

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.03.2020

CORAM

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

S.A.No.1274 of 2005
and
C.M.P.No.17251 of 2005

1.Sundara Gounder
2.Narayanasamy
3.Thamaraimanalan
4.Natarajan

... Appellants/Respondents/Defendants

versus

Perumal Gounder (Died)

1.Janaki
2.Balaraman
3.Rajaraman
4.Anjali Devi
5.Arivukkodi
6.Madhimugavadhini @ Ilamathi
7.Chandrapoorani
8.Baby Vinayagam

... Respondents /Appellants/ Plaintiff

(Cause title accepted vide order
of the Court dated 01.10.2005
made in C.M.P.No.15867 of 2005).
in SA.SR.75825/2005

Prayer: Second Appeal is filed under Section 100 of code of Civil Procedure against the judgment and decree dated 08.12.2004 made in A.S.No.38 of 2003 on the file of the Additional Subordinate Court, Tindivanam, reversing the judgment and decree dated 09.04.2003 made in O.S.No.705 of 1995, on the file of the learned District Munsif-cum-Judicial Magistrate, Vanur.

For Appellants : Mr.P.Dinesh Kumar
for Mr.D.Ravichander

For Respondents: Mr.Veeraraghavan[R1 to R8] - No Appearance

JUDGMENT

The defendants in O.S.No.705 of 1995 are the appellants before this Court. The suit was laid for declaration of plaintiff's

title over the suit property and for consequential injunction. It came to be dismissed by the trial Court, and in an appeal preferred by the plaintiff in A.S.No.38 of 2003, the said decree was reversed and the suit was decreed. Hence, the second appeal is laid at the instance of the defendants. Parties would be referred to by their rank before the trial court.

2.1 The suit property is described as the southern 4 cents in Sy.No.32/1. The entire survey number has a total extent of 8 cents and the northern 4 cents belonged to one Kathamuthu Gounder. There is no dispute as to the northern 4 cents in Sy.No.32/1. This Kathamuthu Gounder is also not a party to the suit. The case of the plaintiff is that under Ext.A3, sale deed dated 27.10.1919, the suit property was sold by one Raghava Gounder in favour of Aadhimoola Gounder. The purchaser under this document has sold the property to one Muruva Gounder under Ext.A2, sale deed dated 24.06.1921. Muruva Gounder in turn sold the property to the plaintiff's father Natesa Gounder under Ext.A1, sale deed dated 30.06.1924. On the demise of Natesa Gounder, the property devolved on the plaintiff. On this set of facts, the plaintiff laid a suit for declaration of title when he faced certain obstruction to the same at the hands of the defendants.

2.2 According to the defendants, the suit property, measuring 4 cents in Sy.No.32/1 and the adjacent plot to its south in Sy.No.32/2 measuring 7 cents originally belonged to one Periya Muniyan. He is the brother of Natesa Gounder (Uncle of the plaintiff). On the demise of Muniya Gounder, the property devolved on his sons Mottaian and Gopal. Mottaian had two sons, namely Munusamy and Jagannathan, and Gopal has two sons Rathnam and Gothandapani. While so, on 05.05.1976, under Ext.B1, Mottaian, Munusamy and Jagannathan have executed a sale deed in favour of the defendants. This sale deed covers the suit property plus 1.5 cents in the southern plot comprised in Sy.No.32/2. In the very next year, on 14.11.1977, under Ext.B2, the defendants purchased the remaining 5 ½ cents in S.No.32/2 from Gopal's heirs namely Rathnam and Gothandapani along with their respective sons. It is further pleaded that the vendor to Ext.A1 did not have any title to the suit property and hence, the plaintiff has not and cannot acquire any title under the same.

3.The dispute went to trial. The plaintiff examined himself as PW1. Gothandapani, who is one of the executant of Ext.B2 sale deed in favour of the defendants was examined on the side of the plaintiff as PW2. In addition, the plaintiff also examined an independent witness as PW3. For the defendants, the first defendant examined himself as DW1 and also examined two other witnesses. The plaintiff has produced adangal for fasali from 1369 to 1376 and also the certificates of the Tahsildar. The

defendants too have produced title deeds in Exts.B1 and B2 and also produced several tax receipts, Patta Pass Book, both prior to and after the suit and also produced two other critical documents in Exts.B3 and B4.

4.In the context of the case, Exts.B3 and B4 may have to be briefly explained. Ext.B3 is the sale deed dated 24.10.1961 under which Kathamuthu Gounder had purchased the northern 4 cents in Sy.No.32/1. In this sale deed, the southern boundary is shown to be Muniya Gounder's property. This Kathamuthu Gounder settled this property in favour of his wife under Ext.B4, settlement deed dated 21.05.1982. By this time, the suit property is stated to have been purchased by the defendants under Ext.B1. In Ext.B.4, settlement deed, the southern boundary is shown to be the first defendant's property.

5.On appreciating the evidence, the trial Court has non-suited the plaintiff. When the matter came up before the First Appellate Court, it reversed the decree of the trial Court and allowed the first appeal. Its line of reasoning are that, notwithstanding the fact that Ext.A1 is certified copy, still Section 90 of the Evidence Act applies for proving its due execution. Secondly, under Ext.A.4, Adangal, the entire 8 cents in S.No.32/1 is shown to be in the name of the aforesaid Kathamuthu Gounder, and since the defendants did not show that it is in their possession, the defence has to be rejected.

6.This Second Appeal was admitted on the following substantial questions of law:

"1. In the absence of a proof of partition between Natesa Gounder and Munia Gounder, prior to Ex.A1, is the Learned Subordinate Judge right in holding that the Plaintiff has title and possession?

2. In law, the presumption under Section 90 of the Evidence Act, if at all, can be applied for the genuineness of the document. In the said circumstances, is the Learned Subordinate Judge right in granting a decree on the basis of presumption?

3. When the Defendants having produced Title Deed and also documents to prove their possession, is the Learned Subordinate Judge right in reversing the finding on adverse possession?"

7. The learned counsel for the appellants submitted that the First Appellate Court did not focus on couple of critical issues :

- a) Sec. 90 of the Evidence Act which creates a presumption of hand writing and signature in an ancient document aged more than 30 years as belonging to those by who they were

purported to have been made, or to whom it was purported to be belonged to, as the case may be, can be applied only for the original document and not for their certified copies. Even this presumption which is rebuttable in character.

- b) If Ext.A4, on which, the First Appellate Court found reasons to decree the suit only refers to the name of Kathamuthu Gounder and not the plaintiff. In a suit for declaration of title, the plaintiff needs to prove his title, and it is impermissible in law for him to fall back on the weaknesses, if any, in the defence. If Ext.A4 at the least had referred to the name of the plaintiff, then it would have created an onus for the defendants to address and respond. With nothing in that document, the First Appellate Court ought not to have acted on it.
- c) PW2 is one Kothandapani. He is the co-executant of Ext.B2 sale deed, and was examined by the plaintiff to prove that the plaintiff's father had title to the suit property. However, post his examination, his testimony only benefited the defendants more than the plaintiff and that it strengthened the relative probability of the defendants' case. This apart, the defendants had produced Ext.B5 Patta Pass Book and tax receipts well prior to the suit. These tax receipts stand in the name of the 1st defendant, which would imply the 1st defendant has been in possession of the entire plot.

8.The plaintiff died during the pendency of the main appeal and his legal representatives have been impleaded as Respondents 1 to 8. There is no representation for the respondents and since the appeal is of the year 2005, and is about 15 years old as of today, this Court chose to consider the merit of the appellants argument.

9.1 Principally, the contention of the appellants/defendants is that the burden is on the respondents/plaintiff to prove their case, and that they should not fall back on any possible weakness of the defendants' case. The plaintiff has produced three title deeds which are in favour of his father Natesa Gounder. This is in the year 1924. From 1924 and till 1995 he has exercised some act of ownership over the property. And, according to him, the plaintiff has not produced any document except Ext.A4-Adangal, which does not refer to plaintiff at all. This implies, the plaintiff cannot take advantage of any of the evidence produced by the defendants to show that plaintiff's father had enjoyed this piece of property.

9.2 Turning to the defendants case, as argued by the learned counsel for the appellants, Ext.B3, sale deed in favour of Kathamuthu Gounder shows Muniya Gounder's property as the southern boundary property. If rule of preponderance of

probability is the thumb rule for deciding civil disputes, this Court necessarily cannot over look the fact that even in 1961, Muniya Gounder was shown to be the owner. Muniya Gounder along with his sons have sold this property under Ext.B1 to the defendants. So far as the property covered under Ext.B2 is concerned, it is situated to the south of the property covered under Ext.B1 which may not be very relevant at this point of time for deciding this issue. What is significant about the defendants case is that he has produced several revenue records which includes many tax receipts in Exts.B8 to B.25, all of which, are issued in the name of the 1st defendant. The earliest of the tax receipt is of the year 1985 (Ext.B9) which is several years prior to the institution of the suit. This apart, since the suit property is a vacant site, the presumption is that possession follows title. Any act of ownership or assertion of title through possession becomes material. It is in this context, the tax receipts and other revenue records produced by the defendants comes to their aid.

10. Turning to the extremely brief line of reasoning of the First Appellate Court, this Court necessarily need to record that the learned First Additional Judge has got both his reasoning wrong. Irrespective of whether Section 90 of the Evidence Act will apply to a certified copy of the ancient document, the fact remains that it only creates a rebuttable presumption to the effect that any hand writing or signature in an ancient documents shall be presumed as belonging to that person by who it is purported to have been written or signed the document. This rebuttable presumption cannot be extended to the contents of the documents. There is therefore, a material misconception in understanding the true purport of Sec.90 of the Evidence Act.

11. In conclusion, this Court does find merit in this appeal and accordingly holds all the substantial questions of law in favour of the appellants. Accordingly, this Second Appeal is allowed, and the judgment and decree in A.S.No.38 of 2003 dated 08.12.2004 passed by the file of the Additional Subordinate Court, Tindivanam is set aside, and the decree of the trial Court is restored. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

ssn

To

1. The Additional Subordinate Judge,
Tindivanam,
2. The District Munsif-cum-Judicial Magistrate,
Vanur,

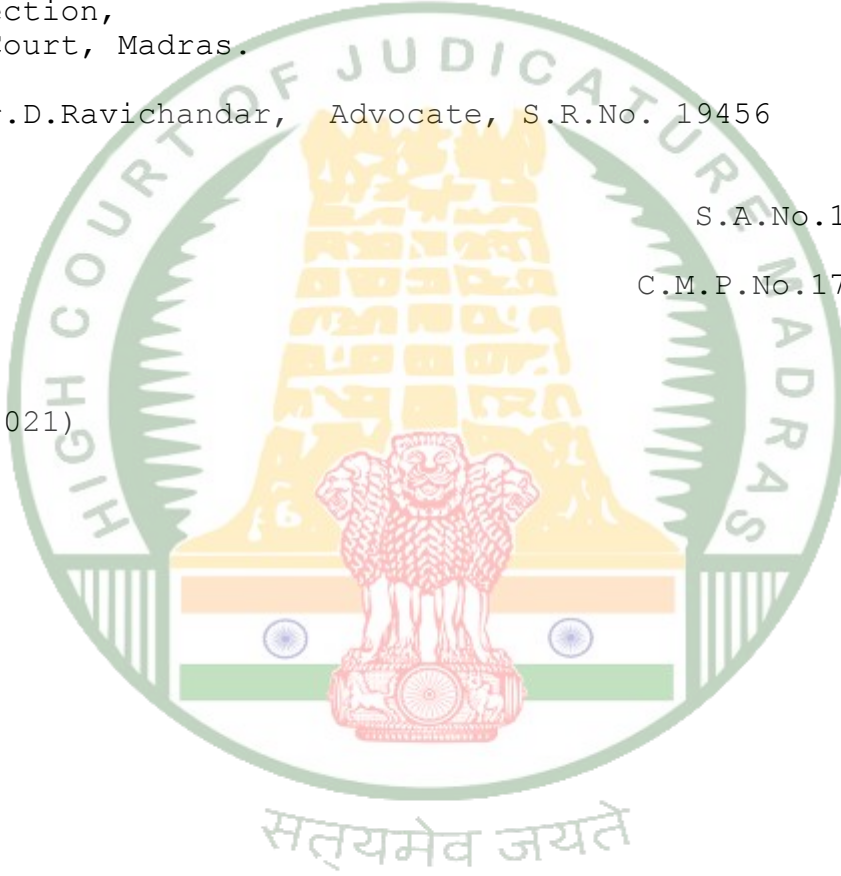
Copy To

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

+1cc to Mr.D.Ravichandar, Advocate, S.R.No. 19456

S.A.No.1274 of 2005
and
C.M.P.No.17251 of 2005

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