



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.11.2021

CORAM

WEB COPY

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

S.A(MD)No.177 of 2011

and

M.P(MD)No.1 of 2011

1.T.K.Subramania Mudaliar

2.S.Srinivasa Sundar

3.S.Arun ... Appellants / Appellants / Defendants

Vs.

T.Subramania Mudaliar ... Respondent / Respondent / Plaintiff

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree, dated 20.10.2010, passed in A.S.No.86 of 2010, on the file of the Additional Subordinate Court, Tirunelveli, confirming the judgment and decree, dated 20.04.2010, passed in O.S.No.88 of 2006, on the file of the First Additional District Munsif Court, Tirunelveli.

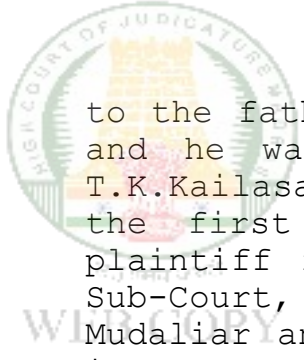
For Appellants	: Mr.D.Srinivasaragavan
For Respondent	: Mr.R.Manimaran

JUDGMENT

The concurrent Judgments and decrees passed in O.S.No.88 of 2006 by the First Additional District Munsif Court, Tirunelveli and in A.S.No.86 of 2010 by the Additional Subordinate Court, Tirunelveli, are being challenged in the present second appeal.

2. The respondent / plaintiff has instituted a suit in O.S.No.88 of 2006 on the file of the trial Court for the relief of permanent injunction, wherein the present appellants have been shown as defendants 1 to 3.

3. It is the case of the respondent / plaintiff that the suit property originally belonged to one T.K.Kailasa Sundara Mudaliar and T.K.Thirumalaiappa Mudaliar. The said T.K.Thirumalaiappa Mudaliar filed a suit in O.S.No.61 of 1947 before the Sub-Court, Tirunelveli, for partition. The said suit ended in a compromise in I.A.No.445 of 1947 and according to the said compromise, 15-1/2 cents was allotted



to the father of the plaintiff, namely, T.K.Thirumalaiappa Mudaliar and he was in possession and enjoyment of the same. The said T.K.Kailasa Sundara Mudaliar died in the year 1962, leaving behind the first defendant and his other sons. The brothers of the plaintiff filed a suit in O.S.No.187 of 2000 before the Principal Sub-Court, Tirunelveli, against their father T.K.Thirumalaiappa Mudaliar and the plaintiff for partition. The said suit also ended in a compromise and the suit property in Survey No.340/2C measuring an extent of 15-1/2 cents was allotted to the plaintiff and a final decree was also passed. The plaintiff has also applied for separate patta in his name and a patta was also issued in his name. The District Collector, Tirunelveli, sent a notice to the plaintiff regarding acquisition of 7-3/4 cents for the purpose of underground drainage. The plaintiff also executed a sale deed to an extent of 7-3/4 cents in favour of the Tirunelveli Corporation and he was also enjoying remaining 7-3/4 cents. Since the defendants are intimidating the plaintiff from enjoying the suit property, the plaintiff has instituted the suit.

4. In the written statement filed on the side of the appellants / defendants, it is averred that the suit schedule property was part of the property in O.S.No.61 of 1947 and there was a division in Survey No.340/2 in equal halves. The defendants are not aware of the allotment of 15-1/2 cents as per the said decree in O.S.No.187 of 2000. Hence, there are other shares and the plaintiff cannot quantify it as 15-1/2 cents. The plaintiff has parted the share in Survey No.340/2 in favour of the Corporation and the Tirunelveli City Municipal Corporation has also made construction. Hence, the Tirunelveli City Municipal Corporation is a proper and necessary party and the suit is liable to be dismissed for non-joinder of necessary parties and there is absolutely no cause of action for instituting the suit.

5. Before the trial Court, on the side of the plaintiff, the plaintiff examined himself as P.W.1 and Exs.A1 to A6 were marked. On the side of the defendants, the first defendant was examined as D.W.1 and Exs.B.1 and B.2 were marked.

6. On the basis of the rival pleadings on either side, the trial Court has framed necessary issues and after evaluating both the oral and documentary evidence, has decreed the suit in favour of the respondent / plaintiff.

7. Aggrieved by the Judgment and decree passed by the trial Court, the defendants as appellants, had filed an Appeal Suit in A.S.No.86 of 2010. The first appellate Court, after hearing both sides and upon reappraising the evidence available on record, has allowed the appeal and confirmed the Judgment and decree passed by the trial Court. Challenging the said concurrent Judgments and decrees passed by the Courts below, the present second appeal has been filed by the defendants as appellants.

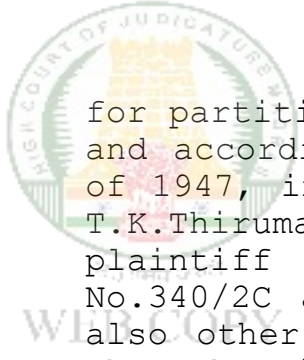


8. Heard the learned counsel for the appellants and the learned counsel for the respondent and also perused the records carefully.

9. The learned counsel appearing for the appellants / defendants would submit that the respondent / plaintiff has to prove that the suit schedule property is actually available on earth. In the absence of any such definite proof by the respondent / plaintiff, the Courts below ought not to have granted the decree as prayed for in favour of the respondent / plaintiff. The respondent / plaintiff has sought for bare injunction based on his title over the suit schedule property and not based on his possession over the suit property and therefore, he has to file a suit for declaration of his title over the suit property, since the appellants / defendants are disputing the title over the suit property and availability of land on the earth. No independent right had been accrued or conferred on the respondent / plaintiff's father under Ex.A6 and the right to take water from Survey No.340/2C alone was conferred on him along with others and therefore, the respondent / plaintiff is not justified in claiming title over the suit property based on Ex.A.6. Further, Ex.A.2 would not confer any right on the respondent / plaintiff, as the same is based on Ex.A.6. As per Ex.B.1, the respondent / plaintiff as well as one Rabbani brothers had executed a sale deed in favour of the Tirunelveli Municipal Corporation measuring the entire extent covered in Survey No.340/2C and thus, there are no lands available much less 7-3/4 cents in Survey No.340/2C and therefore, the respondent / plaintiff is not entitled for the suit relief, as against the appellants herein, without impleading the proper parties in the suit. No documents are available before the Courts below to prove that 7-3/4 cents of land situate on the Southern side of Survey No.340/2C belongs to the respondent / plaintiff and in the absence of any such document, the respondent / plaintiff is not entitled to the said relief, as the other documents are relating only to entire extent of lands in Survey No.340/2C. The respondent / plaintiff was claiming his right through Ex.A6 and Ex.A2 documents, whereas, the said properties were handed over to the Tirunelveli Municipal Corporation through Ex.B.1, sale deed by the respondent / plaintiff, which is a subsequent document to Ex.A6 and Ex.A2 and therefore, the respondent / plaintiff has no manner of right whatsoever over suit schedule in Survey No.340/2C and prayed for dismissal of the Second Appeal.

10. The learned counsel appearing for the respondent / plaintiff submitted that the Courts below, after analysing the documents available on record, has rightly decreed the suit in favour of the respondent / plaintiff and prayed for allowing the Second Appeal.

11. On going through the above facts of the case, it is seen that T.K.Kailasa Sundara Mudaliar and T.K.Thirumalaiappa Mudaliar ~~have filed a suit in the said T.K.Thirumalaiappa Mudaliar~~ the said T.K.Thirumalaiappa Mudaliar filed a suit



for partition in O.S.No.61 of 1947 before the Sub Court, Tirunelveli and accordingly, the said suit ended in a compromise in I.A.No.445 of 1947, in which, item No.9 of the first schedule was allotted to T.K.Thirumalaiappa Mudaliar, who is the father of the respondent / plaintiff and T.K.Thirumalaiappa Mudaliar got right in Survey No.340/2C and got every right to take water in the suit Tank and also other sharers take water from the suit Tank and accordingly, when the title of the said T.K.Thirumalaiappa Mudaliar has been very well defined in the said decree of the year 1947, the appellants / defendants had got no right over the property regarding the said Tank in Survey No.340/2C. As per Ex.A6, the respondent / plaintiff has proved his title over the suit property through his father and also Ex.A.2, which is the suit filed by the family members of T.K.Thirumalaiappa Mudaliar and the said suit has been filed for partition and in the said suit, the plaintiff has been arrayed as the second defendant and as per the said compromise decree, the respondent / plaintiff has derived title to the said land in Survey No.340/2C. Ex.B.2 has been executed by T.S.Padmanaba Mudaliar in favour of Rabbani and others, but in the said document, the said parties have not stated how did they inherit the above said property in Survey No.340/2C, which does not talk about survey numbers and it says about the four boundaries and Ex.B.2 has got nothing to do with the property, as the said T.S.Padmanaba Mudaliar and his family members has sold the suit property in favour of Rabbani and others and there is no document to show that how T.S.Padmanaba Mudaliar has got title over the undivided share and the appellants / defendants ought to have questioned the said T.S.Padmanaba Mudaliar, how he derived the title over the property. If he has 15-1/2 cents in the above said document, there is no survey number available regarding Survey No.340/2C as it says about the four boundaries and in between there is a Tank. The description of the property does not show any right on the said lands alleged to have been occupied or sold by the third parties and both the Courts below have considered the same as it is not through the said Rappani and others. Hence, the question of law is only a fact and the same has not been established by the appellants and the same is not accepted and rejected.

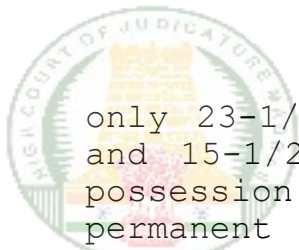
12. As it is seen that the respondent / plaintiff has succeeded to his property of 15-1/2 cents through the compromise decree in the partition suit between the family members of the said T.K.Thirumalaiappa Mudaliar, who inherited the property by way of a partition suit in O.S.No.61 of 1947 and O.S.No.187 of 2000 and as such, the respondent / plaintiff has proved his title over the suit property, who had succeed the said land from his father and the appellants have not proved the same and the same has to be rejected.

13. As it is already seen that 7-3/4 cents has already been sold by the said respondent / plaintiff in favour of the Tirunelveli City Municipal Corporation and the said title has been derived by way of his title who had inherited the property from his father and the claim made by the appellants / defendants is also rejected.



14. It is seen that in the decree in O.S.No.61 of 1947, the ninth item in first schedule was allotted to the father of the plaintiff and from the father of the respondent / plaintiff, the respondent / plaintiff herein inherited the property and the same was allotted by way of compromise between the family members of T.K.Thirumalaiappa Mudaliar and as a result, 15-1/2 cents in Survey No.340/2C has been allotted to the respondent / plaintiff and the document, namely, Ex.A.6 would prove the same. Ex.A.2 would show that the property has been allotted to the respondent / plaintiff and the appellants / defendants have not proved their title through any document. The respondent / plaintiff's title has been scrutinised by the Courts below and granted a decree of permanent injunction and the appellants / defendants have not raised any question whether the respondent / plaintiff is having a title over the suit property. If at all, the appellants / defendants are having the possession, they ought to have produced appropriate documents to prove the same and without any documents, the appellants cannot canvass the same. It is also seen that both the Courts below have rendered that the respondent / plaintiff had got a clear title over the suit property, even though he has not filed a suit for declaration and he has filed a suit for permanent injunction. As the title as well as injunction have been proved by necessary appropriate revenue records, this Court is of the view that the appellants / defendants have not made out a case for interference and there is no substantial questions of law arising in this Second Appeal and it is well written that the first schedule of the ninth item of the suit property has been allotted to the father of the plaintiff, which is the subject matter of the suit and it reveals that the Tank was allotted to the father of the respondent / plaintiff and that being the case, the appellants / defendants, who have not produced any piece of evidence to show that the respondent / plaintiff's father had no right over the said property in contra.

15. It is also further seen that there is no evidence to show that the appellants / defendants are in possession and enjoyment of the property. when there is no piece of paper produced to show that the appellants / defendants have got right over the property, if at all they have claimed right over the suit property, which has been sold in favour of Rappani and others by T.S.Padmanaba Mudaliar, they ought to have proceeded against the other third parties and cannot come and disturb the possession of the respondent / plaintiff regarding 7-3/4 cents in Survey No.340/2C. The plaintiff has conveyed 7-3/4 cents to the Municipal Corporation in Survey No.340/2C and remaining 7-3/4 cents is in possession of the plaintiff, which has been proved beyond doubt as right over the property has been established. The remaining portion of the property is in the possession of the plaintiff, in which the Municipal Corporation has not disputed at any point of time. It is further seen that the lands conveyed to the said Municipal Corporation is



only 23-1/4 cents, in which 7-3/4 cents belongs to the plaintiffs and 15-1/2 cents of Rappani brothers. As 7-3/4 cents is in the possession of the respondent / plaintiff and the granting of permanent injunction by the trial Court as well as the first Appellate Court is only based on the evidence and the documents which requires no interference from this Court and accordingly the appellants / defendants claim is rejected. It is further seen that if the appellants / defendants have got right over the property, they ought to have proceed the same in accordance with law and cannot disturb the peaceful possession and enjoyment of the respondent / plaintiff, as he has proved the same beyond any doubt which is evident from the partition suits by the decrees granted. Even if the respondent / plaintiff has not filed the suit for declaration, this Court finds that the possession, title and enjoyment of the suit property is in favour of the respondent / plaintiff, which has also been confirmed by the Courts below, which are the authority of facts had granted permanent injunction.

16. For the reasons aforesaid, this Court is of the considered view that no substantial questions of law has been made out by the appellants / defendants to interfere with the well considered judgment and decree rendered by the Courts below and accordingly, the Second Appeal stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

- 1.The Additional Subordinate Court,
Tirunelveli.
- 2.The First Additional District Munsif Court,
Tirunelveli.



3.The Record Keeper,
V.R. Section, Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.R.MANIMARAN, Advocate (SR-33751[F] dated 09/11/2021)

+1 CC to M/s.D.SRINIVASARAGAVAN, Advocate (SR-33804[F] dated
09/11/2021)

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