

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.07.2020

CORAM

THE HON'BLE MR. JUSTICE R.SUBRAMANIAN

S.A.Nos.720 & 721 of 2016

and

C.M.P.No.13616 of 2016

1.Valliammal

2.Perumal

.. Appellants

in both appeals/ Appellants/Defendants

Vs.

Vijayakumar

.. Respondent in both appeals/

respondent/Plaintiff

Prayer in S.A.No.720/2016: Second Appeal filed under Section 100 C.P.C., against the judgment and decree of the learned Principal Subordinate Judge, Salem dated 26.08.2015 in Cross Appeal No.46 of 2015 in A.S.No.34 of 2015, partly reversing the judgment and decree of the learned Principal District Munsif, Salem dated 19.01.2015 in O.S.No.1267 of 2012 and dismiss the said suit.

Prayer in S.A.No.721/2016: Second Appeal filed under Section 100 C.P.C., against the judgment and decree of the learned Prinicipal Subordinate Judge, Salem dated 26.08.2015 in A.S.No.34 of 2015, confirming the judgment and decree of the learned Principal District Munsif, Salem dated 19.01.2015 in O.S.No.1267 if 2012 and dismiss the said suit.

For Appellant : Mr. T.M. Hariharan

For Respondent : Mr. P. Asai Thambi

COMMON JUDGMENT

The defendants in O.S.No.1267/2012, on the file of the District Munsif, Salem are the appellants. The said suit was laid by the plaintiff seeking declaration of title and permanent injunction restraining the defendants from interfering with his possession.

2. According to the plaintiff, the suit property formed part of larger extent of land originally belonged to one Perumal who had a son by name Muthu. The said Muthu had one of whom was Kolanda Gounder. At a partition

between the sons of Muthu, an extent of 1 acre 36 cents in Survey No.20/2 was allotted to Kolanda Gounder. Kolanda Gounder had two sons by name Ramasamy and Iyyanar. After the death of Kolanda Gounder, the patta for the entire extent of 1 acre 36 cents in Survey No.20/2 which was by then sub divided as 20/2G was issued to Ramasamy he being the eldest son. The plaintiff would further claim that there was a partition in the year 1998 between Ramasamy and Iyyanar, the father of the plaintiff namely the sons of Kolanda Gounder.

3. According to the plaintiff, Iyyanar was allotted the eastern 68 cents and Ramasamy was allotted the western 68 cents. Each of them were given 1/4th share in the well and the service connection. Contending that the defendants after the death of Ramasamy and Iyyanar are attempting to interfere with the plaintiff's possession. The plaintiff laid the suit for declaration and injunction.

4. The suit was resisted by the defendants contending that they have perfected title by adverse possession. It was claimed that the plaintiff had left his parents and it was the defendants who were taking care of the plaintiff's parents also. While admitting the relationship, the alleged partition in the year 1998 was denied by the defendants.

5. At trial, the plaintiff was examined himself as P.W.1 and examined one Arunachalam as P.W.2. Exs.A1 to A5 were produced on his side. The second defendant Perumal was examined as D.W.1 and Exs.B1 to B8 were produced. The trial Court upon a consideration of the evidence, particularly, Exs.A1 and A5 concluded that the defendants have conceded the title of the plaintiff's father Iyyanar under Ex.A1 and that of the plaintiff under Ex.A5 to the eastern 68 cents of land.

6. Ex.A1 is a registered agreement of sale dated 09.01.1997 executed by Ramasamy Gounder and others towards the entire extent of the property. The plaintiff's father Iyyanar was a party to the said document. The said document clearly recites that the property is ancestral property in the hands of the parties. Ex.A5 is the another agreement of sale executed by Ramasamy Gounder, the second defendant Perumal and his minor son Selvan. The said agreement is also a registered agreement. In the boundary recitals it is shown that the property subject matter of Ex.A5 lies on the western side of the property of Vijaya Kumar namely the plaintiff herein.

7. Considering the effect of these two documents, the learned trial Judge concluded that the plaintiff has established his case that there was a partition in 1998 and he was allotted the eastern portion of the property.

8. Adverting to possession, the trial Court found that the plaintiff has not established his possession and he is not entitled to decree for injunction. On the above findings, the

trial Court granted a declaratory decree while rejecting the claim for injunction. Aggrieved, the defendants preferred an appeal in A.S.No. 34/2015, the plaintiff filed a Cross Appeal No.46/2015. The learned Subordinate Judge who heard the appeal and the cross appeal together confirmed the decree for declaration granted by the trial Court. The appellate Court however disagreed with the conclusion of the trial Court that the plaintiff has not established his possession. The learned appellate Judge applied the principle that possession follows title, since the property is a vacant land and concluded that the plaintiff has established his possession also. On the said conclusion, the appellate Court while dismissing the appeal in A.S.No.34/2015 allowed the cross appeal in Cross Appeal No. 46/2015. Aggrieved, the defendants have come up for these two second appeals.

9. I have heard Mr. T.M. Hariharan, learned counsel appearing for the appellants and Mr.P. Asai Thambi, learned counsel appearing for the Caveator.

10. Mr.Hariharan, learned counsel appearing for the appellants who vehemently contend that once revenue records stand in the name of Ramasamy, it is for the plaintiff to prove his title and the partition pleaded by him by cogent and convincing evidence. He would submit that the Courts below were not right in relying upon Exs.A1 and A5, more so, the said documents were not even pleaded in the plaint. It is also the contention of Mr.Hariharan that Ex.A1 was only a loan transaction and it was not intended to be an agreement of sale. He would also contend that the lower appellate Court was not right in invoking the principle "possession follows title" in deciding the question of possession since the plaintiff himself has admitted that he has not been in the village for the past 12 years.

11. I am unable to countenance the submission of Mr.Hariharan. Even assuming that Ex.A1 sale agreement dated 09.01.1997 is a loan transaction, Ramasamy has not claimed exclusive title to the property. The reason for plaintiff's father Iyyanar joining the execution of the agreement has not been satisfactorily explained. The document very clearly recites that the property is ancestral property of the parties. This document is a registered instrument that has been produced in proper custody since the plaintiff father was a party to the instrument. Therefore, the defendants cannot claim that the reliance placed by the Courts below on Ex.A1 to conclude on the question of title in favour of the plaintiff is incorrect.

12. Adverting to Ex.A5, Mr.Hariharan would contend that it is not produced from proper custody and in the absence of pleading with reference to Ex.A5, the Courts below were not right in relying upon the same. Admittedly, the plaintiff is not a party to the said instrument. The defendants are

parties to the said instruments. It is a registered instrument and the certified copy of the same has been produced. The execution of the said document is not denied. The only contention is that it is an agreement between the defendants and a third party and the same cannot be used to conclude the question of title in favour of the plaintiff. Boundary recitals in instruments constitute valid evidence of title when some of the parties to a suit who are interested in denying the title of the plaintiff are parties to the instrument. Ex.A5 is an agreement of sale executed by the second defendant, his father and his minor son. It relates to only 68 cents of land. It contains a specific recital that the eastern boundry is Vijayakumar's of land.

13. It is clear from Ex.A5 that the partition pleaded by the plaintiff said to have taken place in 1998 is more probable. I therefore see no error in the findings of the Courts below based on Ex.A1 to Ex.A5 concluding that the plaintiff is the owner of 68 cents of land of the eastern side of Survey No.20/2G.

14. On the question of possession, Mr. Hariharan would contend that in the absence of any positive evidence to show that the plaintiff has been in possession of property and in the light of specific admission that he has not been leaving in the village, the lower appellate Court was not right in invoking the principle "possession follows title". I am unable to accept such submission of the learned counsel. In the year 2000, the defendants have admitted the title of the plaintiff and his possession of the eastern 68 cents in S.No.20/2G in Ex.A5 agreement of sale. The suit has been filed in 2012. No doubt, a period of 12 years might have expired, but in the absence of any concrete evidence, to show that the defendants were in continuous possession and they have perfected title by adverse possession, the appellate Court cannot be faulted for having invoked the principle "possession follows title".

15. I find no perversity in the findings of the appellate Court in order to enable me to reapprciate the evidence setting in second appeal. I also do not find any question of law much less a substantial question of law in order to enable me to entertain the second appeal. The second appeal therefore fail and it is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (AR I)

/true copy/

Sub Asst. Registrar

AT

To

1.The Principal Subordinate Judge,
Salem.

2.The Principal District Munsif,
Salem.

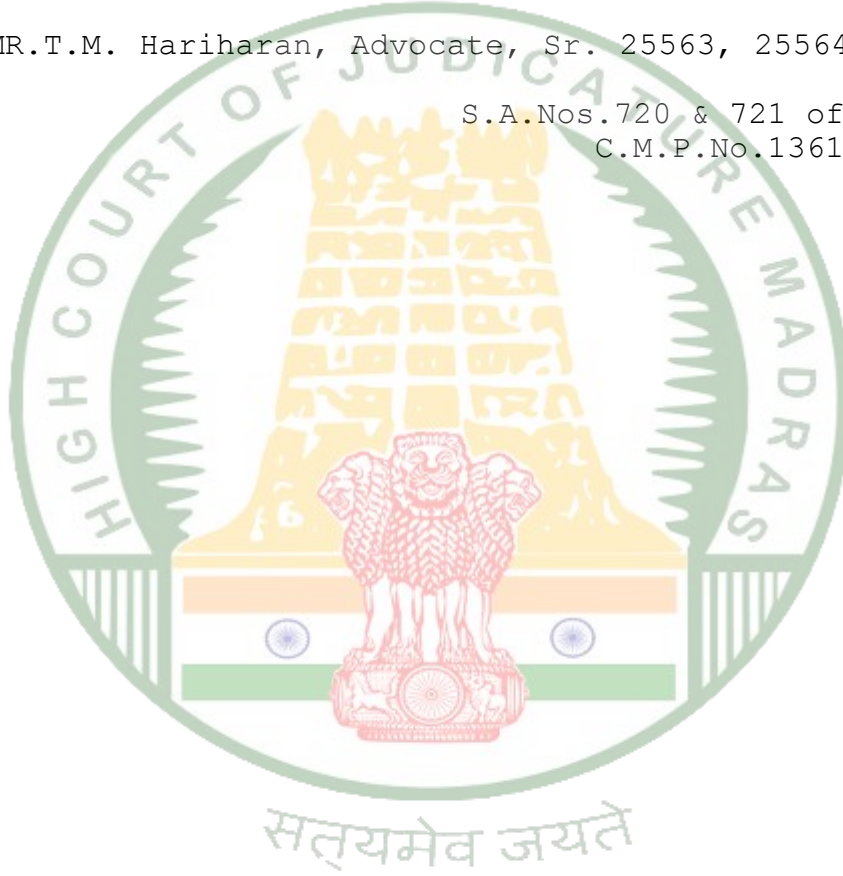
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The section Officer
Vernacular Records High Court, Madras

2 ccs to MR.T.M. Hariharan, Advocate, Sr. 25563, 25564

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C.M.P.No.13616 of 2016

RSK (CO)
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