

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2020

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.1464 of 2007

and

MP.No. 1 of 2007

1. Kaliyaperumal

2. Vasudevan ...Appellants/Defendants

Vs

Ranganathan ...Respondent/Plaintiff

PRAYER: Second Appeal is filed under Section 100 of CPC praying to present the Memorandum of Grounds of Second Appeal against the Judgment and decree of the Subordinate Judge's Court at Chidambaram in A.S.No.41 of 2006, dated 28.02.2007 reversing the Judgement and Decree passed by the Court of the District Munsiff Cum Judicial Magistrate at Kattumannar Kovil in O.S.No.96 of 2001 dated 31.01.2006.

For Appellants : Mr. V. Anand

For Respondent : N. Sankaravadivel

Judgment

The defendants are the appellants herein. The respondent/plaintiff had filed the suit O.S.No.96 of 2001 on the file of the District Munsif cum Judicial Magistrate, Kattumannarkoil for a declaration that the suit property belongs to him and for a permanent injunction restraining the defendants from interfering with his possession of the suit property and cutting the trees and enjoying the fruits.

2. The parties are referred to in the same litigative status as in the Trial Court.

The Case of the plaintiff is as follows: The suit-properties along with other properties originally belonged to the paternal grandfather of the plaintiff Periyar and the 1st defendant one Muthukannu. Whiles, the plaintiff's father, 1st-defendant's father and Murugesan, the son of Muthukannu had partitioned the suit property and other properties amongst themselves and were

in possession of their respective portions for 22 years. The suit property was allotted to the share of the plaintiff's father, from whom the plaintiff had got the property. It is his case that he had been using the suit property as a house site and as a farm from the time it had been given to him. He would further contend that he has raised Tamarind trees and other vegetables in the said land and has been paying land tax. That apart, he has also been granted the patta in respect of the said property. Meanwhile, difference of opinion arose between him and the first defendant who is none other than his paternal uncle Manikam's son. By virtue of this difference of opinion, the first defendant attempted to grab the property of the plaintiff and with this intent he had tried to trespass into the suit property from 10.03.1997 onwards. Therefore, the plaintiff had come forward with the suit.

3. The defendants on the other hand had contended that the suit property was allotted to the defendants under a partition dated 26.07.1973 and they have been in possession and enjoyment of the same for over twelve years and had therefore prescribed title to the property. The defendants would contend that first defendant's son Elango had married one Lalitha and the said marriage had broken, which resulted in the said Lalitha filing a maintenance Petition against her husband.

4. The plaintiff had approached the defendants to compromise the dispute and the defendants had refused to do so. This angered the plaintiff to come forward with the present vexatious suit and defendants would contend that they have been in possession and enjoyment of the suit-property ever since the partition.

5. The learned District Munsif cum Judicial Magistrate, Kattmannarkoil has framed the following issues:

- 1) Whether the plaintiff is entitled to declaration of his title and permanent injunction?
- 2) Whether the plaintiff has prescribed title by adverse possession?
- 3) Whether there is any cause of action?
- 4) Whether the suit reliefs are correctly valued?
5. To what reliefs the plaintiff is entitled?

6. The plaintiff has examined himself as PW1, one Kaliaperumal as P.W.2 and Ramalingam as P.W.3 and had marked Exs. A1 to A6. The first defendant has examined himself as D.W.1 and marked Exs.B1 to B21. On a detailed consideration of the evidence on record both oral as well as documentary, the learned Trial Judge had rendered a finding against the plaintiff and had dismissed the suit.

7. Aggrieved by the said Judgment and decree, the plaintiff

has filed A.S.No.41 of 2006 on the file of the Subordinate Judge, Chidambaram. The learned Judge on a perusal of the evidence and the pleadings, has allowed the Appeal, setting aside the judgment and decree of the Trial Court. The learned Judge has taken note of the fact that the suit Survey Number measured an extent of 10 cents, of which one cent was allotted to the Temple of the family deity and the remaining 9 cents was divided amongst the sons of Periyar namely the father of the first defendant and plaintiff and Murugesan, the son of Muthukannan, brother of Periyar. Therefore, the Court below has considered the above facts and passed a decree declaring the suit with reference to 3 cents in suit Survey No.64 /9 in Keelpuliangudi Village. The Judgment would further indicate that the said decision has been taken only after discussions had taken place between the counsel of the plaintiff and the defendants and the parties as well.

8. However, the defendants have come forward with the above Second Appeal, which is admitted on the following substantial question of law namely "Whether the first Appellate Court is correct in law in reversing the finding of fact made by the Trial Court without setting aside those findings?"

9. The judgment and decree has been challenged on the ground that the 9 cents, which remained after allotting 1 cent to the Temple, had to be divided equally between the plaintiff's and the first defendant's father on the one hand and Murugesan on the other, that Periyar's Branch and Muthukannu's Branch were each entitled to $4\frac{1}{2}$ cents. Consequently, the plaintiff's Branch would be entitled to $2\frac{1}{4}$ cents and likewise the defendants would be entitled to $2\frac{1}{4}$ cents. The appellants would contend that without appreciating the above position, the Lower Appellate Court has proceeded to grant a decree in favour of the plaintiff in respect of 3 cents which is in excess of the lands actually allotted to the plaintiff and the defendants.

10. Mr. V. Anand, learned counsel appearing on behalf of the appellants/defendants would contend that admittedly the properties belong to Periyar and Muthukannan and had to be equally apportioned amongst the two. Considering the fact that the total property in question is only an extent of 9 cents, the entire extent of 6 cents cannot be allotted to the share of Periyar Branch. Periyar Branch was only entitled to $4\frac{1}{2}$ cents and consequently plaintiff Branch was entitled to $2\frac{1}{4}$ and the defendants were also entitled to the equal extent. He would, therefore, seek to have the Appeal allowed.

11. Mr. Sankaravadivel, learned counsel appearing on behalf of the Respondent/plaintiff would contend that Ex.B6 is a partition deed executed amongst the father of the first

defendant and the plaintiff, in and by which 3 cents had been allotted to the plaintiff and the same has also been executed by the first defendant himself. He would therefore contend that the partition as contained in Ex.B6 has been considered by the learned Appellate Judge namely the Subordinate Judge, Chidambaram. Ex.B6 is only a document recording/referring the past event and it can therefore be received in evidence as it does not deal with a partition in praesenti but was only a record of an earlier transaction. He would further contend that no exception can be taken to the Judgment and Decree of the lower appellate court.

12. Heard the counsel and perused the papers.

13. Ex B6 is styled as a family arrangement and the reading of this document would clearly indicate what is sought to be given effect to under the deed is only a record of past agreement and is thereby admissible in evidence. The Lower Appellate Court has considered the said document and has come to the conclusion that the recitals contained therein would clearly show that the plaintiff is entitled to an extent of 3 cents on the basis of Ex.B6 and therefore the judgment and decree of the Lower Appellate Court does not require any interference. The Lower Appellate Court has considered the findings of the Trial Court as well as evidence on record independently before passing the decree and the substantial question of law is answered against the defendant/appellant.

14. It is seen that the share due to Muthukannu's son has already been allotted to him and it is the remaining extent that is being partitioned among the plaintiff and the defendant. However, considering the fact that the appellants/defendants had agreed to the above said share, it does not lie in the mouth of the defendants to renege from the earlier agreement.

15. In the result, the substantial question of law is answered against the defendants and the Second Appeal stands dismissed. The Judgment and Decree of the Lower Appellate Court is confirmed. No costs. Consequently, connected Miscellaneous petition is closed.

Sd/-
Assistant Registrar (CO)

//True copy//

Sub Assistant Registrar

mrn

To,

1. The Subordinate Judge,
Chidambaram

2. The District Munsiff Cum Judicial Magistrate,
Kattumannar Kovil

+1cc to Mr.N. Sankaravadivel, Advocate SR.No.19398

S.A.No.1464 of 2007
and
MP.No.1 of 2007

SJ(CO)
GMY(24/08/2020)



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