

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.03.2019

PRONOUNCED ON : 04.04.2019

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.1307 of 2005

1. Andal Ammal
W/o. Sundaramurthy
2. Sundaramurthy,
S/o. Gopal Padayachi.
Both at Muthandikuppam Village,
Perperiyankuppam post,
Panruti Taluk. Appellants/Defendants

Vs.

Selvarangam,
S/o. Samikannu Padayachi,
Muthandikuppam Village,
Perperiyankuppam post,
Panruti Taluk. Respondent/Plaintiff

Second Appeal filed under Section 100 of C.P.C., against the judgment and decree dated 29.03.2005 in A.S.No.2 of 2005 on the file of the Subordinate Court, Panruti, confirming the judgment and decree dated 16.12.2004 in O.S.No.56 of 1997 on the file of the District Munsif Court, Panruti.

For Appellants : Mr.A.Nilapher
for Mrs.R.Meenal

For Respondent : Mr.R.Sunil Kumar

JUDGMENT

Challenge in the second appeal is made to the judgment and decree dated 29.03.2005 passed in A.S.No.2 of 2005 on the file of the Subordinate Court, Panruti, confirming the judgment and decree dated 16.12.2004 passed in O.S.No.56 of 1997 on the file of the District Munsif Court, Panruti.

2. The parties are referred to as per their rankings in the trial court for the sake of convenience.

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

"1. Whether in law the Courts below are correct in granting a decree for declaration when the final decree for declaration when the final decree proceedings in the prior suit O.S.No.376/77 were set at naught by the delivery of the property to the appellants pursuant to the Court sale in O.S.No.1252/86?

2. Whether in law the Courts below were not wrong in failing to see that judicial acts should be deemed to have been done properly and that the property was delivered to the appellants under Ex.B.4 delivery receipt?

3. Whether in law the Courts below were right in overlooking the admissions of P.W.1 regarding the enjoyment of the property and still granting a decree in his favour?"

4. 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.

5. The suit has been laid by the plaintiff for the reliefs of declaration and permanent injunction and briefly stated, according to the plaintiff, the suit property was allotted to him as per the preliminary and final decree passed in O.S.No.376 of 1977 on the file of the Subordinate Court, Cuddalore, the partition suit laid by the plaintiff and pursuant to the abovesaid decree passed in the suit, the plaintiff had taken the possession of the suit property and enjoying the same by paying kists, etc., and the defendants have no right or title to the suit property and on the other hand, the defendants without any entitlement in law are attempting to interfere with the plaintiff's possession of the suit property and hence, according to the plaintiff, he has been necessitated to lay the suit for appropriate reliefs.

6. The defendants resisted the plaintiff's suit contending that the suit property belonged to the plaintiff's paternal

uncle Manika Padayachi and though the decree had been passed in favour of the plaintiff in O.S.No.376 of 1977 on the file of the Subordinate Court, Cuddalore, as claimed in the plaint, the plaintiff had not placed any material evidencing that he had taken the delivery of the property said to have allotted to him in the abovesaid suit proceedings, on the other hand, according to the defendants, it is only Manika Padayachi who had been in the possession and enjoyment of the suit property continuously and after his demise, his son Palani had been enjoying the suit property by retaining the same in his possession and on account of the long and continuous possession of the suit property by Manika Padayachi and his son, they had also prescribed title to the same by adverse possession. The plaintiff has not enjoyed the suit property as claimed in the plaint by paying kists, etc., and the patta in respect of the suit property has been standing only in the name of Manika Padayachi and it is he who had been in the enjoyment of the same by paying the kists, etc., The second defendant had levied a money suit against Palani, son of Manika Padayachi in O.S.No.1252 of 1986 on the file of the District Munsif Court, Panruti. Pursuant to the decree obtained in the said suit, the suit property was brought for sale by way of auction and in the said auction, the second defendant's wife namely the first defendant was the highest bidder in the auction and accordingly, the sale certificate had been issued in favour of the first defendant and following the same, the first defendant had also taken delivery of the suit property through the Court process on 29.01.1993 and since then, it is only the first defendant who has been in the possession and enjoyment of the suit property as the absolute owner thereof and the first defendant had purchased the suit property in the Court auction in bonafide manner and when the plaintiff had not endeavoured to take the possession of the suit property and also failed to take the delivery of the suit property pursuant to the decree passed in O.S.No.376 of 1977 and enjoy the same and on the other hand, when the first defendant had purchased the suit property in the Court auction sale and enjoying the same after taking the delivery of the property, in such view of the matter, it is put forth that the plaintiff is not entitled to obtain the reliefs as claimed in the plaint and the plaintiff's suit is liable to be dismissed.

7. In support of the plaintiff's case Pws.1 to 3 were examined and Exs.A1 to A10 were marked. On the side of the defendants Dws.1 to 3 were examined and Exs.B1 to B4 were marked.

8. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the Courts below were pleased to accept the plaintiff's case and

accordingly, granted the reliefs in favour of the plaintiff as prayed for. Impugning the same, the second appeal has been filed.

9. The materials placed on record would go to show that in the partition suit laid by the plaintiff in O.S.No.376 of 1977 on the file of the Subordinate Court, Cuddalore, against his brother, the suit property had come to be allotted to his share by way of the preliminary decree passed in the said suit and the same had come to be allotted to his share in the final decree proceedings and to evidence the same, the plaintiff has marked the certified copy of the preliminary decree and final decree passed in the abovesaid proceedings as Exs.A1 and A2. Following the same, it is seen that the plaintiff had taken the delivery of the property allotted to him under the final decree through the Court process and the same could be found from the delivery receipt marked by the plaintiff as Ex.A4. The suit register extract of O.S.No.376 of 1977 on the file of the Subordinate Court, Cuddalore has been marked as Ex.A3. To evidence that the plaintiff has been in the possession and enjoyment of the suit property by paying kists, it is found that the plaintiff has also marked the kists receipts in his name as Exs.A5 to A10 and most of them, have come to be issued in favour of the plaintiff following the delivery of the suit property to him pursuant to Ex.A4.

10. The defendants in the written statement have not seriously disputed the factum of the suit laid by the plaintiff for partition in O.S.No.376 of 1977 on the file of the Subordinate Court, Cuddalore and on the other hand, the defendants are found to have raised the defence that though the decree had come to be passed in favour of the plaintiff in the said suit, according to them, following the same, the plaintiff had not taken the actual delivery of the suit property as claimed by him and on the other hand, according to the defendants, the suit property continued to be in the possession and enjoyment of the plaintiff's paternal uncle Manika Padayachi who had been enjoying the suit property and on the ground of his continuous possession and after him, according to the defendants, his son Palani had been enjoying the suit property and the defendants would also put forth that by way of an exchange arrangement between Manika Padayachi and the plaintiff, the suit property had come to be entrusted to Manika Padayachi for the sake of convenience and on that footing, it is put forth by the defendants that despite the decree obtained by the plaintiff in O.S.No.376 of 1977, it is only Manika Padayachi and after his demise, his son Palani only, who had been in the possession and enjoyment of the suit property and not the plaintiff. In this connection, the reliance is placed upon

certain admission of the plaintiff made during the course of his evidence, at the first instance, that the suit property has been in the possession and enjoyment of Manika Padayachi. However, subsequently, the plaintiff had disputed the case of the defendants that the suit property had been entrusted to Manika Padayachi on the basis of the oral exchange arrangement between them and further disputed the case of defendants that following the same, it is only Manika Padayachi who had been in the possession and enjoyment of the suit property. Therefore, as rightly determined by the trial Court as well as the first Appellate Court, the evidence of a party should be viewed cumulatively and not in isolation. On that basis, when the evidence of the plaintiff is read in toto and jointly, it is found that he has in toto disputed the case of the defendants that Manika Padayachi and his son Palani had been in the possession and enjoyment of the suit property following the oral exchange arrangement. In such view of the matter, the so-called admission on the part of the plaintiff would not in any manner deprive the plaintiff from claiming title to the suit property as determined in his favour in the partition suit in O.S.No.376 of 1977. Though the defendants would come forward that the suit property had been entrusted to Manika Padayachi on the basis of the oral exchange arrangement between the parties concerned, however, the defendants have not come out with the clear case as to on what understanding or terms, the parties had entered into an oral exchange and when the same took place and with reference to the abovesaid case of the plaintiff, there is no acceptable and reliable materials placed to substantiate the same. The Courts below are therefore found to be fully justified in rejecting the abovesaid plea projected by the defendants. Furthermore, when the defendants have come forward with the plea of oral exchange arrangement, particularly when the same cannot be upheld in the eyes of law, in such view of the matter, the claim of the defendants that Manika Padayachi had been enjoying the suit property by way of an oral exchange arrangement and also keeping the same in his continuous possession, as such, cannot be accepted sans any material pointing to the same. There is no material placed on the part of the defendants that Manika Padayachi had been enjoying the suit property as the absolute owner thereof by placing acceptable and reliable material. Though the defendants would claim that Manika Paddayachi and his son had been in the possession and enjoyment of the suit property by obtaining patta, paying kists, etc., and with reference to substantiate their abovesaid case, absolutely there is no documentary evidence pointing to the issuance of patta, payment of kists, etc., either by Manika Padayachi or Palani. Though the defendants would claim that on account of the continuous and long possession and enjoyment of the suit property by Manika Padayachi and his son to the knowledge of the plaintiff by asserting their title openly beyond the statutory

period, however with reference to the abovesaid claim of the defendants, there is no reliable material furnished on their part other than Exs.B1 to B4. Particularly, when there is no material at all placed on the part of the defendants that the suit property had been in the possession and enjoyment of Manika Padayachi or his son in any manner, in such view of the matter, the plea of adverse title put forth by the defendants on the part of Manika Padayachi and his son Palani had been rightly disbelieved by the Courts below.

11. It is found that the second defendant has levied a money suit against Palani on the basis of a promissory note and obtained a decree and pursuant to the same, alleging that the suit property belonged to Palani, for realising the decreetal amount in the money suit laid by him, it is found that the suit property had been brought for sale in the Court auction and in the Court auction sale, the first defendant had purchased the suit property and to evidence the same, the sale certificate issued in favour of the first defendant has been marked as Ex.B1 and to evidence that the first defendant has taken the delivery of the suit property through the Court assistance, the delivery receipt has been marked as Ex.B4. Thus, it is projected from Exs.B1 and B4, that the first defendant is the lawful owner of the suit property and therefore, the plaintiff is not entitled to seek the reliefs as prayed for.

12. As rightly found by the Courts below, the plaintiff is not a party to the suit proceedings laid by the second defendant against Palani in O.S.No.1252 of 1986 on the file of the District Munsif Court, Panruti. The plaintiff is also not a party in the execution proceedings laid by the second defendant against Palani. It has not been explained by the second defendant on what basis he has alleged in the said proceedings, that the suit property belonged to Palani and thereby brought the same for sale for realising the decreetal amount ordered in his favour. In the abovesaid suit proceedings, when the claim of title set out by the defendants on the part of Palani and his father Manika Padayachi, as above discussed, has no legs to stand legally and when with reference to the same, the plea put forth by the defendants is not buttressed by acceptable and reliable materials and the same having been rightly rejected by the Courts below, and the defendants having also failed to establish that Manika Padayachi and his son had prescribed title to the suit property by way of adverse possession and particularly, when the materials placed on the part of the plaintiff would go to disclose that the suit property had been only allotted to the plaintiff in the partition suit laid by him and that the plaintiff had also taken possession of the same as

the lawful owner and enjoying the same, in such view of the matter, when behind the back the plaintiff, the second defendant having obtained the decree against Palani and had also brought the suit property for sale without showing any entitlement to the same as belonging to Palani and without the knowledge of the plaintiff, in such view of the matter, as rightly determined by the Courts below, merely because the sale certificate had been issued in favour of the first defendant by the Court, it cannot be construed or held that the first defendant had acquired a valid title to the suit property on the strength of the same. On the mere issuance of the sale certificate, it could not be construed that the Court has conveyed a valid title to the holder of the same as such, unless the decree holder establishes that he had brought the property belonging to the judgment debtor for sale and when it is found that the decree holder namely the second defendant has brought the suit property for sale without showing the legal entitlement of Palani to the same or the legal entitlement of Manika Padayachi to the same and on the other hand, when the suit property is found to be lawfully belonging to the plaintiff, in such view of the matter, on the strength of the sale certificate and the delivery receipt projected by the defendants, it cannot be held that the first defendant had acquired a valid title to the suit property as such.

13. The defendants' counsel contended that the Courts below had erred in going into the question as regards the validity of the sale certificate issued by the Court marked as Ex.B1. However, the abovesaid argument, does not merit acceptance. When the plaintiff has come forward with the suit seeking for the declaration of title to the suit property and when the same is challenged by the defendants by putting forth a rival claim of title to the suit property on the part of Manika Padayachi and his son Palani and the same is repudiated by the plaintiff, in such view of the matter, the suit being a title suit, the Courts are entitled to determine the question as to who has a valid title to the suit property, whether the plaintiff or Manika Padayachi and his son as put forth by the defendants and for determining the said point, the Court has to go into the question of title projected by the rival parties and on that footing, when the Court has come to the conclusion that it is only the plaintiff who has a valid title to the suit property and not Manika Padayachi and his son and furthermore, by way of the same, when the Court has come to the conclusion that misleading the Court, the suit property belonging to the plaintiff had been brought for sale in the suit proceedings laid by the second defendant against Palani without any basis and thereby the sale certificate had come to be issued in favour of the first defendant following the sale of the suit property in

the Court auction sale held in connection with the abovesaid proceedings, in such view of the matter, the Courts below are found to be fully justified in determining that the sale certificate obtained by the first defendant in respect of the suit property is not valid in law.

14. The defendants contended that after the first defendant had taken the delivery of the suit property by way of Ex.B4 delivery receipt, the plaintiff has not placed any document evidencing his possession and enjoyment and on that footing, according to her, the plaintiff is not entitled to obtain the reliefs as prayed for. Equally, it is found that the first defendant has also not placed any evidence to show that it is she who has been in the possession and enjoyment of the suit property pursuant to the alleged delivery obtained by her in respect of the same under Ex.B4. Other than the delivery receipt marked as Ex.B4 there is no other material placed on the part of the first defendant to hold that since then, it is only the first defendant who has been in the possession and enjoyment of the suit property as claimed by her and on the other hand, considering the materials projected by the plaintiff in toto, it is seen that it is only the plaintiff, as the lawful owner of the suit property, who is in the possession and enjoyment of the same and when the plaintiff's title to the suit property had been upheld in the partition suit in O.S.No.376 of 1977 as above pointed out and when the same has become final and when the contra title projected by the defendants on the part of Manika Padayachi and his son Palani are found to be not established in any manner, in such view of the matter, in my considered opinion, the Courts below are found to be fully justified in accepting the plaintiff's case and rejecting the defence version.

15. The Courts below had appreciated and construed the materials placed on record placed by the respective parties and on a proper appreciation of the same, both factual wise and legal wise, noting that it is only the plaintiff who has a valid title to the suit property and also has valid possession and enjoyment of the same, rightly granted the reliefs in favour of the plaintiff and rightly held that the sale certificate issued in favour of the first defendant in respect of the suit property marked as Ex.B1 is not valid in law as the defendants had failed to establish that the suit property belonged to Manika Padayachi and his son Palani as put forth by them and that they are entitled to bring the suit property for sale for executing the decree obtained by the second defendant against Palani in O.S.No.1252 of 1986 on the file of the District Munsif Court, Panruti.

16. The Courts below had properly analyzed the evidence of the parties projected in the matter and rightly determined that it is only the plaintiff who has the valid title to the suit property and thereby, granted the reliefs in favour of the plaintiff. The substantial questions of law formulated in the second appeal are accordingly answered in favour of the plaintiff and against the defendants.

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

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

nsd

To

1. The Subordinate Judge,
Panruti.
2. The District Munsif Judge,
Panruti.

Copy to

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

+1 cc to Mr.R.Subramanian, Advocate, S.R.No.33115

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