



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 16.07.2019

CORAM :

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

Second Appeal (MD) No.610 of 2015

and

C.M.P. (MD) No.228 of 2019

Karuppiyah (Died)	: 1 st Appellant/2 nd Plaintiff
1.Sadaiyan Periakaruppan	: 1 st Appellant/2 nd Appellant/ 3 rd Plaintiff
2.Vellaiammal	: 2 nd Appellant
3.Pinniyakkal	: 3 rd Appellant
4.Bose	: 4 th Appellant
5.Angammal	: 5 th Appellant
6.Meena	: 6 th Appellant
7.Ayyar	: 7 th Appellant

(Cause title accepted vide Order
dated:10.12.2014 made in MP No.1 2014
in SA.Sr.No.40663/2014 by SVJ)

-Vs-

1.State of Tamil Nadu, Represented through its District Collector, Collectorate, Madurai.	: 1 st Respondent/1 st Respondent/1 st Defendant
2.The District Revenue Officer, Collectorate, Madurai.	: 2 nd Respondent/2 nd Respondent/2 nd Defendant
3.The Tahsildar, Usilampatti.	: 3 rd Respondent/3 rd Respondent/3 rd Defendant
4.Panju	: 4 th Respondent/4 th Respondent/4 th Defendant

Prayer: Second Appeal filed under Section 100 of the Code of the Civil Procedure, against the judgment and decree dated 27.09.2012 passed in the appeal in A.S.No.142 of 2010 on the file of the Third Additional Subordinate Judge, Madurai Camp at Usilampatti confirming the judgment and decree dated 25.06.2010 passed in the suit in O.S.No.64 of 2002 on the file of the District Munsif cum Judicial Magistrate No.1, Usilampatti.



For Appellant : Mr.J.Barathan
For Respondents : No appearance
1 to 3
For Respondent 4 : Mr.K.Muraleedharan

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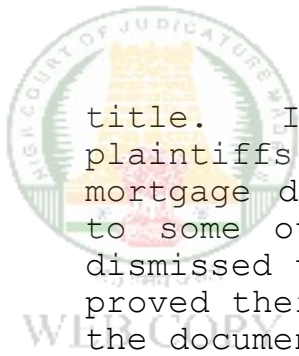
JUDGMENT

Legal heirs of 2nd plaintiff and the 3rd plaintiff in the suit in O.S.No.64 of 2002 on the file of District Munsif Court, Usilampatti, are the appellants in this Second Appeal.

2.The first appellant along with his two brothers filed the suit in O.S.No.64 of 2002 on the file of District Munsif Court, Usilampatti, for declaration of title and consequential permanent injunction in respect of the suit property which is shown as a property measuring an extent of 61 cents in Survey No.237/11 in K. Pothampatti Village in Usilampatti Taluk. The suit is also for declaration that the order passed by the District Revenue Officer dated 14.12.2001 is null and void and for consequential injunction restraining defendants 1 to 3 from making any change in the revenue records pursuant to the order of the second defendant. In the plaint, the appellants stated that the suit property is their ancestral property. It was contended by them that their forefathers, namely, the grand father of the plaintiffs and his son had executed a registered mortgage deed in favour of one Aathikannu Nadar on 19.06.1913 in respect of the suit property and that the said mortgage was later redeemed by the plaintiffs. It was contended that the plaintiffs are in possession and enjoyment of the suit property. The fourth defendant in the suit is a private individual and the fourth respondent appears to have approached the third respondent for subdivisional change of patta in his name. However, an order has been passed on 14.12.2001 by second respondent directing the mutation of the revenue records in favour of the fourth defendant. It was, therefore, the suit was also filed for declaring the order of second respondent as null and void.

3.The suit was resisted by defendants 1 to 3 with reference to the revenue records. It is the case of the third respondent that the plaintiffs have obtained patta in respect of an extent of 25 cents under UDR without showing any document of title. It was contended by the second defendant that the predecessor in interest of fourth defendant were shown as land owners. Since patta had been given wrongly in favour of plaintiffs under UDR, without notice to land owners and without any document, it is stated that patta was restored by the order of the District Revenue Officer, the second defendant in the suit.

4.The fourth defendant also filed a detailed written statement claiming title to the suit property on the basis of the document of



title. It is also the case of the fourth defendant that the plaintiffs have come forward with a false case by relying upon a mortgage deed dated 19.06.1913 which is either a transfer relating to some other property or fictitious document. The trial Court dismissed the suit specifically holding that the plaintiffs have not proved their title nor enjoyment. The trial Court found that though the document, namely, the mortgage deed of the year 1913 is produced as Ex.A2, the trial Court found that the suit property is not the subject matter of the mortgage. The plaintiffs' only document to show that they are the owners of the property was rejected on the ground that it is not pertaining to the suit property. The plaintiff further relied upon a partition deed under Ex.A11. Surprisingly, the partition deed was not even pleaded in the plaint. Hence, the lower Court rendered a finding that the document under Ex.A11 is a self-serving document. It appears that in the 1991 partition deed, a portion of suit property was included only for the purpose of getting patta under UDR. Though the total extent is more than 25 cents, in the partition deed only an extent of 25 cents in Survey No.237 was dealt with and the patta during UDR is also for the same extent of 25 cents. The trial Court also found that the plaintiffs are not in enjoyment of the property. However, relying upon the document produced by the defendants under Exs.B3 and B4, the trial Court also found that the suit property belonged to the defendants and that the plaintiffs are not entitled to any relief in the suit. Aggrieved by the same, the plaintiffs filed A.S.No.147 of 2010 on the file of the Sub Judge, Usilampatti.

5.The Appellate Court also confirmed the judgment of the trial Court and dismissed the appeal. As against the dismissal of the appeal in A.S.No.142 of 2010 on the file of the Sub Court, Usilampatti, the above Second Appeal has been preferred. The Second Appeal was admitted on the following substantial question of law:

"(A) When the District Revenue Officer is only a Revisional Authority in patta transfer matters under Section 13 of the Tamil Nadu Patta Passbook Act, 1983, whether the order dated 14.12.2001 (Exhibit B2) passed by him straightaway on a miscellaneous petition filed by the fourth respondent/fourth defendant is without jurisdiction and so null and void?

(B) Whether the lower Courts erred to apply the principle of presumption of 30 year old documents under Section 90 of the Indian Evidence Act, 1872 to the documents produced by the appellants/plaintiffs, Exhibit A2 (Othi deed dated 19.06.1913), Exhibit A.13 (Othi deed dated 14.04.1948) and a mortgage deed (mel othi dated 21.07.1922) produced as additional evidence in the first appeal?

(C)Whether the observation of the Courts below that the suit property in Survey No.237/11 is not mentioned in Court's judgment; but mentioned as Survey No.385, forgetting

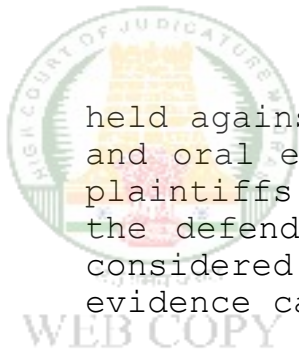


that Exhibit A.2 is of the year 1913 (100 years ago) is perverse when the old "A" Register (Exhibit A.6) shows that Survey No.237/11 correlated to old Survey No.385?

(D)Whether the first appellate Court committed an illegality in not discussing and analysing the reasons given by the trial Court and coming to an independent finding, but simply stating that the trial Court has fully appreciated the evidence?

(E) Whether the civil Court can rely upon the orders of the revenue authorities transferring patta for deciding title to the suit property?

6.The learned Counsel appearing for the appellants submitted that the plaintiffs are entitled to get a decree for declaration of title and consequential reliefs. The learned Counsel appearing for the appellants submitted that the order passed by the second respondent which is also challenged in the appeal cannot be sustained as the revisional authority has exercised the power of original authority under Patta Passbook Act by granting patta in favour of the fourth respondent. The learned Counsel further submitted that the original othi deed dated 19.06.1913 marked as Ex.A2 is an old document and Section 90 of the Indian Evidence Act should be applied regarding genuineness of the transaction under Ex.A2. It is further submitted that the partition deed under Ex.A11 ought not to have been discarded by the trial Court as self-serving document when the genuineness of the document was not disputed by the defendants. The Courts below have concurrently held that the plaintiffs miserably failed to prove their claim of title. Admittedly, the only document to show that the property belonged to the grand-father of the plaintiffs is the document namely the mortgage deed under Ex.A2 of the year 1913. Both the Courts have concurrently held that the property conveyed under Ex.A2 is not the subject matter of the suit. In such circumstances, the contention of the appellants that the suit property is their ancestral property cannot be believed. The Courts have also found that the partition deed under Ex.A11 is a self-serving document. It is to be seen that the partition deed under Ex.A11 is among the plaintiffs and an extent of 25 cents alone is the subject matter of partition. No prior document of title is produced. This partition appears to be to get patta under UDR. As a matter of fact, the plaintiffs were given patta during UDR in respect of an extent of 25 cents even though the suit property is more in extent. The findings of the Courts below that the partition under Ex.A11 is a self-serving document is fair in the circumstances, especially having regard to the fact that the plaintiffs have not produced any other document to prove their ownership or possession. Therefore, the Courts below are perfectly right in accepting the case of the defendants and rejecting the case of the plaintiffs based on proper appreciation of evidence. The trial Court and the appellate Court have concurrently



held against the plaintiffs after proper appreciation of documentary and oral evidence in the light of the pleading. The fact that the plaintiffs have not even pleaded partition in the plaint, would help the defendants to argue that the partition under Ex.A11 cannot be considered by Courts below. It is well settled that no amount of evidence can be looked into without plea.

7.Having regard to the findings of the Courts below, this Court is unable to see any substantial question of law for consideration. Having regard to the fact that the findings of the Courts below are supported by materials and reasons, there is no scope for interfering with the judgment of the Courts below under Section 100 of C.P.C. Hence, this Second Appeal is dismissed, However there is no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

SRM

To

1.The III Additional Sub Judge,
Madurai Camp at Usilampatti.

2.The District Munsif cum Judicial Magistrate,
Usilampatti.

+1 CC to M/s.K.MURALEEDHARAN, Advocate SR-75576.

+1 CC to M/s.T.R.JEYAPALAM, Advocate SR-75613.

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