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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.09.2021

CORAM

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

SA NO.368 OF 2016

AND

CMP NO.6593 OF 2016

1.Seethapathy
2.Elanceziyan
3.Dhananjayan

... Appellants/Respondents/Defendants

VS.

Arumugam

... Respondent/Appellant/Plaintiff

PRAYER: Second Appeal filed under Section 100 of Code of Civil Procedure against the judgment and decree in A.S.No.15 of 2014 on the file of I Additional District Judge, Tindivanam dated 17.03.2016 in reversing the well considered judgment and decree in O.S.No.42 of 2007 on the file of District Munsif cum Judicial Magistrate Court, Vanur, dated 07.01.2013.

For Appellants : Mrs.R.Sripriya
for Mr.V.Raghavachari

For Respondent : M/s.J.Prithvi
for M/s.S.Kaithamalaikumaran

J U D G M E N T

The defendants are the appellants. The respondent is the plaintiff. The plaintiff filed a Suit for declaration and injunction in respect of his property in S.No.18/5, new S.No.189/3 measuring an extent of 0.43 Cents.

2.The defendants denied the claim holding that they were enjoying the properties according to their convenience and they were paying kist to the Suit schedule properties and pursuant to their long possession and enjoyment, patta and adangal stands in their name.



3.Originally, the properties belonged to one Ramanuja Gounder. Ramanuja Gounder had two sons, namely, Loganatha Gounder and Kannan. The said Ramanuja Gounder partitioned the properties along with his sons on 01.07.1968. Thereafter, the property, which came to the share of Loganatha Gounder was partitioned among the three sons namely the plaintiff, the first defendant and one Manavalan on 16.04.1980. The said partition deed was registered as Document No.704/1980. As per Ex.A2, the partition deed dated 16.04.1980, the Suit property was allotted to the share of the plaintiff and the parties were enjoying their respective shares independently. The plaintiff mortgaged the Suit property on 20.08.1981 to which the first defendant and another brother were the attesting witnesses. Separate patta was issued in favour of the plaintiff. While so, on 16.03.2007, the defendants have attempted to interfere with the property and to sell the same. The second and third defendants, who are the sons of the first defendant, claimed that they are the title holders by virtue of the Settlement Deed executed by their father and on the basis of long possession. On the basis of the partition deed dated 01.07.1968 and the partition deed dated 16.04.1980 and the attempt to dispossess the possession of the defendants on 16.03.2007, the plaintiff has filed the Suit for declaration and injunction.

4.As stated above, in the written statement, the defendants have taken a stand that the partition deed dated 16.04.1980 was not acted upon and the parties have enjoyed the properties according to their convenience and accordingly, one of the brothers, namely, Manavalan has sold the property, which was in his possession, contrary to the partition deed. The property allotted to the plaintiff is not in possession of the first defendant and the property allotted in favour of the first defendant is in possession of the plaintiff. Therefore, the claim of the plaintiff for declaration of title in respect of the property which was in his possession, which was settled in favour of the second and third defendants is not the property of the plaintiff and therefore, he cannot claim declaration of title.

5.The Trial Court framed appropriate issues and held that by virtue of the documentary evidence and continuous possession, the plaintiff is not entitled to the relief sought for and dismissed the Suit. On appeal, the First Appellate Court has found that the possession follows title and that when a registered document vide Ex.A2 partition deed is accepted by all the parties, they cannot go against the judgment and claim contrary title. It relied on the evidence of D.W.2 - brother, who is not a party to the Suit and held that the parties were enjoying the property as per the partition deed and the first



defendant has settled the property which is derived under Ex.A2 partition deed in favour of second and third defendants and therefore, the plaintiff is entitled to declaration of title and possession.

6.This Second Appeal was admitted on 15.04.2016 on the following substantial questions of law:-

"A. Whether the Lower Appellate Court is right in applying the principles of "possession follows title" for a cultivable land when it is established that defendants are in possession of property and are tilling it?

B. Whether the Lower Appellate Court ought not have seen that under Section 35 and 114 of the Indian Evidence Act, the Court shall presume the existence of the fact likely to have happened in the normal course of events, namely, collection of kists and mutation of name in the name of the defendants based on their possession?

C. Whether the Lower Appellate Court is right in rejecting Exhibits B11 to B14 on the ground they are subsequent to the filing of suit, when those documents are relatable to Exhibits B4 to B10?

D. Whether the Lower Appellate Court is right in reversing the Judgment of the Trial Court without even considering the area of error committed by the Trial Court?

E. Whether the Lower Appellate Court is right in not framing the point for consideration that would predicate a decision on the subject rather than framing an issue that would not lead the Court to arrive at a correct conclusion?

F. Whether the deed of partition could be a document of title amongst the original co-owners and it does not prove mere severance in status which could be dislodged by evidence ?"

7.From the perusal of the evidence, it is noted that the entire lot of the property partitioned amongst the brothers are not cultivable lands. On them the Cashewnut trees were grown. Ex.A3 shows that the plaintiff has mortgaged the property in the year 1981 itself and it was witnessed by the first defendant and another brother. Ex.A4 proves that separate patta was issued in favour of the plaintiff vide Patta Nos.20 and 22 and he paid Kists for the property allotted to his share. The very crucial documents is Ex.B3. A reading of Ex.B3 clearly shows that the first appellant/first defendant had settled the property in which he derived title through the partition deed



Document No.704/1980 dated 16.04.1980. A reference through the shares allotted to the first defendant vide Ex.A2, it seems that in respect of the property in S.No.17/1, he was allotted 0.93 Cents out of 1.42 Acres. The extent of property which was settled in favour of the second and third defendants is also 0.93 Cents. In the schedule of the settlement deed, it is mentioned that in old S.No.17/1, out of 1.42 Acres, he has settled 0.57 1/2 Cents. In S.No.18/5, out of 0.43 Cents, he had settled 0.35 (1 1/2) Cents. But a conjoint reading of Exs.A2 and B3 would go to show that the first defendant was not allotted any land in old S.No.18/5 measuring an extent of 0.43 Cents. On the contrary, it was allotted in favour of the plaintiff. Therefore, the First Appellate Court has rightly held that the first defendant is not entitled to the property which was not allotted to his share by Ex.A2 which is an admitted document. On the other hand, the appellants are entitled to 0.93 Cents in S.No.17/1. Therefore, the settlement in respect of the property in S.No.18/5 is without title and hence not valid and the appellant/first defendant is entitled to settle only the extent of 0.93 Cents of property in S.No.17/1 only and not the property in S.No.18/5. The other brother Manavalan who was examined on the side of the defendants as D.W.2 would categorically depose that the property was enjoyed by the respective sharers and the partition deed dated 16.04.1980 was acted upon. Therefore, from the evidence of D.W.2, the brother who is an independent witness and from the evidence of D.W.1, it is clearly noted that as per the partition, the brothers have derived title to the property and in respect of the Suit property in S.No.18/5 measuring an extent of 0.43 Cents, the plaintiff is the title holder.

8.The appellants have pleaded continuous possession and convenient enjoyment of the property and that will entitle them to have the title. But the documents marked by them are post suit documents, which came into existence after filing of the Suit. Mere entry into Village accounts or transfer of name in patta will not confer any title and they are not conclusive proof. As already premised that Cashew trees were standing on the Suit property and there was no evidence from the side of the defendants that the lands are cultivable and they were filling it. In such circumstances, the findings of the First Appellate Court that possession follows title is absolutely valid. Apart from that, one of the brothers namely Manavalan sold his share of land allotted through Partition Deed dated 16.04.1980. This factum is admitted by all parties. Mortgage made by plaintiff is admitted and his separate possession of his share are all admitted. But the defendants have not come out with the circumstances in which the patta was transferred or the legal right to get such transfer has not proved in evidence. In such circumstances, their title can be traced only from the registered Partition Deed. Once the registered document, namely,



the partition deed marked as Ex.A2 is admitted and there is evidence to show that the parties were in the exclusive possession of the properties, the claim of the appellants is not sustainable and the findings of the First Appellate Court is based on sound reasons. The questions of law raised by the appellants are answered against the appellants.

9.In the result, the Second Appeal stands dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

TK

To

1. The I Additional District Judge
I Additional District Court
Tindivanam.
2. The District Munsif cum Judicial Magistrate
District Munsif cum Judicial Magistrate Court
Vanur.

+1cc to Mr.S.Kaithamalai Kumaran, Advocate, S.R.No.50588

SA NO.368 OF 2016

BR(CO)
SU(03/06/2022)