

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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| Reserved on  | 17/12/2019 |
| Delivered on | 03/02/2020 |

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

S.A.No.1228 of 2019 &  
C.M.P.No.26686 of 2019

Muthukrishna Reddiar, (Deceased)  
S/o.Mr.Duraisamy Reddiar,  
Residing at Kesavarayanpettai Village,  
Melmaruvathur Post,  
Cheyyur Taluk. ... Appellant/Plaintiff

1.Balasubramani Reddiar  
2.Radha  
3.Purushothaman Reddiar  
4.Janakirama Reddiar  
5.Venkata Subbu Reddiar ... Appellants/Proposed Parties

Versus

1.Rajaram Reddiar  
2.Vijaya  
3.Pattabi Reddiar ... Respondents/Defendants

Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 29.08.2018 passed in A.S.No.17 of 2014 by the learned Subordinate Judge at Madurantakkam, by confirming the judgment and decree dated 03.03.2014 passed in O.S.No.179 of 2010 by the learned District Munsif, Maduranthakam.

For Appellants : Mr.Nagu Sah

JUDGMENT

The appellant herein, as plaintiff filed the suit in O.S.No.179 of 2010, seeking for declaration to declare his title over the suit schedule property and for consequential permanent injunction restraining the defendants, their men, agents, servants from any way interfering with his peaceful possession and enjoyment over the suit schedule property and to declare the

settlement deed executed in favour of the second defendant by the first defendant on 27.05.2009 as null and void.

2. The case of the plaintiff is that he is the absolute and exclusive owner of the suit property. He got the suit property by way of oral exchange between himself and the father of the first defendant, viz., Ramalinga Reddiar about 50 years ago. The said Ramalinga Reddiar is none other than the uncle of the plaintiff. Patta has been transferred in the name of the plaintiff under patta No.55 and he had dug a well in the suit property about 30 years ago and got electricity service connection No.89.

3. It is further stated that the plaintiff also prescribed right and title over the suit mentioned property and he has been enjoying the property without interruption for more than statutory period. While so, the first defendant, who has no right and connection with the suit mentioned property, created a settlement deed in favour of the second defendant on 27.05.2009. Hence, the settlement deed is not binding upon the plaintiff. It is alleged that taking advantage of the said documents, the defendants are attempted to interfere with the peaceful possession and enjoyment over the suit schedule property on 05.07.2010. Hence, the suit.

4. The third defendant filed a written statement disputing the averments made in the plaint. It is contended that the plaintiff got the suit property by way of oral exchange before 50 years is highly false, besides baseless and mischievous. The oral exchange is nothing but a myth. It is the case of the third defendant that originally the suit property to an extent of 33 cents out of 78 cents in S.No.74/3 was purchased by his aunt, viz., Kokilammal under registered sale deed, dated 07.10.1948. The remaining land of 45 cents is his ancestral property. In the registered partition deed, dated 25.10.1985, the third defendant was allotted 33 cents in S.No.74/3 and the remaining 45 cents was allotted to the first defendant. Pursuant thereto, the first defendant had executed a registered settlement deed, dated 25.07.2009 in favour of his wife, the second defendant. The defendants have filed an appeal before the R.D.O to cancel the patta No.55 issued in favour of the plaintiff.

5. Based on the above pleadings, the trial Court framed necessary issues. On behalf of the plaintiff P.W.1 and P.W.2 were examined and Exs.A1 to A12 were marked. On the side of the defendants, D.W.1 and D.W.2 gave evidence and Exs.B1 to B12 were marked. The Revenue officer was examined as C.W.1 and through him Ex.C1 was marked.

6. The trial Court, after considering the evidence adduced by the parties, came to the conclusion that the plaintiff has failed to prove his case and hence, he is not entitled to the reliefs sought for in the plaint. Aggrieved over the Judgment and Decree, the plaintiff preferred an appeal, but in vain. Challenging the concurrent finding, the present appeal has been filed.

7. Mr.Nagu Sah, learned counsel appearing on behalf of the appellant would submit that the Courts below erred in dismissing the plaintiff's suit for declaration of title and for permanent injunction on untenable grounds by totally misconstruing the evidence on record. It is further argued that the plaintiff has proved his prolonged possession of the suit property for more than 5 decades by virtue of exchange of properties through Exs.A1 to A3 and Exs.A6 to A8. It is the submission of the learned counsel that exchange arrangement made 50 years ago was duly acted upon by the plaintiff and thereafter, the plaintiff by way of digging well in S.No.74/3, obtained electricity service connection and it was established through Exs.A6 to A8. Hence, the findings of the Courts below are perverse and they are liable to be set aside.

8. In the matter on hand, the plaintiff claims title over the property by way of oral partition entered into between the father of the first defendant viz., Ramalinga Reddiar and the plaintiff about 50 years ago and on the basis of oral and partition, a patta was issued in his name. He marked Ex.A1-patta, Ex.A2-kist receipt and Ex.A3-encumbrance certificate and Exs.A7 and A8-adangal for fasli 1397 to 1420 were marked to substantiate his case. According to the defendants, there was no oral partition as alleged by the plaintiff and his continuous possession of the suit property and digging up well was denied. The certified copy of the sale deed, dated 07.10.1948 was marked to show that the first defendant's aunt Kokilammal purchased 33 cents in S.No.74/3 and under Ex.B2, she had settled the property in favour of the first defendant. Ex.B3-kist receipt in respect of S.No.74/3, reveals that it was issued in the name of the third defendant. Under, Ex.B6-partition deed, dated 10.07.1965 entered into by sons of Ramalinga Reddiar, Govindha Reddiar, Rajaram Reddiar, Pattabi Reddiar, the third defendant was allotted 33 cents in S.No.74/3.

9. It is apposite to mention here that though the plaintiff contended that in pursuance of the oral partition, the plaintiff has been in possession of the property, however, no revenue document was produced to prove his possession for the past 50 years. It is seen that after issuing UDR patta in the name of the plaintiff in the year 1980, the other documents came into existence. Ex.B7 shows that there is no well in S.No.74/3.

10. The trial Court as well as the appellate Court on proper appreciation of evidence adduced by the parties, came to the conclusion that the plaintiff has not proved his case. It is also observed that he is not entitled to claim adverse possession over the suit property by relying on the decision reported in 2005 (3) CTC 399. So, I find no merit in the contention of the learned counsel for the appellant. In the considered opinion of this Court, the factual findings arrived at by the Courts below do not warrant interference.

11. For the foregoing reasons, the Second Appeal is dismissed as devoid of merits. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

- 1.The Subordinate Judge,  
Madurantakkam.
- 2.The District Munsif,  
Maduranthakam.

+1cc to Mr.N.Nagusah, Advocate Sr.8051

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srg 30/11/2020

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