



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 03.12.2020

Pronounced on: 08.12.2020

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Coram::

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

S.A.No.1024 of 2009
& M.P.No.1 of 2009

1. Ravindran,

2. Kamaraj,
Both Appellants 1 & 2
Rep by Power Agent,
Narayanasami Gounder,
S/o.Manjamuthu,
Ayyanarpalayam Village,
Virudachalam Village,
Virudachalam Taluk,
Cuddalore District.

3.Balasubramanian

... Appellants/Plaintiff's

/versus/

1. Ramamoorthy,
S/o.Kannusamy Gounder.

2. Mohanraj,
S/o.Kannusamy Gounder.
All are residing at
Veppur Village,
Virudachalam Taluk,
Cuddalore Taluk.

3.Ayyasami
S/o.Krishna Gounder

... Respondents/Defendants

Prayer: Second Appeal is filed under Section 100 of C.P.C against the judgment and decree of Additional Sub Court, Virudachalam, dated 30.07.2009 made in A.S.No.78 of 2008 confirming judgment and decree of Second Additional District Munsif Court, Virudachalam dated 24.10.2008 made in O.S.No.474 of 2004.

For Appellant : Mr.S.Sounthar
For R1 to R3 : Mr.V.Sekar



J U D G M E N T

(The case has been heard through video conference)

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This Second Appeal is filed by the plaintiff in O.S.No.474 of 2004 on the file of 2nd Additional District Munsif, Virudhachalam. The suit filed for declaration and permanent injunction in respect of property in S.No.92/14 measuring 0.17.5 H (0.44 cents) in patta No.453 at Veppur Village, Virudhachalam Taluk.

2. The case of the plaintiff is that the suit property originally belong to the father of Ramasamy, Muthu Goundar and Kona Goundar. The plaintiff is descendent of Kona Goundar. 1st defendant is descendent of Ramasamy Gounder and Muthu Goundar died issueless. By way of oral partition, held 50 years ago, the suit property was allotted to Kona Goundar branch. The father of the plaintiff dealt the said suit property by creating bockiam with one Arumugam for Rs.1,200/- on 23.05.1966. In the said bockiam Kannusamy, who is the father of the defendants 1 & 2 had signed as attestor. Later, when the bockiam was discharged on 05.05.1972, the said Kannusamy has attested the discharge also. Thus, the exclusive possession and enjoyment of the suit property with the plaintiff knowledge being explicitly seen from the endorsement by the father of the defendants 1 & 2. While so, the defendants 1 & 2 are trying to include their name in the patta of the suit property. The petition to the Tahsildar, Virudhachalam, to delete the name in the patta was dismissed on 14.12.2201. The Appeal to Revenue Divisional Officer, Virudhachalam is pending. Stay order has been granted by the Revenue Divisional Officer on 25.09.2003 till the disposal of the appeal. However, taking advantage of the new patta issued in the name of the defendants, they have sold 0.03 H of the land to the 3rd defendant. In view of the alienation, the Settlement Tahsildar, Land Acquisition has caused notice for enquiry. The defendants 1 & 3 are trying to disturb the peaceful possession and cultivation of the suit property by the plaintiff. Hence, the suit for declaration and permanent injunction.

3. Relying upon revenue tax receipts, A-Register, Chitta and Adangal, as proof for possession and relying upon the oral partition, as proof for title the contested the suit. The suit defended by the respondent Nos.1 to 3 questioning the validity of the alleged oral partition. The bockiam created on 23.05.1966 in favour of Arumugam and subsequent discharge of the Bockiam on 05.05.1992 were denied. The contention of the plaintiff that the entire suit property was devolved upon him based on the oral partition was denied by the defendant and



contrarily, they contended that the suit property original belong to Kona Goundar, Ramasamy Goundar and Muthu Goundar. Muthu Goundar had no male issues. Therefore, Ramasamy Goundar and Kona Goundar divided the property among themselves. The joint patta issued by the Government and based on the oral partition, they both were dealing the property independently and have created several alienation and encumbrances. Specifically on 18.01.1965, Kannusamy Goundar created a mortgage in favour of Gnanambal wife of Muthu Pillai. Periyasamy Goundar and Kannusamy Goundar had created mortgage in favour of multi purpose and credit society. Suppressing all these facts, the suit has been laid. The defendants 1 & 2 are son of Kannusamy Goundar had inherited the property as per partition and enjoying it peacefully for more than 12 years. Based on the said title, they alienated 0.02. H to the 3rd defendant Iyyasamy Goundar. The property has been sub-divided and patta has been given to the respective parties. For suppressing all these facts and also for non-impleading other brothers, the suit is bad for non-joinder of necessary parties and liable to be dismissed. When 200 sq.mts of land was acquired by the 4th defendant for expansion of National Highways, the suit for injunction restraining the acquisition is not maintainable.

4. Before the Trial Court, on behalf of the plaintiff 3 witness were examined. On behalf of the defendants 4 witnesses were examined. 38 documents on the plaintiff side and 42 documents on the defendant side were marked.

5. The Trial Court framed following issues:-

(i). Whether the genealogy given by the plaintiff is true one?

(ii). Whether the plaintiff is entitled for the relief of declaration and

permanent injunction as prayed for?

(iii). To what relief is the plaintiff is entitled?

6. Ex.A.1 is the registered mortgage deed executed by Periyasamy Goundar, father of the plaintiff in favour of one Arumugam. In this deed, the Periyasamy Goundar has mortgaged 0.44 cents to one Arumugam. The father of the defendants 1 & 2 signed as witness. The attesting to a document is not knowledge of its content. Further, there are correction in the extent of the property in Ex.A.1 therefore, the Trial Court held that there is no proof to show that the attestation by the Kannusamy in Ex.A.1 is with knowledge of its content, more particularly, about the extent shown in Ex.A.1. The revenue documents like Adangal, Chitta will not prove exclusive possession of entire extent of 0.44 cents in suit survey number and some of the exhibits does not relate to the suit property.



7. The Appeal before the Revenue Authority regarding issuance of Patta is yet to be decided. The documents in connection with the said proceedings were rejected as not relevant for the issue under consideration. Therefore, the Trial Court, after elaborate consideration of evidence has held that, the plaintiff has failed to prove his title based on the oral partition. Hence, the plea of adverse possession in alternate, cannot be entertained. When the suit is laid for declaration of title based on ownership, having failed to prove his title as well as exclusive possession over the suit property, the Trial Court concluded against the plaintiff.

8. On appeal, the First Appellate Court affirmed the finding of the Trial Court. The plea of adverse possession held against the plaintiff/appellant on the ground that, one cannot claim adverse possession against co-owner without ousting. Further, there is no enough pleading regarding adverse possession except a stray reference. The entire pleading is on the strength of oral partition and claim of ownership over the property.

9. Aggrieved by the concurrent finding, the Second appeal is filed on the ground that the Courts below erred in not considering the revenue records Ex.A.2 to Ex.A.12, Ex.A.21 to Ex.A.24 which proves exclusive enjoyment of the suit property by the appellant for several decades. The attestation of Kannusamy Goundar, the father of the defendants 1 & 2 in Ex.A.1 mortgage deed and attestation in the endorsement for discharge of the said deed ought not to have been rejected. The perceptive title for more than 50 years though pleaded, the Courts below failed to properly appreciate.

10. Before making his submission, the Learned Counsel for the appellant reported the power agent/Mr.Narayanasami Gounder, who represented the appellants 1 & 2 died and there is no instruction from appellants 1 & 2. Hence, he make his submission only on behalf of the 3rd appellant/Balasubramanian. The Learned Counsel appearing for the respondent would submit that in spite of communication to the respondents, they have not provided any instruction to him.

11. The Learned Counsel appearing for the appellant would submit that the attestation in the mortgage deed in the year 1966 is a strong evidence against the defendants. When the father has acknowledged the title of the plaintiff by his conduct, their sons are estopped from claiming right over the property. Even, if the oral partition is disbelieved for want of evidence, the mortgage deed of the year 1966 and discharge in the year 1972 are sufficient enough to prove that Kannusamy Goundar, the father of the defendants 1 & 2 has acknowledged the



title of the plaintiff and relinquished any right whatsoever he had in the suit property by allowing the plaintiff to mortgage the property. The plea of the defendants 1 & 2 that they have half share in the suit property not been established or proved through documents. Ex.A.13 and Ex.A.14 which are the appeal petition given to the Revenue Authorities to cancel the patta issued in the name of the defendants not been properly appreciated by the Courts below.

12. On perusing the records and the grounds raised by the appellant in the Second Appeal, this Court finds that the Courts below have appreciated the evidence and has arrived at a right conclusion.

13. It is a suit for declaration of title and injunction. The burden of proof is on the plaintiff to establish his case irrespective of the stand taken by the defendants. In this case, the appellants heavily rely upon Ex.A.1 mortgage deed dated 23.05.1966. In this document, Kannusamy Goundar has signed as one of the witness. The Learned Counsel for the appellant urge this Court to presume that Kannusamy Goundar has signed as witness knowing the content of the document. Since, the document relates to mortgage for entire extent of the suit property by the father of the plaintiff, the appellant wants the Court to presume that by attesting the mortgage document Kannusamy Goundar had relinquished his right in favour of the plaintiff's father.

14. Such presumption is neither permissible under law or facts, it is totally opposed to common practice. Attestor to a document only vouchsafe the identity of the signatory. The suit property which is an ancestral property devolved upon the contesting parties cannot be taken as a property of one branch in the absence of evidence. In this case, according to the appellant the documentary evidence regarding title is Ex.A.1 it is only a mortgage deed. There is yet another document in the suit, which is marked as Ex.B.6 which is purported to have been executed by Kannusamy Goundar father of the defendants 1 & 2 in favour of Nanammal wife of Muthu Pillai in respect of 0.22 cents in the suit property which is half of the total extent. This mortgage is also a registered deed dated 18.01.1965 much prior to Ex.A.1. When Kannusamy Goundar himself executed a mortgage claiming title over 0.22 cents out of 44 cents in S.No.92/14 much prior to Ex.A.1. By attesting as a witness in Ex.A.1, Court cannot presume that Kannusamy Goundar has relinquished his right in the suit property. The Courts below has rightly negatived and there is no legal or factual error in this finding.

15. Regarding the Revenue document like kist receipts, Chitta, Adangal to prove possession and claim prescriptive



title, it is to be noted that being an ancestral property and the revenue document show only joint patta has been given to them. On both sides there are kist receipts, Chitta and Adangal, without specifying the exact extent of land in their possession and enjoyment. In a joint family property, one owner hold and possess the property on behalf of the other owners. There cannot be injunction against the co-owner when ouster is not pleaded. To take advantage of alternate plea of prescriptive title, there must be specific pleading of continuous, open and hostile possession. Mere accession of possession continuously for 12 years or more, is not a pleading adequate to sustain claim of adverse possession. For this reason, the Courts below have rightly rejected the contention of the plaintiff seeking alternate relief regarding title and declaration relief.

16. For the said above reasons, this Court finds no merit in the Second Appeal and therefore, the Second Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

bsm

To:-

- 1.The Additional Subordinate Judge,
Virudachalam.
- 2.The Second Additional District Munsif,
Virudachalam.

Copy to:
The Section Officer,
V.R.Section, High Court, Madras.

+lcc to Mr.S.Sounthar, Advocate, S.R.No.39644
+lcc to Mr.D.Shivakumaran, Advocate, S.R.No.39543

S.A.No.1024 of 2009
& M.P.No.1 of 2009

SV(CO)
CB(27/08/2021)