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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.02.2019

PRONOUNCED ON : 25.02.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A.No.843 of 2005

and

C.M.P. No.11881 of 2005

1.D.Jayapal

2.A.Sarathy

...Appellants/Appellants/Defendants

Vs.

G.Purusothamman

...Respondent/Respondent/Plaintiff

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 23.10.2003 in A.S.No.44 of 2002 passed by the Subordinate Judge, Ranipet, confirming the decree and judgment of the District Munsif, Ranipet in O.S.No.125/1998 dated 28.06.2002.

For Appellants : Mr.M.Kamalanathan

For Respondent : Mr.T.P.Prabhakaran

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 23.10.2003 passed in A.S.No.44 of 2002, on the file of the Subordinate Court, Ranipet confirming the judgment and decree dated 28.06.2002 passed in O.S.No.125 of 1998 on the file of the District Munsif Court, Ranipet.

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

3. Suit for Permanent injunction.

4. The case of the plaintiff in brief is that the suit properties and the other properties originally belonged to Annasamy Naidu, son of Gopal Naidu and he had executed two settlement deeds dated 15.06.1956 in respect of the suit properties in favour of his sister's sons namely, Jayarama Naidu and Venkatesa Naidu and pursuant to the same, the abovesaid Jayarama Naidu and Venkatesa Naidu acquired title to the suit



properties and they had been in the possession and enjoyment of the same and in or about 1957 Venkatesa Naidu died without leaving any legal heirs and accordingly, Jayarama Naidu had inherited the share of Venkatesa Naidu and continued to be in the possession and enjoyment of the entire suit properties as the absolute owner and the patta had been issued in his favour and he had been enjoying the suit properties by paying kists, service charges, etc., and Jayarama Naidu died intestate leaving behind his son, the plaintiff and daughters Anusuya and Baby and accordingly the children of Jayarama Naidu succeeded to the properties and the plaintiff has levied the suit on his behalf as well as on behalf of the other co-owners. The suit properties continued to be in the possession and enjoyment of the plaintiff and the same could be evidenced from the patta issued in favour of the plaintiff and the kists receipts projected by the plaintiff and furthermore, the plaintiff has also perfected his right to the suit properties by way of the adverse possession also. The defendants have no right or interest in any manner in respect of the suit properties nor in the possession and enjoyment of the same and on the other hand inasmuch as they had been attempting to interfere with his possession and enjoyment of the properties illegally, according to the plaintiff, he has been necessitated to lay the suit for appropriate relief.

5. The case of the defendants in brief is that the suit laid by the plaintiff is not maintainable either in law or in facts. The settlement deeds relied upon by the plaintiff are not true and valid and they are created documents and the suit properties are not in the possession and enjoyment of the plaintiff or his predecessors in interest as put forth in the plaint and the abovesaid settlement deeds had not been acted upon and the claim of the plaintiff that he is in the possession and enjoyment of the suit properties is not true. The first defendant's mother's sister Jayammal executed a registered will dated 23.06.1993 in favour of the first defendant when she was hale and healthy and the abovesaid will has been duly attested and accordingly, the first defendant had acquired title to the suit properties and following the same, alienated the third item of the suit properties in favour of the second defendant on 10.12.1997 to the knowledge of the plaintiff for a good and valid consideration and the suit properties are in the possession and enjoyment of the defendants and hence the suit laid by the plaintiff is not sustainable and without the prayer for declaration, the plaintiff's suit not maintainable and hence the suit is liable to be dismissed.

6. In support of the Plaintiff's case, P.W.1 was examined and Exs.A1 to A18 were marked. On the side of the defendants D.W.s.1 to 4 were examined and EXs.B1 to B37 were marked.



7. 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 relief prayed for by the plaintiff. Impugning the same, the present second appeal has been laid by the defendants.

8. At the time of admission of the second appeal, the following substantial question of law was formulated for consideration.

"Whether the courts below were correct in granting a decree for permanent injunction when no cause of action is either pleaded or proved as to the infringement of the plaintiff's right to possession"

9. The plaintiff claims title to the suit properties based on the settlement deeds dated 15.06.1956 marked as Exs.A1 and A2. According to the plaintiff, the suit properties originally belonged to Annasami Naidu and that the said Annasami Naidu had executed the settlement deeds marked as Exs.A1 and A2 in favour of the plaintiff's father Jayarama Naidu and one Venkatesa Naidu and following the same Jayarama Naidu and Venkatesa Naidu acquired title to the suit properties and enjoying the same and as Venkatesa Naidu died issueless, his brother Jayarama Naidu succeeded to his share in the suit properties and after the demise of Jayarama Naidu, his children including the plaintiff had inherited the suit properties and accordingly enjoying the same and inasmuch as, the defendants without any entitlement or right interfered with the possession and enjoyment of the plaintiff in respect of the suit properties, according to the plaintiff, he has been necessitated to lay the suit for appropriate relief.

10. Per contra, the defendants had disputed the title, possession and enjoyment of the plaintiff in respect of the suit properties and in particular, disputed the settlement deeds relied upon by the plaintiff marked as Exs.A1 and A2 for claiming the title to the suit properties and according to the defendants the abovesaid settlement deeds had not been acted upon and following the same neither the beneficiaries / settlees nor the plaintiff had been in the possession and enjoyment of the suit properties as claimed by the plaintiff and according to the defendants, Jayammal, the maternal aunt of the first defendant had bequeathed the suit properties in favour of the first defendant by way of the registered will dated 23.06.1993 marked as Ex.B4 and following the same, it is only the first defendant, who had acquired title to the suit properties and accordingly the first defendant had alienated the



third item of the suit properties in favour of the second defendant on 10.12.1997 and thus putforth the case that the suit properties are in the possession and enjoyment of the defendants and accordingly prayed for the dismissal of the plaintiff's suit. Further, a plea has also been taken by the defendants that the suit laid by the plaintiff without the relief of declaration is not maintainable.

11. From the settlement deeds marked as Exs.A1 and A2 it is found that as putforth by the plaintiff, the suit properties had been settled by Annasami Naidu in favour of Jayarama Naidu and Venkatesa Naidu. The plaintiff is the son of Jayarama Naidu. The plaintiff has levied the suit on his behalf as well as on behalf of the other children of Jayarama Naidu. From the materials placed on record, it is found that the parties are not at issue that the suit properties originally belonged to Annasami Naidu. In fact, the defendants had resisted the plaintiff's suit based on the will said to have been executed in favour of the first defendant by Annasami Naidu's wife namely Jayammal. The abovesaid will has been marked as Ex.B4. On a perusal of the recitals contained in Ex.B4 will, as rightly determined by the courts below, there are clear recitals contained therein that the suit properties originally belonged to Annasami Naidu and that he had executed the settlement deeds in respect of the suit properties in favour of Jayarama Naidu and Venkatesa Naidu and it has been further recited in the abovesaid will that inasmuch as the abovesaid settlement deeds executed by Annasami Naidu had not been acted upon, Annasami Naidu continued to remain in the possession and enjoyment of the suit properties till his death and after his demise, it is recited that his wife had succeeded to the suit properties. Therefore, as rightly determined by the courts below, when the title of Annasami Naidu to the suit properties has been clearly admitted by the defendants in their title deed marked as Ex.B4 will and furthermore, when the settlement deeds relied upon by the plaintiff had also been clearly admitted in Ex.B4 will, in such view of the matter, it is for the defendants to establish that the abovesaid settlement deeds marked as Exs.A1 and A2 executed by Annasami Naidu had not been acted upon and despite the execution of the same in favour of Jayarama Naidu and Venkatesa Naidu, Annasami Naidu continued to remain in the possession and enjoyment of the suit properties as putforth by the defendants. From the documents projected by the plaintiff it is seen that following the execution of the settlement deeds marked as Exs.A1 and A2, it is found that the patta had come to be issued in favour of Jayarama Naidu, which could be evidenced from the patta pass book marked as Ex.A3 and furthermore, the other patta pass books issued in favour of Jayaraman Naidu have also come to be marked as Exs.A13 and A14. As above noted, the plaintiff is the son of Jayarama Naidu and according to the



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plaintiff's case, after the demise of Jayarama Naidu, he has been in the possession and enjoyment of the suit properties. To evidence that the plaintiff has been enjoying the suit properties by paying kists, etc., the kists receipts in the name of the plaintiff have come to be marked as Exs.A5 to A12 and the patta pass book issued in favour of the plaintiff has been marked as Ex.A15. Furthermore, to establish that Jayarama Naidu had been in the possession and enjoyment of the suit properties, the chitta and adangal extracts has been marked as Ex.A18 and from the said document, it is found that for the fasalis from 1384 to 1392, the entries are made therein denoting that it is only the Jayarama Naidu who had been in the possession and enjoyment of the suit properties. Furthermore, the Tahsildhar has also issued the solvency certificate Ex.A17 in favour of the plaintiff indicating the ownership of the plaintiff in respect of the suit properties with survey number, extent, etc., and the abovesaid documents, in toto, would go to show that, as rightly determined by the courts below, inasmuch as the settlement deeds marked as Exs.A1 and A2 executed by Annasami Naidu had been acted upon, following the same it is seen that Jayarama Naidu and Venkatesa Naidu had been in the possession and enjoyment of the suit properties and after the demise of Jayarama Naidu, his son, the plaintiff, continues to be in the possession and enjoyment of the suit properties and thus it is made clear by the plaintiff, by placing acceptable and reliable documents, that the suit properties are in his possession and enjoyment and furthermore, the plaintiff has also clearly established as to how he had derived the title to the suit properties from the original owner, namely, Annasami Naidu and when from Ex.B4 will, the ownership of the suit properties as originally belonging to Annasami Naidu and the factum of Annasami Naidu having executed the settlement deeds in favour of Jayarama Naidu and Venkatesa Naidu having been admitted by the defendant himself, still to establish the truth and validity of the settlement deeds marked as Exs.A1 and A2, it is found that the plaintiff had taken steps to examine the witnesses who had attested the settlement deeds marked as Exs.A1 and A2 and the necessary steps taken by the plaintiff with reference to the same having been returned as reporting that the attestors are no more, it is seen that as pointed out by the courts below, the plaintiff had been incapacitated to examine the attestors to the abovesaid settlement deeds to further buttress his case. Be that as it may, when the factum of the execution of the settlement deeds in respect of the suit properties by Annasami Naidu in favour of Jayarama Naidu and Venkatesa Naidu has been clearly recited in Ex.B4 will, the alleged title document of the defendants and all that the said document recites is that the abovesaid settlement deeds have not come into force and on the other hand, when the documents projected by the plaintiff, as above pointed out, go to disclose that the settlement deeds marked as Exs.A1



and A2 had been acted upon and following the same, the settlees and thereafter, the plaintiff, has been in the possession and enjoyment of the suit properties continuously, it is clear, as determined by the courts below, that it is only the plaintiff who has been in the possession and enjoyment of the suit properties as the true owner thereof along with the other legal heirs of the deceased Jarama Naidu.

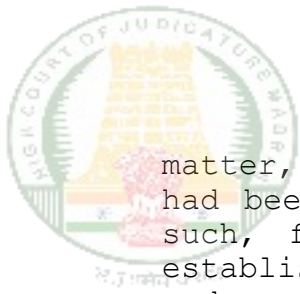
12. In the light of the abovesaid discussions, when Exs.A1 and A2 are found to have been acted upon and it is only the settlees and thereafter, the plaintiff who has been in the possession and enjoyment of the suit properties, to establish the contrary, the defendants should have placed acceptable and reliable materials to evidence that despite Exs.A1 and A2, the defendants are in the possession and enjoyment of the suit properties following Ex.B4 will. At the foremost, as rightly determined by the courts below, when the original owner Annasami Naidu had settled the suit properties in favour of Jayarama Naidu and Venkatesa Naidu by way of Exs.A1 and A2 and when Exs.A1 and A2 are found to have come into force immediately and acted upon, in such view of the matter, the claim of the testator Jayammal under Ex.B4 that the abovesaid settlement deeds had not been acted upon and the suit properties continued to remain in the possession and enjoyment of Annasami Naidu and thereafter with her, his wife and thereby she has acquired title to the same and entitled to bequeath the same in favour of the first defendant has been rightly disbelieved by the courts below, as no reliable and convincing proof has been placed by the defendants pointing to the same. Though the defendants had endeavoured to establish Ex.B4 will by examining the attestator as D.W2, when the entitlement of Jayammal to bequeath the suit properties in favour of the first defendant by way of Ex.B4 will has not been established by the defendants, it is evident that the claim of title to the suit properties by the first defendant based on Ex.B4 will has been rightly discountenanced by the courts below and the same does not warrant any interference.

13. Inasmuch as the original owner of the suit properties is Annasami Naidu, the documents projected by the defendants in the name of Annasami Naid marked as Exs.B21 to B29, would be of no use to sustain the defence version. The same had been rightly assessed and analysed by the courts below. The defendants had chosen to produce the patta document standing in the name of Jayammal marked as Ex.B2, however, when the defendants has failed to establish as to when the said patta had come to be issued in favour of Jayammal and with reference to the same, there is no indication contained therein, accordingly, it is found that no reliance could be placed upon Ex.B2 document for upholding the title of Jayammal in respect of the suit properties. As regards the case of thoraya patta marked as



Ex.B3, the same is not shown to be pertaining to the suit properties and different survey number is mentioned therein. As rightly determined by the courts below, Ex.B3 would be of no use to sustain the case of the defendants. It is contended that the plaintiff is residing at Kancheepuram and therefore, he would not have been in the possession and enjoyment of the suit properties and in this connection, they had come forward with the mortgage deed dated 05.05.1993 executed by the plaintiff in favour of Shanmuga Pillai marked as Ex.B5. In Ex.B5, the plaintiff is shown to be residing in Kancheepuram and however, as rightly determined by the courts below, considering the distance between the suit properties and Kancheepuram, being not on the higher side, the said document would be of no use to disbelieve the plaintiff's case. The defendants have marked the hospital records pertaining to the eye operation conducted on Jayammal as Exs.B8 to B12, Jayammal death certificate Ex.B13, hospital records pertaining to Annasami Naidu marked as Exs.B14 to B16, however, when the abovesaid documents are not shown to be useful to resolve the issues involved in the matter as regards the title, possession and enjoyment of the suit properties, the abovesaid documents had been rightly not taken into consideration by the courts below. From the document marked as Ex.B30, the petition forwarded by the first respondent to the Tahsildar, voters documents marked as Exs.B31 to B33, it is found that the first defendant and the Jayammal are the permanent residents of Chennai and in such view of the matter, the abovesaid documents belie the case of the first defendant that he or Jayammal is in the possession and enjoyment of the suit properties as claimed by him. Similarly, the documents projected by the defendants as Exs.B34 to B37 are found to be not germane for deciding the issues involved in the matter and accordingly, no reliance had been placed by the courts below on them for determining the issues involved in the matter.

14. in the light of the above discussions, the defendants having accepted the title documents of the plaintiff in the will projected by them marked as ExB4 and on the other hand, had chosen to project the rival claim of title to the suit properties without any basis based upon Ex.B4 will, particularly, failing to establish the entitlement and the competency of the testator Jayammal to execute the abovesaid will in favour of the first defendant in respect of the suit properties and on the other hand putforth a false claim of title to the suit properties based upon Ex.B4 will, it is evident that, thereby, they had admitted the fact that the plaintiff is in the possession and enjoyment of the suit properties and in such view of the matter, it is found that, accordingly, the plaintiff had been necessitated to levy the suit against the defendants for permanent injunction to safeguard his possession and enjoyment of the suit properties and in such view of the



matter, the contention of the defendants' counsel that the suit had been laid by the plaintiff without any cause of action, as such, falls to the ground and inasmuch as the plaintiff has established his possession and enjoyment of the suit properties and as the defendants had failed to establish their claim of possession and enjoyment based on Ex.B4 will and in such view of the matter accepting the cause of action pleaded and established by the plaintiff, it is found that the courts below had proceeded to grant the relief of permanent injunction in favour of the plaintiff, which in my considered opinion, do not warrant any interference.

15. A plea has been taken by the defendants' counsel that the suit laid by the plaintiff without the relief of declaration is not sustainable. However, considering the rival claims of title put forth by the respective parties in respect of the suit properties as above pointed out, when the title of the plaintiff has been clearly admitted by the defendants by way of Ex.B4 will and only have taken a plea that the abovesaid settlement deeds had not come into force, but having failed to establish the same and on the other hand, the plaintiff is found to have established that the abovesaid settlement deeds had come into force and acted upon and following the same he and his predecessors in interest has been in the possession and enjoyment of the suit properties, in the light of the abovesaid factual matrix, in my considered opinion, the relief of declaration is not necessarily required to be prayed for by the plaintiff for sustaining the relief of permanent injunction sought for and in such view of the matter, the abovesaid contention put forth by the defendants' counsel for challenging the plaintiff's case does not merit acceptance.

16. In the light of the above discussions, the substantial question of law formulated in this second appeal is accordingly answered against the defendants and in favour of the plaintiff.

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

s/d-
Assistant Registrar

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Sub-Assistant Registrar

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To

1. The Subordinate Court, Ranipet

2. The District Munsif Court, Ranipet.

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

+1 CC to Mr. M. Kamalanathan, Advocate sr 16935

+1 CC to Mr. T. P. Prabhakaran, Advocate sr 16820.

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and

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AD(CO)

SP(08/09/2021)