

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.08.2019

PRONOUNCED ON : 18.09.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A.No.151 of 2016
and
C.M.P. No.3081 of 2016

Pichai Pillai ...Appellant /Plaintiff

Vs.

Govindarajan ... Respondent /Defendant

Prayer:

Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 01.07.2015 in A.S.No.26 of 2014 passed by the Additional District cum Sessions Court, Ariyalur, confirming the judgment and decree dated 26.02.2013 in O.S. No. 43 of 2010 before the Principal District Munsif Court, Ariyalur.

For Appellant : Mr.s. R. Meenal.

For Respondent : Mrs. R. Poornima.

JUDGMENT

Challenge in this Second Appeal is made to the judgment and decree dated 01.07.2015 passed in A.S.No.26 of 2014 on the file of the Additional District cum Sessions Court, Ariyalur, confirming the judgment and decree dated 26.02.2013 passed in O.S. No. 43 of 2010 on the file of the Principal District Munsif Court, Ariyalur.

2. For the sake of convenience, the parties are referred to as per their rankings in the trial court.

3. Suit for possession and mesne profits.

4. The case of the plaintiff, in brief, is that the suit property belongs to the plaintiff and same is his ancestral property and the plaintiff has left the village and settled in Mangalam village and the defendant is the close friend of the plaintiff and when the plaintiff left the village he had entrusted the suit property to the defendant and permitted him to occupy the same. The plaintiff had sold all the other properties in the suit village and retained the suit property alone. There is a house and shop put up by the plaintiff in the suit property and the defendant had maneuvered to get the house tax assessment in his name and the service connection qua the suit property without the knowledge of the plaintiff and on coming to know of the same, the plaintiff had again changed the assessment in his name and issued a notice calling upon the defendant to hand over the possession of the suit property and the defendant accepted to vacate the suit property in a short period of time, but, however, failed to keep up his promise and hence the suit for appropriate reliefs.

5. The defendant resisted the plaintiff's suit contending that the suit property is not the ancestral property of the plaintiff as claimed in the plaint and disputed that the plaintiff had entrusted the suit property to him when he left the suit village and also disputed that the defendant had maneuvered to get the house tax assessment and service connection in his name qua the suit property without the knowledge of the plaintiff and that on coming to know of the same, the plaintiff had changed the house tax assessment in his name and issued the notice and according to the defendant, the plaintiff has no cause of action to institute the suit and the suit property is situated in natham and was vacant and occupied by the defendant 30 years ago and he had constructed a thatched house in it and residing with his family members and also running the petty tea shop in the same and in recognition of his enjoyment, a certificate was issued by the Government in the year 1990 and the patta had also been issued in favour of the defendant in respect of the suit property and is paying the house tax to the panchayat and obtained service connection for the house situated in the suit property. The abovesaid facts are known to the plaintiff. The plaintiff owned a house on the west of the north south street in the suit village and sold it away when he left the village. There has been communal clash between the two communities in the suit village and that the plaintiff belongs to moopannar community and the defendant belongs to vaniar community and after the abovesaid trouble, there is no cordial relationship between the plaintiff and the defendant and the non issuance of reply to the legal notice issued by the plaintiff would not amount to admitting the plaintiff's case and the plaintiff has no manner of right, title or possession over

the suit property at any point of time and hence the suit laid by the plaintiff deserves dismissal.

6. In support of the plaintiff's case, P.Ws.1 to 3 were examined and Exs. A1 and A2 were marked. On the side of the defendant, D.Ws. 1 and 2 were examined and Exs.B1 to B7 were marked. Ex.C1 was 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 dismiss the plaintiff's suit. Impugning the same, the present second appeal has been preferred.

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

i. Whether in law the courts below are right in overlooking that as the appellant had better title to the suit property and as the respondent was claiming only possessor rights, title would prevail over possession?

ii. Whether in law the courts below are right in failing to see that the respondent was only a permissive occupant and that once the permission was withdrawn by issuing a suit notice, the suit had to be decreed in favour of the appellant?

iii. Whether in law the courts below are right in not referring to the probative value of Exhibit X1 ancient document, which proved the title of the appellant's father under Sections 32(7) and 90 of the Indian Evidence Act?

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9. This Petition is filed under Order 41 Rule 27 of CPC. The case of the petitioner / plaintiff is that she met her counsel at Chennai for instructing her to file the second appeal and she had informed that she was paying tax for the suit property till the respondent / defendant managed to get his name incorporated / included in the official records and also given various letters to the authorities concerned with reference to

the suit property and she was unable to file the said documents during the course of trial as she could trace the same only now and hence, according to the petitioner / plaintiff, the documents projected by her by way of the additional evidence are essential for proving her case and hence the petition.

10. The respondent / defendant resisted the abovesaid petition contending that the petitioner has no title to the suit property in any manner and it is only the defendant who has been in the possession of the suit property over a considerable period of time and the documents projected by the plaintiff as additional evidence are not related to the suit property and they are not true and genuine documents and have been projected for the purpose of the case and the documents had not been adverted to in the plaint in any manner and hence the abovesaid documents could not be received as additional evidence in the second appeal and the petition is, therefore, liable to be dismissed.

11. The plaintiff claims the suit property as his ancestral property, however, the same has been disputed by the defendant. Despite the abovesaid position, the plaintiff has not come forward in a clear manner as to how he claims the suit property as his ancestral property. Other than vaguely stating that the suit property is his ancestral property in the plaint, the plaintiff has not come forward in a clear manner as to from which ancestor he had traced his title to the suit property and how the alleged ancestor had acquired title to the suit property. Furthermore, in the courts below, the plaintiff had marked only two documents, namely, the legal notice issued by him as Ex.A1 and the acknowledgement card as Ex.A2. Other than the abovesaid two documents, absolutely there is no material on the part of the plaintiff evidencing that his alleged ancestor or he had at any point of time enjoyed the suit property in their own right by paying tax and the other charges as claimed in the plaint. Though the plaintiff would claim that there is a house and a shop put up by him in the suit property and he has been in the enjoyment of the same till he left the suit village, however, as above pointed out, there is no material on the part of the plaintiff evidencing either his or his alleged ancestors' possession and enjoyment of the suit property at any point of time. Furthermore, the plaintiff has not placed any document evidencing his claim of title to the suit property as projected by him.

12. The plaintiff would put forth the case that he had entrusted the suit property to the defendant, his friend, when he left the suit village. The plaintiff has not averred in the plaint as to when he left the suit village and when he entrusted the suit property to the defendant, but, very vaguely the plaintiff has pleaded that when he left the suit village, he had entrusted the suit property to the defendant. However, during the course of evidence, the plaintiff would claim that he had entrusted the suit property to the defendant during the year 1980. If that be so, necessary pleas to that effect would have been incorporated by the plaintiff in the plaint. Now, according to the plaintiff, as testified by him, at the time when he left the suit village, he had sold his house located to the west of the north south street to one Thangaraj and also alienated his lands to about 5 to 6 persons and would claim that he had retained only the suit property and entrusted the same to the defendant in the year 1980. However, when, as above pointed out, the plaintiff has miserably failed to establish that the suit property is his ancestral property and has been in his possession or his ancestor's possession at any point of time and the plaintiff having also failed to establish his alleged entrustment of the suit property to the defendant during the year 1980 as testified by him, in such view of the matter, the courts below are found to be justified in not acceding to the plaintiff case that he has a valid claim of title to the suit property.

13. The only document relied upon by the plaintiff for deriving title to the suit property is Ex.X1. According to the plaintiff, Ex.X1 relates to the property lying adjacent to the suit property and in Ex.X1, the suit property is shown as belonging to Karuppaiya Moopanar's vacant site in the boundary recitals and on that basis, according to the plaintiff, the suit property belongs to him. Karuppaiya Moopanar is stated to be the father of the plaintiff. No doubt, in Ex.X1 in the boundary recitals, one of the boundaries is shown as the vacant site of Karuppaiya Moopanar. However, Ex.X1 cannot be the basis for upholding the plaintiff's claim of title to the suit property. Ex.X1 is sought to be marked through P.W.2. P.W.2 has admitted that it is only the defendant who has been in the possession and enjoyment of the suit property for nearly 15-20 years and according to him, he does not know about the recitals contained in Ex.X1 directly and came to know about the same only through his father and in such view of the matter, when neither P.W.2 nor the plaintiff nor the defendant are the parties to Ex.X1 and when the parties to Ex.X1 had not been examined to establish the recitals contained therein, particularly, the boundary recitals, in the light of the decision relied upon by the defendant's

counsel 2007 (4) CTC 125 (M.Subramani vs. P. Shanmugam and others) wherefrom, the recitals as to boundaries mentioned in documents are not admissible in evidence unless the executants are examined and the position of law being as above, in such view of the matter, Ex.XI cannot be the basis for upholding the alleged claim of title of the plaintiff to the suit property and the above position of law had been rightly assessed and determined by the courts below in the right perspective.

14. Considering the documents projected by the defendant, in toto, when it is found that and also admitted as above pointed out, the defendant is found to be in the possession and enjoyment of the suit property by paying the tax, service charges, professional taxes to the panchayat for running the tea shop in the suit property and also the water charges and when the documents of the defendant lend support to his claim of possession and enjoyment of the suit property in his independent right and when the defendant has also been granted the certificate and patta with reference to his possession and enjoyment of the suit property, in all, it is found that the defendant has been in the possession and enjoyment of the suit property in his own right without any reference to the plaintiff whatsoever, and in such view of the matter, the courts below are found to be justified in declining the relief of possession of the suit property claimed by the plaintiff.

15. Though the plaintiff would claim that he had changed the tax assessment in his name after coming to know of the defendant's mutation of tax assessment, however, as above pointed out, there is no material on the part of the plaintiff evidencing his claim of possession and enjoyment of the suit property. Other than the legal notice, there is no document on the part of the plaintiff. No doubt, the defendant has not responded to the legal notice issued by the plaintiff. However, considering the facts and circumstances of the case, in toto, the failure of the defendant in responding to the legal notice, cannot be termed as fatal to the defence version in any manner and therefore, by way of Ex.A1 legal notice ipso facto, we cannot uphold the plaintiff's claim of title to the suit property as put forth by him.

16. In the light of the above position, the courts below are found to be justified in holding that the plaintiff has miserably failed to establish his claim of title to the suit property and also justified in holding that the plaintiff has miserably failed to establish that he had entrusted the suit property to the defendant and that the defendant is only in the permissive occupation of the plaintiff qua the suit property and the courts below are also found to be justified in not placing

reliance upon Ex.X1 deed considering the fact that Ex.X1 having not been established by the plaintiff in the manner known to law, as above pointed out, by examining the parties associated to the same, particularly, P.W.2 having no direct knowledge about the same and in such view of the matter, the courts below are found to be just and right in dismissing the plaintiff's suit and accordingly, I do not find any valid reason to interfere with the concurrent judgment of the courts below in any manner.

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17. The petition has been laid by the petitioner / plaintiff for the production of additional evidence. Considering the documents to be projected by the petitioner / plaintiff as additional evidence, it is found that those documents are found to come into existence even prior to the institution of the suit. In such view of the matter, the plaintiff should have endeavoured to produce the abovesaid documents during the trial. Absolutely, no valid reason has been projected by the plaintiff for the non production of the said documents before the trial court. The claim of the plaintiff that she was unable to produce the same before the trial court as the said documents could be retrieved only recently, cannot at all be believed, particularly, when the abovesaid case of the plaintiff is being strongly refuted by the respondent / defendant. Furthermore, the truth and genuineness of the documents projected by the plaintiff as additional evidence are being refuted by the respondent / defendant in toto. Considering the abovesaid factors, when the petitioner / plaintiff has miserably failed to establish the applicability of the ingredients of Order 41 Rule 27 of CPC to the present petition, in such view of the matter, I am unable to accede to the request of the petitioner's counsel for the reception of additional evidence as put forth by her. Resultantly, the petition is dismissed.

18. The plaintiff's counsel in support of her contentions placed reliance upon the decisions reported in 2012 5 SCC 370 (Maria Margarida Sequeira Fernandes and others vs. Erasmo Jack De Sequeira (dead) through Lrs.) and 2004 2 MLJ 708 (The Executive Officer, Kadathur Town Panchayat, Harur Taluk, Dharmapuri District vs. V. Swaminathan and others). When the plaintiff has laid the suit seeking the relief of recovery of possession based on title, as above pointed out, when the plaintiff has miserably failed to establish his claim of title to the suit property and when it is seen that the defendant is in the possession and enjoyment of the suit property in his independent right by paying tax and the other charges, as above pointed out, and when the plaintiff has miserably failed to

establish the alleged permissive occupation of the defendant qua the suit property at his instance as put forth by him, in such view of the matter, when the plaintiff has miserably failed to establish a better claim of title to the suit property than that of the defendant, in such view of the matter, the plaintiff cannot seek and obtain the reliefs as prayed for in the suit as determined by the courts below. In the light of the abovesaid factual matrix, the principles of law outlined in the decisions relied upon by the plaintiff's counsel are taken into consideration and followed as applicable to the case at hand.

19. The substantial questions of law formulated in this second appeal are accordingly answered against the plaintiff and in favour of the defendant.

20. In conclusion, the second appeal fails and is accordingly dismissed with costs. CMP NO. 3081 Of 2016 is dismissed. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

Copy to

1. The Additional District cum Sessions Judge,
Ariyalur.
2. The Principal District Munsif,
Ariyalur.
3. The Section officer,
V.R. Section, High Court, Madras.

+lcc to Mrs.Poornima, Advocate Sr.80905
+lcc to Mr.R.Subramanian, Advocate Sr.80433

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