

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Judgment
26.02.2021

Date of Pronouncing Judgment
08.03.2021

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THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

S.A.No.2082 of 2000
and
C.M.P.No.20358 of 2000

Dhanapal Padayachi .. Appellant / Appellant / Plaintiff

Vs.

1.Dhanasinghu Padayachi
2.Ugravel Padayachi (deceased)
3.Vasantha
4.Santhi
5.Udayakumar
6.Sathya .. Respondents / Respondents / Defendants

RR4 lie 6 brought on record as LRs of the deceased R2 vide order of court dated 30.10.2018 made in CMP.7186 to 7188/2017 (RHJ)

Prayer: Second Appeal filed under Section 100 of C.P.C., against judgment and decree of the learned Subordinate Judge, Panruti dated 01.10.1999 in A.S.No.76/96 confirming the judgment and decree of the learned District Munsif, Panruti dated 27.03.1995 in O.S.No.94/92.

For Appellant : Ms.Rita Chandrasekar
for M/S.Aiyar & Dolia

For Respondents : Mr.S.K.Rakhunathan, for R3

R2 : died

R1, R4 to R6 : NA



J U D G M E N T

The plaintiff is the appellant herein. For the sake of convenience, parties are referred to as per the litigant's status before the trial Court.

2. The unsuccessful plaintiff is the appellant herein. The plaintiff filed a suit in O.S.No.94/1992, before the District Munsif, Panruti for a declaration that the plaint schedule property belongs to him by virtue of Exs.A1 and A2 and also for a permanent injunction restraining the defendant / respondent from interfering with his possession. Pending suit, the first defendant trespassed into portion of the suit property and hence, filed an amendment petition to add the relief of recovery of possession. After trial, the suit was dismissed and the appeal was also dismissed. Hence, the second appeal.

3. The above second appeal is admitted on the following substantial question of law.

(i) Whether the Courts below were right in shifting the onus on the appellant to prove the validity of Exs.A1 and A2 in the light of the claim that the third respondent was entitled to a share as the grand daughter of Adhimoola in joint possession with her uncle?

(ii) Whether the recital in Ex.B1 and the conduct of D.W.2 would suffice to prove that Ex.B1 was sham and nominal?

(iii) Whether the appellant is entitled to the plaint property under Ex.A1 and Ex.A2 in the proof that Varadaraja & Chinnasamy could not validly alienate the same?

4. Heard the learned counsel for the appellant and the learned counsel for the third respondent.

5. On perusal of the plaint, written statement and Ex.A3, I find that the suit is filed for declaration of title and for permanent injunction. Pending suit, as it is alleged that the first defendant trespassed into the suit property. Hence recovery of possession is also sought for.



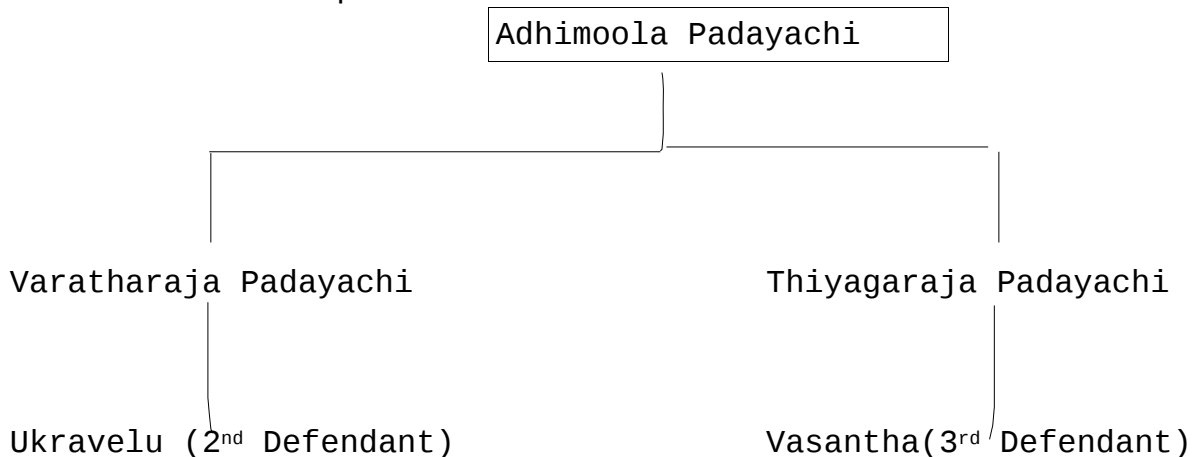
6. The plaint schedule refers to S.No.470/1, a total extent of land is 1 acre 42 cents out of which, A Schedule property is described as 40 cents, B Schedule property is described as 18 cents.

7. The plaint proceeds on the basis that:

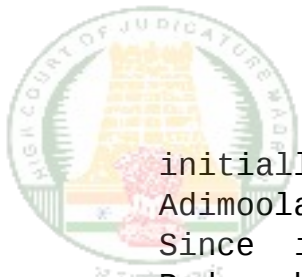
(a) As per Ex.A1 Sale Deed dated 16.09.1985, the plaintiff claims to have purchased the A Schedule property to an extent of 40 cents from Varadaraja Padayachi and his Son Ukravel (second defendant). In respect of B Schedule property, he claims to have purchased 18 cents under Ex.A2 sale deed dated 29.08.1986 from one Chinnatambi Padaiyachi and others and thus the plaintiff rests his claim on Exs.A1 and A2.

8. Per contra, the third defendant who is the contesting defendant would contend that she has filed a written statement denying the title to the B Schedule property in favour of the plaintiff. Inter-alia, contended that she is the daughter of Devaraju Padayachi, who is the son of Adimoola Padiyachi and hence under Ex.A2 Sale deed, no title will be conveyed to the plaintiff. On the contrary, she would depose as D.W.2 that under Ex.B1, he has sold the property in favour of the first defendant and hence, the first defendant is the sole and absolute owner of the B Schedule property.

9. The genealogy tree is produced by the learned counsel for the third respondent is as hereunder:-



10. The relationship between the parties assumes significance in the background of the dispute between the parties. The total extent of 1 acre 42 cents in S.No.470/1



initially belonged to Rathina Padayachi, Vellaiya Padayachi, Adimoola Padayachi in the ratio of 37 cents, 45 cents 60 cents. Since in branch of Adimoola Padayachi, namely Varatharaja, Padayachi, Thiyagaraja Padayachi @ Devaraja Padayachi. Thiyagaraja Padayachi died in the year 1958, followed by the death of Sarathammal, Widow, their only daughter namely 3rd defendant is entitled to branch of Thiyagaraja Padayachi. In respect of Varatharaja Padayachi, the 2nd defendant namely Ukravelu is the son.

11. It is the specific case of the defendants that between the sons of Adimoola Padayachi viz., Varatharaja Padayachi and Thiyagaraja Padayachi there was no partition and it is the further case of the defendants that in the land in S.No.470/1, the vendor of the plaintiff namely Chinna Thambi has no right or title. So also in respect of 40 cents said to have been conveyed under Ex.A1, neither the second defendant nor his father Vadatharaja Padayachi has any independent right or any individual extent.

12. Before the trial Court, the plaintiff examined himself as P.W.1 and also examined one Dhandapai and marked Exs.A1 to A6. On behalf of the defendants / respondents, the first defendant was examined as D.W.1 and third defendant was examined as D.W.2. D.W.3 and D.W.4 are the legal heirs of Adhimoola Padaiyachi, the original predecessor in title. In the reply statement, the plaintiff has taken a stand that the third defendant is not the daughter of Devaraja Padayachi @ Thiyagaraya Padayachi.

13. In this regard, based upon Ex.B3 marriage expenses note book and Ex.B4 ceremonial function and the birth certificate Ex.B5, the trial Court has come to the conclusion that on a combined reading of oral evidence of D.W.3 and D.W.4 who are the sons and cousin sons of the Adimoola Padayachi branch, would vouch for the paternity of the third defendant that she is the daughter of Devaraja Padayachi and Saradhambal. In view of the oral evidence of D.W.3 and D.W.4 coupled with the documentary evidence of Exs.B3 to B5, the finding rendered by both the Courts below that the third defendant is the only daughter of Thiyagaraya Padayachi is found to be well considered and does not warrant any interference.



14. D.W.3 is the attester of Ex.A1 sale deed. He is the son of Rathina Padayachi. It is the specific evidence that in respect of the suit property Chinna Thambi (vendor of the plaintiff) has no right or title. D.W.4 Kuppusamy, who is the brother of Rathina Padayachi and the son of Vellaiya Padayachi, has categorically stated that the Chinna Thambi, does not have any share or title to the suit property. They are the other two branches of predecessor of Adhimoola Padayachi, which assumes significance. In view of the specific pleadings in the written statement that the vendor of the plaintiff has no title to convey under Ex.A2. In support thereof, examined D.W.3 and D.W.4 under the branch of Adimoola Padayachi, coupled with the fact that the suit property which is still undivided share and that being so, both the Courts below have rightly come to the conclusion that unless the plaintiff proves the title of the vendor, Ex.A2 will not confer any title or right upon the plaintiff is held to be sustainable in law.

15. Furthermore, despite the oral and documentary evidence to the extent indicated above, the plaintiff has not chosen to examine his alleged vendor namely Chinna Thambi, or the sons to substantiate their rights and it also assumes significance. Nor even encumbrance certificate has been filed before the trial Court to show at any point of time, prior to the sale under Ex.A2 Chinna Thambi had title or was in possession in respect of the suit property was not filed before the trial Court and accordingly, both the Courts below have concurrently held that in the absence of title or possession for the plaintiff vendor being established in the manner known to law. On the contrary, when the documentary evidence of B3 to B5, demonstrates that the third defendant is daughter of Devaraja Padayachi and she is entitled to one share in the branch of the Adimoola Padayachi coupled with the fact that at no point of time, the vendor of the plaintiff had any right or title to the suit property assumes significance.

16. Yet another point is that the property is still in the joint possession and the property is not yet divided. The co-sharer in the suit properties who are in possession and enjoyment of the property do not oust the other persons title. When the specific case of the third defendant is that she is the daughter of Thiyagaraja Padayachi and he is entitled for 30 cents and hence under Ex.A1, the plaintiff said to have purchased only



an undivided share and not with the share specific boundary assumes significance and thus I find that where a co-owner and other owner are in possession of the property, the possession of one of the co-owner do not oust the right or title in respect of the third defendant in the property jointly held by the other branches of Adimoola Padayachi and thus I find that under Ex.A1, it has been sold as a co-sharer of the property and as such it is an undivided property and hence the trial Court as well as the Lower appellate Court had rightly come to the conclusion that by virtue of Ex.B1, D3 had right to convey the title and suit property to the first defendant and defendant 1 is in possession of the property in his own right and Ex.A2 will not confer any right or title to the plaintiff in the absence of any title to the plaintiff's vendor. For the reasons stated supra, both the Courts below has rightly rejected the relief which I find that such a finding rendered by both the Courts below does not suffer from any irregularity or illegality warranting interference under Section 100 of CPC.

17. In view of the specific pleadings in the written statement supported by the oral evidence of D.W.3 and D.W.4, the trial Court has rightly come to the conclusion that the third defendant / third respondent is entitled to share as a granddaughter of Adimoola Padayachi in joint possession with her paternal uncle and hence in the absence of any evidence on the part of the plaintiff, both the Courts below has rightly held that the third defendant is entitled for a share in the suit property and hence, the substantial question of law on the above ground stands negatived as against the appellant.

18. Considering the fact that the plaintiff has denied the paternity of the third defendant which was duly proved in the manner known to law as discussed supra, both the Courts below have rightly held that the third defendant is the granddaughter of Adimoola Padayach. She is in joint possession with her paternal uncle and she in her individual capacity had executed Ex.B1 sale deed in favour of the first defendant coupled with the evidence of D.W.3 and D.W.4 and hence I find that Ex.B1 is not a sham and nominal document and its duly conveying right of the third defendant to and in favour of the first defendant. Accordingly, the second substantial question of law also stands negatived against the appellant. In this view of the matter, the second appeal is devoid of merits and liable to be dismissed.



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19. Accordingly, the second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

AT

To

1.The Subordinate Judge, Panruti.

2.The District Munsif, Panruti.

Copy To

The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to M/s.Aiyar and Dolia, Advocate, S.R.No.14710

+1cc to Mr.S.K.Rakhunathan, Advocate, S.R.No.14707

S.A.No.2082 of 2000 and
C.M.P.No.20358 of 2000

NRL(CO)
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