



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **16.12.2019**

CORAM:

THE HONOURABLE MR.JUSTICE **R.SUBRAMANIAN**

S.A. (MD) .No.608 of 2019

Kanusamy

..Appellant

Vs.

Pitchaammal (died)
W/o. Natesan Pillai

1.Valliammal

2.Ramasamy

...Respondents

PRAYER: Second Appeal filed under Section 100 of the code of Civil Procedure, to set aside the Judgment and Decree, dated 06.03.2019 passed in A.S.No.11 of 2017, on the file of the Additional District and Sessions Court, Pudukkottai District confirming the Judgment and decree, dated 22.07.2011 in O.S.No.53 of 2000 on the file of the Learned District Munsif-cum-Judicial Magistrate, Keeranur, Pudukkottai District.

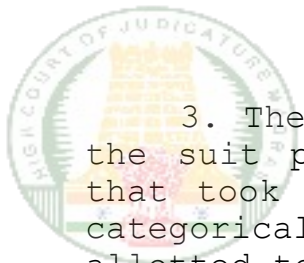
For Appellant

: Mr.B.Sekar

JUDGMENT

The plaintiff, in O.S.No.53 of 2000, whose suit for declaration and injunction was dismissed, upon confirmation of the same by the lower appellate Court in A.S.No.11 of 2017, has come up with this Second Appeal.

2. According to the plaintiff, the suit properties and other properties originally belonged to one Elayaperumal, who died 40 years prior to the filing of the suit, leaving behind three sons viz., Arunachalam, Muthusamy and Kandasamy. In an oral partition that took place 30 years about filing of the suit, the property was allotted to Kandasamy, who is also no more. It is stated that the wife of Kandasamy namely, Alayee @ Ahilambal was in possession and enjoyment of the property for the past 25 years and patta was also granted to her. According to the plaintiff, he has purchased the said property from Alayee @ Ahilambal under a registered sale deed, dated 16.07.1999 and he has been put in possession of the property. Claiming that the defendants 1 & 2, who are the daughters of Arunachalam and the third defendant, who is the brother of the plaintiff, are attempting to interfere with his possession and enjoyment of the property, the plaintiff has come up with the above suit.



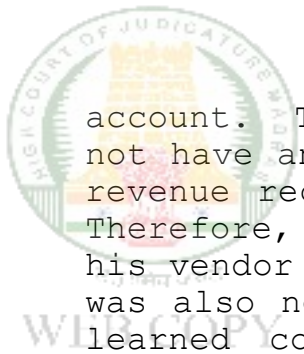
3. The suit was resisted by the third defendant contending that the suit property was not allotted to Kandasamy in the partition that took place between three sons of Ialayaperumal. It is the categorical case of the defendant that the suit property was allotted to other brother Arunachalam. According to the defendants, Arunachalam died leaving behind his wife and two daughters Pichayammal and Valliammai. It is also claimed that Alayee @ Ahilambal and her minor daughter Logambal sold the property that was allotted to Kandasamy under a sale deed, dated 10.01.1969 to one Pichai Pillai. The boundaries in the sale deed, dated 10.01.1969 would show that the properties on the west were allotted to Arunachalam and was in possession of Nagammal as on date. On the above contention, defendants sought for dismissal of the suit.

4. The trial Court upon consideration of the evidence on record, concluded that the vendor of the plaintiff, namely, Alayee @ Ahilambal having sold the entire extent of the property to Pitchai Pillai under Ex.B3, she did not have any title to convey to the plaintiff in the year 1999 under Ex.A1 sale deed. The Courts below also took note of the revenue proceedings, wherein, patta that was granted to the vendor of the plaintiff, namely, Alayee @ Ahilambal was cancelled and the land was registered in the name of daughters of Arunachalam namely, Valliammai and Pitchaimmal. Having found that the vendor of the plaintiff had no title to convey, the trial Court dismissed the suit. Aggrieved, the plaintiff preferred an appeal in A.S.No.11 of 2017, on the file of the Additional District and Sessions Court, Pudukkottai.

5. The learned first appellate Judge, upon reconsideration of the evidence on record, concurred with the findings of the trial Court and dismissed the appeal. Aggrieved, the plaintiff has come up with this second appeal.

6. I have heard Mr.B.Sekar, learned counsel for Mr.P.Ganapathi Subramanian, learned counsel appearing for the appellant.

7. Mr.B.Sekar, learned counsel appearing for the appellant would vehemently contended that the Courts below were not right in assuming a equal partition between the sons of Ilayaperumal. According to him, at the partition, a larger share was given to Kandasamy in the suit properties. Therefore, even after the sale under Ex.B3, dated 10.01.1969 Alayee @ Ahilambal continued to be in possession of some other land, which was conveyed by her under Ex.A1 sale deed. Unfortunately, the said plea was never taken before the Courts below. All that was claimed was that at the partition between three sons of Ilayaperumal, namely, Arunachalam, Muthusamy and Kandasamy, each one of them were allotted $1/3^{\text{rd}}$ share and $1/3^{\text{rd}}$ share of Kandasamy devolved on Alayee @ Ahilambal, who sold it to plaintiff under Ex.A1, dated 16.07.1999. Both the Courts below have concurrently found that the Alayee @ Ahilambal alienated whatever land that was allotted to Kandasamy as early as on 10.01.1969. The



account. The Courts below concluded that the Alayee @ Ahilambal did not have any other land in the proceedings of transfer of patta the revenue records were mutated in the name of the defendants 1 & 2. Therefore, the claim of the plaintiff that the defendants 1 & 2 and his vendor were in possession of the property, was enjoying the same was also negated by the courts below. Despite best efforts, the learned counsel for the appellant is unable to show that the findings of the Courts below could be termed as perverse. I do not find any question of law much less substantial question of law in order to enable me to entertain the second appeal. Hence, the second appeal fails and dismissed, without being admitted. No costs.

Sd/-

Assistant Registrar ()

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/ /2020

Sub Assistant Registrar(CS)

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To

1.The Additional District and Sessions Court,
Pudukkottai.

2.The District Munsif-cum-Judicial Magistrate,
Keeranur, Pudukkottai District.

3.The Section Officer, (2 copies)
V.R.Section, Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.P.GANAPATHI SUBRAMANIAM, Advocate (SR-105746[F] dated 18/12/2019)

**S.A. (MD) .No.608 of 2019
16.12.2019**

VB(13.01.2020) 3P 6C