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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.12.2021

CORAM

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

S.A.No.250 of 2012

and

M.P.No.1 of 2012

Ramakrishnan

... Appellant/Appellant/Plaintiff

Vs.

1.M. Ramu

2.M. Velayutham

3.Ayyappan

... Respondents/Respondents/Defendants

Prayer: Second Appeal filed under Section 100 of C.P.C., against the judgment and decree dated 23.09.2011 made in A.S.No.42 of 2010 on the file of Principal Sub Court, Tindivanam, confirming the judgment and decree dated 07.04.2010, made in O.S.No.433 of 2007 on the file of the Additional District Munisif Court, Tindivanam.

For Appellant :Mr. P. Dinesh Kumar

For Respondents :Mr. J. Prithivi
for Mr.S.Kaithamalaikumaran
for respondents

J U D G M E N T

This second appeal is filed against the judgment and decree dated 23.09.2011 made in A.S.No.42 of 2010 on the file of Principal Sub Court, Tindivanam, confirming the judgment and decree dated 07.04.2010, made in O.S.No.433 of 2007 on the file of the Additional District Munisif Court, Tindivanam.

2. Notice of motion was ordered on 12.03.2012. The unsuccessful plaintiff is the appellant herein. The suit is filed for declaration of tile and for permanent injunction against the defendants 1 to 3.



3. The plaint proceeds on the basis that:

3(i) the suit property more fully described hereunder originally belonged to one Natrajan S/o. Munusami. He for himself and as the guardian of his minor brothers Raman and Velayutham sold the same to Kuppusami S/o, Munusami Kounder, the brother of the plaintiff under the registered sale deed dated 09.06.1970 for Rs.600/- and delivered possession of the same. Kuppusami and his brothers Ramakrishnan, the plaintiff and Thiruvenkatam were in possession and enjoyment of the suit property and other properties as members of joint family.

3(ii) Kuppusami and his brothers including the plaintiff orally divided their properties in or about 1970. An extent of Ac.0.07 cents on the western side of the suit property was allotted to the share of plaintiff. He is in exclusive possession and enjoyment of the same. The remaining extent in the suit property, namely, old S.No.41/4 eastern, Ac.0.22 1/8 was allotted to the share of Kuppusami and Thiruvenkatam. They were in possession and enjoyment of the same ever since then.

3(iii) Kuppusami and Thiruvenkatam gifter old S.No.41/4 Ac.0.22 1/8 to the plaintiff under the registered Gift deed dated 02.09.1970 and delivered possession of the same. The gift deed dated 02.09.1970 was duly executed, validly attested and registered. The plaintiff accepted the settlement deed and is in possession of the property. Kuppusami and Thiruvenkatam confirmed and acknowledged the plaintiff's title to western Ac.0.07 in S.No.41/4 allotted to the share of with the plaintiff. The plaintiff has been exclusive possession and enjoyment of entire suit property, ever since then. Thus, the plaintiff has absolute title to the suit property, old S.No.41/4 Ac.0.22 1/8.

3(iv) The suit property has been renumbered as S.No.187/4 He.0.13.5 in resurvey. The Tasildhar, Tindivanam transferred patta in respect of the suit property to the plaintiff in the proceedings in RTR.620/2004-05 dated 03.11.2004. The Revenue authorities granted patta in respect of suit property in favour of plaintiff jointly with others. It was comprised in old Patta No.125. It is now in new Patta No.120. The plaintiff has paid kist to old Patta No.125 as well as New No.120. Thus, the plaintiff and his predecessors in title have been in open, continuous and uninterrupted possession of the suit property in assertion of absolute title to the suit property, to the knowledge of the defendants for more than the statutory period and thereby prescribed title by adverse possession also.



4. The written statement filed by the defendants inter-alia contended that the brother of the defendants 1 and 2 is not karta of the family, during the right time of the sale and the sale effected on behalf of the minor by the elder brother is void in nature and does not confer any title and also raised the plea of adverse possession is not substantiated.

5. The trial Court has formulated an issue whether Ex.A1/Sale deed dated 09.06.1970, executed by the elder brother of the defendants 1 and 2 is valid and binding upon the defendant.

6. The learned counsel for the appellant would contend that the brother of the plaintiff had purchased the property from the brother of the defendant as a karta of the family and in such capacity, he was in joint possession of the property and evidencing joint possession, has filed Ex.A3 to Ex.A15. However, since the defendants have mortgaged these properties under Ex.A6 on 15.10.2016, he has filed the suit. The defendant/appellant derived title on the strength of Ex.A1/Sale Deed said to have been executed by one Natarajan, brother of the defendants 1 & 2 in favour of the brother of the plaintiff and thereafter, in the family partition, the plaintiff's brother had executed Ex.A2/Gift Deed on 12.09.1970, whereby, the plaintiff had obtained title to the property. Both the Courts below have concurrently held that on the date of the execution of Ex.A1/Sale Deed, dated 09.06.1970, it disclosed that the said Natarajan acting as a Karta for two younger brothers who are minors and has executed the document, however, it found that the first defendant is not a minor as shown in the sale deed.

7. Further, relying upon Ex.B3/Sale Deed, dated 22.12.1970 and Ex.B4/Sale Deed, dated 20.03.1972, both the Courts below have come to the conclusion that in the year 1970, the first defendant is major in such capacity, he had executed the sale deed under Ex.B4 on 20.03.1970, which is prior subsequent to Ex.A1, wherein, the first defendant was shown as a major, so also in Ex.B3/Sale Deed, dated 22.12.1970, he described as a major. In the sale deed the mother of the defendant viz., Krishammal has also joined as a party to the document and therefore, during the life time of mother, i.e., when mother of minor is alive, the brother cannot act as a Karta of the family. In view of the said fact, the Courts below have



held that Ex.A1/Sale Deed shown as if minor has executed the document, is void in nature and accordingly, rejected the relief of declaration of title under Ex.A1 and Ex.A2.

8. The learned counsel for the appellant would contend that a plea of adverse possession was not properly appreciated by both the Courts below and relied upon Exs.A3, A4 & A5. The Trial Court has come to the conclusion that mutation of name in the revenue records cannot give right to title, it only enable the party to remit the kist.

9(a). On the other hand the learned counsel for the appellant would contend that in the joint Patta the name of the defendants 1 & 2 was not mentioned but only the name of the one Natarajan, plaintiff viz., Ramakrishnan and mother of the plaintiff viz., Palaniammal, alone was shown. As per the patta proceedings under Ex.A4, dated 31.11.2004 a separate patta was issued in respect of the property covered under Ex.A1/Sale Deed and hence, the plea of adverse possession ought to have been answered in his favour.

9(b). Further contended that since the said Natarajan was not arrayed as a party defendant, he has a share in the property. Therefore, 1/3rd share ought to have been declared under him and ought not to have been dismissed the suit in entirety.

10. Considering the documentary evidence of Exs.B3 and B4, both the Courts below have concurrently held that on the contemporary time of Ex.A1/sale deed namely on 20.02.1970 and 20.12.1970, the mother of the defendants 1 and 2 are alive and mother represented them as natural guardian and first defendant is already a major and hence, the first defendant being not party to Ex.A1 and the second defendant being minor, ought to have been represented by the mother and hence, under the above stated situations has rightly held that under Ex.A1, he is not binding upon the defendants 1 and 2. Since, the vendor of the plaintiff namely Natrajan was not impleaded as party, rejected the claim of title to the property in entirety.

11. On the point of adverse possession, the plaintiff relied upon Ex.A3/joint patta and Ex.A4/patta proceedings and kist receipt under Exs.A6 to A15. The trial Court has categorically rendered a finding based upon the oral evidence of P.W.4 coupled with Ex.A4 that the original joint patta is 125, as per Ex.A3 and as per Ex.A4, only in the year 2004, separate patta was granted in Patta No.120 to the plaintiff under the patta proceedings of the Thasildar.



12. When that being the case, whether he could pay kist in respect of Patta in 124 from the year 1987, cannot be accepted. Accordingly, held that since Ex.A6 to A15 are the kist receipt for Patta No.120 since the Patta No.120 was transferred in the name of the plaintiff only in the year 2004 and hence, he would not have remitted a kist for the new Patta No.120. Besides, the joint patta referred to under Ex.A3, the patta number is shown as 125.

13. In the absence of any link document to show whether the Patta No.125 is separated and assigned as 120 in both the Courts below have rejected the said contention on the ground, patta number does not tally nor correspond with the year of patta transfer proceedings and hence, rejected the relief of adverse possession. If at all the plaintiff can seek only the partition of share said to have been sold by the Natrajan, elder brother of A1 and A2, I find that the Natrajan, vendor of the plaintiff was not arrayed as a party.

14. For the sole reason, though, the defendants 1 and 2 admitted in the written statement as to the limited extent of 1/3rd share could not be granted by the Court, since Natrajan was not made as a party and hence, I find that the concurrent finding of the trial Court, as to the title, entitlement of the declaration of title to the entire extent of the land and non impleading of the necessary party namely Natrajan and plea of adverse possession, are stands negatived. Hence, I find that there is no substantial question of law involved in this case.

15. Accordingly, the second appeal stands dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

SD/-
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

To

1.The Principal Subordinate Judge,
Tindivanam.



2.The Additional District Munisif Court,
Tindivanam.

+lcc to Mr.D.Ravichander, Advocate Sr.66649

+lcc to Mr.S.Kaithamalai Kumaran, Advocate Sr.65885

S.A.No.250 of 2012 and
M.P.No.250 of 2012

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