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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.01.2021

PRONOUNCD ON : 03.02.2021

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A.No. 1099 of 2008

and

M.P.No.1 of 2008

R. Rajeswari

W/o. K. Ravindran

...Appellant/Plaintiff/Appellant

Vs.

1. Pappammal

D/o. Athayi

2. P. Kaliammal

W/o. Periyasamy

3. Saraswathi

W/o. M. Kalianna Gounder

4. Gomathi

W/o. M. Chinnasamy Gounder

... Respondents/Defendants/Respondents

Prayer: Second Appeal filed under Section 100 of CPC, 1908 against the judgment and decree of the learned Subordinate Judge, Namakkal dated 21.11.2007 in A.S. No.117 of 2004 confirming the judgment and decree of the learned Additional District Munsif, Namakkal dated 15.10.2004 in O.S. No.288 of 2002.

For Appellant : Mr. T.M. Hariharan

For Respondents : Mr. Krishna Prasad

for M/s. Sarvabhauman Associates

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 21.11.2007 passed in A.S. No.117 of 2004 on the file of the Subordinate Court, Namakkal, confirming the judgment and decree dated 15.10.2004 passed in O.S. No.288 of 2002 on the file of the Additional District



Munsif Court, Namakkal.

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

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3. The plaintiff in OS.No.288 of 2002 is the appellant in the Second Appeal.

4. Suit for declaration and permanent injunction.

5. Briefly stated, the case of the plaintiff is that the defendants lands are running adjacent to the plaint schedule property, which belonged to Muthusamy Gounder, the grand father of the plaintiff and Muthusamy Gounder executed a sale deed in favour of the plaintiff's mother Angammal, and put her in the possession of the plaint schedule property and Angammal had settled the plaint schedule property in favour of the plaintiff by way of the registered settlement deed dated 28.03.2001 along with some other properties and the plaintiff obtained the possession of the plaint schedule property and enjoying the same by paying the kists, etc., and the patta stands in the name of the plaintiff's mother. The defendants, with a view to grab the plaint schedule property, of late, proclaiming that they are arranging to get the patta for the plaint schedule property and thereby attempting to interfere with the plaintiff's possession and enjoyment qua the same and hence according to the plaintiff, she had been necessitated to lay the suit for appropriate reliefs.

6. The defendants resisted the plaintiff's suit contending that the suit laid by the plaintiff is not maintainable either in law or on facts and admitted that the defendants' lands are adjacent to the plaint schedule property lying in survey No.208/1, however, disputed the claim of the plaintiff that the plaint schedule property originally belonged to the plaintiff's grand father Muthusamy Gounder and that he had executed the sale deed in favour of the plaintiff's mother and put her in the possession of the same and thereafter, the plaintiff's mother had settled the plaint schedule property in favour of the plaintiff by way of the settlement deed dated 28.03.2001 and that the plaintiff, subsequent thereto, had been enjoying the suit property by paying the kists, etc., and also the patta has been mutated in the name of the plaintiff's mother. According to the defendants, the plaint schedule property and the other properties belonged to Nallaiya Gounder, Son of Perumal Gounder and he had alienated the abovesaid properties to Arumugam Pillai on 08.02.1929 and following the same, it is only Arumugam Pillai, who had been enjoying the abovesaid properties and the abovesaid properties are described as Muthurangan thotam lying in mitta Survey No.208/2 and Arumugam Pillai had other properties on the southern side of the properties purchased by him from Nallaiya Gounder and for enjoying the said properties, Arumugam Pillai had purchased



the property from Nallaiya Gounder for creating a pathway to reach his other lands. Arumugam Pillai's legal representatives, through their power agent Nagalingam Pillai, had alienated the plaint schedule property and the other properties to one Muthusamy Gounder by way of the registered sale deed dated 24.03.1939 and subsequently it is only the defendants, as the legal representatives of the Muthusamy Gounder, who are enjoying the plaint schedule property and the other properties. Muthusamy Gounder after his purchase on 24.03.1939, exchanged certain properties lying in Survey No.208/2 with one Etti Gounder, who was having the properties in Mitta Survey No. 208/3 and Muthusamy Gounder's legal representatives effected the partition in the year 1946 for creating the pathway in the plaint schedule property to reach their other lands and in the said partition deed, the plaint schedule property has been shown as the pathway and thereafter, the fourth defendant's father-in-law Marappa Gounder had purchased the properties on 14.06.1958 and even in the abovesaid sale deed, the plaint schedule property has been clearly described as the pathway and in the re-survey number, the plaint schedule property has been located in Survey No.208/1 and on 13.01.1984, Marappa Gounder and his sons had effected the partition in respect of the family properties whereunder the fourth defendant's husband Chinnasamy had been allotted the 'A' schedule properties and after his demise, it is only the fourth defendant, who has been enjoying the properties allotted to her husband and accordingly enjoying the plaint schedule property as a pathway to reach her other lands and the plaint schedule property is not the agricultural land and it has been, all along, used only as a pathway by the fourth defendant and her predecessors in title as aforesaid and it is learnt that the plaintiff's mother had clandestinely secured the patta in respect of the property lying in Survey No.208/1 and on the basis of the said patta, she and the plaintiff cannot lay a valid claim of title over the plaint schedule property and on account of the long and continuous possession and enjoyment of the plaint schedule property as a pathway, the defendants have secured the right over the same by way of adverse possession also and therefore, the plaintiff is not entitled to obtain the reliefs as prayed for and the suit is liable to be dismissed.

7. In support of the plaintiff's case, P.Ws. 1 to 4 were examined and Exs.A1 to A18 were marked. On the side of the defendants D.Ws.1 to 4 were examined and Exs.B1 to B6 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 dismiss the plaintiff's suit. Challenging the same, the present second appeal has been preferred.

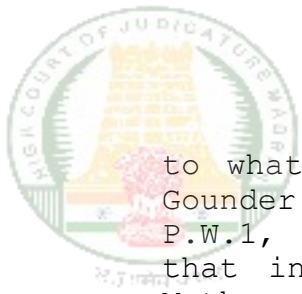


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following substantial questions of law were formulated for consideration.

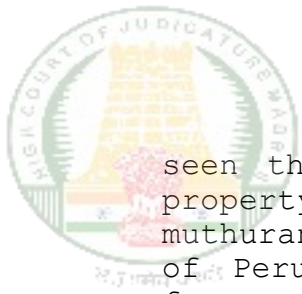
- 1) When Exs.B2 and B1 even if acceptable relate only to a third share in the suit property have not the courts below erred in dismissing the suit in its entirety?
- 2) Whether Ex.A6 sale of the year 1939 in favour of Vyapuri Gounder conveying acre 4.19 in Mitta Survey No.208/2 correlated Survey No.208/1 registered in his name in Ex.A15 settlement register does not establish the anterior title of the appellant and does not the failure of the courts below to appreciate these clinching materials available on record amount to serious error in appreciating evidence calling for interference under Section 100 C.P.C?

10. The plaintiff/appellant claims title to the suit property based on the settlement executed in her favour by her mother Angammal on 28.03.2001, which has been exhibited as Ex.A1. The suit property is described as comprised in Survey No.208/1 dry Ac. 0.25 at Vettambadi village. Further according to the plaintiff, her mother Angammal derived the title to the abovesaid suit property by way of the sale deed executed by her grand father Muthusamy Gounder. In the plaint, the plaintiff has not averred as to when the abovesaid sale deed was executed by Muthusamy Gounder in favour of Angammal. However, during the course of trial, the sale deed dated 14.02.1981 has been marked as Ex.A5 and the same is stated to be the sale deed in favour of Angammal executed by Muthusamy Gounder. It has not been averred in the plaint as to how Muthusamy Gounder, the plaintiff's grand father had derived the title to the suit property as described in the plaint. However, from the averments contained in Ex.A5 sale deed, it is noted that, Muthusamy Gounder had derived the title to the suit property by way of the oral partition. The plaintiff, during the course of trial, would claim that she traces the title to the suit property on the strength of the sale deed dated 21.06.1939 marked as Ex.A6 and the said sale deed, according to the plaintiff, had been executed by Palani Gounder in favour of Vyyapuri Gounder and his son Karuppa Gounder. However, the plaintiff has not established as to how Muthusamy Gounder, her grand father had derived the title pursuant to Ex.A6 sale deed. In any event, as above pointed out, in Ex.A5 sale deed Muthusamy Gounder has described the derivation of the title to the suit property putting forth the case that in the oral partition effected between the sons of Vyyapuri Gounder and him, the properties described in Ex.A5 sale deed had been allotted to him. However, as above pointed out and as rightly held by the first appellate court, the plaintiff has not come forward with the case as to when the oral partition had been effected between Muthusamy Gounder and the sons of Vyyapuri Gounder and also has not come forward as



to what is the extent of the property allotted to Muthusamy Gounder and in this connection, the plaintiff examined as P.W.1, during the course of cross examination, has admitted that in Ex.A5, the properties were described as allotted to Muthusamy Gounder in the oral partition and she is not aware of the same and came to know about the same only through her mother and also would plead ignorance as to when the abovesaid oral partition had been effected and further admitted that she has not disclosed the oral partition in the plaint. Similarly, the plaintiff's mother Angammal examined as P.W.2 would also testify that the partition had been effected between her father and her grand father orally and she does not know when the abovesaid partition had been effected and also would state that she is not aware whether any deed has been executed with reference to the factum of partition and also does not know whether any partition deed had been handed over to her by her father at the time of execution of Ex.A5 sale deed. In addition to that, the plaintiff has also not endeavoured to examine any independent witness to establish the factum of oral partition whereunder the suit property is claimed to have been allotted to the share of her grand father Muthusamy Gounder. In such view of the matter, as rightly concluded by the first appellate court, the plaintiff has failed to establish the origin of the title of the suit property particularly as to how her grand father had derived the title to the same.

11. From the materials placed on record, particularly, Ex.A15 settlement register, it is seen that the properties lying in Survey Nos.208/1, 2 and 3 were originally part of mitta Survey No.208/2. The same is not in dispute. It is thus noted that the suit property shown as located in Survey No.208/1 measuring an extent of Acre 0.25 was originally comprised in Mitta Survey No.208/2. The earliest sale deed projected by the plaintiff for claiming the title to the properties comprised in Survey No.208/2 comprising of an extent of 4.19 acres is the sale deed dated 21.06.1939 marked as Ex.A6. As per the recitals contained in the abovesaid sale deed, Palani Gounder is claimed to have alienated the property comprised in mitta Survey No.208/2 also known as Muthurangan thotam in favour of Vyyapuri Gounder vagaiyarah. As above pointed out, the plaintiff has, thereafter, failed to establish as to how her grand father Muthusamy Gounder had derived the title to the suit property, particularly, she has failed to establish the factum of oral partition put forth by her during the course of trial as recited in Ex.A5 sale deed. Moreso, the plaintiff has also failed to establish as to how Palani Gounder derived the title to the property comprised in mitta Survey No.208/2 of an extent of 4.19 acres and that he had the competency to alienate the same in favour of Vyyapuri Gounder Vagaiyarah under Ex.A6 sale deed. Therefore, the first appellate court is found to be justified in holding that the plaintiff has failed to establish the claim of the title through her grand father from Ex.A6 sale deed.



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seen that the defendants would put forth the plea that the property comprised in mitta Survey No.208/2 known as muthurangan thotam originally belonged to Nallaiya Gounder son of Perumal Gounder and that he had alienated the same in favour of one Arumugam Pillai by way of the sale deed dated 08.02.1929, the copy of which sale deed has been marked as Ex.B4. It is thus noted that Ex.B4 sale deed has come into existence much prior to Ex.A6 sale deed. Further according to the defendants, Arumugam Pillai had utilised the property purchased by him under Ex.B4 sale deed as a pathway for gaining access to his other lands located on the southern side. Further according to the defendants, the sons of Arumugam Pillai, through their power agent Nagalingam Pillai, had alienated the suit property and the other properties comprised in mitta Survey No.208/2 in favour of Muthusamy Gounder by way of the sale deed dated 24.03.1939, the copy of which has been marked as Ex.B3. Ex.B3 is also found to be anterior to Ex.A6 sale deed. It is also the case of the defendants that Muthusamy Gounder and one Etti Gounder exchanged the properties during 1940 and thereafter, Muthusamy Gounder had been using the suit property only as the pathway. It is also put forth by the defendants that Muthusamy Gounder had alienated the properties belonging to him in favour of Marappa Gounder by way of the sale deed dated 14.06.1958, the copy of which has been marked as Ex.B2 and the recitals contained in Ex.B2 as well as the recitals contained in Exs.B3 would go to disclose that the suit property lying in the western extremity has been used only as the pathway and for gaining access to the other lands. It is also the case of the defendants that in the partition effected between Marappa Gounder and his sons, the "A" schedule properties described has been allotted to Chinnasamy, the husband of the fourth defendant and the abovesaid partition deed dated 13.01.1984 has been marked as Ex.B1. On a perusal of the recitals contained in Ex.B1, it is noted that the suit property has been described only as the pathway and therefore, as rightly concluded by the first appellate court, the suit property originally comprised in mitta Survey No.208/2 and presently comprised in Survey No. 208/1 has been only used as the pathway by the predecessors in interest of the defendants and therefore, when the suit property has been dealt with by the predecessors in interest of the defendants right from 08.02.1929 and when there is no material as to how Palani Gounder had derived the title to the suit property and when the plaintiff has failed to plead as well as establish that Palani Gounder had derived the valid title to the suit property and on the other hand when from Exs.B4 and B3 it is noted that the suit property had already been dealt with by Nallaiya Gounder and the sons of Arumugam Pillai, as rightly concluded by the first appellate court, the plaintiff has miserably failed to establish the trace of title of the suit property particularly as to how Palani Gounder had derived the title to the suit property. In such view of the matter, the claim of the plaintiff that she has established the title of



her predecessors in interest, namely, palani Gounder, qua the suit property by virtue of Ex.A6 sale deed, as such, cannot be countenanced in any manner when prior to Ex.A6, the suit property had been dealt with, as above noted, under Exs.B4 and B3 and thereafter also dealt with under Exs.B2 and B1, all put together, as rightly contended by the defendants' counsel, when as above noted, the parties are not at issue that the present survey Nos.208/1, 2 and 3 originally form part of mitta Survey No.208/2 and when the property comprised in mitta Survey No.208/2 had been dealt with by the predecessors in interest of the defendants as above discussed, the courts below are justified in coming to the conclusion that the plaintiff has failed to establish her claim of title to the suit property.

13. The plaintiff would only put forth the case that the patta had been granted in favour of her mother qua the suit property. However, as rightly concluded by the courts below, when the plaintiff has failed to establish the origin of title qua the suit property through her predecessors in interest as above discussed and also failed to establish the factum of the partition through which her grand father is claimed to have been allotted the suit property and when the plaintiff has also failed to establish her claim of possession and enjoyment of the suit property right from the days of her predecessors in interest, merely on the production of the patta, we cannot safely conclude that the plaintiff has a valid claim of title to the suit property. As rightly concluded by the courts below, the patta would not confer or extinguish the title in favour of the holder of the same and the revenue documents cannot be construed as the documents of title and in such view of the matter, the courts below are found to be justified in non suiting the plaintiff. In the light of the abovesaid discussions, in my considered opinion, no substantial question of law is involved in the second appeal. Be that as it may, the substantial questions of law formulated in the second appeal, for the reasons aforesaid, are accordingly answered against the plaintiff and in favour of the defendants.

14. In conclusion, the judgment and decree dated 21.11.2007 passed in A.S. No.117 of 2004 on the file of the Subordinate Court, Namakkal, confirming the judgment and decree dated 15.10.2004 passed in O.S. No.288 of 2002 on the file of the Additional District Munsif Court, Namakkal, are confirmed. Resultantly, the second appeal is dismissed with costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-IV)

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To

1. The Subordinate Judge,
Namakkal

2. The Additional District Munsif Court,
Namakkal

Copy To

The Section Officer,
VR Section,
High Court, Madras

+1cc to Mr.T.M. Hariharan, Advocate SR.No.5849

+1cc to M/s. Sarvabhauman Associates, Advocate SR.No.5607

S.A.No.1099 2008

AJS (CO)
GMY (02/09/2021)