

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.1421 of 2005

1. Selvaraj
2. Thatchanamoorthy
3. Arul

...Appellants

-Vs-

- Karuppan (died)
1. Viruthambal
 2. Palaniammal
 3. Anjalai

...Respondents

Prayer:-

Second Appeal filed under Section 100 of Civil Procedure Code, against the decree and judgment dated 25.07.2005 passed in A.S.No.112 of 2003 by the Hon'ble Sub Court, Kallakuruchi confirming the decree and judgment dated 11.04.2003 in O.S.No.543/1997 by the Hon'ble 3rd Additional District Munsif Court, Kallakuruchi.

For Appellants : Mr.G.Viswanathan
for Mr.B.Vijaravelu

For Respondents : Mr.A.G.Rajan for R1 to R3.

JUDGMENT

In this second appeal, challenge is made to the judgment and decree dated 25.07.2005 passed in A.S.No.112 of 2003 on the file of the Subordinate Court, Kallakuruchi confirming the judgment and decree dated 11.04.2003 passed in O.S.No.543 of 1997 on the file of III Additional District Munsif Court, Kallakuruchi.

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

"Whether the patta and the tax receipts issued by Government authorities can be discarded

without assigning reasons thereto when they are not legally challenged or disproved by the defendants? Whether it doest not contravene Sec. 114(e) of the Indian Evidence Act, 1872?".

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 plaintiffs simplicitor for the relief of permanent injunction. According to the plaintiffs' case, the suit property belonged to their grand father Chellamuthu and he had settled the same in favour of their grand mother Viruthambal by way of the settlement deed dated 07.12.1970 and Viruthambal in turn settled the suit property in favour of the plaintiffs by way of the settlement deed dated 12.08.1996 and since then, it is only the plaintiffs who had been continuously enjoying the suit property and thereby acquired prescriptive right in respect of the same and the defendants have no right, interest or title over the suit property and on the other hand, inasmuch as the defendant attempted to interfere with their possession and enjoyment of the suit property, according to them, they had instituted the suit seeking for appropriate relief.

6. The defendants disputed the title of Chellamuthu and Viruthambal in respect of the suit property and challenged the truth and validity of the settlement deed said to have been executed in favour of the plaintiffs as put forth in the plaint and also disputed that the plaintiffs had been enjoying the suit property by way of the abovesaid documents and acquired prescriptive title to the same. According to the defendants, the suit property is a natham poramboke and the first defendant had been enjoying the same by putting up a thatched structure for more that 15 years and paying kists to the Government and the plaintiffs cannot claim any exclusive right, possession and enjoyment over the suit property and recognizing the possession and enjoyment of the first defendant, he has been granted patta and hence the suit is liable to be dismissed.

7. The plaintiffs who have lost in both the courts, have laid the second appeal.

8. The plaintiffs seek title to the suit property based upon two settlement deeds dated 07.12.1970 and 12.08.1997 marked as Exs.A1 and A2. According to the plaintiffs, the suit property

originally belonged to their grand father Chellamuthu and he had settled the same in favour of their grand mother Viruthambal by way of Ex.A1 settlement deed. Further according to the plaintiffs, Viruthambal had settled the property in their favour by way of Ex.A2 settlement deed. However, the plaintiffs have not established that Chellamuthu, their grand father had exclusive title, possession and enjoyment of the suit property as put forth by them entitling him to settle the same in favour of Viruthambal, their grand mother. On a perusal of the property comprised in Exs. A1 and A2, particularly, the boundaries recited therein, as rightly determined by the courts below, the properties comprised in the abovesaid documents are not found to be one and the same. Excepting the southern boundary, all the other boundaries given to the properties comprised in the abovesaid documents totally differ. In such view of the matter, when the same property is not found to be involved in Exs.A1 and A2, the case of the plaintiffs in tracing title to the suit property by way of Ex.A1 settlement deed, as such, falls to the ground. By way of Ex.A2 document, the property described therein is shown to be a vacant site and in such view of the matter, the claim of the plaintiffs that they had been enjoying the said property by paying house tax, etc., also, cannot be readily accepted. When as could be seen from the evidence of P.W.1, examined on behalf of the plaintiffs that he owns five to six houses in the suit village and when the suit property has not been described as consisting of a super structure and on the other hand, the same is described only as a vacant site and furthermore, the door number of the super structure said to be located in the suit property is also not disclosed by the plaintiffs in the plaint and when the house tax receipts projected by the plaintiffs are not shown to be related to the alleged super structure found in the suit property, the courts below are found to be fully justified in not placing reliance upon the house tax receipts projected by the plaintiffs marked as Exs.A4 to A9. The patta document projected by the plaintiffs marked as Ex.A3 stands in the name of Pavadai, son of Chellamuthu and another. P.W.1 during the course of cross examination has admitted that the other person mentioned in the patta Ex.A3 refers to the first defendant Karuppan, accordingly, when Ex.A3 patta is found to be issued both in the name of Pavadai and Karuppan jointly, it does not stand to reason as to how the plaintiffs could claim exclusive title to the suit property and sans any material pointing to the same in any manner, it does not stand to reason as to how the plaintiffs traces their title to the suit property from their grand father Chellamuthu by way of Ex.A1 settlement deed. When the patta issued in respect of the suit property is found to be jointly issued in favour of Pavadai and Karuppan, the claim of the plaintiffs that thereafter, they had been issued exclusive patta marked as Ex.A10 also cannot be accepted, particularly,

when Ex.A10 is found to be issued after the institution of the suit. Furthermore, when there is no material placed on record on the part of the plaintiffs that Ex.A10 patta had come to be issued in their favour after issuing notice to one and all, particularly, the defendants, no reliance, at all, could be fastened upon Ex.A10 patta for accepting the plaintiffs' case.

9. In the light of the abovesaid discussions, when the plaintiffs are not shown to be the exclusive owners of the suit property and the plaintiffs have also failed to establish the exclusive title of their predecessors in interest and furthermore, when the plaintiffs had failed to establish the actual extent of the property in the suit survey number, which is in their possession and enjoyment, the relief of permanent injunction sought for by the plaintiffs, cannot be granted in their favour and the same is found to be rightly declined by the courts below. In such view of the matter, I do not find any reason to interfere with the judgment and decree of the courts below dismissing the plaintiffs' suit.

10. In the light of the above position, 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 question of law formulated in this second appeal is accordingly answered against the plaintiffs and in favour of the defendants.

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

bga

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Subordinate Court,
Kallakuruchi
2. The III Additional District
Munsif Court, Kallakuruchi.

Copy to:-

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

+1cc to Mr.A.G.Rajan, Advocate, SR.No.27201

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Kak (31/07/2019)



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