

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.08.2020

PRONOUNCED ON : 14.08.2020

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.1211 of 2011

Ramar ... Appellant /Defendant

Vs.

Ramachandran ... Respondent/Plaintiff

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 31.03.2011 passed in A.S.No.69 of 2008 on the file of the Additional District and Sessions Court, (F.T.C.III), Kallakurichi confirming the Judgment and Decree dated 02.02.2006 passed in O.S.No.543 of 2002 on the file of the II Additional District Munsif Court, Kallakurichi.

For Appellant : Ms.A.Nilaphar
for Ms.R.Meenal

For Respondent : Ms.V.Sasirekha

JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 31.03.2011 passed in A.S.No.69 of 2008 on the file of the Additional District and Sessions Court, (F.T.C.III), Kallakurichi confirming the Judgment and Decree dated 02.02.2006 passed in O.S.No.543 of 2002 on the file of the II Additional District Munsif Court, Kallakurichi.

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

3.The unsuccessful defendant in O.S.No.543 of 2002 on the file of the II Additional District Munsif Court, Kallakurichi, is the appellant.

4.Suit for Declaration and Permanent Injunction.

5.The respondent /plaintiff seeks title to the suit property based upon the settlement deed executed in his favour by his mother Chinnakannu Ammal on 27.06.1979. According to the plaintiff, the suit property originally belonged to Kuppusamy Gounder and he had alienated the suit property to his mother Chinnakannu Ammal by way of a registered sale deed dated 16.03.1954 and pursuant to the same, Chinnakannu Ammal was in possession and enjoyment of the suit property and she had subsequently settled the suit property along with the other properties in favour of the plaintiff by way of a registered settlement deed dated 27.06.1979 and the same had been accepted and acted upon and since then, it is only the plaintiff, who has been in the possession and enjoyment of the suit property by obtaining patta and paying kist etc., and the defendant has no right, title or possession of the suit property, however on account of enmity, the defendant is attempting to interfere with the plaintiff's possession and enjoyment of the suit property and hence, according to the plaintiff, he has been necessitated to levy the suit for appropriate reliefs.

6.The appellant/defendant resisted the plaintiff's suit contending that the plaintiff has no right, title and interest in the suit property and denied that the suit property originally belonged to Kuppusamy Gounder and that he had alienated the suit property in favour of the plaintiff's mother Chinnakannu Ammal and according to the defendant, Chinnakannu Ammal has no entitlement to settle the suit property in favour of the plaintiff by way of a registered settlement deed dated 27.06.1979 and therefore, it is put forth that the plaintiff cannot lay any claim of title or interest in respect of the suit property by virtue of the abovesaid settlement deed. According to the defendant, the extent of 40 cents on the southern side in the suit survey number belonged to the defendant ancestrally and recognising his possession and enjoyment, patta has been granted in favour of the defendant in respect of the suit survey number and the defendant has been in the possession and enjoyment of the southern extent of 40 cents by obtaining patta, paying kist etc., and therefore, the plaintiff cannot claim any right or interest over the southern extent of 40 cents extent in the suit property and never been in the possession and enjoyment of the same at any point of time and further, on account of long and continuous possession and enjoyment of the southern extent of 40 cents in the suit survey number, it is pleaded that the defendant has prescribed title to the abovesaid extent by way of adverse possession and therefore, prayed for dismissal of the plaintiff's suit.

7.On the basis of the abovesaid pleas, the parties went for trial and in support of the plaintiff's case, PWs1 to 3 were

examined and Exs.A1 to A10 were marked. On the side of the defendant, DWs1 & 2 were examined and Exs.B1 to B3 were marked.

8.On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the Courts below were pleased to grant the reliefs in favour of the respondent/plaintiff as prayed for. Impugning the same, the present second appeal has been preferred by the defendant.

9.To sustain his title, interest and right over the suit property, the plaintiff has filed the sale deed dated 16.03.1954, by virtue of which, the suit property had been alienated in favour of the plaintiff's mother Chinnakannu Ammal by Kuppusamy Gounder and following the same, it is found that Chinnakannu Ammal had settled the suit property in favour of the plaintiff by way of the registered settlement deed dated 27.06.1979, which has come to be exhibited as Ex.A2. A perusal of the abovesaid documents, coupled with the encumbrance certificates marked as Exs.A7 & A8, as rightly held by the Courts below, it is evident that the suit property has been in the possession and enjoyment of the plaintiff's predecessors in interest and from Ex.A7 encumbrance certificate, it is noted that Kuppusamy Gounder had purchased the suit property from one Appusamy Gounder on 09.02.1954. Further, it is also noted that an extent of 8 cents had been acquired by the Government and the same could be gathered from the notice sent by the Special Thasiladar to the plaintiff's mother marked as Ex.A5 for objection. Further, as could be gathered from Exs.A6, A9 and A10 cumulatively, as rightly held by the Courts below, coupled with the Kist receipt marked as Ex.A4, all would go to show that the suit property has been in the possession and enjoyment of the plaintiff and his predecessors in interest continuously and accordingly, the Courts below are found to be justified in upholding the claim of title of the plaintiff to the suit property as put forth in the plaint.

10.As adverted to earlier, the defendant has not claimed right over the entire extent of the suit property. On the other hand, the defendant has only claimed that the southern extent of 40 cents in the suit survey number belonged to him ancestrally and that he has been in the possession and enjoyment of the same. However, quite inconsistent to the abovesaid case projected in the written statement, during the course of evidence, the defendant would claim that the suit property had been acquired by him. However, pointing to the same, no material worth acceptance has been projected by the defendant. Further, to evidence that the defendant and his predecessors in interest had been in the possession and enjoyment of 40 cents on the southern side, absolutely, there is no reliable and

acceptable materials projected on the side of the defendant. The two documents marked as Exs.B1 & B2 are found to have emanated after the institution of the suit. Barring Exs.B1 & B2, we have only the isolated kist receipt marked as Ex.B3 dated 06.04.1986. The defendant has not come out as to on what basis the southern extent of 40 cents in the suit survey number belonged to him ancestrally. If that be so, the defendant would have projected the documents pointing to the possession and enjoyment of the extent of 40 cents in the suit survey number by his predecessors in interest. However, the defendant has admitted during the course of evidence that there is no documentary evidence in respect of the possession and enjoyment of the his ancestors qua the extent of 40 cents in the suit survey number. As above pointed out, it is also not the case of the defendant that the Southern extent of 40 cents has been assigned to him by the Government. Further, the defendant has not come out clear as to what basis, he had been issued the patta marked as Exs.B1 & B2. In such view of the matter, merely on the basis of the isolated kist receipt Ex.A3, we cannot infer that the defendant has a valid claim of title and interest qua the extent of 40 cents in the southern side of the suit survey number.

11. In the light of the abovesaid factors, the Courts below have rightly held that the defendant has failed to establish his claim of title, right or interest over the extent of 40 cents in the suit survey number as put forth by him and in such view of the matter, as the defendant has no valid claim of right whatsoever over the said extent, it is found that the defendant has been putting inconsistent pleas with reference to his alleged claim of title to the southern extent in the written statement and during the course of evidence and resultantly, unable to substantiate his please by placing acceptable and reliable materials. Therefore, the Courts below are found to be justified in rejecting the defendant's claim of right, title as well as possession and enjoyment of the southern extent of 40 cents in the suit survey number. As above noted, barring Ex.B3, there is no material pointing to the possession and enjoyment of the extent of 40 cents by the defendant. Therefore, the claim of the defendant that he has prescribed title to the extent of 40 cents on the southern side on account of long and continuous enjoyment by way of adverse possession, as such, cannot be countenanced in any manner and therefore, the abovesaid plea of the defendant has been rightly not accepted by the Courts below.

12. In the light of the abovesaid factors, when the plaintiff, as above pointed, has established his claim of title, right and interest over the suit property as well as the possession and enjoyment of the same right from the days of his

predecessors in interest by marking reliable and convincing materials and when the defendant has failed to establish his case in any manner as projected by him and resultantly, the Courts below are found to be justified in upholding the plaintiff's case on the principle of preponderance of probabilities considering the materials projected in the matter and in such view of the matter, I do not find any valid reason to disturb the findings of the Courts below in granting the reliefs in favour of the plaintiff as prayed for.

In view of the abovesaid discussions, no substantial questions of law is found to be involved in this second appeal and resultantly, the second appeal is dismissed. No costs. Consequently, connected miscellaneous petition, if any, is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

sms
To

- 1.The Additional District and Sessions Court,
(F.T.C.III), Kallakurichi.
- 2.The II Additional District Munsif Court, Kallakurichi.
- 3.The Section Officer, V.R.Section, High Court, Madras.

+1 cc to M/s.R.Meenal Advocate sr26811
+1 cc to M/s.V.Sasirekha Advocate sr26919

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