

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 20.02.2020

Date of Verdict : 02.06.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

S.A.No.1777 of 2002

1. Thangaraj (Died)
2. Pandiyan
3. T.Periyasamy
4. Muthukannau
5. Ranjitham

(Appellants 3 to 5 are brought on record and R12 brought on record as legal heirs of the deceased first appellant vide order of the Court dated 27.11.2019 made in C.M.P.Nos. 23833, 23835 and 23840 of 2019 in S.A.No.1777 of 2002) ...Appellants/Plaintiffs

Vs.

1. Balasundaram (Died)
2. Subbiah (Died)
3. Kathirvel
4. Panchatcharam
5. Anandavalli
6. Gnanaguru
7. Kalaiselvi

(Respondents 5 to 7 are brought on record as legal heirs of the deceased first respondent vide order of the Court dated 26.03.2009 made in C.M.P.Nos. 3110 to 3112 of 2007 in S.A.No.1777 of 2002)

8. Rajakumari
9. Tamilozhi
10. Ezhilvalavan

11. Sitrarasan

(Respondents 8 to 11 are brought on record as legal heirs of the deceased second respondent vide order of the Court dated 07.06.2019 made in C.M.P.Nos. 1259 to 1261 of 2009 of 2007 in S.A.No.1777 of 2002)

12. Janaki

...Respondents/Defendants

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 28.09.2001 made in A.S.No.55 of 2001 on the file of the Principal District Court, Perambalur, confirming the judgment and decree dated 06.12.1994 made in O.S.No.359 of 1992 on the file of the District Munsif, Ariyalur.

For Appellants : Mr.S.Balasubramanian

For Respondents

R1 & R2: Died(Steps taken)

For R3, R4,

R8 to R 11: Mr.P.Dinesh Kumar

For Sarvabhauman Associates

For R5 to R7: Mr.P.Dinesh Kumar

For Mr.J.Ramakrishnan

R12 : Not ready in notice

JUDGMENT

This second appeal is directed as against the judgment and decree dated 28.09.2001 made in A.S.No.55 of 2001 on the file of the Principal District Court, Perambalur, confirming the judgment and decree dated 06.12.1994 made in O.S.No.359 of 1992 on the file of the District Munsif, Ariyalur.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial Court.

3. The case of the plaintiff in brief is as follows :-

3.1. The suit is filed for injunction. The suit properties are the ancestral properties of the plaintiffs' father Muthusamy Aachari. After his demise the plaintiffs succeeded the suit properties as legal heirs and they are in possession and enjoyment of the suit properties. Patta also stands in the name of their father. After his demise, the patta also changed in the name of the plaintiffs. The elder brother of the plaintiffs one

Kulanthai Aachari has died and his wife was residing at Vallikandapuram Village. There is no relationship between them. While being so, the defendants are strangers to the suit property and they have no right over the suit property. Since they intended to purchase the suit property for very low price, for which the plaintiffs are not agreed, they are tried to trespass into the suit property. Hence the suit for injunction.

4. Resisting the same, the defendants filed written statement and denied the entire allegations and averments made in the plaint as false and frivolous. Neither the plaintiff nor their father have title or right over the item Nos. 1 to 4, 7, 10 & 11 of the suit property. They are not in possession and enjoyment of the same. Insofar as the item Nos. 2 & 10 of the suit property ad measuring 0.84 cents, the first item of the suit property ad measuring 0.08½ cents, the third item of the suit property ad measuring 0.30 cents and the eleventh item of the suit property ad measuring 1.23 acre originally belonged to one Muthusamy S/o.Palanimuthu, Pearalli Village. Along with the other properties, the above said properties were purchased from the said Muthusamy by one Natesa Pandaram, who is the father of the defendants, for valid sale consideration in the year 1946. The said purchase was oral one. From the date of the said purchase their father had been in exclusive possession and enjoyment of the above suit properties. After his demise, in the year 1959, the defendants being the legal heirs inherited the above suit properties and have been in joint possession and enjoyment of the same. They are also paying kist for the suit properties. Subsequently on 11.05.1977, the defendants partitioned the above suit properties and the same was also registered one. The property ad measuring 0.08½ cents comprised in S.F.No.401/3 was kept in common for all the defendants as such it was not mentioned in the partition deed. Therefore, the plaintiffs have no right or title or possession in respect of the items 1 to 4, 7, 10 & 11 of the suit property and prayed for dismissal of the suit.

5. On the side of the plaintiffs, they examined P.W.1 & P.W.2 and were marked Ex.A.1 to Ex.A.23. On the side of the defendants, they examined D.W.1 to D.W.5 and were marked Ex.B.1 to Ex.B.43. The Advocate Commissioner's report and plan were marked as Ex.C.1 & Ex.C.2. On perusal of the material produced on record and on considering both the oral and documentary evidence adduced by the respective parties and also the submissions made, the trial Court decreed the suit insofar as the item Nos. 5,6,8,9 and 7 in the suit properties ad measuring 1.27 acres and in item No.11 in the suit properties ad measuring 0.44 cents. Insofar as the remaining properties are concerned

dismissed the suit. Aggrieved by the same, the plaintiffs preferred an appeal suit in A.S.No.55 of 2001 before the Principal District Court, Peramballur and the first appellate Court dismissed the appeal by confirming the judgment and decree passed by the trial Court. Aggrieved by the same the plaintiffs filed this present second appeal.

6. At the time of admission of this second appeal on 13.12.2002, the following substantial question of law was formulated for consideration:-

"Whether the decree and judgment of the Courts below are legally sustainable inasmuch as they have failed to consider Ex.A.1 to Ex.A.23 which will prove the title and possession of the appellants with respect to the suit properties?"

7. Heard Mr.S.Balasubramanian, learned counsel appearing for the appellants/plaintiffs and Mr. P.Dinesh Kumar, learned counsel appearing for the respondents/defendants and perused the material placed before this Court.

8. According to the plaintiffs, the suit properties are ancestral properties of their father Muthusamy Aachari and he was also issued patta, which were marked as Ex.A.1 to Ex.A.3. After his demise, the plaintiffs being the legal heirs, they inherited the suit property. Thereafter, the revenue records also mutated in their name and the patta was also issued in favour of their elder brother Kulanthai Aachari and another. The patta issued in their favour were marked as Ex.A.4 to Ex.A.8. The Kist receipts of the suit property were marked as Ex.A.9 to Ex.A.21.

9. Whereas according to the defendants, their father Natesa Pandaram purchased the suit properties in item Nos. 1 to 4, 7, 10 & 11 from the plaintiffs' father Muthusamy for valid sale consideration. But the sale was oral one. After purchase of the suit property, he was in possession and enjoyment of the suit properties and after his death, his legal heirs viz., the defendants have been in possession and enjoyment of the suit properties 1 to 4, 7, 10 & 11. Thereafter they partitioned the suit properties by registered partition deed dated 11.05.1977, which was marked as Ex.B.1. Thereafter, they also mutated revenue records in their favour.

10. Admittedly the defendants are not in possession and enjoyment of the suit property in Item Nos. 5,6,8 & 9 of the suit property. Further insofar as the item Nos. 1 to 4 & 7 of

the suit properties are concerned, the defendants are in possession and enjoyment only 0.30 cents and also ad measuring 1.23 acres in item Nos. 10 & 11 of the suit properties. The Advocate Commissioner was appointed and his report and plan were marked as Ex.C.1 and Ex.C.2. Originally the suit properties belonged to one Perumal Udayar and the same were jointly enjoyed by plaintiffs' father and the defendants' father and one Muthusamy S/o.Palanimuthu. The defendants' father purchased the property from the said Muthusamy and thereafter they mutated the revenue records in their favour.

11. That apart the plaintiffs marked Ex.A.22 and 23 and on perusal of the same it revealed that they mortgaged the suit properties mentioned in item Nos.5,6,7, 8 and 11 alone. It is also categorically proved by the evidence given by the defendants that part of the property in 7th item and part of the property in 11th item are in possession and enjoyment of the plaintiffs. Therefore both the Courts below held that the plaintiffs are entitled only the property mentioned in item Nos. 5,6,8,9 and part in item Nos.7 & 11, and dismissed the suit insofar as the other items are concerned. Both the Courts concurrently held on the said facts as such, no need to interfere with the finding of the Courts below.

12. In view of the above discussion, this Court does not find any valid reason to interfere with the reasonings and findings rendered by the Courts below for upholding the case of the plaintiffs. As such, this Court is of the considered opinion that no substantial question of law involved in this appeal. Be that as it may, the substantial question of law formulated by this Court is answered in favour of the defendants and as against the plaintiffs.

13. In fine, the second appeal stands dismissed by confirming the judgment and decree passed by Courts below. There is no order as to costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

rts

To

1. The Principal District Judge,
Perambalur.
2. The District Munsif,
Ariyalur.
3. The Section Officer,
V.R.Section,
Madras High Court,
Chennai.

S.A.No.1777 of 2002

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