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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.02.2021

PRONOUNCED ON : 26.02.2021

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.1623 of 2008

Kandasamy Gounder,
S/o, Mani Gounder,
Kallanatham village,
Kallakurichi Taluk,
Villupuram District.

... Appellant/Appellant/Defendant

Vs.

1. Mariyaprakasam,
S/o, Anthoni Muthu
2. Thomas,
S/o, Anthoni Muthu,
Kallanatham Village,
Kallakurichi Taluk,
Villupuram District.

... Respondents/Respondent/Plaintiff

Prayer : Second Appeal filed under Section 100 of C.P.C., against the judgment and decree of Subordinate Judge Court, Kallakurichi dated 15.07.2008 in A.S.No.21 of 2005 confirming the judgment and decree of Additional District Munsif-II, Kallakurichi in O.S.No.976 of 2000 dated 24.11.2004.

For Appellant : Mr.S.Sounthar

For Respondents : Mr.T.Sezhian

J U D G M E N T

Challenge in this second appeal is made to the judgment and decree dated 15.07.2008 passed in A.S.No.21 of 2005 on the file of the Subordinate Court, Kallakurichi, confirming the judgment and decree dated 24.11.2004 passed in O.S.No.976 of 2000 on the file of the Additional District Munsif Court -II, Kallakurichi.



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

3. The defendant in O.S.No.976 of 2000 is the appellant in this second appeal.

4. Suit for permanent injunction.

5. The case of the plaintiffs in brief is that the suit properties are the ancestral properties of their father Anthoni Muthu and the same had been allotted to Anthoni Muthu by way of a partition and a joint patta had also been issued by the Tahsildar on 09.07.1994 in favour of Anthoni Muthu and by way of a registered partition deed dated 17.04.2000 entered into between the plaintiffs, their brothers and their father, the first item of the suit properties had been allotted to the first plaintiff and the second item of the suit properties had been allotted to the second plaintiff and since then, the plaintiffs had been enjoying the suit properties absolutely and also made improvements in the suit properties and the defendant without any manner of right, title or interest over the suit properties, attempted to interfere with their possession and enjoyment and hence according to the plaintiffs, they had been necessitated to lay the suit against the defendant, for the relief of permanent injunction.

6. The defendant resisted the plaintiffs' suit contending that the claim of the plaintiffs that the suit properties had been allotted to their father Anthoni Muthu by way of a partition and that the joint patta had been issued in the name of Anthoni Muthu by the Tahsildar and by way of the subsequent partition deed dated 17.04.2000, the suit properties had been allotted to the plaintiffs as put forth in the plaint are all false and further contended that the claim of the plaintiffs that the defendant has no right, title or interest over the suit properties are also false and according to the defendant, the suit properties belonged to one Nayagam and Nayagam was allotted the suit properties by way of a partition which took place in his family and during August 1982, Nayagam sold the suit properties to the defendant, who since then has been enjoying the suit properties by paying Kists etc., in his own right and also by obtaining patta and as the son of Nayagam interfered with the defendant's possession and enjoyment of the suit properties, the defendant preferred the suit against him and the compromise decree had been passed in the abovesaid suit and despite the abovesaid position, the plaintiffs with a view to grab the suit properties had come forward with the present suit without any cause of action and the plaintiffs' suit without seeking the relief of declaration qua the suit properties is not maintainable and accordingly prayed for the dismissal of the plaintiffs' suit.



7. In support of the plaintiffs' case, P.Ws.1 to 3 were examined. Exs.A1 to A12 were marked. On the side of the defendant, D.Ws.1 to 3 were examined. Exs.B1 to B3 were marked.

8. On an appreciation of the oral and documentary evidence adduced in the matter and the submissions put forth by the respective parties, the Courts below were pleased to decree the suit in favour of the plaintiffs as prayed for. Challenging the same, the present second appeal has been preferred by the defendant.

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

(i) Whether the Courts below are legally justified in granting a decree for injunction in favour of the plaintiffs when patta for suit property produced before it jointly stands in the name of defendant and plaintiff's alleged ancestors?

(ii) Whether the suit for injunction simplicitor is maintainable without prayer for declaration when plaintiff's title is specifically denied in written statement?

10. From the pleas and the materials put on record by the respective parties, it is found that the plaintiffs and the defendant are vying with each other only as regards the first item of the suit properties. As regards the second item of the suit properties, the defendant, as such, has not put forth any claim.

11. Even in respect of the first item of the suit properties, it is found that the defendant would put forth the case that he is entitled to 66 cents of land. Now according to the plaintiffs, the suit properties are the ancestral properties of their father and by way of Ex.A3 partition deed effected between the plaintiffs, their brothers and father, the suit properties had been allotted to the plaintiffs. Considering the Kist receipts, Adangal Extract, Chitta Extract projected by the plaintiffs, as held by the Courts below, it is seen that the plaintiffs have established their possession and enjoyment of the suit properties as put forth by them. It is also noted from Ex.A6, it is seen that the plaintiffs have also obtained loan on the footing that the suit properties belonged to them.

12. The determination of the Courts below that the revenue records projected by the plaintiffs go to disclose that the suit properties are in their possession and enjoyment and also in the possession and enjoyment of their father Anthoni Muthu being founded on factual matrix and not shown to be in any manner



perverse or illogical, I do not find any valid reason to interfere with the same.

13. The defendant has filed Exs.B1 to B3, to claim that he is having title, possession and enjoyment of the extent of 66 cents in the first item of the suit properties. According to the defendant, he had orally purchased the abovesaid extent from one Nayagam for a sum of Rs.2,000/-. However, the abovesaid oral sale putforth by the defendant has been rightly rejected by the Courts below. No reason is warranted to interfere with the abovesaid determination. The compromise decree said to have been obtained by the defendant in O.S.No.838 of 2000 would not in any manner affect the case of the plaintiffs, inasmuch as, the plaintiffs are not the parties to the abovesaid proceedings. When the defendant has failed to establish that Nayagam had title to the extent of 66 cents in the first item of the suit properties, his claim that Nayagam had orally sold the abovesaid extent to the defendant, as such, cannot be accepted. Therefore, the Courts below had rightly not placed reliance upon Ex.B1. The other documents projected by the defendant namely Exs.B2 to B3 are found to be obtained by the defendant after the institution of the suit. Therefore, the said documents by themselves would not be sufficient to buttress the defendant's claim of possession and enjoyment of the suit properties prior to the institution of the suit.

14. The defendant's counsel would putforth the contention that the documents projected by the plaintiffs would only show the joint possession and therefore according to him, the plaintiffs cannot be held to be in the exclusive possession and enjoyment of the suit properties. However, as rightly held by the Courts below, considering the title document and the revenue documents projected by the plaintiffs on the whole, it is evident that it is only the plaintiffs who are in the possession and enjoyment of the suit properties and accordingly as held by the Courts below, the defendant is unable to putforth any reliable document evidencing his claim of possession and enjoyment of the suit properties, at any point of time, prior to the institution of the suit. When the defendant has failed to establish his vendor's alleged claim of title to the extent of 66 cents in the first item of the suit properties, the contention of the defendant that based on the joint patta projected by the plaintiffs, the plaintiffs' suit should not have been decreed by the Courts below as such cannot be countenanced. When the documents projected by the plaintiffs go to show that they are in the possession and enjoyment of the suit properties and when there is no document evidencing the claim of the defendant's title, possession and enjoyment of the suit properties or his predecessors in interest, title and possession, the contention of the defendant that the plaintiffs



have failed to establish their case, as such cannot be accepted. The Courts below are found to have properly appreciated the materials placed on record, both on factual matrix as well as on the points of law, had rightly held that it is only the plaintiffs who are in the possession and enjoyment of the suit properties and accordingly, the reasonings and conclusions of the Courts below for upholding the plaintiffs' case not shown to be perverse, illogical and irrational by the defendant, no reason is warranted to interfere with the same.

15. Considering the claim of the plaintiffs to be in the possession and enjoyment of the suit properties based on the title deed marked as Ex.A3 and the plaintiffs having also established that it is only their father Anthoni Muthu who had been in the possession and enjoyment of the suit properties and when the defendant has not projected a valid claim of title, possession and enjoyment of the extent of 66 cents in the item 1 of the suit properties, in such view of the matter, the contention raised by the defendant that the plaintiffs should have sought for the relief of declaration of their title qua the suit properties, as such, cannot be countenanced.

16. For the reasons aforesaid, the substantial questions of law formulated in the second appeal are accordingly answered in favour of the plaintiffs and against the defendant.

17. In conclusion, the judgment and decree dated 15.07.2008 passed in A.S.No.21 of 2005 on the file of the Subordinate Court, Kallakurichi, confirming the judgment and decree dated 24.11.2004 passed in O.S.No.976 of 2000 on the file of the Additional District Munsif Court-II, Kallakurichi are confirmed. Resultantly, the second appeal is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

mfa

To

1. The Subordinate Judge,
Subordinate Court,
Kallakurichi.



2. The Additional District Munsif-II,
II Additional District Munsif Court,
Kallakurichi.

+1cc to Mr.S.Sounthar, Advocate, S.R.No.12474

+1cc to Mr.R.Meenal, Advocate, S.R.No.11848

S.A.No.1623 of 2008

RP (CO)
HS (09/09/2021)