



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.06.2019

CORAM:

THE HON'BLE MR.JUSTICE N.SESHASAYEE

S.A.No. 1318 of 2005

1. Arjunan (Died)
2. Sulochana
3. Tamilselvi
4. Siva
5. Vennila
6. Chitra
7. Gunasundari

(Appellants 2 to 7 are brought on
record as legal heirs of the deceased
sole appellant Vide order dated 05.4.2019
in CMP.No.7838/2019 in SA.No.1318/2005)

...Appellants 2 to 7/
Lrs of Plaintiff

Vs.

Vishwanathan

...Respondent / Defendant

Prayer:- Second Appeal filed under Section 100 of Civil Procedure Code against the Judgment and Decree in A.S.No. 10/2003 on the file of the 1st Addl. Sub-judge, Cuddalore, dated 23.02.2004 and confirming the judgment and decree in O.S. 625/1997 on the file of the Principal District Munsif, Cuddalore, dated 22.10.2002.

For Appellants : Mr.V.Raghavachari

For Respondent : Ms.R.Meenal

JUDGMENT

The plaintiff, who was unsuccessful both before the trial Court and the first appellate Court, is the appellant herein. Parties would be referred to by their rank before the trial Court.

2.1 The case of the plaintiff is that:

- The suit was laid for declaration of title and for consequential injunction. The plaint-schedule details four items of suit properties, which according to the plaintiff, originally belonged to one Kumarasamy Padayachi. While so, on 25.02.1976 Kumarasamy Padaiyachi executed a Will (Ex.A5)



in favour of his daughter Arumbu Ammal and his son-in-law Vidanthira Padayachi. The legatees are the parents of the plaintiff.

- According to the plaintiff, on 26.07.1988, the plaintiff's parents sold 13 cents in the 3rd item of the suit property to the defendant Vide sale deed dated 26.07.1988, marked as Ex.A6. The plaintiff claims that the defendant does not have any title to any extent more than what was sold to him. Nor is he entitled to any share in other three items of properties.

2.2 The defendant disputed the entire allegations of the plaintiff and has alleged in his written statement that the suit properties originally belonged to one Pacha Kannu Padayachi, Kumarasamy Padayachi and Ramasamy Padayachi, who are all brothers. These brothers have divided the suit property. Accordingly:

- Item No. 1 was divided between Pachai Kannu Padaiyachi and Kumarasamy Padaiyachi equally and accordingly, the former was allotted 11½ cents in the north and Kumarasamy Padayachi was allotted 11 ½ cents in the south.
- So far as item 2 goes, again it was divided equally between Pacha Kannu Padayachi and Kumarasamy Padayachi, with the former taking the southern 16 cents and the latter obtaining the northern 16 cents.
- Pertaining to item 3, again it was divided equally into two parts of 13 cents each between Pachai Kannu Padayachi and Kumarasamy Padayachi. (in this Kumarasamy Padayachi's share was sold under Ex.A6 to the defendant, and that Pachai Kannu Padayachi's share also devolved on the defendant)
- Turning to the 4th item, Pachaikannu Padayachi and Kumarasamy Padayachi had divided it equally among themselves with the former taking western half.

Therefore, the plaintiff is not entitled to the total extent in any one of the property. This apart, the suit is also bad for non-joinder of necessary parties, since plaintiff has not impleaded widow of one of his brother Vairam.

3.1 While through Kumarasamy Padayachi, the plaintiff claims title, the defendant claims right to the property through his paternal grandfather Pacha Kannu Padayachi. Before the trial Court, parties have adduced oral and documentary evidence. To prove the factum of partition which the defendant pleaded, he introduced in evidence Ext.B-3 dated 11-08-1927 and Ext.B-4



3.2 On appreciating the evidence of both documentary and oral, the trial Court did not find any merit in the case and dismissed the same. The first appellate Court followed it.

A. Whether the order of the courts below is not against Ex. A.6 which clearly proves the admission of the defendant to the plaintiff's title?

C. Whether the courts below are right in dismissing the suit for declaration when the documents produced by the defendant under Ex. B.3 to B.5 establish the title of the plaintiff and the portion under the enjoyment of the defendant?

D. Whether the order of the courts below are not perverse when it dismisses the suit for declaration even after the admission of title of the plaintiff's predecessor in interest by the defendant?

5. The learned counsel appearing for the appellants argued that the defendant is admitted to have purchased a part of the item 3 under Ex.A6 and therefore, it has not given him any right to deny the title to the plaintiff for the entire property. He added that so far as other items of properties are concerned, neither the plaintiff, nor any of his predecessor in title, including his paternal grand father Kumarasamy Padayachi was a party to Ex.B3 and Ext.B4 documents, and therefore, the said documents cannot be said to have impacted the title of the plaintiff adversely.

6. Per contra, the learned counsel for the respondent submitted that, when the plaintiff's title to the suit properties were denied, burden is on the plaintiff to establish his title to the suit properties. The defendant has fairly admitted that the plaintiff has title to ½ share in item Nos. 1,2 and 4 (as indicated in paragraph No.2.2 above), but as to the rest, the plaintiff ought to have proved his title.

7.1 So far as Ex.B3 and B4 are concerned, even though the



plaintiff or his predecessors-in-title are not a party, yet, in as much as the defendant's grandfather or father, as the case may be, had asserted title and executed mortgage deeds as earlier as in 1927 and 1969, it becomes apparent that all the four items of suit properties belonged to all the four brothers, and Vide Ext.B3 and that under Ex.B4, defendant and his father have asserted title earlier.

7.2 On assessing rival contentions, it emerges that if the rule of preponderance of probability that guides the decision-making process of the Court in civil litigations is applied, then Ext.B3 indicates that the suit properties were not the exclusive property of Kumarasamy Padayachi, but were shared by him jointly with his brother Pachakannu Padayachi and Ramasamy Padayachi. Now, since neither the plaintiff nor his father were parties to Ext.B-3 or B-4, they might not bind the plaintiff, yet it adds relevancy under Section 13 of the Evidence Act, since the defendant's grandfather and his father had asserted their title over half share in all the four items of properties several decades ago. And there is no contra evidence on record, to upset the probable conclusion that Ext.B-3 and B-4 suggest.

8. But the larger issue is, whether the dismissal of the entire suit as has held Courts below is correct in law? The answer is an emphatic 'No'. Both the Courts below held that the defendant has admitted plaintiff's title to half share in each of the items No. 1,2, 4 and remedy ought to have been granted as concerning these three items of properties.

9. Accordingly, the appeal is partly allowed and plaintiffs title is declared as regards southern half share in Item 1, northern half share in Item 2, and eastern half share in Item 4. The decree of the first Appellate Court in A.S.No. 10/2003 on the file of the learned I Addl. Sub-Judge, Cuddalore, dated 23.02.2004 is interfered with and modified to the extent indicated. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

kmm

To

1. The learned 1st Addl. Sub-judge,
Cuddalore,



2. The Principal District Munsif,
Cuddalore,

+1cc to Mr.V.Raghavachari, Advocate, S.R.No.47266

+1cc to Mr.R.Subramanian, Advocate, S.R.No.47769

S.A.No.1318 of 2005

AKM(CO)

RGA(12/08/2021)