

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

S.A.No.1115 of 1999
and
C.M.P.No.10790 of 1999

1. Rasappan

2. Chinnian

3. Ranga Naicker

4. Subbammal

5. Kuppammal

6. Gurusamy

7. Saraswathy

8. Thangavel

9. Nagammal ..Appellants/Defendants 1,2,4 to 10

/versus/

1. Chinnaranga Naicker

2. Pappa Naicker

3. Rangasamy

4. Chinnasamy

5. Krishnasamy ..Respondents/Plaintiffs

PRAYER: Second Appeal filed under Section 100 of C.P.C., against the Judgement and decree dated 29.01.1999 on the file of the Principal District Judge, Erode in A.S.No.162 of 1998 and against the Judgement and decree made in O.S.No.146 of 1995 dated 18.08.1998 on the file of District Munsif Cum Judicial Magistrate, Perundurai.

For Appellants : Ms.K.Indupriya
for Mr.V.P. Sengottuvel

For Respondents 3 to 5: No appearance
R1 & 2 : Died

JUDGMENT

The defendant is the appellant herein. The respondent / plaintiff filed a suit for declaration of title deed and for permanent injunction. After trial, suit was decreed and the appeal preferred was dismissed and hence the Second Appeal has been filed.

2. The respondent / plaintiff filed a suit for declaration of title deed and for permanent injunction based upon the partition deed. The suit property belongs to the first plaintiff and the father of the plaintiffs 2 to 5 in the oral partition, the properties have been divided and subsequently the partition deed was registered on 30.06.1995. After the death of the father of the plaintiffs 2 to 5, the suit has been filed. Since the defendants in the Appeal Suit had interfered with the possession of the plaintiffs, the defendants / appellants filed written statement inter alia contending that the suit property is in the continuous, peaceful possession and enjoyment by them and denied Ex.P1. In the trial, the third plaintiff was examined as PW1 and Ex.A1 to Ex.A3 were marked and the first defendant was examined as DW1 and Ex.B1 was marked. The trial Court accepted the case of the plaintiffs and granted the decree and on appeal the same was confirmed. Challenging the same, this Second Appeal has been filed.

3. The above Second Appeal has been admitted on the following substantial questions of law;

" Whether the Courts below are right in placing the burden of proof in this case on the defendants to establish their title to the suit property. As the suit is for declaration of the plaintiff's title to the suit property and for permanent injunction.

(b) Whether the Courts below are right in holding that the reasoning of the Courts on the basis of "Possession follows title" the plaintiffs are entitled to the relief of declaration and injunction.

(c) Whether the Courts below are right in decreeing the suit when the plaintiffs in the suit have omitted to implead the second defendant alone when there are several legal heirs to late, Chinnaranga Naicker, when the suit is for declaration and permanent injunction.

(d) Whether Courts below are right decreeing the suit when a specific plea was raised that the suit is bad for non joinder of the heirs of the Late. Chinnaranga Naicker. But the plaintiffs failed to implead them and the Courts also ignored that aspect in decreeing the suit."

4. Heard the Learned Counsel appearing on behalf of the Appellants.

5. According to the plaintiffs Ex.A1 is the source of the title and partition. On a perusal of Ex.A1, it is seen that it is 30 years old document on the date of marking and hence the Lower Appellate Court has rightly come to the conclusion that Ex.A1 is an ancient document. Accordingly, they are entitled for presumption as to the contents and substance of the document.

6. To rebut the presumption, arising under Ex.A1, the defendants / appellants have not filed any document or let in any strong oral evidence also assumes significance. It is needless to say that according to the respondents / plaintiffs, the evidence of the PW1 is found to be materially in corroboration with Ex.A1 which is admittedly an ancient document. The suit property is a vacant site. On a combined reading of the documentary evidence of Ex.A1 coupled with the evidence of PW1, both the Courts below have correctly concluded that the pleadings should rebut the presumption made in favour of the plaintiffs. The defendants have marked Ex.B1 patta. With regard to the genuineness of the Ex.B1 patta, the Lower Appellate Court has rightly come to the conclusion that the name of defendants 2 & 3 were not mentioned in the patta and the names of the other defendants have been subsequently included by way of interpolation in it and furthermore, the ink was also in different colour and observed that Ex.B1 patta has been marked on behalf of the defendants during the pendency of the suit and hence has categorically rejected Ex.B1 by holding that Ex.B1 having been obtained after the suit to show the alleged possession and also found various infirmities in description, as narrated above, and rightly rejected Ex.B1.

7. In the absence of any source of title of the defendants / appellants and in view of the positive evidence available under Ex.A1 coupled with the evidence of the PW1, both the courts below have rightly come to the conclusion that the plaintiffs are the owners and are entitled for the relief of declaration of title and they are in the possession of the property and accordingly decreed the suit. Hence on the above factual matrix of the case as spoken to by oral Evidence and as demonstrated under the documentary evidence, the substantial questions of law

does not arises for consideration. I find no merit in this Second Appeal.

8. In this view of the matter, the Second Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

s/d-

Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

kmm

To

1.The Principal District Judge,
Principal District Court,
Erode.

2.The District munsif-cum- Judicial Magistrate,
Perundurai.

S.A.No.1115 of 1999
and
C.M.P.No.10790 of 1999

CA(CO)
SP(13/09/2021)