

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.02.2019

PRONOUNCED ON : 14.02.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.1565 of 2005

Ayyamperumi Udayar	...	Appellant/Plaintiff
	Vs.	
Veeramuthu	...	Respondent/Defendant

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 13.11.2003 passed in A.S.No.85 of 2000 on the file of the Sub-Court, Kallakurichi, confirming the Judgment and Decree dated 30.11.1998 passed in O.S.No.768 of 1992 on the file of the I Additional District Munsif's Court, Kallakurichi.

For Appellant : Mr.K.A.Ramakrishnan

For Respondent : Mr.V.Bhiman

JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 13.11.2003 passed in A.S.No.85 of 2000 on the file of the Subordinate Court, Kallakurichi, confirming the Judgment and Decree dated 30.11.1998 passed in O.S.No.768 of 1992 on the file of the 1st Additional District Munsif Court, Kallakurichi.

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

" 1).Whether the courts below are right in believing the case of the defendant of oral partition in respect of the lands in S.No.180/4 as being the lands left out in the registered partition in the absence of any evidence?

2).In equity whether the appellant is not entitled to the entire extent of lands in S.No.180/4 when he was allotted with a property not belonging to the joint family so

as to compensate him for the reduction occurred in the total extent allotted to him?"

3.Considering the scope of the issues involved in the second appeal 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.Parties are referred to as per their rankings in the trial Court.

5.The suit has been laid by the plaintiff for the reliefs of declaration, permanent injunction and for damages.

6.The plaintiff has claimed the reliefs sought for in the suit in respect of the suit property described to be lying in Nagalur Village in Kallakurichi Taluk in R.S.No.180/4 of an extent of 1 Acre 78 cents and for claiming title to the abovesaid property described in the plaint schedule, the plaintiff mainly relies upon Ex.A1 partition deed dated 05.10.1982. According to the plaintiff's case, in the partition effected between him, his brother and the defendant, the suit property had come to be allotted to his share and further, according to the plaintiff, though the suit property is comprised in R.S.No.180/4 measuring an extent of 1 Acre 78 cents, it is pleaded that in the abovesaid partition deed, the abovesaid extent has been shown in two items as measuring an extent of 15 cents in R.S.No.180/ 4 and 1 Acre 73 cents in R.S.No.180/3 and it is further pleaded by the plaintiff that R.S.No.180/3 does not belong to the plaintiff's family and the said property belongs to one Lakshmana Bakthar and situated on the western side of R.S.No.180/4 and thereby, contended that following Ex.A1 partition deed, it is he, who has been in the possession and enjoyment of the suit property as described in the plaint by obtaining patta and cultivating the crops and paying kists and inasmuch as the defendant, without any authority, attempted to interfere with his possession and enjoyment of the suit property, according to the plaintiff, he has been necessitated to lay the suit for appropriate reliefs.

7.The defendant has resisted the plaintiff's suit admitting the partition effected between the family members as per Ex.A1 partition deed and also admitted that R.S.No.180/3 does not belong to the family. However, disputed the claim of the plaintiff that he has been allotted the suit property of an extent of 1.78 cents as described in the plaint and according to him, by way of the abovesaid partition deed, the plaintiff had been allotted an extent of 15 cents in R.S.No.180/4 lying on the extreme western side north to south and as regards the remaining

extent of 1.63 cents, it is pleaded by the defendant that the same had been divided east-west and the northern share comprising of an extent of 83 ½ was allotted to the defendant and the southern share comprising of an extent of 74 cents was allotted to the plaintiff and thereby, put forth the case that it is only the defendant, who has been in possession and enjoyment of the extent comprising of an extent of 83 ½ cents in R.S.No.180/4 on the northern side and the plaintiff is not entitled to claim the reliefs prayed for and accordingly, sought for the dismissal of the plaintiff's suit.

8. In the light of the rival pleas put forth by the respective parties, as rightly determined by the Courts below, at the foremost, the plaintiff has to establish that his family owned the suit property as described in the plaint. Though the plaintiff, during the course of his evidence, would claim that the suit property had been acquired by his father by way of sale, however, to evidence the same, no document is forthcoming on the part of the plaintiff. To further establish that his father or his ancestors had been in possession and enjoyment of the suit property as described in the plaint neither the patta, chitta adangal extract nor the kist receipt standing in the name of the plaintiff's father or his ancestors has been produced by the plaintiff and in such view of the matter, as rightly determined by the Courts below, it is evident that the plaintiff's claim of title to the suit property as described in the plaint through his father / ancestors and subsequently, by way of Ex.A1 partition deed, as such, had been rightly disbelieved by the Courts below and thus, it is noted that for claiming title to the suit property, the only document relied upon by the plaintiff is only the partition deed marked as Ex.A1. However, as rightly determined by the Courts below, in the partition deed Ex.A1, admittedly, the suit property has not been described as given in the plaint and on the other hand, on a perusal of Ex.A1 partition deed, it is found that insofar as R.S.No.180/4 is considered, out of the total extent comprised therein, it is seen that the plaintiff has been allotted only an extent of 15 cents within the specific boundaries and in such view of the matter, the case of the plaintiff that he has been allotted an extent of 1 acre 78 cents in R.S.No.180/4 i.e. the suit property by way of Ex.A1 partition deed does not merit acceptance.

9. It is the case of the plaintiff that by mistake, the remaining extent in R.S.No.180/4 has been wrongly described in the partition deed Ex.A1 as comprised in R.S.No.180/3 of an extent of 1 acre and 73 cents and according to the plaintiff, the abovesaid property comprised in R.S.No.180/3 does not belong to the family and it really belongs to one Lakshmana Bakthar, whose property comprised in R.S.No.180/3 is lying on the western

side of R.S.No.180/4 and on that basis, the plaintiff seeks claim of title to the suit property. However, as pointed out by the Courts below, if really, any such mistake had crept in the partition deed in describing the suit property as put forth in the plaint, by this point of time, the plaintiff would have endeavoured to obtain necessary rectification deed from all concerned with regard to the correct description of the suit property. Furthermore, when considering the extent given in Ex.A1 partition deed, one item shown as 15 cents and another item shown as 1 acre and 73 cents in R.S.No.180/3, if the same are added, it is found that the total extent would come to 1 acre 88 cents in R.S.No.180/4. On the other hand, even according to the plaintiff, the suit property measures an extent of only 1.78 cents in R.S.No.180/4, it is thus evident that without any basis, the plaintiff has come forward with the case, as if the suit property has been wrongly shown in the partition deed Ex.A1 as R.S.No.180/3 of an extent of 1 acre 73 cents.

10.With reference to the case of the plaintiff that he has been in possession and enjoyment of the suit property following Ex.A1 partition deed, absolutely, there is no acceptable material forthcoming on the part of the plaintiff. In this connection, the plaintiff would rely upon the adangal extract marked as Ex.A3. On a perusal of Ex.A3, it is found that the abovesaid adangal is found to be pertaining to fasalis from 1393 to 1400 and the suit property is shown to be in the possession and enjoyment of the plaintiff. However, when as put forth by him, the suit survey number has not been correctly furnished in Ex.A1 partition deed, it has not been explained by the plaintiff as to how the revenue authorities had chosen to depict his name as being the sole occupant of the suit property comprised in R.S.No.180/4. The patta mentioned in Ex.A3 is not produced. As rightly determined by the Courts below, the adangal extract Ex.A3 cannot be sole basis for upholding the plaintiff's claim of title to the suit property. The kist receipts marked as Exs.A4 to 7 also do not denote that the same had been paid for an extent of 1.78 cents in the suit survey and therefore, the abovesaid documents would not in any manner serve the plaintiff's case.

11.As rightly determined by the Courts below, considering the documents projected by the plaintiff, when they are found to be not disclosing that the plaintiff has a valid title to the suit property and the same is in his effective and settled possession and enjoyment and when the plaintiff himself had admitted during the course of his evidence as per Ex.A1 partition deed, he has been allotted only 15 cents in R.S.No.180/4 and also admitted that the remaining extent of 1 acre 63 cents had not been shown in Ex.A1 partition deed and furthermore, when the plaintiff has failed to establish that

following Ex.A1 partition deed, the suit property has been in his valid possession and enjoyment and also the plaintiff having failed to establish that his father / ancestors had title to the suit property as put forth by him, in all, it is found that the plaintiff has miserably failed to establish his claim of title, possession and enjoyment of the suit property. As rightly determined by the Courts below, taking advantage of the wrong description of the property in Ex.A1 partition deed, it is found that the plaintiff has come forward with the case, as if the suit property had been allotted to him under Ex.A1 partition deed. However, he having failed to substantiate his case by placing acceptable and reliable materials and when at the foremost, he has failed to establish that his family owned the suit property comprising of an extent of 1.78 cents, in such view of the matter, the Courts below are fully justified in declining the reliefs sought for by the plaintiff.

12.As regards the claim of damages put forth by the plaintiff on the footing that the defendant had destroyed the coriander crops raised by him in the suit property and thereby, he is entitled to the damages prayed for, as rightly determined by the Courts below, absolutely, there is no material worth acceptance evidencing that the plaintiff had raised coriander crops in the suit property and the adangal extract projected by him marked as Ex.A3 does not disclose that the plaintiff had raised coriander crops in the suit property and on the other hand, the adangal extract depicts the raising of maize and sesame and furthermore, if really, the defendant had destroyed the coriander crops raised by the plaintiff, the plaintiff would have initiated necessary action against the defendant as per law and when with reference to the same, there is no document projected on the part of the plaintiff and furthermore, when the plaintiff has failed to establish the quantum of damages said to have been suffered by him on account of the alleged destruction of the coriander crops by the defendant, in all, it is seen that the Courts below are fully justified in negating the relief of damages prayed for by the plaintiff.

13.In the light of the above discussions, the Courts below are found to have analysed the materials placed on record, both oral and documentary, in the right perspective and correctly determined that the plaintiff has failed to establish his title, possession and enjoyment of the suit property as projected in the plaint by placing acceptable and reliable materials and in such view of the matter, no interference is called for with reference to the abovesaid determination of the Courts below. In my considered opinion, no substantial question of law is involved in the second appeal. Be that as it may, the substantial questions of law formulated in the second appeal are

accordingly, answered against the plaintiff and in favour of the defendant.

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

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1.The Sub-Court, Kallakurichi.

2.The I Additional District Munsif Court,
Kallakurichi.

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

+lcc to Mr.V.Bhiman, Advocate sr.13125

+lcc to Mr.K.A.Ramakrishnan, Advocate sr.13537

S.A.No.1565 of 2005

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