

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 07.01.2020

Date of Verdict : 24.01.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

S.A.No.704 of 2005 and
CMP.No.9805 pf 2005

Ariyasamy @ Arokiyasamy ...Appellant/Appellant/Plaintiff

Vs.

1.Rayappan ..1st Respondent/1st Respondent/1st Respondent
2.Lourdu Ammal(died) ..2nd Respondent
3.Sesurani ..3rd Respondents/(LR of Deceased R2)
(R2 died - R3 is recorded as LR
of the deceased R2 vide order of
court dated 22.11.2019 made
in SA.No.704 of 2005 as per memo
dated 22.11.2019)

Prayer :-

This Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree dated 29.10.2004, in A.S.No.117 of 2003 on the file of the I Additional Subordinate Judge's Court at Villupuram modifying the decree and judgment dated 29.09.2000 in O.S.No.371 of 1997 on the file of the I Additional District Munsif Court at Ulundurpet.

For Appellant : Ms.Mythili Suresh
for M/s.Sarvabhauman Associates

For Respondents

For R1 : Mr.D.Senthil Kumar
for M/s.Ramalingam Associates
: R2 - died
: R3 - not ready in notice

JUDGMENT

This second appeal is directed as against the judgment and decree dated 29.10.2004, in A.S.No.117 of 2003 on the file of the I Additional Subordinate Judge's Court at Villupuram reversing the decree and judgment dated 29.09.2000 in O.S.No.371 of 1997 on the file of the I Additional District Munsif Court at Ulundurpet.

2. For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

3. The case of the plaintiff in brief is as follows :-

3.1 The suit is filed for declaration and injunction. There are two items in the suit schedule property. The first item of the suit schedule property belonged to the Government, which is classified as 'panjama tharisu'. The suit property was assigned in favour of the plaintiff's father. He also paid kist to the Government and he died intestate leaving behind the plaintiff as his legal heir. Thereafter the plaintiff is in possession and enjoyment of the suit property and is continuing to pay kist in respect of the first item of the suit schedule property. The second item of the suit schedule property originally belonged to one, Sundra Iyer. The said property was purchased by the plaintiffs' father by oral sale for the valuable sale consideration of Rs.60/- After his demise, the plaintiff is in possession and enjoyment of the suit schedule second item of the property. Under UDR scheme, patta was also issued in patta No.17 in favour of the plaintiff in respect of the suit property. In fact, the suit property was in possession and enjoyment of the plaintiff and his predecessors for the past seventy years. Therefore, the plaintiff has prescribed title by adverse possession. The defendants have no title and right over the suit properties. However, on 15.12.1997, they were trying to interfere with the possession of the plaintiff. Hence, the suit.

4. Resisting the same, the defendants 1 and 2 filed written statement stating that the suit property originally belonged to one, Mariyan, who was paternal grandfather of the plaintiff, maternal grandfather of the first defendant and paternal grandfather of the second defendant. The said Mariyan was in possession and enjoyment of the suit property for more than 44 years, and he died intestate. He had three sons by name Anthony, Chinnappan and Arulappan and they are the legal heirs of the deceased Mariyan. They succeeded the suit property as the legal heirs after the demise of the said Mariyan. Therefore, the plaintiff's father alone had never been in possession and enjoyment of the entire suit property. After the death of his father, the plaintiff is in possession and enjoyment of his share alone. The second defendant has been in possession and enjoyment of the share of the Arulappan and one, Sowriammal. Therefore, they are commonly enjoying the suit property. In fact, the share of the said Chinnappan was purchased by the first defendant on 10.02.1965 for a valid sale consideration. Thereafter, partition was effected between the plaintiff and the defendants even before 14 years, in which 1/3 share was allotted for each one of them. Accordingly, 1/3 share went to the first defendant and immediate on eastern side 1/3 share allotted to the plaintiff and immediate on the eastern side 1/3 share was allotted to the second defendant. Accordingly, the plaintiff and the defendants 1 and 2 are enjoying the suit properties by paying revenue dues to the concerned departments.

4.1 Further stated that originally joint patta was issued in patta No.30 for the suit properties. Thereafter the plaintiff fraudulently obtained patta No.17 in his name under UDR scheme without the knowledge of the defendants 1 and 2. Thereafter, the defendants 1 and 2 filed objections before the Deputy Tahsildar, Ulundurpet Region and by the order dated 04.10.1994, the names of the defendants 1 and 2 were included in new patta No.17. Therefore, the new patta was issued in favour of the plaintiff and defendants 1 and 2. Their names were also entered in the adangal extract and as such the said patta is not only belong to the plaintiff. As such the plaintiff is not entitled for title by adverse possession for the entire property, and he is entitled only for his share alone, and not for the entire property. Therefore, prayed for dismissal of the suit.

5. In support of the plaintiff's case, P.W.1 to P.W.3 were examined and seventeen documents were marked as Ex.A.1 to Ex.A.17. On the side of the defendants D.W.1 and D.W.2 were examined and Ex.B.1 to Ex.B.11 were marked. On considering the oral and documentary evidences adduced by the respective parties and the submission made by the learned counsel, the trial Court dismissed the suit. Aggrieved over the judgment and decree of the trial Court, the plaintiff preferred an appeal suit in A.S.No.117 of 2003 before the I Additional Subordinate Judge's Court at Villupuram. The first appellate Court on appreciating the materials placed on records, partly allowed the appeal holding that the plaintiff is entitled for 1/3 extension in the suit property and also granted permanent injunction in respect of the 1/3 share of the suit properties. Challenging the same, the plaintiff has come forward with the present second appeal.

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

a) When the appellant's father had acquired title to suit first item under Ex.A.1 - Assignment deed, whether the lower appellate court is justified in law in holding that it is only a memorandum and not an argument?

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

8. Heard M/s.Mythili Suresh, the learned counsel appearing for the plaintiff and Mr.D.Senthil kumar, the learned counsel appearing for the first defendant.

9. This Court considered the rival submission made by the learned counsel on either side.

10. The plaintiff has claimed item 1 of the suit property as if it was originally assigned to his father and classified as 'Government panjama tharisu'. After his demise, the plaintiff is in possession and enjoyment of the suit property. In respect of the second item of the suit schedule property, it was purchased by his father by oral sale from one, Sundra Iyer. After demise of his father, the plaintiff alone is in possession and enjoyment of the suit property and claimed declaration and injunction in respect of the suit property. The plaintiff has to prove his title over the suit property. In respect of the first item of the suit property, Ex.A.1 was marked. It is seen from the Ex.A.1 that it is not an assignment patta in favour of the plaintiff's father and it is a memorandum given by the concerned authorities to the father of the plaintiff. With regards to the second item of the suit schedule property, according to the plaintiff, it was purchased by oral sale by his father from one, Sundra Iyer. In this regard also, the plaintiff did not produce any piece of evidence to show that the property was purchased by his father by oral sale from one, Sundra Iyer. According to the plaintiff, after the death of his father, he derived title over the suit property and he marked Ex.A.2 patta issued for the suit properties in patta No.30. Ex.A.3 to A11 were marked by the plaintiff to prove the revenue dues paid to the revenue authorities for the fasli year 1368 to 1381. The kist were paid for the patta No.39. The Ex.A12 was marked as Kist receipt for the patta No.17 with regards to the suit property.

11. Further the patta No.17 was issued in favour of the plaintiff in respect of the suit properties. But it is seen from the Ex.B4 dated 11.10.1994, on the objection raised by the defendants, the Deputy Tahsildar, Ulundurpet Region ordered to include the defendants' names in the patta. Though the plaintiff produced Kist receipts pertaining to patta No.39 and 30, he did not produce any document to prove his possession in respect of Patta No.17. Ex.B.4 proved that the defendants' names were also included in the patta No.17 by an order dated 11.10.1994 in respect of the suit properties. Accordingly, the revenue records were also mutated in the name of the plaintiff as well as the defendants 1 and 2. Therefore, the plaintiff also failed to prove his adverse possession for the entire suit property. In fact, the plaintiff has to prove his possession for 12 years and more with the necessary animus to hold hostile title. Though the suit properties are ancestral one, the plaintiff failed to prove that he is the absolute owner of the suit schedule property, which was derived from his father. The suit properties originally belonged to one, Mariyan and he had three sons, namely Anthony, Chinnappan and Arulappan. On the demise of the said Mariyan, the suit properties and the other properties were partitioned among them. Accordingly, 1/3 of the suit properties were allotted to each of the plaintiff as well as the defendants 1 and 2, which is also categorically proved by the deposition of D.W.1.

12. The defendants also marked Ex.B.1, the copy of the sale deed in favour of the first defendant in respect of his mother's share was purchased by him. After the order was passed by the Deputy Tahsildar, Ulundurpet Region to include the names of the defendants 1 and 2 in the patta No.17, their names were mutated in the revenue records. It is also clearly proved by the Ex.B.5 chitta relates to Patta No.17. Therefore, according to the patta no.17, the plaintiff, defendants 1 and 2 are the joint owners of the suit properties. Ex.B.6 is the adangal extract produced by the defendants and it relates to the fasli year 1404 to 1407 corresponding to the year 1984 to 1987. Ex.B.7, Ex.B.8 and E.B.10 were marked and it relates to the tax receipts for the suit properties.

13. In fact, the trial court found that Ex.A.2 patta which was marked by the plaintiff, in which the names of the other joint owners were erased, and it lost its original identity. Therefore, the first appellate court rightly concluded that the suit properties are jointly enjoyed by the plaintiff as well as the defendants 1 and 2 till the date of the suit. The case of the defendants 1 and 2 also is that it is the joint family property and they are jointly enjoying the suit property and each of them are entitled to 1/3 share in the suit properties. Though the trial court also concluded that the suit properties are jointly possessed by the plaintiff and defendants 1 and 2, failed to allot any share to plaintiff. Therefore, the first appellate court rightly held that the plaintiff is entitled to the share of 1/3 in the suit property.

14. However, the plaintiff failed to prove title over the suit property since Ex.A.1 is only a memorandum issued by the Government and it cannot be construed as assignment issued in favour of the father of the plaintiff in respect of the first item of the suit schedule property. In respect of the second item of the suit schedule property, it was purchased by oral sale by his father and it is also not proved by the plaintiff by any piece of evidence. Therefore, the plaintiff is entitled only for relief of permanent injunction with regards to the 1/3 share of the said property.

15. In view of the above, this Court does not find any valid reasons to interfere with the reasonings and findings rendered by the first appellate court and this Court is of the considered opinion that no substantial question of law is involved in the second appeal. Be that as it may, the substantial question of law is accordingly answered against the plaintiff.

16. In fine, the second appeal is dismissed. Consequently, connected miscellaneous petition is closed. There is no order as to costs.

Sd/-
Assistant Registrar (CS-III MDU)

//True copy//

Sub Assistant Registrar

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To

1. The I Additional Subordinate Judge's Court
at Villupuram
2. The I Additional District Munsif,
at Ulundurpet.

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

+1cc to M/s.Sarvabhauman Associates, Advocate SR.No.5124

+1cc to Mr.D.Senthil Kumar, for M/s.Ramalingam Associates
Advocate SR.No.5211

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CMP.No.9805 of 2005

V G I (CO)
GMY (19/08/2020)

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