

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 13.01.2020

Date of Verdict :24.01.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

S.A.No.700 of 2006

Subbarayan ...Appellant/1st Respondent/Plaintiff

Vs.

1.Pattusamy
2.Rajayal
3.Rajendran
4.Susila
5.Vasantha
6.Sundari
7.Sumathi

...Respondents 1 to 7/Respondents/Defendants 2 to 4, 6 to 9
8.Pandian ...8th Respondent/2nd Respondent/5th Defendant

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 12.12.2005, in A.S.No.6 of 2005 on the file of the Principal Subordinate Judge's Court, Virudhachalam, reversing the judgment and decree dated 25.10.2004 in O.S.No.92 of 1999 on the file of the District Munsif cum Judicial Magistrate's Court, Neyveli.

For Appellant : Mr. R. Sunilkumar

For Respondents: Mr. V. Raghavachari, for R2 to 7
R1 & R8 - Died

J U D G M E N T

This second appeal is directed as against the judgment and decree dated 12.12.2005, passed in A.S.No.6 of 2005 on the file of the Principal Subordinate Judge's Court, Virudhachalam, reversing the judgment and decree dated 25.10.2004 in O.S.No.92 of 1999 on the file of the District Munsif cum Judicial Magistrate's Court, Neyveli.

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 declaration and permanent injunction. The suit properties originally belonged to grandfather of the plaintiff. In the suit properties, there

were also other properties which belonged to the first defendant and one A.Narayanasamy. These properties comprised in patta which was issued in favour of the plaintiff, first defendant and one Narayanasamy. The first defendant is possessed of some other properties and those properties are not related to the suit properties. Though he paid kist for the said properties, in the said properties patta No.50 is mentioned. In the year 1977, the grandfather of the plaintiff executed a settlement deed in favour of uncle of the plaintiff one Krishnsamy and also in the name of plaintiff by appointing the father of the plaintiff as guardian, since the plaintiff was minor at that time of execution of the settlement deed by his grandfather. In fact the payment of kist is reflected in the joint patta issued as patta No.50. As per the settlement deed, the plaintiff is entitled to suit properties and the settlement deed has been acted upon. After attaining majority, the plaintiff was paying kist for the properties and he has been in possession and enjoyment continuously after his predecessors and thus he also prescribed title by adverse possession. Therefore, neither the defendants 1 and 2 nor any other person have any right over the suit properties. Due to the enmity between the plaintiff and the defendants the defendants are claiming right over the suit properties and now the defendants are trying to trespass with the suit properties and claim title over the suit properties. Hence, the suit.

4. Resisting the same, the defendants filed a written statement stating that the suit properties never belonged to the grandfather of the plaintiff. It is true that the suit properties were also covered under patta No.50 and in respect of the properties comprised in Survey Number.99/4 ad-measuring 1 acre which is 1st item of the suit property and the property comprised in Survey Number.114/3 ad-measuring 1.82 acres which is 2nd item of the suit property patta No.50 was granted in favour of the grandfather of the plaintiff, first defendant, one Narayanasamy and as such each entitled for 1/3rd share in the first item namely the property comprised in Survey No.99/4 and 1/3rd share each in the property comprised in Survey No.114/3. Therefore, the grandfather of the plaintiff had no title for the entire properties to execute a settlement deed in favour of the plaintiff and he is entitled only to 1/3rd share in both items. The said settlement deed was executed on 28.12.1977. In fact in the year 1971 itself, the son of the plaintiff's grandfather viz., Panchanatha Padayachi filed a suit in O.S.No.26/1966 on the file of the Sub Court, Chidambaram for partition and the said suit was decreed granting 1/3rd share to the plaintiff's father and his grandfather and the plaintiff, namely 35 cents in Survey No.99/4 and 61 cents in Survey No.114/3. Therefore, the grandfather of the plaintiff had no title to the suit properties and as such he had no right to execute settlement deed in the year 1977. In fact, the defendants are having 1/3rd share in the suit properties and that being so, the grandfather of the plaintiff and the said Narayanasamy filed a

suit against the first defendant in O.S.No.910/1966 on the file of District Munsif's Court, Chidambaram. The said suit was decreed, in which the first defendant has got 1/3rd share in the suit properties. Therefore, the first defendant is entitled to 35 cents on the North of the 1st item of the suit property. The said Narayanasamy is none other than the elder brother of the second defendant. The said Narayana Swamy and the second defendant orally divided 1/3rd share in the suit properties and also in the oral partition 36 cents in Survey No.99/4 was allotted to the second defendant. The 61 cents in Survey No.114/3 is in possession of the second defendant's brother, the said Narayanasamy who is a joint pattadhar. Apart from that, 32 cents on the south of Survey No.114/3 is left for common usage. In the remaining extent of 1.50 acres, the first defendant is entitled to the middle portion. The first defendant also divided the share of 60 cents in which he had sold 50 cents on 21.01.1987 by a registered sale deed in favour of the 2nd defendant. After the sale, his share is sub divided as 114/3B. The remaining land on the south of 32 cents in which the common share of 10 cents and 1/3rd share in the tamarind tree is being enjoyed by the first defendant. Since from the date of purchase, the 2nd defendant is in the possession of 60 cents, he has prescribed title by adverse possession. Therefore, the plaintiff has no title right or interest over the suit properties. The plaintiff was never in possession and enjoyment of the suit properties and therefore, the plaintiff is not entitled to seek any relief as prayed for and sought for dismissal of the suit.

5. In support of the plaintiff's case, P.W.1 to P.W.4 were examined and six documents were marked as Ex.A.1 to Ex.A.6. On the side of the defendants D.W.1 was examined and Ex.B.1 to Ex.B.63 were marked. Through Ex.P.W.4, Ex.X.1 to Ex.X.5 were marked. On considering the oral and documentary evidence adduced by the respective parties and the submission made by the learned counsel, the trial Court decreed the suit in favour of the plaintiff. Aggrieved over the judgment and decree of the trial Court, the defendants preferred an appeal suit in A.S.No.6 of 2005 before the Principal Subordinate Judge, Virudhalam. The first appellate Court on appreciating the materials placed on record, allowed the appeal and dismissed the suit filed by the plaintiff. Aggrieved by the same, the plaintiff has filed the second appeal in S.A.No.700 of 2006.

6. At the time of admission of the second appeal, the following substantial questions of law were framed :-

a) Whether the learned Subordinate Judge was not in error in finding that the plaintiff settlor was entitled to undivided 1/3rd share, failing to note that the defendant had not even pleaded as case of joint holding and the plea of oral partition propounded by him had been

rejected by the trial court and the said finding was not even adverted to by the appellate court?

b) Whether the dismissal of the suit for declaration by the plaintiff's settlor in 1966 is not relevant, especially when the settlor continued in possession notwithstanding the dismissal of the suit and the defendants in the suit had not filed their own suit for partition at any point of time based on the findings in the judgment in O.S.910 of 1996?

c) Whether the plaintiff settlor had not in any event prescribed title to the property by adverse possession by continuous enjoyment for well over the statutory period and consequently the settlement executed by him was perfectly valid and the injunction granted by the trial court was therefore perfectly justified?

7. The learned counsel appearing for the appellant/plaintiff and the respondents/defendants are present and they have reiterated the averments set out in the plaint as well as in the written statement.

8. Heard Mr. R. Sunilkumar, learned counsel appearing for the appellant and Mr. V. Raghavachari, learned counsel appearing for the respondents.

9. Pending the appeal suit before the First Appellate Court, the defendants filed an application to receive additional documents under Order 47 Rule 27 CPC, in I.A.No.240 of 2005 and the same was dismissed by the First Appellate Court. Now this Court has to see whether the plaintiff is entitled to 1/3rd share.

10. The case of the plaintiff is that the suit properties originally belonged to his grandfather Ariyaputhira Padayachi. In the suit property along with the other properties also belonged to first defendant and one Narayanasamy all were jointly issued patta No.50 in the year 1977. The said Ariyaputhira Padayachi, executed settlement deed in favour of the plaintiff and his uncle one Krishnasamy by appointing his father as a guardian. Therefore, they are paying all revenue dues in their name and settlement deed has been acted upon. Therefore, the defendants are not entitled to the suit properties. But the plaintiff deposed in his cross examination that 1/3rd share in the suit properties were already decreed in favour of first defendant and one Narayanasamy. In the cross examination, he deposed that he had no knowledge about the same and also admitted that he did not take any action on the decree. He also deposed that when

the suit properties were enjoyed by himself and his father more than 12 years, as such they are entitled for adverse possession. He also admitted that the suit properties which was originally derived by his grandfather by partition along with his family members and thereafter, the said properties was partitioned before this Court in which 61 cents out of 1.08 acres were allotted to his father. The second defendant was examined as D.W.1. He deposed that originally the entire properties belonged to one Aanaya Padayachi, he had 3 sons namely Sembaiyan, Ariyaputhiran and Appu and two daughters viz., Annamaal and Rathinambal, in which one Mr.Manickam is the husband of the said Annamaal and their son is Govindasamy. The said Rathinambal died without any legal heir. The said Ariyaputhira Padayachi had 3 sons viz., Krishnasamy, Ganasen and Panjanathan. One Punniyamurthy and plaintiff/Subbarayan are two sons to the said Ganesan. One Sivakumar was born to Punniyamurthy and 4 sons to the said Appu and the first defendant is one of the sons to the said Appu. Therefore, the first item of the suit property comprised in Survey No.99.1 ad-measuring 1.08 acres and the second item comprised in Survey No.114/3 ad-measuring 1.28 acres which were issued joint patta No.50. Therefore, the joint patta issued in favour of the Ariyaputhira Padayachi, Narayanasamy and Govindasamy, since all the three are having equal share namely $\frac{1}{3}^{\text{rd}}$ in the suit properties, as such the grandfather of the plaintiff is entitled only for $\frac{1}{3}^{\text{rd}}$ share in the suit properties.

11. As such, the settlement deed itself is invalid since the grandfather of the plaintiff had no title over the entire suit schedule properties. Further, he categorically deposed that in O.S.No.26/1966, the grandfather of the plaintiff and his brothers along with Ganesan filed a partition suit in which the father of the plaintiff has got $\frac{1}{3}^{\text{rd}}$ share namely 35 cents in the first item of the schedule mentioned property and 61 cents in the 2nd item of the suit schedule property. Ex.B9 to Ex.B33 also paid in the name of the second defendant and Ex.B35 was issued for the first item of the suit schedule property and Ex.B36 to Ex.B42 are also the tax receipt paid for the pasli year 1396 to 1404. Ex.B43 with the sale deed executed in favour of D2 by the first defendant in the year 1987. Further, Ex.A1 patta jointly issued in the name of Ariyaputhira Padayachi, first defendant and one Narayanasamy. It shows that all the three were in joint possession and enjoyment of the properties and entire suit properties were not in enjoyment of the grandfather of the plaintiff alone. In fact, the original settlement deed was not produced by the plaintiff though the plaintiff P.W.2 who is one of the witnesses in Ex.A2 has stated that he does not know about other witnesses and he does not know about the settlement deed executed in his favour by his grandfather. The plaintiff also failed to mark any documents to show his predecessor who is possession and enjoyment of the suit property.

12. In fact, Ex.A2 settlement deed was executed in favour of the plaintiff as well as his maternal uncle and thereafter, no sub division in the suit schedule property and also no change of patta issued in their favour respectively. Except the settlement deed, the plaintiff did not mark any document to show that his grand father solely had title over the suit schedule property. The defendants marked judgment and decree in the partition suit between the brothers of the plaintiff grandfather as Ex.B3 to Ex.B7. In the judgment and decree passed in O.S.No.910/1966, 909/1966 and A.S.No.117/1967 and A.S.No.112/1967. Whereas, the grandfather of the plaintiff stated in the settlement deed that the entire suit property is a self acquired one. Therefore, the plaintiff failed to prove that his grandfather had title over the entire suit schedule property. Further, the plaintiff's grandfather and said Narayanasamy have filed a suit for declaration and injunction in O.S.No.26 of 1966, and the same was dismissed and it also proved that they are having only 1/3rd share of suit schedule property. Therefore, the grandfather of the plaintiff is entitled 1/3rd share in the first item of the suit schedule property namely 35 cents and 61 cents in the 2nd item of the suit schedule property.

13. In fact, the plaintiff in the year 1990 itself sold out 30 cents from the first item of the suit schedule property in favour of Saraswathy Ammal and 15 cents sold out in favour of the Kalyanasundaram and they have not been impleaded as parties in the suit. However, the plaintiff's grandfather never had title over the entire suit schedule property. Therefore, the trial Court only on the basis of the settlement deed decreed the suit. However, the first appellate Court had gone into the evidence on record and rightly reversed the finding of the trial Court and dismissed the suit filed by the plaintiff.

14. In view of the above discussion, this Court does not find any valid reason to interfere with the findings rendered by the First Appellate Court. Therefore, this Court is of the considered opinion that no substantial questions of law are involved in this appeal. Be that as it may, the substantial questions of law are accordingly answered against the plaintiff and in favour of the defendants.

15. Accordingly, this Second Appeal stands dismissed confirming the judgment and decree passed by the First Appellate Court. No order as to cost.

Sd/-
Assistant Registrar (ADI MDU)

//True copy//

Sub Assistant Registrar

To

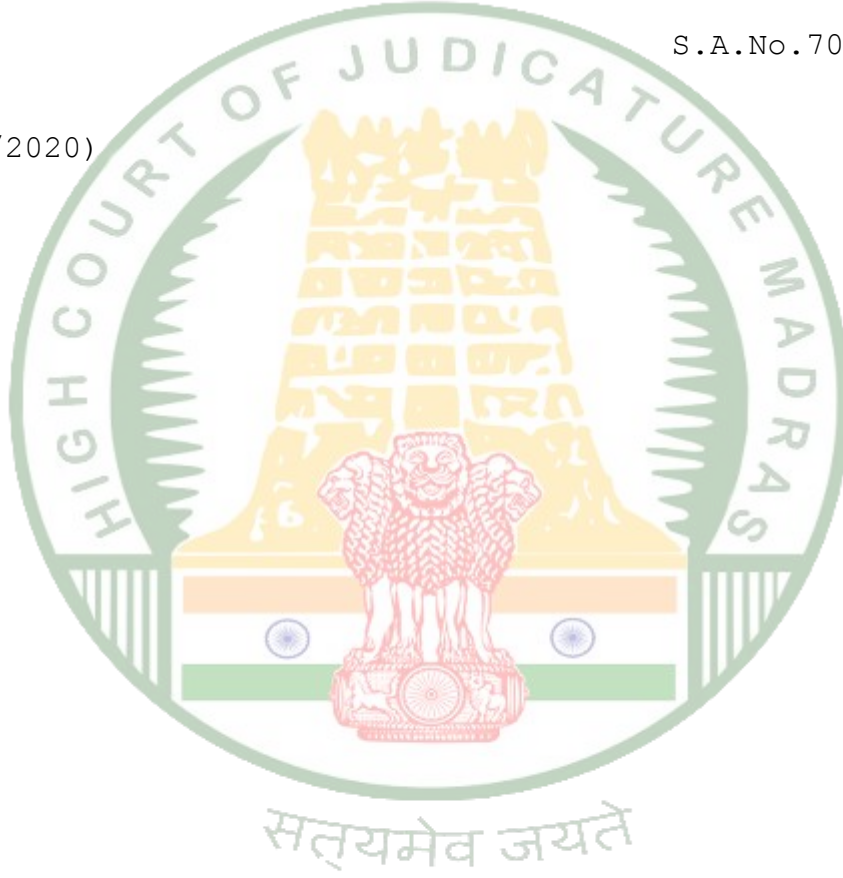
1. The Principal Subordinate Judge Court,
Virudhachalam.

2. The District Munsif cum Judicial Magistrate Court,
Neyveli.

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

S.A.No.700 of 2006

PM(CO)
GMY (21/08/2020)



WEB COPY