

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09/07/2018

DELIVERED ON : 04/03/2020

CORAM:

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

SECOND APPEAL NO.1544 OF 2011
AND M.P.NO.1 OF 2011

1.Kumaravel
2.Chellapangi ... Appellants/Plaintiffs 2 & 3

Vs.

1.The Collector
Cuddalore District.

2.The Tahsildar
Vridhachalam.

3.Annakili

4.Arasan

5.Kuppusamy

6.Renganayaki

7.Minor Kasiviswanathasamy

8.Rajkumar

9.Sivakumar

... Respondents/Defendants

PRAYER: Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree dated 31.01.2011 passed in A.S.No.117 of 2006 on the file of the Principal Sub Court, Vridhachalam, confirming the judgment and decree dated 22.06.2006 passed in O.S.No.90 of 1997 before the First Additional District Munsif Court, Vridhachalam.

For Appellants : Ms.R.Meenal

For Respondents 4-9 : Mr.V.Anand

J U D G M E N T

Challenging the concurrent findings of the Courts below, the unsuccessful plaintiffs have preferred the above Second Appeal.

2. According to the plaintiffs, the deceased first plaintiff's father Gopal Padayachi on 08.08.1929 by virtue of a registered sale deed purchased the suit properties. Ever since the purchase, the plaintiffs family is in uninterrupted possession and enjoyment of the same. In the year 1995, the first defendant attempted to interfere with their peaceful possession claiming title and hence the first plaintiff, father of the second and third plaintiffs/present appellants filed the suit for declaration and injunction.

3. The defendants denied the title and claimed alternatively title through prescription and adverse possession. According to them, the properties are ancestral in nature, through partition title to the first item of property devolved on him and he is in continuous possession of the same. In so far as the second and third items of properties he acquired title through Court auction and it is borne out of documentary evidence. The claim of the plaintiff's is false and unsustainable.

4. The Trial Court framed the following issues:

"1. Whether the plaintiff is entitled to declaration and consequential injunction as prayed for?

2. Whether the suit property belonged to Uthandi Padayachi?

3. Whether the sale deed is true and valid?

4. Whether the plaintiff has title and has been in possession of the suit property?

5. To what reliefs?

6. Whether the defendants trespassed into the suit property on 10.12.2005?

7. Whether the plaintiff is entitled to possession of the suit property? "

5. The plaintiffs examined three witnesses and marked Exs.A1 to A13 to prove his title. The defendants have

examined the son of the first defendant as D.W.1 and other two witnesses and marked Exs.B1 to B47. The Trial Court after considering the oral and documentary evidence had dismissed the suit. Aggrieved over the same, the present appellants preferred an appeal. Pending appeal, they filed an interlocutory application in I.A.No.207 of 2009 for amending the prayer. After framing appropriate points for consideration, the appeal and the petition for amendment were considered by the appellate court and the same were dismissed.

6. Aggrieved over the concurrent findings of the Courts below, the appellants have preferred the above Second Appeal on the following substantial questions of law:-

"(i) Whether in law the Courts below are right in failing to see that when the title of the appellant's predecessor was admitted their title should have been declared.

(ii) Whether in law the lower appellate court was right in dismissing IA 207/2009 for amendment of the description of the properties when it was a formal amendment and when there was no ambiguity about the identity of the properties.

(iii) Whether in law the Courts below are right in overlooking that the respondents had taken contrary stands about their title and that they did not prove their claim."

7. I have considered the rival submissions.

8. The learned counsel for the appellants would contend that the first respondent had admitted the title of the plaintiffs in C.C.No.457 of 1981. He admitted the validity of Ex.A1 sale deed and thereby having admitted the title of the plaintiffs cannot claim title to the suit property. Further, the second and third items of the suit properties were in continuous possession of the plaintiffs. Even though it is claimed by the contesting defendants that they have purchased the same in Court auction, they have not taken possession of the same. That the appellants have obtained UDR patta and thereafter only the defendants had created troubles. The amendment sought to the identity of the properties were only formal. But both the Trial and Lower Appellate Courts on an erroneous understanding have dismissed the suit.

9. The learned counsel for the defendants would

drew the attention of the Court to the length and breadth of factual circumstances and settled position of law.

10. According to the defendants, the suit properties originally belonged to one Ariyaputhra Padayachi and after his demise his three sons partitioned the same. The first defendant purchased 1.30 acres in S.No.72/1 in a Court auction in E.P.No.974 of 1969 in O.S.No.209 of 1965 on the file of District Munsif Court, Vridhachalam on 10.02.1970 and took possession out of Court. Thus, he acquired title to the property situate in S.No.72/1. Exs.B1 to B14 are documents to show mutation had taken place in the revenue records in his favour and Exs.B15 to B43 are the kist receipts. Thus, he has proved his title. The boundaries to these properties, which are item 2 and 3 of the suit schedule do not tally. The defendants also produced Ex.B47 - FMB sketch to show description as claimed in the amendment is also erroneous. The trace of title as claimed by the plaintiffs father proven to be defective and the vendor to the plaintiffs had not convey perfect title. The ancestral nature of property, relationship, partition, possession and devolution of title in favour of the first defendant were all admitted by the second plaintiff P.W.1 during cross examination. In result, it can be inferred that the plaintiffs failed to prove his title and possession. On the contrary, the first defendant had proven his title and possession.

11. On consideration of the facts, it is clear that both the Courts proceeded on the well settled principles of law that the plaintiffs must succeed or fail on the title he establishes and if he cannot succeed on the strength of title his suit must fail notwithstanding the fact that the defendant in possession has no title to the property.

12. The case of the plaintiffs as discussed by the Courts below based on Ex.A1 - Sale deed dated 08.08.1929. As per the sale deed they acquired three items of properties. However, P.W.1 clearly admitted in his cross examination that first item of the suit properties was sold by the first plaintiff and his son one Panneer Selvam and two others. Therefore, they have no title to the same and hence title to item 2 and 3 of the properties alone is to be proved.

13. Both the Courts below have elaborately discussed the identity of the second and third items of the suit properties. The plaintiffs had made amendments to the schedule and then adduced evidence before the Trial Court on the issues framed out of the pleadings. Pending appeal,

another petition for amendment vide I.A.No.207 of 2009 was filed. The plaintiffs wanted to amend the boundaries of the suit property, pursuant to the Sub-division taken place after institution of the suit. But the pleadings, oral and documentary evidence produced by the plaintiffs goes to show that the description does not tally with the title deed. The plaintiffs after having claimed title through Ex.A1 - sale deed dated 08.08.1929, rebelled against the same and contended that the properties are wrongly described in title deed itself. Amendments can be made taking support of the pleadings, relevant documents marked and requisite evidence supporting / warranting amendments as to pleading of a fact or alteration or addition of a prayer etc. New issues can also be raised on the basis of written statements or counter claim or even during trial also amendments can be made. But, amendments cannot be made or permitted in certain circumstances, where after laying foundation of title is a declaration suit based on a particular document and after pleading that the said document is the source of the title and after adducing evidence on the issues framed on that basis, one cannot revolt around and state there are discrepancies in the description of the properties acquired. The very case will stand demolished. In the instant case, the survey numbers, boundaries and the extent of the properties found in the title deed dated 08.08.1929 are sought to be amended as it does not tally with the schedule to the properties on ground. Even if the amendment is allowed, the facts lead to show it will not prove the identity and title of the plaintiffs to items 2 and 3 of the suit properties. The defendants by overwhelming evidence proved that the case of the plaintiffs is false and on the contrary proved his title too. Therefore, the grounds raised by the plaintiffs does hold water.

14. On the basis of the above facts, the following questions are raised for consideration:

"(i) Whether in law the Courts below are right in failing to see that when the title of the appellant's predecessor was admitted their title should have been declared.

(ii) Whether in law the lower appellate court was right in dismissing IA 207/2009 for amendment of the description of the properties when it was a formal amendment and when there was no ambiguity about the identity of the properties.

(iii) Whether in law the Courts below are right in overlooking that the

respondents had taken contrary stands about their title and that they did not prove their claim."

15. As far as question no.(i) is concerned, of course, it was admitted during trial in C.C.No.457 of 1981. But, later, in O.S.No.1256 of 1982, the first defendant summoned for the certified copy of the document and proved that title does not vest with the plaintiff. Hence, the finding of the Courts below is well reasoned, valid and legal.

16. As far as question no.(ii) is concerned, as discussed in the foregoing paragraphs, even if the amendment is allowed, the identity of the property does not tally with the title deed. On the other hand, the defendant had proved his title by overwhelming evidence. Therefore, dismissal of the amendment petition will not change the course of the judgment.

17. In so far as question no.(iii) is concerned, the plaintiff had failed to prove the title and the defendant has proved his title and possession. The above question of fact has been extensively discussed by the Courts below. There is no error in the conclusion arrived at by the Courts below.

18. As such, the above questions, on the face of it, are nothing but questions of facts and not questions of law much less substantial questions of law.

19. The Courts below have extensively analysed the facts and law and arrived at a just and reasonable conclusion. I do not find any discrepancy in the reasoning given and the conclusion arrived at and concur with the same. Hence, the judgment and decree passed by the Lower Appellate Court stands confirmed and the Second Appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

TK

To

1.The Principal Sub Judge
Principal Sub Court
Vridhachalam.

2.The First Additional District Munsif
First Additional District Munsif Court
Vridhachalam.

3.The Section Officer,
VR Section, High Court, Madras.

+1cc to M/s.R.Meenal, Advocate SR.19546

SECOND APPEAL NO.1544 OF 2011

RV(CO)
CB(01/09/2020)



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