

IN THE HIGH COURT OF JUDICATUE AT MADRAS

Dated : 24.01.2019

CORAM :

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

S.A.Nos.602 and 603 of 2018
and

C.M.P.No.18302 of 2018 in S.A 603 of 2018

- 1.Shanbagavalli
- 2.Nagalakshmi
- 3.Santhi
- 4.Govindasamy

... Appellants in both
appeals/Plaintiffs

Vs.

Padmavathiammal (died)

1. Kalaimani1st respondent/LR and 2nd Defendant
2. G.Thiagarajan
3. G.Rangarajan
4. S.Nirmala Shanmugasundaram
5. Dr.S.Pandiya Kumar
6. G.B.Nandakumar

... Respondents 2 to 6 in S.A.No.602 of 2018
/Defendants 4 to 8

1. G.Thiagarajan
2. G.Rangarajan
3. S.Nirmala Shanmugasundaram
4. Dr.S.Pandiya Kumar
5. G.B.Nandakumar
6. Padmavathi

... Respondents 1 to 5/Defendants 4 to 8
...6th Respondent in S.A.No.603 of 2018/
2nd Respondent

Common Prayer: Second Appeals filed under Section 100 of the Code of Civil Procedure against the judgment and decree in A.S.Nos.6 of 2015 and 36 of 2014 respectively on the file of Sub-Court, Vaniyambadi dated 26.07.2018 in reversing the judgment and decree in O.S.No.303 of 1995 on the file of the Additional District Munsif Court, Vaniyambadi dated 01.11.2014.

In S.A.No.602 of 2018:

For Appellants : Mr.S.V.Jeyaraman, Sr.Counsel
Assisted by Ms.R.Poornima

For Respondents: Mr.M.S.Krishnan, Sr.Counsel
Assisted by Mr.D.Manimaran [For R1]

Mr.V.Raghavachari
for Mr.R.I.Ramesh [For R3 to R5]

In S.A.No.603 of 2018:

For Appellants : Mr.S.V.Jeyaraman, Sr.Counsel
Assisted by Ms.R.Poornima

For Respondents : Mr.M.S.Krishnan, Sr.Counsel
Assisted by Mr.D.Manimaran [For R2]

Mr.V.Raghavachari
for Mr.R.I.Ramesh [For R4 to R6]

COMMON JUDGMENT

The plaintiffs in O.S.No.303 of 1995 on the file of the Additional District Munsif Court, Vaniyambadi are the appellants herein. They laid a suit for declaration of title and for other ancillary reliefs. The suit was decreed by the trial court, challenging which the defendants 4 to 8 had preferred A.S.No.36 of 2014, and the defendants 1 and 2 had preferred A.S.No.6 of 2015. Both these appeals came to be allowed by the First Appellate Court by a common judgment. Challenging the decrees passed in these first appeals, the plaintiffs/appellants have come forward with the present appeals.

2. The suit property is described as an agricultural land measuring 1.40 acres in S.No.23/1 of Vaniyambadi Taluk and it is informed now that the property falls within Thirumalirunsolai Village. However, there is no dispute as to the identity of the property between the parties.

3. The core allegations in the plaint are: The suit property originally belonged to a certain Duraisamy Gounder, and that it was their ancestral property. Duraisamy Gounder died in 1962, leaving behind his only son Saravanan who succeeded to the suit property. Saravanan died in 1973 where upon the suit property devolved on his heirs, the 1st plaintiff, his widow and the other plaintiffs, their children. They further pleaded that they have

been in the continuous possession for over 50 years and the revenue records also stand in their names.

4. All the defendants resisted the suit with a common written statement. In their written statement, they contend :

The suit property originally belonged to a certain Tholappa Gounder @ Ramasamy Gounder. Tholappa Gounder had three sons namely, Munusamy Gounder, Duraisamy Gounder and Gopala Gounder. Duraisamy Gounder referred to here is the one and through whom the plaintiffs claim title. Some time in 1920, all the three brothers have orally partitioned the property in which, the brothers have obtained 45 cents each. While so, on 04.10.1935, Vide Ext.B1 sale deed Duraisamy Gounder had sold his 45 cents to Gopala Gounder, consequent to which, Duraisamy Gounder ceased to have any right over any portion of the suit property. So far as Munusamy Gounder's branch is concerned, by a Will dated 1949, the defendants 1 and 2 became entitled to his share in the suit property. It is also admitted that the plaintiffs came to be in possession of Gopala Gounder's portion, not based on their title but because of the fact that Gopala Gounder was a medical practitioner, and was away from the property owing to which Gopala gounder entrusted his brother Duraisamy Gounder to manage the property on his behalf. The revenue documents that obtained in favour of the plaintiffs or their predecessors' in title must have to be understood in the context of the relationship between the parties, and also in the context of Gopala Gounder's service in the Government as medical practitioner.

5. The dispute went for trial and before the trial court, the 2nd plaintiff, (daughter of Saravanan and grand daughter of Duraisamy Gounder) was examined as P.W.1. They also examined a set of authorities as PW3 to PW8, who speak in their favour and they produced Exts.A1 to A28 besides the causing the production of Exts.X1 to X13, all of which pertain to revenue records. For the defendants, 4th defendant Thiagarajan was examined as D.W.1. and he produced Ext.B1, the sale deed alleged to have been executed by Duraisamy Gounder in favour of Gopala Gounder.

6. On appreciating the evidence, the trial court decreed the suit on the ground that the plaintiffs have prescribed title to the suit property by adverse possession. This was reversed by the first Appellate Court. In arriving at its decision, the first Appellate Court has relied on the case of the defendants and more specifically Ext.B1 sale deed.

7. This appeal is not admitted. However, the respondents have filed their caveat petition and hence, both sides are heard today. Records of the Court below are also made available.

8. Confining the claim of the appellants to 45 cents alone, the learned counsel for the appellants raised the following points:

- a) Even going by the pleadings of the defendants, Duraisamy Gounder was allotted 45 cents in the suit property, and therefore, this 45 cents cannot be denied to him.
- b) With regard to this 45 cents, more particularly, the defendants 3 to 5 relied on Ext.B1 sale deed dated 04.10.1935. It is only a certified copy. In the absence of the explaining why the original sale deed, the primary evidence, second evidence cannot be received under Section 65 of the Evidence Act, the consequentially, the sale deed should not be looked into.
- c) That the defendants themselves admitted the possession of the plaintiffs, and they have not adequately explained why plaintiffs must be given possession over the suit property even long years after the demise of Gopala Gounder.
- d) Even if Ext.B1 is presumed to be true yet defendants 1 and 2 who claim under Munusamy Gounder have not explained why and how Duraisamy Gounder was in possession of their property.

9. Per contra, the learned counsel for the respondents would contend:

- a) The suit is founded on title and not on possession much less adverse possession. It is an admitted fact on both sides that the family possessed only one item of property, the one scheduled to in the plaint, and therefore, anything that the family needs to address on the title must be in relation to this only property.
- b) If Ext.B1 is considered, it discloses two facts: (i) Duraisamy Gounder admits a partition, and the properties allotted to his share in the partition was sold to Gopala Gounder. (ii) If the family possess only one item of suit property described in the plaint, then the property conveyed under Ext.B1 could not relate to any other property than this.
- c) PW1 in her cross examination would say that she has obtained the Encumbrance Certificate of the suit properties from 1935, but has not chosen to produce it before the Court. She would further submit that one set of defendants have filed O.S.No.250 of 1990 against her, from which she came to know about the allegation relating to Ext.B1 sale deed, that she had read the said document, and still she has chosen not to disclose it in her plaint.

d) So far as the argument of the plaintiffs/appellants touching upon Sec. 65 of the Evidence Act goes, it has to be viewed in the context. So far as possession goes, in a suit founded on title, any number of revenue records other than tax receipts would be of no advantage to the plaintiffs.

10.1 On weighing rival submissions, this Court finds that the plaintiffs/appellants are on the back foot. The cross examination of PW1 discloses her knowledge about Ext.B-1 sale deed yet she has not chosen to either disclose the same in the plaint, and how she continue to assert title over the suit property. It may be their strategy not to disclose the same in the plaint, but, it must be said that it has not worked to their advantage. In stating thus, this Court considers that the argument founded on Sec. 65 of the Evidence Act is made more out of desperation, rather than anything substantial.

10.2 Turning to the other aspects, while the plaintiffs are there to fight for the title to the entire property, they now confine their claim to only 45 cents, and if this 45 cents is available, decree could be granted. But Ext.B-1 evidences that even this 45 cents had been sold by Duraisamy gounder. No plea on adverse possession was positively made in the manner known to law either. And, given the context of the suit the revenue records would be of no advantage to them.

10.3 This Court does not find any merit in these appeals and therefore, there is no necessity to interfere with the order passed by the First Appellate Court.

11. In the result, both the appeals are dismissed and the judgment and decree in A.S.Nos.6 of 2015 and 36 of 2014 respectively on the file of Sub-Court, Vaniyambadi dated 26.07.2018 in reversing the judgment and decree in O.S.No.303 of 1995 on the file of the Additional District Munsif Court, Vaniyambadi dated 01.11.2014 are confirmed. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Subordinate Court,
Vaniyambadi.
2. The Additional District Munsif,
Vaniyambadi.
3. The Section Officer,
V.R.Section,
High Court, Madras.

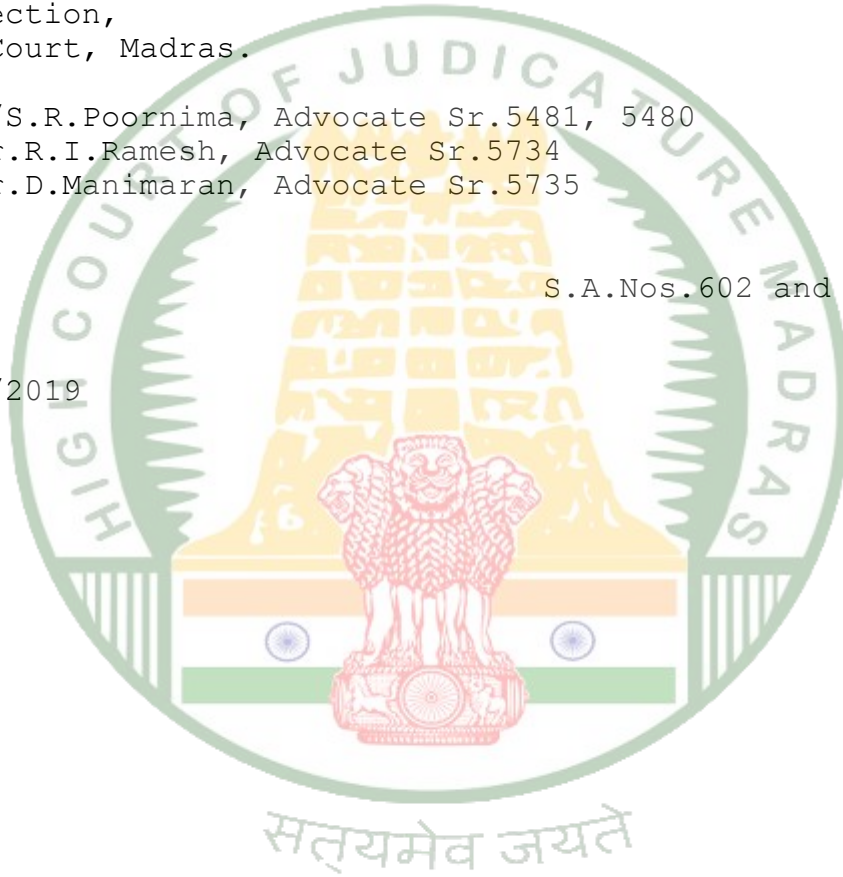
+2cc to M/S.R.Poornima, Advocate Sr.5481, 5480

+1cc to Mr.R.I.Ramesh, Advocate Sr.5734

+1cc to Mr.D.Manimaran, Advocate Sr.5735

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