

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.10.2019

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.182 of 2014

and M.P.No.1 of 2014

M.Ramasamy

..Appellant

Vs.

1. N.Rajan

Rep. by his Power Agent Vasantha

2. Sengodan

Kali Ammal (deceased)

3. Chandran alias Ramachandran

4. kaliyannan

5. Pappathi

6. Veerammal

7. Pappayi

..Respondents

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree of the learned Fast Track Court cum Additional District Judge, Namakkal, dated 10.06.2011 in A.S.No.23 of 2002, reversing the judgment and decree of the learned Additional District Munsif, Namakkal, dated 27.02.2002 in O.S.No.436 of 2000.

For Appellant : Mr.R.Neelakandan

For Respondents: Mr.P.Valliappan

J U D G M E N T

The 1st defendant in O.S.No.436 of 2000 who was successful in getting the suit filed by the plaintiff for declaration and injunction, dismissed upon its reversal by the lower appellate Court has come up with this second appeal.

2. The suit was originally filed by the plaintiff / appellant seeking a declaration of his title on the following pleadings:

The suit properties belonged to Muthusamy Gounder by virtue of his purchase on 12.08.1968. It is pleaded that the said Muthusamy Gounder got married and went to Malaysia along with his wife Chellammal and only male child viz., the 2nd defendant Sengodan. He was in Malaysia till 1954 where he begot two sons namely Sholi and 5th defendant Kaliannan and one daughter

Veerammal, 7th defendanat. The said Muthusamy Gounder returned India in the year 1954 and purchased a house and certain agricultural lands in Kalappanayakkanpatti village and again went back to Malaysia and returned in 1957. Thereafter, he purchased the suit property on 12.08.1968 out of his own income. On 26.10.1973, the said Muthusamy Gounder settled the suit properties to his grandson, through the 5th defendant Kaliannan namely Mani @ Balasubramanian, appointing his wife Chellammal as his guardian. The settlee namely Mani @ Balasubramanian died on 12.01.1977 leaving behind his mother Pappathi, the 6th defendant in the suit as his only legal heir. The plaintiff purchased the suit property from the said Pappathi under a Sale Deed dated 26.11.1993. Therefore, the plaintiff would seek a declaration of title and permanent injunction.

3. The suit was resisted by the defendants contending that the suit properties are not absolute properties of Muthusamy Gounder and he had no power to settle the same on minor Mani @ Balasubramanian. It was also contended that the 1st defendant herein had filed a suit in O.S.No.323 of 1986 on the file of the Subordinate Court, Namakkal for partition and separate possession of the share in the suit property in which exparte preliminary decree came to be passed on 24.08.1992. Thereafter, the suit was transferred to the District Munsif Court, Namkkal and renumbered as O.S.No.380 of 1998. In I.A.No.622 of 1998, a exparte final decree was also passed on 18.08.2000. Therefore, according to the defendants, the plaintiff being a lis pendens purchaser is not entitled to claim declaration of tile and injunction.

4. The trial Court on a consideration of the evidence on record concluded that the plaintiff being the lis pendens purchaser and the suit for partition having been decreed is not entitled to a declaration. On the above finding, without going into other questions the learned trial Judge dismissed the suit. Aggrieved, the plaintiff preferred an appeal in A.S.No.23 of 2002.

5. The lower appellate Court, upon reconsideration of the evidence on record, concluded that the suit properties are the self acquired properties of Muthusamy Gounder and the defendants being the children of Muthusamy Gounder have no right over the properties sold by him during his life time. In as much as the execution of the settlement Deed dated 26.10.1973 was not denied by the defendants, the lower appellate Court concluded that the plaintiff would get an unimpeachable title by virtue of the Sale Deed in his favour dated 26.11.1993, executed by Papathi who was the sole heir of minor Mani @ Balasubramanian who died on 12.01.1977. On the said findings, the lower appellate Court

allowed the appeal and granted a decree for declaration and injunction. The lower appellate Court also took notice of the fact that at a partition in the family of the defendants under Ex.A16 dated 20.01.1979, the suit property was not included. It was also noticed that the partition Deed contains a specific recital stating that there are no other properties to be divided between the parties and if any property is found, it will be treated as the property of a person in whose name it stands. The recital was taken to have the effect of estoppel against the 1st defendant who is the party to the partition Deed Ex.A16 by the lower appellate Court. Aggrieved by the judgment and decree of the lower appellate Court in decreeing the suit, the 1st defendant had filed the above second appeal.

6. The first appeal was disposed of by the lower appellate Court on 10.06.2011. In the interregnum, the 6th defendant in the present suit namely Papathi had filed an application in I.A.No.568 of 2000 under Order IX Rule 13 of C.P.C., seeking to set aside the exparte decree which came to be dismissed on 17.08.2000. No steps have been taken to file an appeal against the said order. Subsequently, an application was filed seeking to condone the delay of 2154 days in filing an appeal against the order dated 17.08.2000 made in I.A.No.568 of 2000. The said application was dismissed by the trial Court. A Civil Revision petition was also filed by the said Papathi in C.R.P (NPD) No.2624 of 2009 which came to be allowed setting aside the order by allowing I.A.No.283 of 2006 condoning the delay in filing the Civil Miscellaneous Appeal against the order dated 17.08.2000 made in I.A.No.568 of 2000.

7. It is stated across the bar that the Civil Miscellaneous Appeal in C.M.A.No.375 of 2011 came to be allowed resulting the exparte decree passed in O.S.No.380 of 1998 being set aside and the suit was restored to file. It is at that stage, the 1st defendant / appellant herein filed a petition in I.A.No.651 of 2012 seeking stay of further proceedings in O.S.No.380 of 1998 pending disposal of the present appeal namely S.A.No.182 of 2014. Upon dismissal of the said petition by the trial Court, the 1st defendant/appellant filed a Civil Revision petition in C.R.P(PD) No. 2551 of 2012. The said Civil Revision petition came to be allowed by this Court on 11.09.2012 staying all further proceedings in the partition suit in O.S.No.380 of 1998 pending the disposal of this second appeal. During the course of order, this Court had observed that the findings in the present suit namely O.S.No.436 of 2000, that is the suit for declaration and injunction, would operate as res judicata in the partition suit.

8. I have heard Mr.R.Neelakandan, learned counsel for the appellant and Mr.P.Valliappan, learned counsel for the respondents.

9. The following questions of law were framed at the time of admission:

- i) Whether the first appellate Court is justified in decreeing the suit, when the plaintiff, on whom the burden lies, failed to establish his right or title over the suit property?
- ii) Whether the first appellate Court was right in ignoring the judgment and decree passed by the competent Civil Court holding the suit property is a joint family property, where the vendor from whom the first respondent/plaintiff, purchased the suit property, is a party?
- iii) Whether the first appellate Court was right in declaring the preliminary and final decree passed in the partition suit covering the suit property holding it as a joint family property, as invalid, in the absence any prayer to declare as invalid.

10. The questions of law 2 and 3 would not now arise, in view of the fact that the exparte decree for partition has already been set aside and the suit is now pending. The only question of law to be considered by me at this juncture is 1st question of law.

11. Mr.R.Neelakandan, learned counsel for the appellant would vehemently contend that the 1st respondent/plaintiff had failed to establish his title over the suit property. The purchase being pending to partition suit, the same subject to the result of the suit.

12. Contending contra, Mr.P.Valliappan, learned counsel appearing for the 1st respondent/plaintiff would draw my attention to the written statement filed by the 1st defendant before the trial Court and submit that there is no plea to the effect that the suit properties are ancestral properties of Muthusamy Gounder. The execution of the settlement Deed dated 26.10.1973 by Muthusamy Gounder has not been specifically denied. The death of Mani @ Balasubramanian on 12.01.1977 is

also not denied. The fact that the 6th defendant/ the mother is the sole heir of Mani @ Balasubramanian is also admitted. The only denial according to Mr.P.Valliappan, is the purchase being pending to the partition suit and the partition suit having been decreed, the plaintiff cannot claim any title. The lower appellate Court on the consideration of the evidence on record concluded that the suit property is self acquired property of Muthusamy Gounder. The fact that the Muthusamy Gounder went to Malaysia, earned money, came back to India and purchased a house and agricultural lands in Kalappanayakkanpatti village is not disputed. The 1st defendant has not produced any evidence, much less any acceptable evidence to show that Muthusamy Gounder had ancestral properties and it was out of the income from the suit property which formed the nucleus, the suit properties were purchased.

13. The lower appellate Court has pointed out that another important circumstance, namely Ex.A16 partition which is dated 20.01.1979 wherein the defendants and other legal heirs of Muthusamy Gounder have divided the properties amongst themselves. The partition deed contains a recital that there are no other properties to be divided between the parties, if any properties are found, it will be treated as the property of a person whose name it stands. The 1st defendant is a signatory of the document. Therefore, the lower appellate Court had rightly held that the 1st defendant cannot be allowed to take a different plea in the present suit to contend that the suit property remained undivided and that he has a right over the property. Once it is held that the properties are absolute properties of Muthusamy Gounder, the settlement deed dated 26.07.1973 would be valid. On the death of Mani @ Balasubramanian on 12.01.1977 leaving behind the 6th defendant Papathi namely his mother to succeed to his estate, the sale by Papathi in favour of the plaintiff dated 26.11.1993 will have to be upheld. I therefore find that the plaintiff has proved his title to the suit property. The lower appellate Court has also found that pursuant to the sale in favour of the plaintiff, Revenue records were mutated and the plaintiff has produced enough evidence to show his possession right from the date of his purchase. I do not find any perversity in the findings of the lower appellate Court to enable me to interfere with the said factual finding in the second appeal.

14. The question of law no.1 is therefore answered against the appellant, in favour of the respondents. As already stated since the decree in the partition suit has been set aside, the other two questions of law need not be gone into.

15. In view of the above conclusions, the second appeal stands dismissed. However, there shall be no order as to cost. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

vum

To

1. The Fast Track Court cum
Additional District Judge, Namakkal

2. The Additional District Munsif,
Namakkal.

Copy to:

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

+2ccs to Mr.P.Valliappan , Advocate SR.No. 855+65

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A.SK(11/09/2020)