

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.10.2019

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.122 of 2014
and M.P.No.1 of 2014

1. Kanakamma
2. Babuji Chetty ..Appellants/Respondents 1 and 2/
Defendants 1 and 3

Vs.

1. S.Neelagandam Chetty
2. Ramasamy Chetty ..Respondents/ Appellants/Plaintiffs

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree of the learned Subordinate Judge, Tiruttani, dated 31.10.2012 made in A.S.No.86 of 2011, reversing the judgment and decree of the learned District Munsif Court, Pallipattu, dated 24.03.2010 made in O.S.No.2 of 2004.

For Appellants : Mr.M.S.Palaniswamy

For Respondents : Mr.P.B.Balaji (for R1 & R2)

J U D G M E N T

The defendants in O.S.No.2 of 2004 are the appellants. The said suit was filed by the plaintiffs, seeking declaration of title and consequential injunction.

2. According to the plaintiffs, the property measuring about 99 cents in Survey No.78/3 belonged to the ancestors of the plaintiffs and defendants namely Mannar Chetty and Seenu Chetty. The plaintiffs are the grand children of Mannar Chetty and the defendants are the grand children of Seenu Chetty through his son Chengalvaraya Chetty. According to the plaintiffs, at an oral partition that took place several years ago, an extent of 49 ½ cents, out of total extent of 0.99 cents was allotted to Mannar Chetty and after his death, it was enjoyed by his son Subramania Chetty who died leaving behind the plaintiffs. Therefore, according to the plaintiffs, they are the owners of the land measuring 49 ½ cents in S.No.78/3. Since the defendants chose to deny the title and attempted to interfere

with the possession of the plaintiffs, the plaintiffs have come forward with the above suit.

3. The suit was resisted by the defendants contending that the suit property absolutely belonged to Seenu Chetty and on his death, the defendants are in possession and enjoyment of the same, hence the plaintiffs have no right over the property in S.No.78/3. The oral partition pleaded by the plaintiffs was also denied by the defendants. The defendants also set up adverse possession.

4. The trial Court upon consideration of the evidence on record found that the plaintiffs have not established that the suit property belonged to their ancestors. The Sale Deed dated 21.09.1917 filed by the plaintiffs in order to establish their title was rejected on the ground that the plaintiffs have not established that it relates to the suit property. Similarly, Ex.A7 Survey notice was also rejected on the ground that it does not relate to the suit property and the plaintiffs have not correlated the survey numbers found in those documents. On the said finding, the trial Court concluded that the plaintiffs have not established their title and dismissed the suit. Aggrieved, the plaintiffs preferred an appeal in A.S.No.86 of 2011.

5. The lower appellate Court on re-appreciation of the evidence, concluded that since the defendants have raised a plea of adverse possession, it should be presumed that they have admitted the title of the plaintiffs. The lower appellate Court further found that the defendants have not established the plea of adverse possession, therefore, the plaintiffs are entitled to succeed. On the above findings, the lower appellate Court allowed the appeal and decreed the suit.

6. Aggrieved, the defendants are on second appeal.

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

- i. Whether the lower appellate Court was right in allowing the appeal on the ground that the appellants have failed to prove their adverse possession, on the assumption that the suit property belonged to the respondents/plaintiffs? (sic)
- ii. The lower Appellate Court failed to see that under Indian Limitation Act it is the burden on respondents/plaintiffs to prove that they were in possession of the suit property within 12 years from the date of filing plaint. In the present suit the respondents/plaintiffs have not

established that they were in possession within 12 years from the date of filing and hence the lower Appellate Court cannot shift the burden on the appellants to prove their case? (sic)

iii. The lower Appellate Court failed to see that the respondents/plaintiffs in their plaint have contended that they have perfected title by adverse possession and hence it is an admission on the part of the respondents that the appellants got title to the suit property and the respondents title is only by way of adverse possession? (sic)

iv. The findings of the lower Appellate Court is based on misconception and its facts and its not supported by any acceptable evidence. The lower Appellate Court accepted the genealogy given by the respondents/plaintiffs as true and correct when the same was denied and repudiated by the appellants /defendants? (sic)

8. I have heard M.S.Palaniswamy, learned counsel for the appellants and Mr.P.B.Balaji, learned counsel for the respondents.

9. It is settled law that in a suit for declaration of title, it is for the plaintiff to prove title by unimpeachable evidence. They cannot rely upon the weakness of the defendants to succeed in suit on title. In support of the claim of the plaintiffs, the only documents produced are Exs.A7 and A8. No doubt, true, both Exs.A7 and A8 are very old documents. But the plaintiffs have miserably failed to establish Exs.A7 and A8 relate to the suit property. Exs.A8 Sale Deed is of the year 1917 and relates to the property situated in two numbers namely S.Nos.54 and 44, it is not known whether those numbers are Paimash numbers or survey numbers. Ex.A7 is the notice issued to Mannar Chetty, for survey and it relates to the suit property namely S.No.78/3. But the old Survey numbers given are 53, 54 and 63 and old Survey No. 44 is missing. In the Sale Deed dated Ex.A8, the extent of the property is given in Kuzies and there is no evidence to show that the extent purchased under Ex.A8, would be equal to 99 cents. Moreover, the documents stand in the name of Mannar Chetty, while the case of the plaintiffs is that the suit property was purchased by Mannar Chetty and Seenu Chetty. Therefore, neither Ex.A7 nor Ex.A8 can be relied upon to confer any absolute title in favour of the plaintiffs.

10. Per contra, the defendants have produced Revenue Records including Village A Register extract, to show that the suit property has always been in their possession and Patta has also been granted to Chengalvaraya Chetty, the husband of the 1st defendant and father of the defendants 2 to 4.

11. In the light of the evidence available, I do not think that the lower appellate Court was right presuming title of the plaintiffs merely because the defendants had raised a plea of adverse possession also. The defendants have specifically denied the title of the plaintiffs and claimed that they are in possession continuously for a longer period. In a case, where the defendants have not expressly admitted title of the plaintiffs, the Court cannot presume the title of the plaintiffs, merely because the defendants have pleaded adverse possession. Hence, the question of law No.1 is answered in favour of the appellants.

12. In view of the answer to the question of law No.1 and the factual finding rendered by the trial Court that the plaintiffs have not established their title of the suit property which, in my considered opinion, has been wrongly set aside by the lower appellate Court, I do not think the questions of law relating to adverse possession need be gone into.

13. I find that the lower appellate Court has not considered the evidence in a right perspective and there is a perversity in the findings with regard to the reliance placed under Exs.A7 and A8 on the ground that the documents are old and pertain to the year 1917. But, the original of Ex.A8 has not been produced and only the copy of Ex.A8 has been produced which has been obtained in the year 2007. The presumption with regard to old documents cannot be drawn in respect of copies of documents unless the copy itself is thirty years old. Therefore, the lower appellate Court was wrong in applying the presumption relating to ancient documents under Section 90 of the Indian Evidence Act, with reference to Ex.A8.

14. Hence, I find that the lower appellate Court had reversed the Judgment of the trial Court on a misconception and mis-reading of the documents produced. As regards Ex.A7, the same is only survey notice and P.W.1 in his evidence has deposed that he does not know whether Mannar Chetty has appeared on the date of enquiry and whether the Patta was granted in his favour. No patta has been produced by the plaintiffs.

15. In view of the above, the 4th question of law is answered in favour of the appellants. The appeal is allowed, the Judgement and decree of the lower appellate Court is set aside and the judgment of the trial Court is restored. Consequently, connected miscellaneous petition is closed. However, considering the relationship between the parties, there shall be no order as to costs.

Sd/-
Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

vum

To

1. The Subordinate Judge,
Tiruttani.
2. The District Munsif,
Pallipattu.
3. The Section Officer,
VR Section,
Madras High Court,
Chennai.

+1cc to Mr.M.S.Palaniswamy, Advocate SR.No.86765

+1cc to Mr.PN.Ramanujam, Advocate SR.No.86729

S.A.No.122 of 2014
& M.P.No.1 of 2014

PM (CO)
GMY (16/06/2020)

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