

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.03.2021

PRONOUNCED ON : 12.03.2021

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.955 of 2008

P.Krishnamurthy

...

Appellant

Vs.

1.Ambiga

2.Kannan

3.Sivaprakasam

4.Uthama Selvi

...

Respondents

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 16.07.2007 passed in A.S.No.161 of 2006 on the file of the Principal Subordinate Court, Vridhachalam, confirming the Judgment and Decree dated 31.01.2006 passed in O.S.No.313 of 2003 on the file of the II Additional District Munsif Court, Vridhachalam.

For Appellant : Mr.Srinath Sridevan

For Respondents : Mr.J.Antony Jesus

JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 16.07.2007 passed in A.S.No.161 of 2006 on the file of the Principal Subordinate Court, Vridhachalam, confirming the Judgment and Decree dated 31.01.2006 passed in O.S.No.313 of 2003 on the file of the II Additional District Munsif Court, Vridhachalam.

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

3.The plaintiff in O.S.No.343 of 2003 is the appellant in the second appeal.

4.Suit for declaration and permanent injunction.

5.The case of the plaintiff, in brief, is that the suit properties belonged to Ramasamy and Ramasamy's son Pavadai had laid the partition suit against his father Ramasamy, mother Kamalathammal and paternal uncle Kaliyaperumal in O.S.No.4 of 1972 on the file of the Subordinate Court, Chidambaram and in the abovesaid suit, a compromise decree had been arrived at between the parties on 24.04.1972. As per the terms of compromise decree, the suit properties are to be acquired absolutely by Ramasamy and the plaintiff, son of Pavadai and Ramasamy died on 13.09.2003 and after his demise, as per the terms of the compromise decree, it is only the plaintiff, who is entitled to the suit properties absolutely and the defendants have no manner of right, title or interest over the suit properties and on the other hand, the defendants, on the

refusal of the plaintiff to alienate the suit properties in their favour, have endeavoured to disturb his possession and enjoyment without any authority and hence, according to the plaintiff, he has been necessitated to lay the suit against the defendants for appropriate reliefs.

6.The defendants resisted the plaintiff's suit contending that the plaintiff's suit is not maintainable either in law or on facts. The items 1 to 11 of the "A" schedule properties covered in O.S.No.4 of 1972 on the file of the Subordinate Court, Chidambaram, are the present suit properties and the suit properties were allotted to the share of Ramasamy and accordingly, Ramasamy had acquired the suit properties and other properties absolutely and on account of his long, continuous and hostile possession and enjoyment, Ramasamy had also prescribed title to the suit properties and Ramasamy had settled the properties and other properties in favour of his daughter viz., the first defendant by way of the settlement deeds dated 03.01.1996 and 19.01.1996 and pursuant to the abovesaid settlement deeds, it is only the first defendant and the other defendants, who had been enjoying the settled properties in their own right absolutely by obtaining patta etc., and the plaintiff has never been in the possession and enjoyment of the suit properties at any point of time and

therefore, according to them, the plaintiff has no cause of action to lay the suit and the suit is liable to be dismissed.

7.In support of the plaintiff's case, PW1 was examined and Exs.A1 to A3 were marked. On the side of the defendants, DW1 was examined and Exs.B1 to B5 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. Impugning the same, the present second appeal has been laid.

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

"a. Whether the Courts below have property interpreted Ex.A1 partition decree?"

b. When the suit properties were allotted to the appellant and his grandfather absolutely under Ex.A1, whether the appellant's grandfather can exclusively convey the property under Ex.B1 Settlement deed?"

10.Considering the pleas and the materials placed on record as well as the submissions put forth by the respective parties, it is found that the plaintiff claims title only based upon the compromise decree said to have been arrived at between the parties in O.S.No.4 of 1972 on the file of the Subordinate Court, Chidambaram. The plaintiff is the son of Pavadai. Pavadai is the son of Ramasamy and Kamalathammal. Kaliyaperumal is the brother of Ramasamy and the paternal uncle of Pavadai. The suit in O.S.No.4 of 1972 on the file of the Subordinate Court, Chidambaram, had been laid by Pavadai against his father Ramasamy, mother Kamalathammal and paternal uncle Kaliyaperumal for partition in respect of the various properties. Items 1 to 11 of "A" schedule properties in O.S.No.4 of 1972 on the file of the Subordinate Court, Chidambaram, are the suit properties involved in the present proceedings. O.S.No.4 of 1972 on the file of the Subordinate Court, Chidambaram, had been disposed of in terms of the compromise decree entered into between the parties thereto. The decree passed in O.S.No.4 of 1972 has been marked as Ex.A1.

11.On a reading of the terms of the compromise entered into between the parties as available in the decree as well as the terms of decree passed in the

abovesaid proceedings, it is evident that as determined by the Courts below as regards the items 1 to 11 of the "A" schedule properties i.e. the suit properties, the same had been allotted to Ramasamy absolutely. We are not concerned with the other items of the properties and as to how they had been allotted in O.S.No.4 of 1972 based upon the compromise entered into between the parties thereto. When it has been clearly mentioned in the compromise entered into between the parties that the items 1 to 11 of the "A" schedule properties in O.S.No.4 of 1972 are to be taken up by Ramasamy absolutely based on the compromise, the contention of the plaintiff that the abovesaid items had been allotted to Ramasamy and the plaintiff, son of Pavadai, as such, cannot be accepted in any manner.

12.In this connection, it is found that the plaintiff seeks to claim title to the suit properties based on the subsequent terms of compromise entered into between the parties. While dealing with the items 12 to 14 of the "A" schedule properties in O.S.No.4 of 1972, the parties had agreed that the abovesaid items should be enjoyed by Ramasamy till his life time and also out of the income derived from the abovesaid items as well as the income derived from the properties allotted to Ramasamy in the abovesaid compromise, he should

celebrate his daughter viz., Ambigavathi's marriage, who was a minor at that point of time and it is further noted that the parties had agreed that after the demise of Ramasamy, items 12, 13 and 14 of the "A" schedule properties should be acquired by Ambiga absolutely as the full owner. Subsequently, there is a recital in the compromise that the remaining properties should be taken by Ramasamy and Pavadai's son absolutely. If really the parties had intended to allot items 1 to 11 of the "A" schedule properties to the son of Pavadai absolutely along with Ramasamy, necessary recitals pointing to the same would have been incorporated in clause - 2 of the compromise, wherein, the items 1 to 11 of the "A" schedule properties had been declared to be allotted to Ramasamy absolutely and when in clause - 3, there is no specific mention of the items 1 to 11 of the "A" schedule properties and when clause - 3 deals only with the items 12 to 14 of "A" schedule, from the word "பாக்கி சொத்தை" found in clause - 3, the contention put forth by the plaintiff that it also includes the items 1 to 11 of the "A" schedule properties, as such, cannot be accepted. If the intention of the parties to the compromise is to allot the items 1 to 11 of the "A" schedule properties absolutely to Ramasamy and the son of Pavadai, necessary recitals pointing to the same would have been incorporated in clause - 2 of the compromise and on the other hand, when

under clause -2, it is only Ramasamy, who had been allotted the items 1 to 11 of the "A" schedule properties absolutely with full ownership, the case of the plaintiff that the Courts below had failed to properly interpret the terms of the compromise decree passed in O.S.No.4 of 1972 on the file of the Subordinate Court, Chidambaram and on that basis, erroneously dismissed the suit, as such, cannot be countenanced.

13.On the other hand, considering the reasons and conclusions of the Courts below, particularly, when they have dealt with the terms of the compromise entered into between the parties in O.S.No.4 of 1972 on the file of the Subordinate Court, Chidambaram as well as the evidence of the plaintiff examined as PW1 in this matter, when PW1 has clearly admitted that the items 1 to 11 of the plaint "A" schedule properties of O.S.No.4 of 1972 had been only allotted to Ramasamy, the case of the plaintiff by way of the present suit that the abovesaid items had been allotted to both Ramasamy and the sons of Pavadai cannot at all be countenanced in any manner. If that be so, Pavadai's son viz., the plaintiff would have also enjoyed the abovesaid items along with Ramasamy. However, evidencing the joint ownership of the abovesaid items by the plaintiff with Ramasamy, no material whatsoever is forthcoming on the

part of the plaintiff. Other than the copy of the decree marked as Ex.A1, no material has been placed by the plaintiff to show that he, at any point of time, had exercised ownership over the abovesaid items.

14.Considering the oral and documentary evidence adduced by the defendants, when it is seen that it is only Ramasamy, who had been exercising absolute ownership over the items 1 to 11 of the "A" schedule properties allotted to him by way of the compromise decree in O.S.No.4 of 1972 and following the same, when it is further seen that he had settled the properties allotted to him in favour of his daughter Ambigavathi by way of Exs.B1 and B2 and when the same had been clearly established by the defendants by marking the settlement deeds and examining the attestors to the abovesaid settlement deeds as DWs2 & 3 and when it is further noted that the abovesaid settlement deeds had been accepted and acted upon and it is only the first defendant, who is enjoying the settled properties, which could be gathered from Exs.B3 & B5, in all, it is evident that inasmuch as it is only Ramasamy, who had been allotted the suit properties by way of the compromise decree passed in O.S.No.4 of 1972 and it is he, who had been enjoying the suit properties as the full owner thereof and also in exercise of his ownership,

proceeded to settle the properties belonging to him in favour of his daughter viz., the first defendant and thereupon, it is only the daughter, who is found to be enjoying the suit properties absolutely. Hence, the claim of the plaintiff that he has title, possession and enjoyment of the suit properties, following the compromise decree passed in O.S.No.4 of 1972 on the file of the Subordinate Court, Chidambaram, has no legs to stand and thus it is noted that without any basis or foundation, the plaintiff has come forward with the present suit.

15.In view of the abovesaid discussions, it is held that the suit properties had been allotted only to the plaintiff's grandfather Ramasamy absolutely by way of the compromise decree marked as Ex.A1 and the Courts below have correctly interpreted the terms of the compromise decree Ex.A1 and in such view of the matter, it is further held that Ramasamy, who is absolute owner of the suit properties, is entitled to settle his properties in favour of his daughter, the first defendant under Exs.B1 & B2. The substantial questions of law formulated in the second appeal are accordingly answered against the plaintiff and in favour of the defendants.

16.In conclusion, the Judgement and Decree dated 16.07.2007 passed in A.S.No.161 of 2006 on the file of the Principal Subordinate Court, Vridhachalam, confirming the Judgment and Decree dated 31.01.2006 passed in O.S.No.313 of 2003 on the file of the II Additional District Munsif Court, Vridhachalam are confirmed. Resultantly, the second appeal is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Index : Yes/No

Internet : Yes/No

sms

12.03.2021

To:

- 1.The Principal Subordinate Court, Vridhachalam.
- 2.The II Additional District Munsif Court, Vridhachalam.
- 3.The Section Officer, V.R.Section, High Court, Madras.

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T.RAVINDRAN,J.

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Pre-delivery Judgement made in
S.A.No.955 of 2008

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