

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.03.2019

PRONOUNCED ON : 09.04.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.1347 of 2005

A.Selvarangam ... Appellant/Plaintiff

Vs.

1.A.Srinivasan

2.S.Krishnamoorthy ... Respondents/Defendants

Prayer :- Second Appeal has been filed under Section 100 of the Civil Procedure Code against the Judgement and Decree dated 13.06.2005 passed in A.S.No.81 of 2004 on the file of the Subordinate Court, Ranipet, reversing the judgment and decree dated 22.07.2003 passed in O.S.No.101 of 2002 on the file of the District Munsif Court, Ranipet.

For Appellant : Ms.R.Nirosha
for Mr.N.S.Sivakumar

For Respondents : No representation/
No appearance
Set exparte vide order
dated 20.03.2019

JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 13.06.2005 passed in A.S.No.81 of 2004 on the file of the Subordinate Court, Ranipet, reversing the judgment and decree dated 22.07.2003 passed in O.S.No.101 of 2002 on the file of the District Munsif Court, Ranipet.

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

"1.Whether the finding of the Lower Appellate Court is correct in law in holding that the suit properties are ancestral in nature and consequently Ex.A2 Will dated 24.09.1980 executed by the appellant and 1st respondent's father in

favour of the appellant is not valid?

2. Whether the Lower Appellate Court is correct in law in reversing the judgment and decree passed by trial Court even though Exhibits A4 to A6 conclusively prove the possession of the appellant / plaintiff over the suit property?"

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. For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

5. Suffice to state that the suit has been laid by the plaintiff for permanent injunction.

6. The plaintiff claims title to the suit properties by virtue of a registered Will dated 24.09.1980 executed by his father, the deceased Arjunan as well as the registered sale deed dated 09.11.1993 executed by one Kuppuammal and accordingly, claiming that the suit properties belong to him and are in his possession and enjoyment and putting forth the case that the defendants have no right, title or interest in respect of the suit properties and on the other hand, with an ulterior motive, they have attempted to interfere with his possession and enjoyment of the suit properties, hence, according to the plaintiff, he has been necessitated to levy the suit against the defendants for the relief of permanent injunction.

7. The defendants have taken the pleas that the Will projected by the plaintiff for claiming title to the suit properties is not true and valid and further according to them, the properties belonging to the father Arjunan are the ancestral properties and Arjunan had five sons, viz., the plaintiff, the first defendant, Rathinam, Sivaji and Velu and therefore, according to them, all the five sons of the deceased Arjunan are in the possession and enjoyment of the suit properties and in such view of the matter, it is put forth that the deceased Arjunan is not entitled to bequeath the suit properties exclusively in favour of the plaintiff by way of the impugned Will and further, would also contend that the plaintiff has failed to establish that the liabilities mentioned in the Will have been cleared by himself and on the other hand, according to them, the liabilities had been cleared by all the sons and accordingly, the patta had come to be issued in favour of the defendants and also contended that the plaintiff had filed a suit against the defendants and the other sons of

Arjunan in O.S.No.171 of 1992 for the same relief and did not prosecute the said suit further and therefore, he is estopped in filling the present suit and the present suit is hit by res judicata and also challenged the sale deed dated 09.11.1993 as not a true and valid document and not binding upon them and contended that the vendors of the plaintiff had not been in the possession and enjoyment of the properties conveyed under the abovesaid sale deed and the revenue documents projected by the plaintiff are only created for the purpose of this case and hence, prayed for the dismissal of the plaintiff's suit.

8. Based on the materials placed on record, the trial Court was pleased to decree the suit in favour of the plaintiff as prayed for. The first appellate Court set aside the judgment and decree of the trial Court and consequently, dismissed the suit laid by the plaintiff. Impugning the same, the present second appeal has been preferred by the plaintiff.

9. As could be seen from the materials placed on record, the plaintiff's father Arjunan had five sons, viz., the plaintiff, the first defendant, Rathinam, Sivaji and Velu. The plaintiff claims title to the suit properties based upon the Will dated 24.09.1980 said to have been executed by his father and the copy of the said Will has been marked as Ex.A1. As to what had happened to the original Will, there is no proper explanation put forth on the part of the plaintiff. During the course of his evidence, the plaintiff would put forth the case that the original Will had been marked in the other proceedings instituted by him against the defendants and others. Be that as it may, the original Will dated 24.09.1980 has not been produced by the plaintiff.

10. Inasmuch as the plaintiff claims title to the suit properties by way of Ex.A1 Will, it is for him to establish that his father was competent to execute the said Will in respect of the suit properties. The plaintiff examined as PW1 during the course of cross examination has clearly admitted that the properties comprised in Ex.A1 Will are only the ancestral properties and furthermore, even in the sale deed projected by the plaintiff dated 09.11.1993 said to have been executed in his favour by Kuppuammal and others, wherein also, it has been described the properties comprised in the said document are only belonging to Kuppu ammal's father Dharman and his brother, the deceased Arjunan i.e. the plaintiff's father jointly and both of them had enjoyed the said properties jointly without division and therefore, it is found that by way of Ex.A2 sale deed, the undivided share is found to have been conveyed in favour of the plaintiff. Be that as it may, as per the recitals contained in Ex.A2 also, it is evident that the suit properties, as such, are only the ancestral properties belonging to the family of Arjunan

and his brother Dharman and the same had not been divided amongst themselves as such and in such view of the matter, when the properties involved in the suit are found to be the ancestral properties belonging to Arjunan, the plaintiff's father, in such view of the matter, it has not been explained on the part of the plaintiff as to how his father would be entitled to bequeath the suit properties in entirety in favour of the plaintiff's alone and if at all, the said Will has any force legally, at the most, it could only be valid as regards the share, to which, the plaintiff's father would be entitled to in respect of the ancestral properties and not in respect of the shares of the other joint owners and on the abovesaid factor alone, it is found that the Will projected by the plaintiff marked as Ex.A1 does not have legal sanctity.

11.The plaintiff claims title to the suit properties by virtue of Ex.A1 Will, and as above noted, the original Will has not been placed for consideration. It is found that in respect of the suit properties, the father of the plaintiff Arjunan had entered into an agreement with his sons on 24.01.1979, wherein, he had agreed that his sons should share the liability of discharging the family debts as detailed in the agreement and accordingly, take the properties belonging to the family and the execution of Ex.A3 agreement has not been controverted by the plaintiff. In fact, the plaintiff, during the course of his evidence, has admitted that as per the terms contained in Ex.A3, the sons should discharge the family debts and take their respective shares belonging to the family and only with that object, Ex.A3 had come into existence and the recitals contained therein, the sons are to discharge the debts and take the properties equally are true and in such view of the matter, as rightly put forth by the defendants before the Courts below, considering the nature of the properties, they being ancestral, accordingly, it is found that Arjunan had entered into an agreement with his sons marked as Ex.A3, whereunder, he had agreed that all the sons should take their respective shares in the family properties after discharging the debts of the family. In such view of the matter, the case projected that Arjunan had executed the Will Ex.A1 bequeathing the suit properties in entirety in favour of the plaintiff, as such, cannot be readily accepted.

12.Furthermore, on a reading of the terms contained in Ex.A1, it does not state that the plaintiff is entitled to obtain the properties described therein, on the demise of Arjunan and on a careful perusal of the recitals contained in Ex.A1 Will, the same would go to disclose that the testator had clearly averred that his five sons should discharge the family debts within a particular period of time and accordingly, on the discharge of the family debts by his five sons including the

plaintiff, the five sons should equally take the properties comprised in the Will and enjoy the same and with reference to the abovesaid disposition of the properties, he has no objection and the terms of Ex.A1 Will being in the abovesaid fashion, the claim of the plaintiff that by way of the said Will, his father had bequeathed the suit properties in entirety in his favour, as such ,cannot be readily accepted. Be that as it may, assuming for the sake of arguments that the plaintiff had been bequeathed the suit properties entitling him to take them absolutely in the failure of the other sons discharging the family debts, to evidence that it is only the plaintiff, who had discharged the family debts solely and absolutely, there is no convincing material forthcoming on the part of the plaintiff. Equally, there is no material on the part of the plaintiff to hold that the defendants have not contributed anything for the discharge of the family debts. In this connection, the plaintiff himself had admitted that in Ex.A1, his father had clearly averred as to the debts to be discharged by his five sons and when it is noted that the period of time has also been fixed for the sons to enable them to discharge the debts of the family and when there is no material put forth on the part of the plaintiff that after the period had ended to discharge the family debts and that, it is he, who had discharged the family debts and thereby, entitled to take the properties comprised in Ex.A1 Will i.e. the suit properties and when with reference to the same, absolutely, there is no plea put forth by the plaintiff in the plaint and also no evidence with reference to the same in any manner, particularly, that the other sons had failed to discharge the family debts and that, it is he alone, who had discharged the family debts as outlined in Ex.A1 Will, in such view of the matter, I am unable to accede to the case of the plaintiff that his father had bequeathed the suit properties in his favour under Ex.A1 Will.

13.For establishing the validity of the Will, the plaintiff has examined one of the attestors to the same as PW2. On a reading of the evidence adduced by PW2, he would only state that he had seen the testator signing the Will in a state of good health and he would state that other than him, one Krishnan had also attested the Will. During the course of cross examination, he would admit that only in the original of Ex.A1, his signature is available and the other attesor viz., Krishnan's signature is also available in the said document and also admitted that he could not identify the signature of the scribe from Ex.A1 copy and he could identify the scribe signature as well as the signature of the other attesor, only on seeing the original Will and furthermore, he has also admitted that without seeing the original of Ex.A1 he could not identify whether the testator Arjunan had signed the Will by seeing the copy of the Will marked as Ex.A1 and when the plaintiff has not adduced

sufficient cause for not placing the original Will for consideration and only on the production of the original Will, when it is found that the attesor PW2 would be competent to say anything about his attestation and the attestation of the other attesor, the writing of the document by the scribe etc., and all the more, even the execution of the Will by the testator concerned, in such view of the matter, in my considered opinion, the evidence of PW2 would not be sufficient and safe to conclude that the original of Ex.A1 Will had been executed by the plaintiff's father Arjunan as projected by the plaintiff. Furthermore, when PW2 has not adduced that the other attesor Krishnan had witnessed the execution of the Will by the testator and he has also not deposed about the testator had witnessed their attestation in the Will and when the abovesaid evidence do not satisfy the requirements of valid attestation as contemplated under law and as abovenoted, when the original Will itself has not been placed for consideration, the evidence of PW2 is lacking in vital aspects for sustaining and upholding the validity of Ex.A1 Will as per law and in such view of the matter, no safe credence could be attached to the evidence of PW2 for upholding the truth and validity of Ex.A1 Will.

14. In the light of the abovesaid position, when the plaintiff has failed to establish the truth and validity of Ex.A1 Will as per law and when the plaintiff has failed to establish as to whether the terms contained in Ex.A1 Will had been failed to be complied with by his brothers i.e. the discharge of the family debts by his brothers and that, it is he alone, who had discharged the entire family debts and thereby, entitled to obtain the properties comprised in the Will absolutely and furthermore, when the properties belonging to Arjunan are admitted to be the ancestral properties and the same had not even come to be divided between Arjunan and his brother Dharman, as such, still remaining joint and the properties belonging to Arjunan being the ancestral properties, all his sons would be entitled to share in the same as per law, in such view of the matter, when it is found that Ex.A1 Will could not be legally executed by Arjunan in respect of the ancestral properties and at the most, the Will could be executed by him only as regards his share in the ancestral properties only, it is found that the plaintiff has miserably failed to establish the truth and validity of Ex.A1 Will as per law and in such view of the matter, the claim of the plaintiff that he has acquired the suit properties and been enjoying the same, pursuant to Ex.A1 Will, falls to the ground and cannot at all be countenanced in any manner.

15. As above noted, the plaintiff would also claim that he has acquired title to the suit properties by virtue of the purchase of properties from Kuppuammal and others under Ex.A2

transaction. As per the recitals contained in the abovesaid sale deed, when the properties described therein are found to be the ancestral properties belonging to Arjunan and his brother Dharman and still they had not been divided, it does not stand to reason as to how the executants of the sale deed Ex.A2 would be competent to convey the undivided share without any declaration of their definite shares in the joint properties as such and in such view of the matter, the claim of the plaintiff that pursuant to Ex.A2 sale transaction, he had obtained the possession and enjoyment of the undivided share cannot at all be countenanced, particularly, the properties remaining undivided till this point of time. Even assuming for the sake of argument that the plaintiff would be entitled to obtain the share of Dharman in the joint family properties by way of Ex.A2 sale deed, for claiming the possession and enjoyment of the same as per law, the only remedy available to him is to lay a suit for partition with reference to the same against all the sharers in the manner known to law and on the other hand, the present case laid by the plaintiff that pursuant to Ex.A2 sale deed, he has to be in the possession and enjoyment of the suit properties exclusively cannot at all be countenanced and in such view of the matter, the relief of permanent injunction prayed for by the plaintiff do not merit acceptance as such.

16. Other than Exs.A1 to A3, the remaining documents projected by the plaintiff are only patta, kist receipt and EB Card. Even the defendants have filed the patta in respect of the suit properties marked as Ex.B2. Therefore, the revenue documents by themselves would not be sufficient to hold safely that it is only the plaintiff, who has been in the exclusive possession and enjoyment of the suit properties as put forth by him and furthermore, when the plaintiff has failed to point as to on what basis the patta had come to be issued exclusively in his favour and when Exs.A5 & A6 are not shown to be pertaining to the suit properties, as such, in all, the documents projected by the plaintiff would not be supportive to his case in any manner, particularly, for sustaining the relief of permanent injunction as prayed for by him in the suit.

17. In addition to that, seeking the similar relief of permanent injunction against the defendants and his other brothers, the plaintiff is found to have laid an earlier suit in O.S.No.171 of 1992, however, the said suit has not been proceeded further and the same had come to be dismissed as settled out of Court and the copy of the decree has been marked as Ex.B1. The plaintiff, during the course of his evidence, has admitted that only on the basis of Exs.A1 and A3, he had laid the suit in O.S.No.171 of 1992, therefore, projecting the same set of documents as now put forth by him, the plaintiff has laid the earlier suit against his brothers for the relief of permanent injunction, however, did not prosecute the suit

further and the said suit had come to be dismissed as settled out of Court. Based on the similar set of documents, again the plaintiff is found to have come forward with the present suit by inventing a new cause of action and furthermore, the present suit has been laid by the plaintiff only against his brother viz., the first defendant and his son viz., the second defendant. However, in the light of the abovesaid discussions, when the plaintiff had failed to establish his entitlement to the suit properties as well as his claim of possession and enjoyment of the same exclusively and when the suit properties are found to be the joint family properties belonging to the plaintiff and his brothers and when the plaintiff has failed to establish the truth and validity of Ex.A1 Will and when the plaintiff has further failed to establish that the terms of Ex.A1 had not come into effect or failed to be performed by the sons of the deceased Arjunan and that, it is he exclusively, who had performed the obligations recited therein in entirety and when the plaintiff has failed to establish that he had obtained the possession of the undivided properties as described in Ex.A2 sale transaction and that, the revenue records projected by the plaintiff do not sustain his case, the first appellate Court is justified in holding that the suit properties are ancestral in nature and the Will projected by the plaintiff dated 24.09.1980 marked as Ex.A2 is not a true and valid document and thereby, the first appellate Court is justified in reversing the judgment and decree of the trial Court as the revenue documents projected by the plaintiff would not establish the possession and enjoyment of the plaintiff in respect of the suit properties. I do not find any valid reason to interfere with the judgment and decree of the first appellate Court in dismissing the plaintiff's suit. The substantial questions of law formulated in the second appeal are, accordingly, answered against the plaintiff.

In conclusion, the second appeal fails and accordingly, is dismissed. No costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar

//True copy//

Sub Assistant Registrar

sms

To

1.The Subordinate Court, Ranipet.

2.The District Munsif Court, Ranipet.

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

+1cc to Mr.N.S.Sivakumar, Advocate SR.No.35029

S.A.No.1347 of 2005

SKV (CO)
GMY (04/06/2019)



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