



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.07.2019

CORAM:

THE HONOURABLE **MR. JUSTICE S.S.SUNDAR**

S.A.(MD)No.277 of 2019

and

C.M.P.(MD)No.5355 of 2019

P.Susila

... Appellant/Appellant/Defendant

Vs.

Panchacharam

represented by his power agent

A.Ramasamy

... Respondent/Respondent/Plaintiff

Prayer: Second Appeal is filed under Section 100 of Civil Procedure Code, 1908, to set aside the judgment and decree passed in A.S.No.37 of 2011 on the file of Subordinate Court, Pattukottai, dated 20.09.2017 confirming the decree and judgment passed in O.S.No.70 of 2006 on the file of District Munsif-cum-Judicial Magistrate Court, Orathanadu, dated 26.08.2010.

For Appellant

:Mr.R.P.Ramachandran

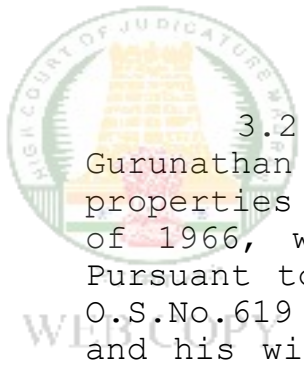
JUDGMENT

The defendant in the suit in O.S.No.70 of 2006 on the file of the District Munsif-cum-Judicial Magistrate Court, Orathanadu, is the appellant in this second appeal.

2.The respondent herein, as plaintiff, filed the suit in O.S.No.70 of 2006 before the District Munsif-cum-Judicial Magistrate Court, Orathanadu, for permanent injunction restraining the defendant from interfering with the peaceful possession and enjoyment of the suit property by the plaintiff. The suit property is described, as a property measuring an extent of 54 Ares in S.No.43/2A and an extent of 28 Ares in S.No.43/2B in Ambalapattu South Kudikadu Village, Orathanadu Taluk. Though there is no dispute in respect of the property in S.No.43/2B, the dispute is only in respect of the property in S.No.43/2A.

3.The case of the plaintiff/respondent in the suit is as follows:

3.1.The suit property and other properties originally belonged to one Muthusamy Mathurar. He died leaving behind his four sons, by name, Ramasamy Mathurar, Appusamy Mathurar, Duraisamy Mathurar and Murugaiyan. Ramasamy Mathurar died, leaving behind his son, Gurunathan. Gurunathan had a wife, by name, Angammal. Appusamy Mathurar died leaving behind his son, one Palanisamy. The wife of Palanisamy is the defendant in the suit.

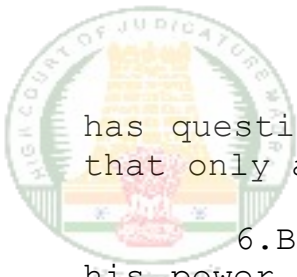


3.2.The suit property was purchased by the plaintiff from Gurunathan and his wife Angammal. The suit property and other properties were the subject matter of partition suit in O.S.No.619 of 1966, which was filed by Murugaiyan, s/o. Muthusamy Mathurar. Pursuant to the preliminary decree, that was passed in the suit in O.S.No.619 of 1966, final decree application was filed by Gurunathan and his wife Angammal. An extent of 88 cents was allotted to the said Gurunathan and Angammal and that the said property was taken possession by them and enjoyed by them. Except the said Gurunathan and Angammal, no other person, who was a party in the suit, secured possession, as per the preliminary decree or final decree.

3.3.Subsequent to a family arrangement, the said Gurunathan has acquired another extent of 46 cents in S.No.43/2 from Murugaiyan by way of oral sale. The plaintiff, on the basis of sale deed obtained from Gurunathan and his wife, is in enjoyment of the suit property. Though the suit was originally filed for bare injunction, subsequently, the relief was amended by including the prayer of declaration of title.

4.The suit was contested by the appellant/defendant. The contention of the plaintiff/respondent regarding family arrangement was denied by the appellant/defendant. The defendant specifically raised a plea that her husband, namely, Palanisamy Mathurar, had purchased the property covering an extent of 2 Acres in R.S.No.43 out of 2 acres 23 cents through a registered sale deed, dated 19.04.1955, from his vendor, by name, Thambusami Mathurar. It is further stated that the defendant's husband was enjoying the property, as an absolute owner and that nobody else, has any title or possession over the property purchased by the appellant's husband. It is further stated that the said property has been sub divided as R.S.No.43/2A, measuring 0.54.0 Ares and R.S.No.43/2A measuring 0.28.0 Ares. It is the further case of the appellant that during UDR, patta for R.S.No.43, which was sub divided as S.No.43/2 covering an extent of 2 Acres was given in the name of one Murugaiyan and Gurunathan, wrongly.

5.It is also stated that the appellant as soon as, she came to know about the wrong issuance of patta in UDR, filed a petition before the Tahsildar concerned to alter the revenue records in her name in the year 1998. It is also stated that the request of the appellant was favourably considered by the Revenue Authorities. It is further stated that the plaintiff's power agent, one Ramasamy though filed an appeal as against the order of Tahsildar, the Revenue Divisional Officer dismissed the appeal and confirmed the order of Tahsildar. It is also the specific case of the defendant/appellant that she is in possession by raising crops in the suit property. It is also contended by the defendant that the suit property measuring an extent of 88 cents in R.S.No.43 was purchased by her husband, while he was a minor and hence, the partition including the property of minor is void. The defendant



has questioned the proceedings in O.S.No.619 of 1966 on the ground that only an ex parte decree was passed.

6. Before the trial Court, the plaintiff/respondent examined his power agent, A.Ramasamy, and Gurunathan, to prove his case and marked Ex-A1 to Ex-A5. The appellant marked Ex-B1 to Ex-B12 and examined herself as DW-1. The trial Court, after framing necessary issues and considering the pleadings and evidence, came to the conclusion that the plaintiff is entitled to an extent of 88 cents in R.S.No.43/2 and that the plaintiff is also entitled to an order of injunction. The suit was dismissed in respect of another extent of 48 cents in S.No.43/2.

7. As against the same, the appellant preferred an appeal in A.S.No.37 of 2011 before the Subordinate Court, Pattukottai. The respondent also preferred a Cross Appeal in A.S.No.54 of 2011. The lower Appellate Court dismissed the appeal preferred by the appellant as well as the Cross Appeal preferred by the respondent. On the basis of final decree, that was passed in the previous suit in O.S.No.619 of 1966, the lower Appellate Court found that the property measuring an extent of 88 cents in S.No.43/2, had been allotted to the predecessor-in-interest of the plaintiff and that the plaintiff was in enjoyment of the suit property as per the final decree proceedings in O.S.No.619 of 1966. As against the same, the present second appeal is preferred by the defendant.

8. In the memorandum of grounds, the appellant has raised the following substantial questions of law:

"1. Whether the Court below is right in decreeing the suit, where the plaintiff holding valid title and possession without seek the delivery of possession in the partition suit?

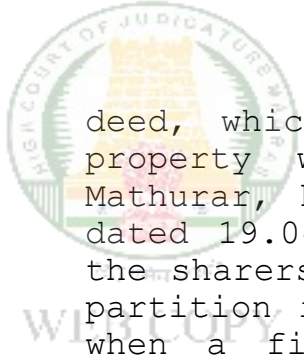
2. Whether the decree is sustainable in law, where no possession obtain from through Court in partition suit by the vendor, can convey title and possession to the plaintiff?

3. Whether the decree and judgment are sustainable in respect of Ex-B19?

4. Whether the decree and judgment are legally valid if consider the delivery account Ex-B19?"

9. From the facts, it can be seen that the plaintiff has claimed title to the suit property on the basis of the property allotted to the plaintiff's predecessor-in-interest, as it is specifically mentioned in the final decree that the predecessor-in-interest of the plaintiff was allotted an extent of 88 cents. Both the Courts below have concurrently held that the plaintiff is entitled to 88 cents out of an extent of 1.12 Acres and that the plaintiff has not proved her title in respect of another extent of 46 cents, that was originally allotted to other sharers.

10. The defendant claims title only on the basis of a sale



deed, which was marked as Ex-A3. Though it is stated that the property was originally purchased in the name of Palanisamy Mathurar, husband of appellant, by way of a registered sale deed, dated 19.04.1955, the fact that the properties were divided among the sharers, pursuant to the suit filed by one of the co-owners for partition is not disputed. The rights of parties are crystallised when a final decree was passed in the suit for partition in O.S.No.619 of 1966.

11.Both the Courts below have concurrently held that the plaintiff is entitled to declaration of title in respect of 88 cents in S.No.43/2. The only point raised by the learned Counsel for the appellant in this case is that the property, that was allotted to the plaintiff's predecessor-in-interest, was never taken possession through Court and that the Courts below have failed to consider the fact that the property was never taken delivery by the plaintiff's predecessor-in-interest in the final decree proceedings. The learned Counsel for the appellant also produced before this Court, a document, namely, Ex-B19, which was marked by the lower appellate Court. Though there is some discrepancies in the description of document, it is stated by the learned Counsel for the appellant that Ex-B19 is a delivery account in the Execution Petition filed in E.P.No.32 of 1983 in O.S.No.619 of 1966. It is also contended by the learned Counsel for the appellant that the suit property has been described as property, measuring an extent of 54 Ares out of larger extent in the suit survey number. It is further stated that when the respondent has not proved his title in respect of whole extent of land, the Courts below have failed to consider the fact that the lesser property, which is not identifiable on ground, with reference to four boundaries, cannot be presumed to be in possession of the plaintiff. Based on assumption, the contention of the learned Counsel for the appellant appears to have logic.

12.The appellant has pleaded title on the basis of a sale deed obtained from one Thambusamy Mathurar. The specific case that the property was purchased by the appellant's husband, by name, Palanisamy, who is also a coparcener or co-sharer, is not in dispute. The said Palanisamy Mathurar was a party to the partition suit. When the proceedings was pending for quiet some time, the final decree application was filed and the properties were allotted with specific reference to survey number and boundaries. An extent of 88 cents of land was allotted to the plaintiff's predecessor-in-interest with reference to specific boundaries. The Courts below have granted the relief to the plaintiff only on the basis of final decree proceedings in the previous suit for partition in O.S.No.619 of 1966. Hence, there cannot be any difficulty for anyone to identify the property on ground. The plaintiff's predecessor-in-interest claims to have acquired some more properties, namely, an extent of 66 cents, by way of oral sale and family arrangement, in addition to 88 cents allotted in the suit for partition. Since the plaintiff did not prove his case for claiming more than, what his predecessor-in-interest had in the suit survey number, both the



Courts below have rejected the claim of plaintiff with reference to any further extent beyond 88 cents. An Advocate Commissioner was appointed in the final decree proceedings and based on the report and plan, properties had been allotted. The appellant pleaded title on the basis of a document ignoring the subsequent decree for partition binding on the appellant.

13. The parties to the partition suit have indulged in several transactions during and after the suit for partition in O.S.No.619 of 1966. It is in the said circumstances, the delivery account in the Execution Petition in E.P.No.432 of 1983 showing that the plaintiff's predecessor-in-interest was not allotted any property in the suit survey number, cannot be accepted. The document, Ex-B19 was marked only before the lower appellate Court. Considering the said document, the lower appellate Court gave a finding that the Ex-B19 will not prove the case of appellant that the property was never taken delivery. In a suit for partition, after the allotment of shares in the final decree, the parties may get property outside the Court, by way of family arrangement or by taking possession. Once a party came into possession of the property, on the basis of final decree, it is not required to file Execution Petition to take delivery of the property through Court. In such circumstances, merely because, the property, for which suit is filed, was not included in the delivery account, cannot be a reason to reject the plaintiff's case, if it is proved otherwise. Having regard to the concurrent findings of the Courts below, the appellant failed to prove her title and possession over the suit property measuring an extent of 88 cents. This Court is unable to interfere with the findings of the Courts below. The judgment and decree of the Courts below are well founded and supported by reasons. This Court is unable to find any substance in any of the substantial questions of law raised by the appellant in the memorandum of grounds.

14. As a result, the second appeal is dismissed and the judgment and decree passed in A.S.No.37 of 2011 on the file of Subordinate Court, Pattukottai, dated 20.09.2017 confirming the decree and judgment passed in O.S.No.70 of 2006 on the file of District Munsif-cum-Judicial Magistrate Court, Orathanadu, dated 26.08.2010, is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS II)

// True Copy //

Sub Assistant Registrar (CS)



To

1.The Subordinate Judge, Pattukottai.

2.The District Munsif-cum-Judicial Magistrate,
Orathanadu.

Copy to:

The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.(2 Copies)

+1 CC to M/s.R.P.RAMACHANTHIRAN, Advocate (SR-78097[F] dated
26/07/2019)

S.A.(MD)No.277 of 2019
26.07.2019

KK/SAR/22.08.2019/6P-6C/