



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved : 03.11.2020

Pronounced on : 09.11.2020

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Second Appeal No.1014 of 2010
and
M.P.No.1 of 2010

Kandasamy Gounder .. Appellant/Appellant/Defendant

/versus/

1.Mariaprakasam
2.Thomas
3.Rosammal
4.Sabastian
5.Raji
6.Bilomina

..Respondents/Respondents/Plaintiffs

Prayer: Second Appeal has been filed under Section 100 of the Civil Procedure Code against the judgment and decree of Sub Court, Kallakurichi, dated 18.03.2010 made in A.S.No.69 of 2007 confirming the judgment and decree of First Additional District Munsif Court, Kallakurichi dated 06.08.2007 made in O.S.No.974 of 2000.

For Appellant :Mr.S.Sounthar

For Respondents :Mrs.R.Meenal for R1 to R6

J U D G M E N T

(The case has been heard through Video Conferencing)

This Second Appeal is filed against the concurrent findings of the Courts Below granting decree of Permanent Injunction in favour of the respondents/plaintiffs.

2.The brief facts involved in this case is that, Anthonymuthu (deceased) claiming title, right and possession over 0.43 cents of land in S.No.126/1 in Thimmapuram Village, Kallakurichi Taluk through a registered sale deed dated 09/12/1971 executed by Kombaiyan vagaiyara, had laid the suit for Permanent Injunction against Kandasamy Gounder alleging that he is trying to disturb the peaceful possession of the suit property. Since Anthonymuthu died pending suit, his legal



representatives were impleaded and they continued to contest the case. Kandasamy Gounder claiming title over 14 1/3rd cents on the eastern portion of the suit property alleged to have purchased from one Pichaiya Pillai., S/o Govindan defended the suit.

3.The plaintiffs relied upon the sale deed dated 09/12/1971-Ex.A-1, Patta-Ex.A-4, kist receipts-Ex.A-5 and the deposition of PW-2[Ponnan] a neighbouring land owner, who had deposed that the suit land is in possession and enjoyment of the plaintiffs. He had also deposed that Chellan had only two sons by name Arumugam and Munian. He had no son by name Govindan and there is no one in the Village by name Pichaiya Pillai.

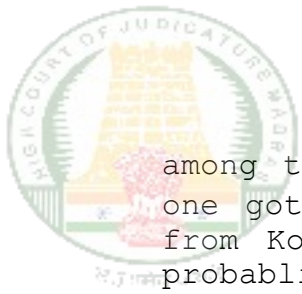
4.The defendant relied upon Ex.B-1-sale deed dated 19/10/1981 executed by Pichaiya Pillai on his behalf and on behalf of his minor son Sakthivel, Ex.B-4 and Ex.B-5 patta issued in his name, kist receipts-Ex.B-2, Ex.B-6 and Ex.B-7 the village map. Also, relied on the deposition of DW-2[Mohammed Ali] Village Administrative Officer to prove his possession and title over the suit property.

5.The Courts below decreed the suit claim taking note of the fact that the sale deed EX.A-1 is anterior in point of time and the plaintiffs are in absolute enjoyment of the entire suit extent of the suit property after proper mutation of revenue records and payment of kist. Whereas the defendant had failed to establish their title and possession over the portion of the suit property upon which they claim.

6.In this appeal, the learned counsel for the appellant/defendant submitted that, the finding of the Courts below is perverse and contrary to law and evidence. The appellants had purchased 1/3 of the suit property from one of the legal heirs of Chellan. Hence, he had become co-owners of the suit property. The Courts Below ought not to have granted a decree of Injunction against co-owner. Further, when there is a cloud over the title, hence, the suit for bare injunction is not maintainable.

7.The learned counsel for the respondents/plaintiffs submitted that, there is no cloud over the title. The plaintiffs through Ex.A-1 and other documents have established that they are the absolute owner of the property and enjoying the same since 1971. The appellants/defendants failed to prove their claim of title and possession. They failed to prove how their vendor Pichaiya Pillai derived right to alienate the property. Hence, on facts and evidence, the Courts Below have decreed the suit, which requires no interference under Section 100 of the Civil Procedure Code.

8.The specific case of the appellants is that the suit property originally owned by Chellan, who had three sons by name Govindan, Arumugam and Munian. The suit property was divided



among the sons of Chellan 40 years ago by oral partition. Each one got $14 \frac{1}{3}^{\text{rd}}$ share. The plaintiffs title document Ex.A-1, from Kombaiyan, S/o Arumugam and Munian, S/o Chellan can only probablise their title to an extent of $28 \frac{2}{3}^{\text{rd}}$ cents and not for the entire 43 cents in S.No. 126/1. Having purchased $14 \frac{1}{3}^{\text{rd}}$ cents from the legal heirs of Govindan, the appellant become co-owner in the suit property.

9.The said submission had been rightly rejected by the Courts Below for want of proof. There is no evidence to show that Chellan had a son by name Govindan and his son is Pichaiya Pillai. PW-2[Ponnan] had positively deposed that Chellan had no son by name Govindan and no one in the village by name Pichaiya Pillai (vendor of the appellant). Whereas, in the cross examination to the specific question, the appellant had deposed that he is not going to examine Pichaiya Pillai, since he is dead. He has not let any other evidence to prove that Chellan had 3 sons and they orally entered into partition 40 years ago and his vendor is from one of the branch. That apart, the revenue records and oral evidence are in support of the plaintiffs to show their possession since 1971. Ex.B-1 sale deed is 10 years after the plaintiffs sale deed. By the time, the appellant alleged to have purchased $14 \frac{1}{3}^{\text{rd}}$ cents of land from Pichaiya Pillai, the revenue records were mutated for entire 43 cents in the name of Anthonymuthu.

10.In the absence of evidence that Chellan had a son by name Govindan and the said Govindan was allotted the eastern part of the suit property, the title set up by the appellant can be termed only as a farce and not a genuine claim. Except the oral evidence of DW-1-the appellant and the recital of Ex.B-1, there is no evidence to show that Chellan had a son by name Govindan. Even DW-2 examined to support the case of the appellant, in the cross examination, failed to sustain his evidence. Therefore, the appellant cannot be termed as a co-owner or there is cloud over the title of the suit property.

11.For the said reasons, this Court concludes that there is no Substantial Question of Law involved in this appeal. Therefore, this Second Appeal is dismissed. The judgment and decree of the Trial Court as confirmed by the first Appellate Court is upheld. No order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar



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To:

1.The Sub Judge , Kallakurichi.

2.First Additional District Munsif Court, Kallakurichi.

Copy To:

The Section Officer
V.R.Section,
High Court, Madras-104.

+1cc to M/s.R.Meenal, Advocate, S.R.No.36231

S.A.No.1014 of 2010
and
M.P.No.1 of 2010

SSD(CO)
SB(28/07/2021)