



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 02.11.2020	Pronounced on: 05.11.2020
-------------------------	---------------------------

Coram::

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

S.A.No.616 of 2010

1. Velu, S/o.Kulla Gounder,
2. Sekar, S/o.Varadha Gounder,
(both residing at Anganampalli Village
Gudiyatham Taluk) ...Appellants/1 & 3 Defendants

/versus/

1. Pichandi,
S/o.Periyappa Gounder,
Anganampalli Village, Baradarami Post,
Gudiyatham Taluk.

2. Gajendran,
S/o.Kulla Gounder,
Anganampalli Village,
Gudiyatham Taluk.

...Respondents/Plaintiff/2nd Defendant

Prayer: Second Appeal is filed under Section 100 of C.P.C, praying against the judgment and decree of the Learned Subordinate Judge, Gudiyatham, Vellore District dated 30.06.2008 in A.S.No.3 of 2007 confirming the judgment and decree of the Learned District Munsif, Gudiyatham, Vellore District, dated 29.06.2006 in O.S.No.11 of 2003.

For Appellants : Mr.Leela Raman,
for Mr.T.M.Hariharan

For R1 : Mr.G.Vinodh Kumar

For R2 : No appearance

JUDGMENT

(The case has been heard through video conference)

The defendant Nos.1 & 3 in the suit for declaration and permanent injunction are the appellants herein. Aggrieved by the concurrent findings of the Courts below, the present Second Appeal is preferred.

2. Heard the Learned Counsel for the Appellants and the Learned Counsel for the 1st Respondent.

3. For the sake of convenience, the parties are referred as per the description and ranking in the plaint.

Five items of agricultural land is the subject matter of the suit. According to the plaintiff, item Nos.1 to 4 of the suit properties are the properties inherited by his father from his ancestors. The item No.5 of the property purchased by him from the income derived from the ancestral properties of item Nos.1 to 4. Till his life time, the plaintiff's father was in absolute possession and enjoyment of the properties. He died 20 years ago handing over the properties to his wife and son (mother of the plaintiff and the plaintiff respectively). After the demise of the plaintiff's mother 3 years ago, the plaintiff enjoying the property absolutely. The defendants have no right over the suit property. However, from 02.01.2003, they are claiming right over the property and trying to trespass into the suit land.

4. The 1st defendant, in his written statement, denied the above said averment of the plaintiff and contended that, the suit property is not the ancestral property of the plaintiff's father and the plaintiff is not in possession of it. The defendants and their predecessors-in-title are in possession of the property for more than the statutory period and they have perfected their title by adverse possession also. They are cultivating the land and paying kist. The boundaries of the suit property not provided for the said reason, the suit has to be dismissed. The 3rd defendant adopted the written statement of the 1st defendant.

5. Subsequently, the 1st and 3rd defendants filed separate additional written statements. In the additional written statement of the 1st defendant it was contended that, the plaintiff and the defendants 1 and 2 are relatives. After the demise of the plaintiff's father Periyappa Goundar, item Nos.1, 2 and 4 are in possession and enjoyment of the 1st defendant. Item Nos.2 and 5 are in joint enjoyment of the plaintiff and 3rd defendant. About 15 years ago, in the presence of village elders, the plaintiff agreed to sell the suit land to the 1st and 3rd defendants and left the village receiving the consideration. The plaintiff has executed a deed to this effect and given it to his father-in-law with an understanding that his father-in-law Venkatesan shall retain it till the plaintiff register the sale deed in father of the defendants.

6. In the additional written statement of the 3rd defendant, it was contended that, the suit for declaration and injunction not maintainable. The plaintiff parents died intestate leaving behind a son (plaintiff) and two daughters namely Venda and Amsa. The daughters are proper and necessary parties to the suit. The property is in possession of the defendants. The plaintiff in connivance with the Revenue Officials had changed the revenue records without the knowledge of the defendants. The revenue records do not bind the defendants. The plaintiff had sold the suit property to the defendants and handed over the possession of the property. Therefore, the defendants are entitled for the benefit of Section 53-A of the Transfer of Property Act.

7. The plaintiff, in his reply statement had stated that, the contention of the 3rd defendant in his additional written statement are false. The suit properties were handed over to the plaintiff and his mother by his father (Periyappa) during his life time and his sisters Venda and Amsa have no right in it. Further, the 3rd defendant had acknowledged their right over the property inherited through Periyappa and had purchased a property from them on 22.03.1995. As far as the unregistered sale deed relied by the defendants which is alleged to have been executed on 24.07.1993 by the plaintiff in respect of item Nos.1, 2 and 4 properties, the plaintiff contended that it is a document fabricated for the purpose of the suit.

8. Based on the pleadings, the Trial Court framed the following issues:-

(i). Whether the plaintiff is entitled for declaration of his title over the suit property?

(ii). Whether the plaintiff is entitled for permanent injunction as prayed for?

(iii). Whether the suit properties are ancestral property of plaintiff and 5th item is purchased out of income ancestral properties?

(iv). Whether the defendant have perfected his title to the suit property by way of adverse possession also?

(v). Whether the defendants are in possession of the suit property as cultivating tenants the same?

(vi). To what relief ?

Additional issues:-

(i). Whether the suit is bad for non-joinder of necessary parties?

(ii). Whether the 1st defendant is in possession of the suit property and entitled for the benefits of Section 5 of Transfer of Property Act?

9. The plaintiff mounted the witness box and deposed. 14 documents were marked on the plaintiff side. 6 witnesses and 13 documents were marked on the side of the defendants.

10. The Trial Court, on considering the evidence has held that the defendant Nos.1 & 3 have admitted the plaintiff's case to the extent that the suit schedule property in Item Nos.1, 2 & 4 were allotted to Periyappa Goundar through oral partition held between the Periyappa Goundar and his brother Thiru.Kulla Goundar.

11. The defendants dispute the title of the plaintiff on the ground that the defendants have perfected the title through adverse possession. In the additional written statement had stated that they have purchased the suit property from the plaintiff through oral sale in the presence of village Headman. Either for perfecting the title by adverse possession or for oral sale, the defendants have not produced any reliable documents. Therefore, the documents available are enough to declare the title of the plaintiff over the suit property.

12. The Trial Court, on considering the evidence held that the plaintiff has proved their possession of the suit property through Adangal and Kist receipts marked as Ex.A.4, Ex.A.5 and Ex.A.6. The Kist receipts relied by the defendants and marked as Ex.B.11 & Ex.B.12, also stands only in the name of the plaintiff. Therefore, the oral evidence let in by the defendants through D.W.1 to D.W.6 were overlooked in view of the documentary evidence. Accordingly, the Trial Court granted relief of declaration and permanent injunction.

13. Aggrieved defendants have preferred appeal before the Subordinate Court, Gudiyatham, Vellore District, in A.S.No.3 of 2007.

14. The Lower Appellate Court has formulated the following points for consideration.

(i). Whether the respondent/plaintiff is entitled to claim declaration of title over the suit properties?

(ii). Whether the respondent/plaintiff is in possession and enjoyment of the plaint schedule properties?

(iii). Whether the respondent/plaintiff is entitled to get permanent injunction?

(iv). Whether the appellant/defendants have perfected their title to the suit properties by way of adverse possession?

(v). Whether the appellants/defendants 1 & 3 are in possession and enjoyment of the suit properties by way of oral sale by the respondent/plaintiff?

(vi). Whether the appellants/defendants are enjoying the suit properties as cultivating tenant?

(vii). Whether the suit filed by the respondent/plaintiff is bad for non-joinder of necessary parties?

(viii). To what relief?

15. The Lower Appellate Court, on re-appreciating the evidence as well as the precedent governing the legal issue, dismissed the appeal by confirming the decree of the Trial Court.

16. The Learned Counsel appearing for the appellant would submit that the Courts below failed to advert to the evidence and pleadings in proper perspective. The inconsistency in the case of the plaintiff not been properly appreciated by the Courts below.

17. According to the Learned Counsel for the appellants, submitted that in the plaint, the plaintiff has falsely averred that the defendants are strangers and the suit properties are ancestral properties of the plaintiff's father. Later, after the written statement and additional written statement in the reply statement, the plaintiff has pleaded that the suit property was allotted to the father of the plaintiff in the oral partition held between the 1st appellant's father (1st defendant father) and 1st respondent father (plaintiff's father). In the absence of evidence to substantiate the oral partition between the family members, the case of the plaintiff ought not to have been accepted by the Courts below. The suit for declaration of title in the absence of clear documents to prove the title is not sustainable and the Courts below ought not to have been accepted the case of the plaintiff's.

18. Per contra, the Learned Counsel appearing for the respondent would submit that the plaintiff has consistent in claiming title over the property through Periyappa Goundar and to substantiate the claim, they have filed documents like title deed and Kist receipts. It is the defendants, who are the appellants herein have taken contradictory plea of adverse possession and title through unregistered sale deed.

19. The admitted case of the parties is that Veera Raghavalu Gounder had two sons by name Thiru.Periyappa Gounder and Thiru.Kullappa Gounder. Thiru.Periyappa Gounder had two wives namely Kamatchi and Pattammal. In the written statement as well as in the deposition of D.W.1, it is admitted that item Nos.1 to 4 of the properties were allotted to Periyappa Gounder and Item No.5 of the plaint property was purchased by Periyappa Gounder under Ex.A.1. As per patta, item Nos.1, 2, 3 & 5 stands in the name of the plaintiff exclusively and for item No.4 the plaintiff is joint pattadar. The defendants admits the title of the plaintiff and set up a title through oral sale deed alleged to have executed by the plaintiff.

20. The specific case of the defendants is that in the presence of D.W.2, D.W.3 and D.W.4 the plaintiff agreed to sale the suit property and has received consideration and handed over the possession to the defendant and left the village. None of the witnesses were able to specify the mode of consideration or date of oral sale. Contrarily, Ex.B.3 sale deed executed on 22.03.1995 by the plaintiff and his step mother Kamatchi in favour of the 3rd defendant indicates that the plaintiffs are very well residing in the same village and had sold the property inherited from Periyappa Gounder to the 3rd defendant. Further, the security deed alleged to have executed by the plaintiff and handed over to Venkatesan never seen the light of the day and it can never be a supportive document for claim of oral sale by the plaintiff.

21. The contention of the defendants is that the possession of the property was handed over to them and same is protected under Section 53-A of Transfer of Property Act, also does not find any merit. When the alleged oral sale itself not been proved and possession based on the Kist Ex.B.11 & Ex.B.12 stands in the name of the plaintiff and not in the name of the defendants, handing possession as part performance is unfound.

22. Hence, this Court holds that the decree and judgment of the Courts below are sustainable in law and evidence. The plaintiff, on their own through documents had proved their title and possession. The evidence let in by the defendants had enhanced the case of the plaintiff regarding title and possession. Therefore, this Court finds not merit in the Second Appeal. Accordingly, the Second Appeal is dismissed. No costs.

Sd/-
Assistant Registrar (CS-IX)

//True copy//

Sub Assistant Registrar

bsm

<https://hcservices.ecourts.gov.in/hcservices/>

To:

1. The Subordinate Judge,
Gudiyatham, Vellore.
2. The District Munsif,
Gudiyatham, Vellore District
3. The Section Officer,
V.R.Section, High Court, Madras.

+1cc to Mr.T.M.Hariharan, Advocate SR.No.35980

+1cc to Mr.G.Vinodhkumar, Advocate SR.No.36053

S.A.No.616 of 2010

AD(CO)
GMY(04/05/2021)



WEB COPY