as such.

9. The plaintiff knowing fully well that she has no case of exclusive title to the suit properties as such, accordingly has also come forward with the plea that on account of her long and continuous possession and enjoyment of the suit properties, she had also prescribed title to the same by way of the adverse possession and the abovesaid case of the plaintiff has been seriously challenged by the defendants. With reference to the abovesaid case, the plaintiff relied upon the documents marked as Exs.A1 to A13. However, when the abovesaid documents cannot be the basis for accepting the adverse title projected by the

plaintiff and when the plaintiff, at the most, could only be stated to be the co-owner of the suit properties along with the defendants and, the plaintiff, in particular, has not taken the plea of ouster and furthermore, the plaintiff having not placed acceptable and reliable materials to show that she had ousted the defendants and enjoying the suit properties absolutely to their knowledge openly, continuously and uninterruptedly by asserting title on herself and also with animus possedendi beyond the statutory period and when the documents projected by the plaintiff do not advance her said case, in such view of the matter, the case projected by the plaintiff that she had prescribed title to the suit properties by way of adverse possession cannot be countenanced and rightly rejected by the courts below.

10. The alleged patta document projected by the plaintiff is not shown to be issued after issuing notice to the defendants, in particular and as above noted, when the suit properties are found to be the joint properties, as of now, belonging to the plaintiff as well as the defendants and when the shares of the defendants as well as the plaintiff's mother had been determined in the earlier partition suit as above noted, merely because the defendants had not endeavoured to take out the final decree proceedings pursuant to the same, that by itself, would not entitle the plaintiff to claim any exclusive title with reference to the suit properties and particularly, when the plaintiff has failed to putforth the plea of ouster and also failed to establish the plea of ouster as well as her exclusive claim of possession and enjoyment of the suit properties beyond the statutory period openly, continuously and uninterruptedly with animus possedendi and as on date, both the plaintiff and the defendants, being the co owners of the suit properties, are entitled to enjoy the same jointly and the relief of permanent injunction sought for by the plaintiff has been rightly declined by the courts below. The rejection of the plea of the adverse possession put forth by the plaintiff by the courts below is found to be based on the proper appreciation of the materials in conjunction with the principles of law outlined with reference to the same and in such view of the matter, no interference is called for to the judgment and decree of the courts below dismissing the plaintiff's suit.

11. In the light of the abovesaid discussions, in my considered opinion, no substantial question of law is found to be involved in this second appeal. Be that as it may, the substantial questions of law formulated in this second appeal are accordingly answered against the plaintiff and in favour of the defendants.

12.In conclusion, the second appeal fails and is dismissed with costs. Consequently, connected miscellaneous petition, if any is, closed.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

bga

To

1. Additional District Judge/Fast track Court, Kallakuruchi,
2. II Additional District Munsif, District Munsif Kallakuruchi.

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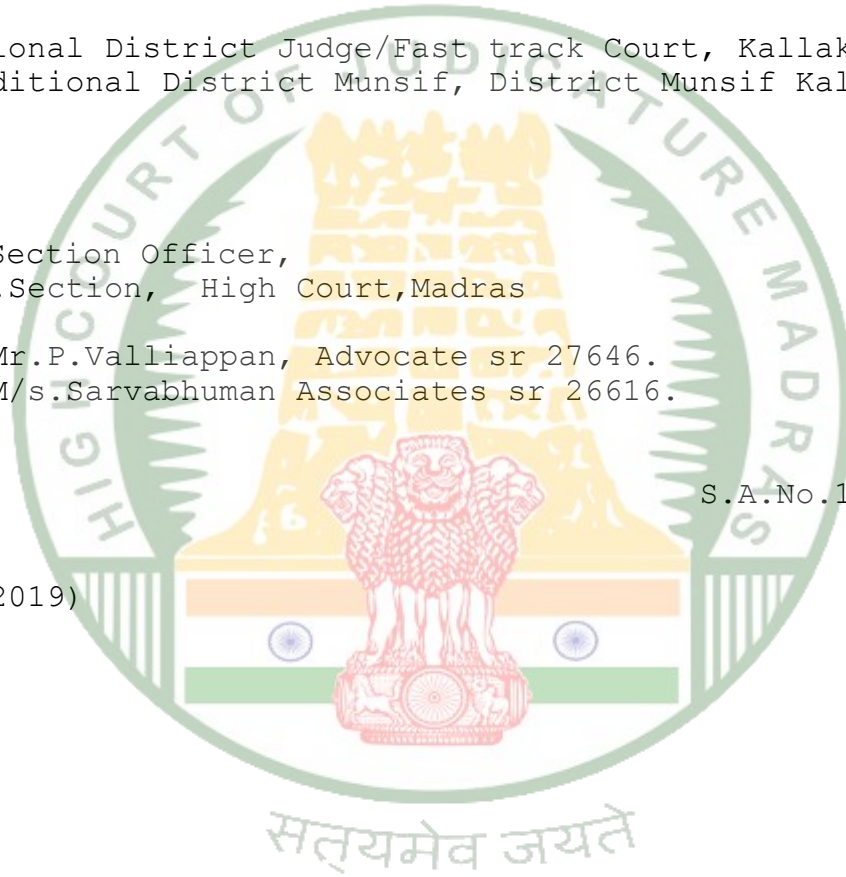
The Section Officer,
V.R.Section, High Court, Madras

+1 CC to Mr.P.Valliappan, Advocate sr 27646.

+1 CC to M/s.Sarvabhman Associates sr 26616.

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VGI(CO)
SP(04/07/2019)



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