

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.40 of 2013

Munisamy

... Appellant/2nd Defendant

Vs.

1.Malarvizhi

..1st Respondent/Plaintiff

2.Muthammal

..2nd Respondent/1st Defendant

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree in A.S.No.01 of 2011 dated 17.02.2012 on the file of the learned District Munsif, Krishnagiri, confirmed by the learned Principal Subordinate Judge, Krishnagiri, against the judgment and decree in OS No.360 of 2007 dated 26/11/10 on the file of the learned District Munsif, Krishnagiri.

For Appellant : Ms. Selvi George

For Respondents : Mr.P.M. Duraiswamy for R1
No appearance for R2

JUDGMENT

The above Second Appeal is filed at the instance of the unsuccessful defendant in a suit filed for the following relief:

"(a)declaring the title of plaintiffs into the suit property,

(b)granting permanent injunction restraining the defendants and their men from any manner trespassing into the suit property or interfering with peaceful possession and enjoyment of the plaintiff in the suit property,

(c)declaring the Sale Deed dated 24.03.1999 executed by the 1st defendant in favour of the 2nd defendant in respect of the suit property as null and void."

2.The suit is filed with reference to the following property:

"Krishnagiri R.D., and Taluk, Bargur Sub R.D., Majith Gollahalli Village the land in S.No.26/11, dry Hectare 0-29-0 (Acre 0.72). Rs.0/81 in this the land

an extent of Dry Acre 0-36 situated within the boundaries of South of the remaining land of plaintiff (in the Sale Deed the 1st defendant wrongly mentioned as Villidevi, who is mother of plaintiff);

North of the Poramboke land;
East of the land of Raji @ Chennappan; and
West of the land of Attukaran."

3.The parties are referred to in the same litigative status as in the suit.

4.It is the case of the plaintiff that she is the daughter of the 2nd wife of the original owner of the property, one Krishnamurthy @ Kanmani. It is her case that there was a Partition between the plaintiff and his brothers and sisters 40 years ago and in the Partition, the suit property and other properties were allotted to the share of her father. After the death of the father, 30 years prior to the suit, the plaintiff's mother and Krishnamurthy's first wife Pottiammal were in possession and enjoyment of the said property. Patta was issued in the name of the said Pottiammal. After her demise on 26.01.1998, the plaintiff and her mother Valliammal have been in possession and enjoyment of the said property.

5.After the death of Pottiammal, the 1st defendant who is none other than the wife of the plaintiff's father's brother one Bharathan @ Chennappan started giving pinpricks in the enjoyment of the suit property. In furtherance of the same, she had executed a Sale Deed dated 24.03.1999 in favour of the 2nd defendant in respect of the suit property. This fact came to the knowledge of the plaintiff only in the month of August 2007, when the 2nd defendant had made a proclamation in the village that he has got Sale Deed for the suit property. The plaintiff thereafter obtained a certified copy of the Sale Deed and it was only then that she came to know that a sale was executed by the 1st defendant in favour of the 2nd defendant on 24.03.1999.

6.While so, on 08.12.2007, the defendants along with certain rowdy elements tried to trespass into the suit property and forcefully occupied the same and the plaintiff thwarted the said attempt and therefore, leaving the properties stating that the defendants will once again visit the suit property. Therefore, left with no other alternative option, the plaintiff has come up with the present suit.

7.The 1st defendant has filed her Written Statement in which she had contended that the oral Partition was not 40 years, but that it was 50 years prior to the filing of the suit and that in the Partition, the suit property was allotted to the 1st defendant's husband. It is her case that her husband and she

have been in absolute possession and enjoyment of the same. After sale the possession was handed over to the 2nd defendant on the very date of the Sale Deed and that he has been in possession and enjoyment of the suit properties since then. The 1st defendant would reiterate that insofar as the suit property is concerned in the oral Partition, the same had been allotted to her husband and the plaintiff had no right or title or interest of the same.

8.The parties had gone to trial before the learned District Munsif, Krishnagiri, who had framed the following issues:

(a)Whether the plaintiff is entitled to the suit property?

(b)Whether the plaintiff is entitled to injunction?

(c)Whether the Sale Deed dated 24.03.1999 should be declared as null and void?

9.The plaintiff had examined herself as P.W.1 and had marked Ex.A.1 to Ex.A.6 in support of her case. The 1st defendant did not choose to enter the witness box and only the 2nd defendant had entered into the witness box as D.W.1. He had also examined two other persons as D.W.2 and D.W.3 and marked Ex.B.1 to Ex.B.9 in support of his case.

10.The learned trial Judge, after considering the evidence on record both oral and documentary, came to the conclusion that the 1st defendant has no right or title to the suit property and therefore, could not convey the same to the 2nd defendant. The learned District Munsif has held that the possession of the property continued to be with the plaintiff as it is evident from the Kist receipt series filed by the plaintiff. The learned Judge has held that the defendants have not proved their case.

11.Challenging the said Judgment and Decree of the learned District Munsif, Krishnagiri, the 2nd defendant alone had filed an appeal. The Appeal before the learned Principal Subordinate Judge, Krishnagiri, in A.S.No.1 of 2011. The learned Principal Subordinate Judge, after considering the evidence on record, confirmed the Judgment and Decree of the learned District Munsif, Krishnagiri. Challenging the concurrent Judgment and Decree, the 2nd defendant is before this Court by way of Second Appeal.

12.While Admitting the Second Appeal, the following Substantial Questions of Law has been framed:

"(1)Whether the Courts below were right in relying on the patta and other revenue documents to decree the suit?

(2)Whether the Courts below were right in holding that the suit is in time?

(3)Whether the Courts below were right in holding

that the burden is on the defendants to prove that there was a oral partition?"

13.Ms.Selvi George, learned counsel for the appellant would contend that except for the patta, there is no other document that has been put forward by the plaintiff to prove her case and she cannot seek to have her title declared on the basis of the Kist receipt which is merely a piece of evidence to show possession. She had also argued that the suit is barred by limitation insofar as the relief to declare the Sale Deed dated 24.03.1999 as null and void is filed in the year 2007.

14.Mr.P.M.Duraiswamy, learned counsel for the 1st respondent would contend that the defendants have admitted the plaintiff's right to the property by stating that a portion of the property in Survey No.26/11 (36 cents) has been allotted to the plaintiff's father. Therefore, the defendants cannot now contend that the plaintiff has not proved the title to the property. The issue before this Court is whether there has been a Partition to the extent of 72 cents in Survey No.26/11 as contended by the defendant?. The plaintiff's contention is that the entire extent of 72 cents has been allotted to her father whereas the defendants would contend that 36 cents in Northern portion has been allotted to the plaintiff's father and the Southern portion has been allotted to the husband of the 1st defendant.

15.Considering the fact that there is no document of title since the property is admittedly an ancestral property in the hands of the family from a very long time. Therefore, the Courts below have examined the Kist receipt to find out who is in possession of the property and from the perusal of Ex.A.1, it is seen that the patta bearing No.44 stands in the name of Govindammal, W/o.Krishnamurthy. The said Kist receipt relates to Fasali 1392. i.e., of the year 1982. Thereafter, from a perusal of Ex.A.4 and Ex.A.3, it is seen that the patta bearing No.44 has been transferred in favour of the plaintiff. The patta passbook which has been produced would show that besides the suit property, the plaintiff is also entitled to the other properties. The patta passbook has been issued on 16.08.2002. Ex.A.4 is also the patta standing in the name of the plaintiff in respect of the suit property.

16.From a perusal of Ex.B.1 which is the Sale Deed executed in favour of the 2nd defendant, it is seen that the very recitals state that the property belongs to the vendor, the 1st defendant, as her ancestral property and through patta. However, the defendants who claim title on the basis of patta question the claim of the plaintiff. However, there is no document prior to 1999 to show that Kist has been paid by the 2nd defendant's

vendor, the 1st defendant. Further, the 1st defendant has not chosen to enter the witness box and only the subsequent purchaser has contested the case. On perusal of the Kist receipt, it is also seen that the payments have been made in respect of Patta No.44 which is admittedly in the name of the plaintiff. This document does not advance the case of the defendants.

17.The Substantial Question of Law No.1 is to whether the Courts below were right in relying on the patta and other revenue documents to decree the suit against the defendant. Since the defendant themselves claim title to the property on the basis of the patta, this question is answered in favour of the plaintiff. The Substantial Question of Law No.2 is as to whether the suit is barred by limitation. The plaintiff had categorically stated that it is only in the year 2007, when the defendant has announced in the Village that he had purchased the property and that the plaintiff came to know about the Sale Deed and immediately has taken steps to verify the same in the Sub Registrar Office and a perusal of Ex.A.6 which is the certified copy of the Sale Deed would clearly indicate that the certified copy has been obtained by the plaintiff only in the month of August 2007 and the suit has been filed on 14.12.2007 and therefore, the suit is filed well within the time from the date of knowledge. The Court below has shifted the burden on the defendant to prove the oral partition since the defendants had come forward with the case that even Survey No.26/11 had been partitioned between the brothers and they have not let in any evidence whatsoever to prove the partition whereas the plaintiff by filing the Kist receipt in respect of 72 cents has established the fact that the total extent of the suit property has been allotted to the share of her father. Therefore, the Question of Law No.3 is answered against the defendants. I find no justification in interfering with the concurrent findings of the Courts below.

In the result, this Second Appeal is dismissed. No costs.

Sd/-

Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

mps

To

1.The Principal Subordinate Judge,
Krishnagiri.

2.The District Munsif,
Krishnagiri.

+1cc to Ms. Selvi George, Advocate SR.No.56754

+1cc to Mr.P.M. Duraiswamy, Advocate SR.No.56635

S.A.No.40 of 2013

TM(CO)
GMY(19/11/2019)



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