

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.03.2020

CORAM

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

S.A.No.177 of 2005
and
C.M.P.No.283 of 2009

1.Rajammal
2.Selvaraj
3.Venkateswaran
4.Suseela
5.Kamala

... Appellants/Plaintiffs

versus

1.Thoppa Gounder (Deceased)
2.T.Manoharan (Died)
3.T.Elangovan
4.T.Manoranjitham
5.T.Mallika
6. Poornima
7.Marimuthu
8.Vahini.

... Respondents / Defendant

(Respondents 2 to 5 brought on record as legal representatives of the deceased sole respondent vide order of Court dated 08.10.2009 made in C.M.P.No.492 of 2009 in S.A.No.177 of 2005)

(Respondents 6 to 8 brought on record as legal representatives of the deceased 2nd respondent viz., T.Manoharan vide order of Court dated 05.03.2020 made in C.M.P.Nos.3234/2020, 3231/2020 & 3233/2020 in S.A.No.177 of 2005).

Prayer: Second Appeal is filed under Section 100 of code of Civil Procedure against the decree and judgment passed in A.S.No.25 of 2003 dated 25.11.2003 on the file of the learned Subordinate Judge of Mettur, allowing the said Appeal and Reversing the Decree and Judgment passed in O.S.No.463 of 1997, dated 10.03.2003 on the file of the District Munsif Court at Mettur and thereby dismissing the said suit and praying to set aside the same and decree the suit as prayed for.

For Appellants : Mr.P.Mani

For Respondents: R1 Died - steps taken
R2 - Died - steps taken
R3, 5 - No Appearance
Mr.P.Jagadeesan[R4 and R6 to R8]

JUDGMENT

The wife and children of certain Ramalingam are the plaintiffs. The suit was originally laid against Ramalingam's brother Thoppa Gounder. The prayer sought are: for declaration of plaintiffs' $\frac{1}{2}$ share in the well in Sy.No.240/1 along with a plot of 38 cents appurtenant to that, and declaration of title over another 1.44 acres. The suit came to be decreed by the trial Court, but was dismissed by the first Appellate Court. Hence, the plaintiffs have moved this Court with the present appeal. The parties would be referred to by their rank before the trial Court.

2.The property is described in the plaint as a block of land measuring 1.44 hectares in Sy.No.240/1 and $\frac{1}{2}$ share in a well therein along with a plot of 38 cents appurtenant to the well. A certain Marimuthu Gounder was married to one Nallammal and they had two sons, namely Ramalingam and Thoppa Gounder. Apart from Ramalingam and Thoppa Gounder, the couple had two other sons and few daughters, who are not relevant to this litigation, and hence, are not parties to it.

3.The case of the appellants/plaintiffs may be summarized;

- Under Ext.A.8, exchange deed dated 06.12.1953, Marimuthu Gounder obtained 2.96 acres in Sy.No.240/1 along with 7/10 share in the well. This property became the subject matter of Ext.A-1 partition deed, dated 12.07.1954. In this partition, 96 cents was allotted to Nallammal, the mother of the parties, and 2 acres came to be allotted to the defendant. Ramalingam was not allotted any land in this block of land. However, Ramalingam was granted 7/40 share in the well.
- Subsequently, on 04.10.1956, under Ext.A.13, Marimuthu Gounder purchased another plot of 1.12 $\frac{3}{4}$ acres in the same survey number along with 10/40 share in the well. Under Ext.A.2, dated 14.07.1967 Marimuthu Gounder settled this plot of land (covered under Ext.A.13) to plaintiffs' father Ramalingam. Subsequently, Ramalingam purchased 42.5 cents in the same survey number along with 3/32 share in the well under Ext.A.3, sale deed dated 16.12.1967.
- In effect, Ramalingam was entitled to 1.55 $\frac{1}{4}$ acres in all. Out of this extent, Ramalingam sold 11 cents to the

defendant sometime in 1976. This brought down Ramalingam's right in Sy.No.240/1 to 1.44 acres. After Ramalingam's demise his heirs laid a suit against the defendant when they faced threat to their title. What is significant here is that apart from the right they claim over 1.44 acres, the plaintiffs also claim title to a plot of 38 cents which is stated to be appurtenant to the well in the property. The plaintiffs claim $\frac{1}{2}$ share in the well as well.

4.The defendant's contention in the written statement may be summarized;

- That neither Ext.A.2, settlement deed, which Marimuthu Gounder had executed in favour of Ramalingam nor the sale deed executed in favour of Ramalingam under Ext.A.3, had taken effect.
- That there is no plot of land matching the description of 38 cents as was alleged by the plaintiffs as lying appurtenant to the well in the property.
- That when the records were mutated and survey fields were sub-divided, the plot allotted to Nallammal in terms of Ext.A.1 partition deed came to be assigned Sy.No.240/1C1. This Survey field, pertaining to which Nallammal was granted patta is said to have an extent of 1.34 acres. Ramalingam has consented to part with 38 cents to his mother, and Nallammal has been in continuous enjoyment of this property and has prescribed title by adverse possession.
- Nallammal vide Ext.A.4, settlement deed dated 28.02.1997 settled this 1.34 acres in favour of Thoppa Gounder. This gift deed has been acted upon, and ever since Thoppa Gounder has been in continuous enjoyment of the property.

5.1 The matter went to trial and before the trial Court, the second plaintiff examined himself as P.W.1. The plaintiffs also examined Nallathambi and Kulandaiyammal, who are the siblings of both Ramalingam and Thoppa Gounder. For the defendant, the defendant alone entered the box.

5.2 After due appreciation of evidence, the trial Court decreed the suit as prayed for, and as already indicated, before the appellate Court the entire suit came to be dismissed. The first Appellate Court's line of reasoning is:

- a) That the suit property was not properly described.
- b) That when the property was sub-divided, Ramalingam had not raised any objection to the 38 cents added to Sy.No.240/1C1, in relation to which patta was granted to Nallammal.
- c) That there is no plot matching the description of 38 cents appurtenant to the

well as contended by the plaintiffs.

6. The appeal is admitted to consider the following substantial questions of law:

1) When there is no dispute with respect to identity of the property with respect to Survey number, has not the first appellate Court erred in rejecting the claim of the appellants/plaintiffs on the ground that the survey field Number has not been properly given?

2) When the appellants/plaintiffs and the respondent/defendant are joint pattadars with respect to the well in S.F.240/1C and the appellants/plaintiffs having half share in the same, has not the first appellate Court erred in denying the rights of the appellants/plaintiffs on the ground that there is no land with 38 cents?

7. The learned counsel for the appellants/plaintiffs made a fair opening to his argument when he submitted that the appellants/plaintiffs do not claim any right over 38 cents as the plaintiffs/appellants would restrict their claim to 1.44 acres as evidenced by Ext.A.2 and Ext.A.3 less the 11 cents that Ramalingam had sold to Thoppa Gounder, and $\frac{1}{2}$ right in the well. Developing his argument, the learned counsel submitted that:

- Notwithstanding the fact that the defendant had contended Ext.A.2 and Ext.A.3 have not taken effect, there is nothing on evidence to prove this contention. No suit was laid to hold that Ext.A.2 has not taken effect. Indeed, when revenue records were mutated and plots were sub-divided, the defendant did not object to grant of some right over this property. So far as Ext.A.3 is concerned, the property which is purchased by Ramalingam, no exception can be taken to this.
- So far as the description of the property is concerned, in the schedule of property the total extent to which the plaintiffs seek a declaration of their title was typed as 1.44 hectares instead of 1.44 acres which is an obvious typographical error, and even though the said description is not amended, yet, the first Appellate Court ought to have granted decree for the actual extent over which the plaintiffs have proved their title through necessary documents.
- So far as the merger of 38 cents belonging to Ramalingam in Sy.No.240/1C1 is concerned, the findings of the first Appellate Court that Ramalingam did not take any steps to register his opposition to the inclusion of his extent in

the patta granted to Nallammal, might not be true. And, even assuming that Ramalingam did not agitate against it, still it does not imply that a title to a piece of property could be effected by a wrong sub-division by revenue officials. If it has to be held otherwise, it will be sufficient for the survey officials to transfer title without any need for the parties to transfer title to their properties in terms of provisions of Transfer of Property Act. Here it is significant to state that the defendant in his pleadings has conceded that Nallammal had right over only 96 cents, and therefore, she could not have obtained title for anything more than 96 cents, since admission cannot convey title over property.

8. The learned counsel for the respondents/defendant would argue that the First Appellate Court has rightly held that there is no 38 cents plot that lie appurtenant as contended by the plaintiffs. At any rate before this Court, the plaintiffs have given up that contention. As to the other allegation that some 38 cents belonging to the plaintiffs were made part of S.No.240/1C1 with regard to which Nallammal was granted patta, the learned counsel would submit that in 1981, Nallammal, her sons Ramalingam and Thoppa Gounder have jointly applied for sub-division of the field and for issuance of patta. Admittedly, Nallammal was granted patta in Patta No.1690 and the related survey number after sub-division of the field is S.No.240/ 1C1 for 1.34 acres. Subsequently, she has also paid tax (kist) for the said property, and they are available on record as Exts.B2 to B9. These documents are documents of possession. To state it differently, Nallammal has been holding an additional extent of 38 cents over and above her entitled extent of 96 cents, and to this 38 cents she has prescribed title by adverse possession. While mutations in the revenue record had taken place in 1981, the suit was laid only in 1997, and if the revenue records were to be considered as documents of possession, then necessarily Ramalingam under whom the plaintiffs claim right did not raise an objection to the same. The learned counsel added that it has come out in evidence Ramalingam died only in 1987, and neither he, during his lifetime, nor any of his heirs after his demise have raised any objection to Nallammal's possession over the additional 38 cents. He further added that neither Ext.A2 nor Ext.A3 have been acted upon at any time before.

9. In reply, the learned counsel for the appellants would argue that it is not much about the existence of revenue records that is germane to decide the issue of prescription of title by adverse possession, but it is all about the animus to hold the property against the interest of the true owner. The point to be addressed therefore, is, whether Nallammal had the requisite knowledge that she was in possession of an additional 38 cents

more than her entitled extent of 96 cents, and if she had the necessary animus to hold the same adverse to the interest of her son Ramalingam. Did she at least know the fact that the plot of 38 cents belonging to her son Ramalingam was included to her patta?

10. In the ultimate analysis, this Court finds that the entire dispute falls under a very narrow space. The plaintiffs' case, if dissected, would disclose that they claim right to:

- a) Half right over the well;
- b) Title over 38 cents appurtenant to the well;
- c) Title over 1.44 acres.

11. As to the first of the reliefs concerning the right over the well, there is not much dispute. So far as the second part of the relief concerning the right over the plot of 38 cents is concerned, the First Appellate Court has held that no such plot of 38 cents as described by the plaintiffs is not available on lie. The counsel for the plaintiffs/appellants has also fairly conceded their claim over this property. The dispute is now with regard to the third part of the relief (which is rolled up as part of a single prayer in the plaint).

12.1 The plaintiffs claim title under Ext.A2 settlement deed executed by his paternal grandfather Marimuthu in favour of Ramalingam. Under this document, Ramalingam obtained 1.12 acres in Sy.No.240/1. Thereafter, under Ext.A-3, Ramalingam has purchased 42.5 cents in the same survey number. In all he was entitled to 1.545 acres, which approximate to 1.55 acres. Out of this 11 cents have been sold to the defendant, and the balance that remains is 1.44 acres.

12.2 Now, unless it is proved that Nallammal was proved to have prescribed title by adverse possession to some 38 cents which is part of this 1.44 acres, the plaintiffs claim of title to 1.44 acres has to be found in their favour. On the point of plea of adverse possession, as rightly pointed out by the trial Court, a mere mutation of revenue records or sub-division of a block of land on paper will not be adequate to acquire title by adverse possession. There must be evidence that Nallammal was in possession of this 38 cents of land and held it with an animus to hold such possession adverse to the interest of her own son Ramalingam. In establishing it, the evidence on record stays at a considerable distance from the standard of proof that the law of adverse possession requires.

13. In conclusion, it is to be held under Ext.A4 Settlement Deed executed on 28.02.1997 Nallammal had right to settle only 96 cents of land that she had acquired under Ext.A1 partition Deed and no more. Necessarily plaintiffs right over 1.44 acres has to be granted.

14. While the First Appellate Court has been right in deciding on the claim of plaintiffs' title over 38 cents of the plot which they claimed as lying appurtenant to the well, its approach to other aspects of the case in rejecting the title of the plaintiffs over 1.44 acres under Ext.A.2 and Ext.A.3 is faulty. Here it has to be emphasized that the first Appellate Court should not have rejected plaintiffs claim merely because in the plaint the schedule of property is described as 1.44 hectares. The Court is duty bound to mould and grant decree to the extent proved.

15. In conclusion, this Second Appeal is partly allowed and the plaintiffs title to half share in the well and 1.44 acres based on Exts.A2 and A3 are upheld and the judgment and decree of the First Appellate Court in A.S.No.25 of 2003 dated 25.11.2003 shall stand modified to this extent. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

tsg/ssn

To

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

+1cc to Mr.P.Jagadeesan, Advocate, S.R.No. 21397

+1cc to Mr.P.Mani, Advocate, S.R.No. 21611

S.A.No.177 of 2005

KK(CO)
GN(29/03/2021)