



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.08.2021

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.Nos.554 & 555 of 2021

&

C.M.P.No.11911 of 2021 in S.A.No.555 of 2021

S.A.No.554 of 2021:

Parthasarathy

...Appellant

Vs.

Chandraleka

...Respondent

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 15.02.2021 made in A.S.No.12 of 2019 on the file of the Principal Sub Court, Mayiladuthurai confirming the Judgement and Decree dated 22.01.2019 made in O.S.No.5 of 2014 on the file of the District Munsif Court, Sirkali.

S.A.No.555 of 2021:

Parthasarathy

...Appellant

Vs.

1.Chandraleka

2.Srinivasan

3.R.Balaji

...Respondents

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 15.02.2021 made in A.S.No.11 of 2019 on the file of the Principal Sub Court, Mayiladuthurai confirming the Judgement and Decree dated 22.01.2019 made in O.S.No.18 of 2015 on the file of the District Munsif Court, Sirkali.

For Appellant : Mr.S.Sounthar

For Respondent : Dr.S.S.Swaminathan



COMMON JUDGMENT

The defendant in a suit O.S.No.18 of 2015 who is the plaintiff in O.S.No.5 of 2014 is the appellant before this Court.

WEB COPY

2. O.S.No.5 of 2014 was filed by the appellant herein for an injunction restraining the respondent from interfering with his peaceful possession and enjoyment of the suit property. He had come to the Court with the following facts.

3. The appellant would contend that the respondent was the wife of his deceased elder brother Rangarajulu. The suit property and other properties were partitioned between the appellant, his father and the respondent's husband under a partition deed dated 30.04.1980. The suit property was the I-Item of the A-schedule property in this partition. Under the terms of the partition deed the property was to vest with the parents for their life time and both the appellant as well as his deceased brother were to take care of them and if they maintain them properly then the two of them were to take the properties.

4. The appellant would submit that his brother did not take care of their parents and it was only the appellant who had taken care of their needs including medical needs and funeral expenses, for which he had spent over a sum of Rs.5,00,000/-. The suit property has been in the possession of the appellant for over 30 years and he has been enjoying the same by cultivating it. The respondent's husband during his life time had never evinced any interest in the suit property and he had not enjoyed it at any point of time. After his demise the respondent was also not in enjoyment of the suit property. Therefore, the appellant had become the absolute owner of the property.

5. The appellant had also got the revenue records mutated in his name. While so, the respondent sent a legal notice to the appellant and for which the appellant had issued a reply dated 01.10.2013. In the said legal notice, the respondent had contended that they had put the appellant in permissive occupation of the lands and that the appellant was bound to pay a rent of Rs.50,000/- per year. Complaint has also been filed by the respondent before the Land Grabbing Cell. Therefore, considering the interference of the respondent in the appellant's possession and enjoyment of the suit property the appellant had come forward with the above suit.

6. The respondents in S.A.No.555 of 2021 had filed O.S.No.18 of 2015 on the file of the District Munsif, Sirkali for recovery



of possession and for future mesne profits. The appellant and the father of respondents 2 and 3 and who is the husband of the 1st respondent were children of Ramanuja Naidu. The said property was Ramanuja Naidu's family property. The husband of the 1st respondent and father of respondents 2 and 3 one Ranga Rajulu was the eldest son and the appellant was the 2nd son of the Ramanuja Naidu. Ranga Rajulu was working at Chennai and he used to regularly visit the village.

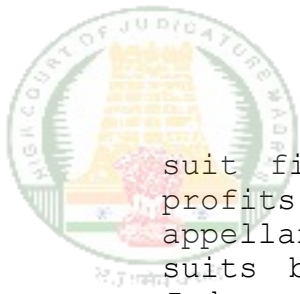
7. On 30.04.1980, there was a partition between Ramanuja Naidu and his two sons. The suit A-Schedule property was partitioned under this partition deed. The A-Schedule property went to the share of the father, Ramanuja Naidu. The B-Schedule property went to the share of Ranga Rajulu and the C-Schedule property went to the share of the appellant. Under this partition deed, the appellant was required to settle the agricultural loan after the life time of Ramanuja Naidu and his wife Vedavalli.

8. The partition deed further stated that after the lifetime of Ramanuja Naidu the property allotted to the share of Ramanuja Naidu was to devolve on Ranga Rajulu. Ramanuja Naidu died on 27.12.2002 and therefore by reason of the partition deed the A-Schedule property under partition deed went to the share of Ranga Rajulu. It was Ranga Rajulu who had taken care of the parents. In the year 1999, Ranga Rajulu passed away and thereafter the appellant did not take care of his father.

9. In the year 1995, the appellant's father was suffering from psoriasis and was taking treatment at Chennai. He would come over to the respondents' house stay there and take treatment. The husband of the 1st respondent died intestate. Therefore, as per the partition deed after the life time of the said Ramanuja Naidu, the respondents were entitled to the property. The appellant has been cultivating the B-Schedule property for and on behalf of the respondents. He was also paying them a sum of Rs.50,000/- a year.

10. Thereafter, by notice dated 21.09.2013 the respondents had demanded possession of the property. However a reply dated 01.10.2013 was sent by the appellant containing false statement and the appellant had also claimed a right to the property. The respondents had given a complaint before the Land Grabbing Cell and as a counter blast the appellant has filed O.S.No.5 of 2014 for a permanent injunction.

11. The written statement in both the suits was the respective plaint in the two suits. The suits were tried together by the learned District Munsif, Sirkali. The learned Judge dismissed the suit filed by the appellant and decreed the



suit filed by the respondents herein. The prayer for mesne profits was relegated to the separate proceedings. The appellant had challenged the Judgement and Decree of both the suits by filing the appeals before the Principal Subordinate Judge, Mayiladuthurai in A.S.No.11 of 2019 challenging the Judgement and Decree in O.S.No.18 of 2015 and A.S.No.12 of 2019 challenging the Judgement and Decree in O.S.No.5 of 2014.

12. The Principal Subordinate Judge, Mayiladuthurai, concurred with the findings of the Trial Court and dismissed both the appeals. Aggrieved by the concurrent Judgement and Decree the appellant is before this Court. The respondents have entered caveat in the Second Appeal.

13. Mr.S.Sounthar, learned counsel appearing for the appellant would submit that the appellant has been in possession and enjoyment of the property for over 3 decades and had also got patta mutated in his name in the year 1986. Therefore, he had prescribed title to the suit property. He would submit that both the Courts below has totally ignored the above facts as well as Ex.B.3, patta granted by Tahsildar.

14. He would further argue that the respondents have come to the Court with two pleas:

- (i) They claim a right under the partition deed; and
- (ii) They claim a right under the Will, which ultimately was not proved by the respondents.

15. He would therefore submit that the Courts below have totally misdirected themselves in decreeing the suit filed by the respondents herein. He would further argue that even assuming that the Will is a true and valid document, the bequest was in the name of Ranga Rajulu who passed away before the Testator and therefore the Will had not come to force. He would therefore pray that the Second Appeals be admitted as they involve Substantial Question of law.

16. Heard the learned counsel and perused the records.

17. The respondents have filed the suit O.S.No.18 of 2015 for recovery of possession. Admittedly, there was a partition between the appellant, his brother Ranga Rajulu who is the husband of the 1st plaintiff in O.S.No.18 of 2015 and father of plaintiffs 2 and 3 and Ramanuja Naidu, the father of the appellant and the said Rangarajulu on 30.04.1980. The suit property had been allotted to the share of the father and mother for life and thereafter the property was to come to the share of the said Rangarajulu.



18. Under the said partition deed the B-Schedule property had fallen to the share of Rangarajulu and the C-schedule property fell to the share of the appellant herein. The I Item of the A-schedule therein (which is the suit property) fell to the share of Ranga Rajulu after the lifetime of the father, Ramanuja Naidu. Likewise, the II Item of the property was to be taken by the appellant herein.

19. Therefore, on the death of Ramanuja Naidu on 27.12.2002 the recitals in the partition deed come into effect and the I Item of property was allotted to Ranga Rajulu and the II Item to the appellant herein. However, the appellant appears to have obtained a patta in his name even during the life time of his father in respect of the suit property. The appellant who puts forth a plea of adverse possession has not pleaded when his possession had turned hostile and that he had openly declared that he is the owner of the property.

20. It is an admitted fact that Ranga Rajulu was not living in the suit schedule village but was living in Chennai and therefore being his brother it is but natural that the appellant be permitted to cultivate the lands. Therefore, the appellant was only in permissive occupation of the property. He had been occupying the property even when he was a minor i.e., on the date of the partition deed being entered into. The appellant has acted upon the terms of the partition by taking possession of the properties that has been allotted to him.

21. Therefore, the appellant cannot take a different stand now and plead adverse possession (ouster). Both the Courts below have held that the appellant had asserted a separate title only when he filed the suit O.S.No.5 of 2014 and immediately the respondents have come forward with the suit for the recovery of possession. Therefore, the appellant cannot sustain a plea of adverse possession.

22. The appellant has not made out any question of law much less a substantial question of law for setting aside the concurrent Judgement and Decree of the Courts below. The Courts below have properly appreciated the evidence on record while decreeing the suit filed by the respondents and dismissing the appeals filed therein.

23. The appellant is entitled to protect his possession till such time as no action is taken by the true owner. Once the true owner has initiated steps to evict him through due process of law he cannot seek to continue in possession by obtaining decree for injunction. Therefore, the Courts below have rightly rejected the suit for injunction filed by the appellant herein.



24. In fine the Second Appeals are dismissed. Consequently, connected Civil Miscellaneous Petition is also closed. No costs.

WEB COPY

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kan

To

1.The Principal Subordinate Judge,
Mayiladuthurai.

2.The District Munsif Judge,
Sirkali.

+2ccs to Mr.S.Sounthar, Advocate Sr Nos.38729, 38728

+2ccs to M/s.S.S.Swaminathan, Advocate Sr Nos.38519, 38520

S.A.Nos.554 & 555 of 2021

PMK (CO)
PR (25/10/2021)