



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.04.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

S.A.No.127 of 2013

and

M.P.No.1 of 2013

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N.Subramani

... Appellant/plaintiff
Vs.

1. N.Velu

2.V.Sathiyaraj

... Respondents/Defendants

PRAYER: Second Appeal filed under Section 100 of C.P.C., against the Judgement and decree passed in A.S.No.12 of 2012 dated 31.07.2012 on the file of the Additional Sub-Court, Tiruvannamalai, confirming the judgment and decree dated 28.01.2012 made in O.S.No.107 of 2010 on the file of the Principal District Munsif Court, Tiruvannamalai.

For Appellant : Mr.N.Kumar Rajan
for M/s.Kumar and Baskar

For Respondents : Mr.V.Raghavachari

JUDGMENT

This Second appeal has been filed by the appellant/plaintiff against the judgment and decree passed by the Additional Sub Judge, Tiruvannamalai in A.S.No.12 of 2012 dated 31.07.2012 confirming the judgment and decree passed by the Principal District Munsif, Tiruvannamalai in O.S.No.107 of 2010 dated 28.01.2012.

2. The appellant/plaintiff herein had filed a suit in O.S.No.107 of 2010 on the file of the Principal District Munsif, Tiruvannamalai to declare his title over the suit property ; for permanent injunction to restrain the defendants, their men etc., from interfering with his peaceful possession and enjoyment of the suit property.

3. The learned Principal District Munsif, Tiruvannamalai by the Judgment and decree dated 28.01.2012 had dismissed the said suit with cost. Aggrieved by the same, the plaintiff had filed an appeal in A.S.No.12 of 2012 on the file of the Additional Sub-Judge,



Tiruvannamalai. The Additional Sub-Judge, Tiruvannamalai by the Judgment dated 31.07.2012 had dismissed the said appeal without cost and thereby confirmed the Judgment and Decree passed by the Trial Court. Being aggrieved, the plaintiff has filed the present Second Appeal.

4. For the sake of convenience, the parties are referred to as described before the Trial Court.

5. The averments made in the plaint are brief as follows:

The Plaintiff and the first defendant are brothers. The second defendant is the son of the first defendant. The plaintiff, the first defendant and their father Nadesa Gounder constituted a Hindu joint family and they were enjoying their ancestral properties. In or about 35 years ago, there was an oral partition among them and in the said oral partition, certain properties were allotted to the share of the plaintiff. Subsequently, on 05.08.1977, the plaintiff had purchased the suit property from one Thangavelu Chetty and his daughter Muniyammal under a registered Sale Deed and from the date of purchase, he has been in possession and enjoyment of the suit property. The plaintiff installed a 5 H.P. Electric Motor and Pumpset in the suit well in the year 1986 by obtaining an Electric Service Connection. The patta for the suit property has been transferred to the name of the Plaintiff. The facts remain so, the defendants attempted to prevent the Plaintiff from enjoying the suit property and hence the plaintiff was constrained to file the above suit for declaration and permanent injunction.

6. The averments made in the written statement filed by the defendants 1 and 2 are in brief are as follows:

a) The facts that the plaintiff and the first defendant are brothers and the second defendant is the son of the first defendant are not disputed. It is also true that the plaintiff and the first defendant and their father Nadesa Gounder constituted a Hindu joint family and they were enjoying their ancestral properties. But it is false to state that in or about 35 years ago, the ancestral properties were divided by their father Nadesa Gounder in to two equal shares and one such share was allotted to the plaintiff and another share was allotted to the first defendant without keeping any property to them. There was an oral partition between the plaintiff and the first defendant and their father Nadesa Gounder only in the year 1988 and since the date of said partition, the plaintiff and the defendants have been in separate possession and enjoyment of their respective shares. In the said



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partition, their father Nadesa Gounder did not take any property towards his share. It is false to state that the plaintiff had purchased the suit property from one Thangavelu Chetty and his daughter Muniyammal under a registered Sale Deed dated 05.08.1977 out of his own funds.

b) It is also false to state that he installed 5 H.P. Electric Motor and Pumpset in the suit well in the year 1986 by obtaining separate service connection. It is also false to state that the patta has been transferred into the name of the plaintiff. The father of the plaintiff and the first defendant became aged and he was unable to manage the joint family and hence, the plaintiff who being the elder son, has taken management of the joint family in the year 1975 and the entire ancestral properties have been managed by the plaintiff on behalf of the joint family. From and out of the income derived from the joint family properties, the suit properties were purchased by the plaintiff for the benefit of the joint family. From the date of said purchase, the joint family has been in possession and enjoyment of the entire suit property and hence the suit property is also considered as joint family property.

c) In the oral partition, which took place in the year 1988, the plaintiff was allotted only an extent of 1.90 acres in Survey No.36/5B and several other properties. The first defendant was allotted the remaining extent of 19 cents which is situated on the South Eastern Corner of the Survey No.36/5B along with other properties and from that date onwards the plaintiff and the first defendant have been in possession and enjoyment of their respective shares. The suit well in Survey No.36/5B was kept as the common well for the use of plaintiff and the first defendant. The first defendant had constructed a house in the said 19 cents and he is enjoying the same. The said 19 cents has been earmarked with distinct ridges. Due to jealous over the prosperity of the defendants, the plaintiff has filed the above vexatious suit and therefore, the defendants prayed to dismiss the suit.

7. Based on the aforesaid averments, the Principal District Munsif, Tiruvannamalai had framed necessary issues and tried the suit. During trial, on the side of the plaintiff, the plaintiff examined himself as PW1 and marked Exs.A1 to A7. On the side of the defendants, the first defendant was examined as D.W.1 and one more witness was examined as D.W.2 and the defendants have marked Exs.B1 to B4.



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8. The learned Principal District Munsif, Tiruvannamalai after considering the materials placed before her found that the first defendant is in possession of 19 cents in the South Eastern Corner of Survey No.36/5B and also found that the plaintiff and the first defendant are taking water on alternative days from the suit well. She further found that the plaintiff has failed to prove that he is in exclusive possession on the entire suit property. Accordingly, she dismissed the suit with cost.

9. Aggrieved by the same, the plaintiff had filed an appeal in A.S.No.12 of 2012 on the file of the Additional Sub Judge, Tiruvannamalai. The Additional Sub-Judge, Tiruvannamalai had dismissed the said appeal confirming the Judgment and Decree passed by the Trial Court. Aggrieved by the same, the plaintiff has filed the present Second Appeal.

10. This Court at the time of admitting the Second Appeal has formulated the following substantial questions of law:

" (1) The Judgment and Decree of the Lower Appellate Court is contrary to law and erroneous?

(2) The Courts below failed to appreciate the contentions raised by the appellant/plaintiff herein regarding title to the Suit Schedule Property?

(3) Both the Courts erroneously held that the appellant/plaintiff herein failed to establish his case regarding the title to the Suit Schedule Property?

11. Heard, Mr.N.Kumar Rajan for M/s.Kumar and Baskar, the learned counsel for the appellant and Mr.V.Raghavachari, learned counsel for the respondents.

12. Substantial Questions of Law 1 to 3:-

The learned counsel for the appellant/plaintiff has submitted that the Courts below failed to consider that the ancestral properties were divided orally 35 years ago and only thereafter, the plaintiff has purchased the suit property in the year 1977 out of his own funds. He further submitted that the Courts below failed to consider that when the father of the plaintiff and the first defendant namely Nadesa Gounder was alive, the plaintiff could not act as the manager of the joint family. He further



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submitted that the Courts below erroneously came to the conclusion that the patta produced by the defendants was given to both the plaintiff and the defendants. He further submitted that the Courts below failed to consider that the patta is not a document of title. He further submitted that the sale deed clearly shows that the suit property was purchased by the plaintiff out of his own funds and therefore, he prayed to allow the Second Appeal and to set aside the Judgments and Decrees passed by the Courts below.

13. Per contra, the learned counsel for the respondents/defendants has submitted that the plaintiff has not come to the Court with clean hands. He further submitted that the plaintiff, while examining himself as P.W.1 has categorically admitted that the first defendant is in possession of 19 cents in Survey No.36/5B and also admitted that the first defendant is taking water in the suit well on alternative days. He further submitted that the patta produced by the defendants would clearly show that in the oral partition, 19 cents in the aforesaid survey number has been allotted to the share of the first defendant and half share was given in the suit well. He further submitted that taking into consideration of all the aforesaid facts, the Trial Court has rightly found that the plaintiff has miserably failed to prove the title and possession of the entire suit property and the same has been confirmed by the First Appellate Court and in the said factual concurrent findings, this Court cannot interfere and therefore, he prayed for dismissal of the Second Appeal.

14. This Court has considered the rival submissions and perused the records.

15. It is an admitted fact that the plaintiff and the first defendant are brothers and the second defendant is the son of the first defendant. It is also an admitted fact that the plaintiff, the first defendant and their father Nadesa Gounder constituted a Hindu joint family and they were enjoying their ancestral properties and that the ancestral properties were orally divided between the plaintiff and the first defendant and in the said partition, their father Nadesa Gounder did not take any share.

16. According to the plaintiff, the said oral partition was took place in or about 35 years ago and only thereafter, on 05.08.1977, he had purchased the suit properties out of his own funds from one Thangavelu Chetty and his daughter Muniyammal and hence, the defendants have



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no right over the suit properties. The case of the defendants is that the said oral partition did not take place in or about 35 years as alleged by the plaintiff, but it took place only in the year 1988. Their further case is that since the said Nadesa Gounder became old and he could not manage the joint family properties, the plaintiff being the elder member took over the management of the joint family properties and out of the income derived from the joint family properties, the suit property was purchased in the name of the plaintiff for the benefit of the joint family. Their further case is that only after purchasing the suit property in the year 1988, the entire joint family properties including the suit property were divided orally between the plaintiff and the first defendant and in the said oral partition, their father Nadesa Gounder did not take any share.

17. The plaintiff while examining himself as PW1, has categorically admitted that he is cultivating only 1.90 acres in Survey No.36/5B and the remaining 19 cents are in possession of the first defendant. He also admitted that, in the said 19 cents, the first defendant has constructed a shed and he is residing there. Further, it is seen from Ex.B1-Patta, the first defendant is in possession and enjoyment of 19 cents. Further P.W.1 has admitted in his evidence that the first defendant is taking water in the suit well on alternative days. Therefore it is clear that only after purchasing the suit property, a oral partition was took place in the family and in the said oral partition in Survey No.36/5B, 1.90 acres alone was allotted to the share of the plaintiff and the remaining 19 cents were allotted to the share of the first defendant. It is also clear that in the suit well, half share was given to the first defendant. Therefore, the plaintiff cannot seek declaration and permanent injunction in respect of the entire suit property. However, taking in to consideration the admission made by the defendants in their written statement that the plaintiff is in exclusive possession of 1.90 acres, the plaintiff is entitled to the decree for declaration and permanent injunction atleast to that extent. But the Courts below, without taking in to consideration of the aforesaid facts have erroneously dismissed the entire suit. The Courts below ought to have moulded the relief and restricted the relief to the extent, the plaintiff is in possession and enjoyment of the property. Hence, this Court is inclined to allow the Second Appeal partly. Accordingly the Substantial Questions of law are answered.



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18. In the result the Second Appeal is partly allowed. Consequently, the connected Miscellaneous Petition is also closed. The Judgments and Decrees passed by the courts below are set aside. The suit is partly decreed as follows:-

(i) That out of total extent of 2.09 acres in S.No.36/58 (New S.No.40/2) of Aradapattu Village, the plaintiff's title is declared in respect of 1.90 acres alone (excluding 19 cents on South Eastern Corner which is in possession of the First defendant) and half share in the well and 5 H.P. Electric Motor and Pumpset with electric service connection bearing S.C.No.148 therein;

(ii) That the defendants are restrained by means of permanent injunction from interfering with the plaintiff's possession and enjoyment of the aforesaid property;

(iii) That the suit is dismissed in respect of the aforesaid 19 cents which is in possession of the first defendant and remaining half share in the well and 5 H.P. Electric Motor and Pumpset with electric service connection bearing S.C.No.148 therein; and

(iv) That the parties are directed to bear their respective costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1.The Additional Sub-Court,
Tiruvannamalai.

2. The Principal District Munsif Court,
Tiruvannamalai.

3. The Section Officer, VR Section,
High Court, Madras.

+1cc to Mr.Kumar and Baskar , Advocate SR.No. 39337

+1cc to Mr.V.Raghavachari , Advocate SR.No. 39606

S.A.No.127 of 2013
and

M.P.No.1 of 2013

gp (CO)
A.SK(03/01/2020)