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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.02.2021

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.1122 of 2008

Savarimuthu,
S/o, Arulappan,
Ayeepattai Village,
Hamlet of Keehur,
Panruti Taluk,
Cuddalore District.

... Appellant/Appellant/Plaintiff

Vs.

1. M. Dharmalingam,
S/o, Murugan,
2. Marimuthu,
S/o, Sivalingam,
3. Seetharaman,
S/o, Kadirvelu,
4. Anjapuli,
S/o, Thangavelu,
All are residing at
Ayeepattai Village,
Hamlet of Keehur,
Panruti Taluk,
Cuddalore District.

... Respondents

Prayer:

Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree of the learned Sub-ordinate Judge, Panruti dated 11.07.2007 passed in A.S.No.16 of 2006 confirming the judgment and decree of the learned District Munsif, Panruti made in O.S.No.198 of 1998 dated 19.10.2005.

For Appellant : Mr.C.Cinna samy, SC

Mr.S.Haja Mohideen Gishi

For Respondents : No appearance



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J U D G M E N T

Challenge in this second appeal is made to the judgment and decree dated 11.07.2007 passed in A.S.No.16 of 2006 on the file of the Sub-ordinate Court, Panruti, confirming the judgment and decree dated 19.10.2005 passed in O.S.No.198 of 1998 on the file of the District Munsif Court, Panruti.

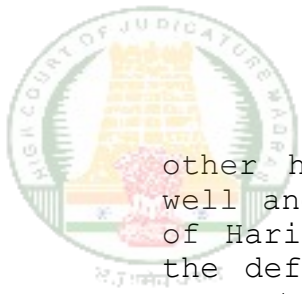
2. For the sake of convenience, the parties are referred to as per their rankings in the trial court.

3. Suit for declaration and recovery of possession.

4. The unsuccessful plaintiff in O.S.No.198 of 1998 is the appellant in the second appeal.

5. Briefly stated according to the plaintiff's case, his father Arulappan owned 0.13 cents of land in Survey No.541/34 of Kizur village and Arulappan had four sons namely Manickkam, Sourimuthu the plaintiff herein, Ponnusamy and Arokiasamy and Arulappan died in the year 1950 and 0.13 cents of land stood in the name of the eldest son Manickkam and Manickkam died in the year 1960 and the other two brothers of the plaintiff allotted the abovesaid 0.13 cents to the plaintiff and they have taken some other properties towards their share. The plaintiff has been in the possession and enjoyment of the abovesaid extent by paying Kists and donated 1 ½ cents to the Panchayath Union for the construction of bore well and overhead tank and the plaintiff is in the possession and enjoyment of the remaining extent 11 ½ cents which is the suit property. The patta for the suit property stood in the name of the plaintiff's elder brother Manickkam up to 1970 and during the re-survey, the patta was mistakenly transferred to in the name of Mariamman Temple and taking advantage of the same, the defendants attempted to disturb the plaintiff's possession qua the suit property and hence according to the plaintiff, he has been necessitated to lay the suit originally for the reliefs of declaration and permanent injunction and pending suit, as the defendants have unlawfully trespassed into the suit property and put up superstructure over the same and hence according to the plaintiff, he has necessitated to seek the reliefs of declaration and recovery of possession.

6. The defendants resisted the plaintiff's suit contending that the plaintiff's father Aurlappan did not have four sons as claimed by the plaintiff, particularly he did not have Manickkam as his eldest son as putforth by the plaintiff. According to the defendants, the suit property belong to Mariammn Temple which has been in existence from time immemorial and the patta No.340 stood in the name of Mariammn Temple for the past 23 years right from re-survey settlement and it is false to state that the plaintiff had donated 1 ½ cents to the Panchayat Union for the construction of bore well and overhead tank. On the



other hand, as the property belong to Mariamman Temple, bore well and overhead tank had been constructed for the inhabitants of Harijan Colony and it is only the Mariamman Temple through the defendants, who is in possession and enjoyment of the suit property and accordingly prayed for the dismissal of the plaintiff's suit.

7. In support of the plaintiff's case, P.Ws.1 to 4 were examined. Exs.A1 to A9 were marked. On the side of the defendants, D.Ws.1 and 2 were examined. Exs.B1 to B13 were marked. Exs.X1 to X4 were also marked.

8. On a consideration of the oral and documentary evidence putforth by the respective parties and the submission made, the Courts below were pleased to dismiss the plaintiff's suit. Aggrieved over the same, the present second appeal has been preferred.

9. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration.

(1) Whether the judgments and decrees of the Courts below are proper and sustainable when admittedly and in the absence of any contrary finding, a portion of the suit property was gifted by the appellant was proved.

(2) Whether the judgments and decrees of the Courts below are proper and sustainable under law when the same are self contradicting ones.

(3) Whether the judgments and decrees of the Courts below are proper and sustainable when the same are based on the repudiation of claim by third parties.

10. At the time when the matter is taken up for hearing, there is no representation for the respondents. Respondents called, absent. Set exparte.

11. The case of the plaintiff is that Arulappan, the plaintiff's father had four sons namely Manickkam, Sourimuthu the plaintiff herein, Ponnusamy and Arokiasamy. Now as per the case of the plaintiff the suit property originally stood in the name of Manickkam and only based on the same, the plaintiff claims title to the suit property. According to the plaintiff, Manickkam died in the year 1960 and in the arrangement/allotment effected with his other brothers, it is putforth that the plaintiff had been allotted the suit property and his other brothers were allotted some other properties. The abovesaid case of the plaintiff has been stoutly challenged by the defendants. In such view of the matter, the plaintiff has to establish primarily that his father had son by name Manickkam. To sustain the abovesaid plea, no document worth



acceptance whatsoever is projected by the plaintiff. Therefore, it is seen that the plaintiff has miserably failed to establish that he has an elder brother by name Manickkam or that his father Arulappan had a son by name Manickkam.

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12. The plaintiff would also putforth the case that the suit property belong to his father Arulappan originally. As rightly concluded by the Courts below, not a single document has been filed to establish the said plea. No document has been placed to evidence that his father had enjoyed the suit property till his demise in 1950 or that the revenue record pertaining to the suit property stood in the name of Arulappan, the plaintiff's father.

13. The claim of oral partition putforth by the plaintiff effected with his two brothers is also not borne out by any acceptable material. There is no material on the part of the plaintiff to hold that the suit property had been allotted to him in the alleged partition. The plaintiff has not mentioned as to when the partition took place, by what mode, where the same took place and in whose presence, the said partition had been effected and what are the properties allotted to his brothers and when the abovesaid facts are not established by the plaintiff by any material, as rightly concluded by the Courts below, the case of the plaintiff that the suit property had been allotted to him in the alleged partition effected with his brothers falls to the ground.

14. The plaintiff would only rely upon Ex.A1 Adangal and Ex.A9 Chitta which stand in the name of Manickkam. As above pointed out, the plaintiff has failed to establish that he has an elder brother by name Manickkam., in such view of the matter, the abovesaid documents per se would not useful to uphold the plaintiff's claim of title to the suit property. Furthermore, the abovesaid revenue documents by itself would not confer title to the plaintiff and as they cannot be considered as documents of title. As rightly concluded by the Courts below, from Exs.A1 to A9 at the most, it could only be held that Manickkam was in the possession of the suit property from 1964 to 1976 and to evidence that the suit property was in the possession and enjoyment of the plaintiff after 1976, no material is forthcoming on the part of the plaintiff.

15. Per contra, from the documents projected by the defendants marked as Exs.B2 to B5, for the fassilies commencing from 1385 to 1410, it is seen that the suit property has been in the possession and enjoyment of the temple, particularly, the property stood in the name of the temple even on the date of filing of the suit. The only contention of the plaintiff is that during the re-survey, the patta was mistakenly mutated in the name of Mariamman Temple. If that be so, it has not been explained as to why the plaintiff had remained a silent



spectator for the past 25 years without raising his little finger challenging the mutation of patta in the name of the temple. If really the plaintiff has a valid claim of title to the suit property, the plaintiff would have challenged the patta transfer effected in favour of the temple.

16. The plaintiff would also putforth the case that the Mariamman Temple came into existence recently and therefore contended that the claim of the defendants that the suit property has been in the possession of Mariamman Temple should not be accepted. However, considering the documents projected in the matter, particularly, Exs.B8 and B2, it is found that the temple was in existence from time immemorial and accordingly the patta had been issued infavour of the temple and the abovesaid aspects have been properly appreciated and determined by the Courts below.

17. The case of the plaintiff is that it is only he, who had donated 1 ½ cents in the said survey number to the Panchayath for the purpose of erecting bore well and overhead tank and in this connection, he would rely upon the evidence of P.W.3, the Assistant Engineer, TWARD Board and the documents marked as Exs.X1 to X4. However, as rightly concluded by the Courts below, the abovesaid materials by itself would not be the basis for holding that the suit property belong to the plaintiff. On a perusal of Ex.X3, it is noted that the plaintiff's son Anthony samy has donated 1 1/2 cents in the suit survey number. When according to the plaintiff, he has derived title to the suit property by way of partition, it does not stand to reason as to how his son had endeavored to donate 1 ½ cents in the said suit survey number to the Panchayath. Therefore, as concluded by the Courts below, Exs.X1 to X4 and the evidence of P.Ws.3 and 4 by themselves would not be sufficient to uphold the plaintiff's claim of title to the suit property.

18. In the light of the abovesaid discussions, it is found that the Courts below have properly appreciated the materials placed on record, both oral and documentary in the right perspective, both on factual matrix and on the points of law and rightly dismissed the plaintiff's suit. No valid reason is put forth warranting any interference in the reasonings and conclusions of the Courts below for dismissing the plaintiff's suit. 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.



19. In conclusion, the judgment and decree dated 11.07.2007 passed in A.S.No.16 of 2006 on the file of the Sub-ordinate Court, Panruti, confirming the judgment and decree dated 19.10.2005 passed in O.S.No.198 of 1998 on the file of the District Munsif Court, Panruti are confirmed. Resultantly, the second appeal is dismissed. No costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar (CS-VII)

//True copy//

Sub Assistant Registrar

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To

1. The Sub-ordinate Judge,
Subordinate Court,
Panruti.

2. The District Munsif,
District Munsif Court,
Panruti.

Copy to
The Section Officer,
VR Section,
High Court.

S.A.No.1122 of 2008

GMR (CO)
GMY (08/09/2021)