



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

JUDGMENT RESERVED ON : 08.12.2021

JUDGMENT PRONOUNDED ON : 14.12.2021

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

S.A. (MD)No.362 of 2005

1.Kalimuthu Thevar

2.Gandhi

3.Subramanian

4.Rathinam

...Appellants 1 to 4
/Appellants 1,2,4 & 5
/Plaintiffs 1,2,4 & 5

5.Kanthi Ammal

6.Minor Senthil Kumar

7.Minor Selvam

8.Minor Senthamarai

9.Minor Jeyaraman

...Appellants 5 to 9
/Appellants 6 to 10

(Minor appellants are represented by 5th appellant)

Vs

1.Boominatha Thevar

2.Kathirvel

3.Poomayilammal

4.Boopathi Thevar

5.Kesa Thevar

6.Alagar Thevar



7.Mahamai

...Respondents 1 to 7/
Respondents 1 to 4 & 5 to 7/
Defendants 1 to 4 & 5 to 7

PRAYER : Second Appeal is filed under Section 100 of C.P.C, against the judgment and decree of the learned Subordinate Judge of Aruppukkottai passed in A.S.No.36 of 2001 dated 01.12.2003 confirming the judgment and decree of the learned District Munsif, Manamadurai passed in O.S.No.228 of 1986 dated 18.12.1987.

For Appellants : Mr.T.S.Mohammed Mohideen
Advocate
For Mr.P.Natarajan
Advocate

For R1 to R7 : Mr.Parthasarathy
Advocate

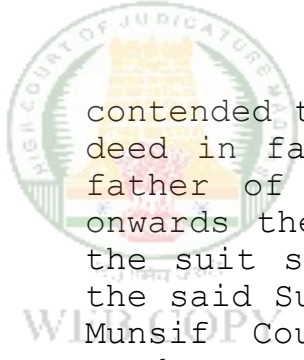
JUDGMENT

The plaintiffs are the appellants.

2.The plaintiffs filed O.S.No.228 of 1986 before the District Munsif Court, Manamadurai for the relief of declaration of title and permanent injunction or in the alternative recovery of possession. The suit was dismissed by the trial Court. The plaintiffs filed A.S.No.36 of 2001 before the Sub Court, Aruppukkottai The first appeal was also dismissed. As against the same, the present second appeal has been filed.

3.The plaintiffs have filed a present suit contending that the suit schedule property originally belonged to the plaintiffs's father Kandasamy Devar and he was granted patta under Exhibits A1 to A3. Exhibit A4 is the patta pass book in the name of the Kandasamy Devar. The said Kandasamy Devar had died in the year 1967 and as per Hindu Succession Act, the plaintiffs, being the legal heirs of the said Kandasamy Devar are in enjoyment of the suit schedule properties. The plaintiffs further contended that the defendants have no manner of title and possession over the suit schedule property, attempted to encroach upon the suit schedule property. Hence, the present suit for declaration of title and permanent injunction.

4.The defendants filed a written statement contending that though the suit schedule properties originally belonged to the father of the plaintiffs namely Kandasamy Devar, the said properties were brought in Court auction in a money decree and one Pothi Naicker had purchased the suit schedule property in Court auction and he has also taken delivery of the same. The defendants further



contended that the said Pothi Naicker had executed a registered sale deed in favour of one Subbaiah Devar in the year 1961 who is the father of the defendants. They further contended that from then onwards the said Subbaiah Devar was in possession and enjoyment of the suit schedule property. The defendants further contended that the said Subbaiah Devar filed O.S.No.246 of 1963 before the District Munsif Court, Manamadurai as against the legal heirs of the Kandasamy Devar. In the said suit, the present first plaintiff was the first defendant.

5.The trial Court after considering the oral and documentary evidence, decreed the suit as prayed for. The defendants therein filed A.S.No.65 of 1965 before the Sub Court, Sivagangai and the same was also dismissed. Then, the defendants therein filed S.A.No.37 of 1967 and it was also dismissed confirming the title and possession of the said Subbaiah Devar.

6.The defendants further contended that the plaintiffs 2 to 5 herein had filed O.S.No.112 of 1968 before the District Munsif Court, Manamadurai claiming partition of their alleged $\frac{1}{2}$ share in the suit schedule property and the said suit was dismissed and it was confirmed in the first appeal. The second appeal filed by the plaintiffs therein was also dismissed. The defendants further contended that the patta has been granted in favour of the said Subbaiah Devar and he is in possession and tax receipts have also been issued in his name. According to the defendants, they are the legal heirs of the deceased Subbaiah Devar. Hence, they prayed for dismissal of the suit.

7.The trial Court after careful consideration of the oral and documentary evidence, dismissed the suit on the ground that the said Kandasamy Devar has lost title to the suit property in view of Exhibit B10 sale certificate and the property has been taken delivery by the Pothi Naicker under Exhibit B11. Thereafter, the legal heirs of the Kandasamy Devar does not have any title or possession over the suit schedule property. The trial Court further held that the title and possession of the purchaser namely Subbaiah Devar has also been confirmed under Exhibits B1, B4 and B5, the judgment and decree in a suit for declaration and injunction initiated by the deceased Subbaiah Devar. The trial Court also found that the present plaintiffs have made a second attempt by way of filing a partition suit for the same suit schedule property. The said suit has been dismissed under Exhibit B6 and confirmed under Exhibit B7. The trial court also found that the revenue record relied upon by the plaintiffs is not believable and dismissed the suit.

8.The First Appellate Court concurred with the findings of the trial Court on basis of Court auction sale and subsequent suit for declaration of title and injunction filed by the Subbaiah Devar and also the unsuccessful attempt by the plaintiffs in a suit for partition. On the above said findings, the First Appellate



Court also confirmed the findings of the trial Court and dismissed the appeal. As against the same, the present second appeal has been filed.

9.The above second appeal has been admitted on the following substantial questions of law:

(i)whether it is correct to hold that the respondents have prescribed title to the disputed properties?

(ii)whether the suit is barred by res-judicata?

(iii)whether the claim of the appellants is barred by limitation?

10.The learned counsel for the appellants contended that the suit property originally belonged to their father Kandasamy Devar and he was issued with patta under Exhibits A1 to A3 and he was also issued with patta pass book under Exhibit A4. The said Kandasamy Devar has passed away in the year 1967 and thereafter, the plaintiff being the legal heirs of the deceased Kandasamy Devar, are in possession and enjoyment of the suit schedule property. The learned counsel further contended that the Courts below have erroneously held that the suit is barred by res judicata, when the plaintiffs are not the parties to the previous proceedings. He further contended that the the respondents have not prescribed title to the disputed properties and the findings of the Courts below are erroneous. The Courts below have erroneously held that the suit filed by the plaintiffs is barred by limitation.

11.Per contra, the learned counsel for the respondents contended that the father of the plaintiffs namely Kandasamy Devar suffered a money decree and the suit schedule properties were brought to Court auction. In the said decree, one Pothi Naicker had purchased the suit schedule property under Exhibit B10 sale certificate and he has taken delivery under Exhibit B11. After Exhibit B10 neither Kandasamy Devar nor his legal heirs have any title over the suit schedule property. The learned counsel further contended that the said Court auction purchaser has sold the suit schedule property in favour of Subbaiah Devar on 01.10.1961. When the legal heirs of the Kandasamy Devar attempted to trespass into the suit schedule property, the Subbaiah Devar has initiated O.S.No.246 of 1963 before the District Munsif Court, Manamadurai for the relief of declaration and permanent injunction. The said suit was decreed. The first appeal and the second appeal were dismissed confirming the title and possession of the Subbaiah Devar. Thereafter, the second attempt was made by the legal heirs of the Kandasamy Devar by filing O.S.No.112 of 1968 before the same Court seeking alleged $\frac{1}{2}$ share in the suit schedule property. The said suit was also dismissed and confirmed in the first appeal and second appeal. Hence, the present suit is the third round of litigation by the legal heirs of the said Kandasamy Devar and therefore, he prayed for dismissal of the second appeal with costs.

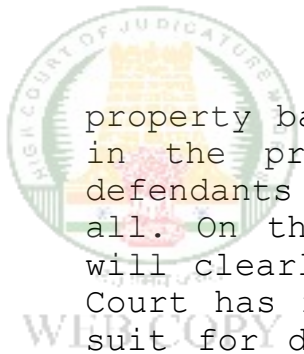


12.I have carefully considered the submissions on either side.

13.It is admitted by both the parties that the suit schedule property was originally owned by one Kandasamy Devar. A perusal of Exhibit B10 will indicate that the said Kandasamy Devar suffered a money decree in O.S.No.146 of 1958. The suit schedule property was brought to Court auction in E.P.No.25 of 1960. The decree holder (Pothi Naicker) himself had purchased the suit schedule property and sale certificate was issued in his name under Exhibit B10 on 11.10.1961. Thereafter, the auction purchaser had taken delivery of the suit schedule property under Exhibit B11. The said Pothi Naicker had executed a registered sale deed in favour of Subbaiah Devar on 01.12.1961. Since the legal heirs of the Kandasamy Devar started disturbing the possession, the said Subbaiah Devar initiated O.S.No.246 of 1963 before the District Munsif Court, Manamadurai for the relief of declaration of title and permanent injunction. The said suit was decreed under Exhibit B1 and the first appeal filed by the legal heirs of the Kandasamy Devar in A.S.No.65 of 1965 was dismissed under Exhibit B4. The second appeal filed by the legal heirs of the Kandasamy Devar was dismissed by the High Court under Exhibit B5. Hence, the title and possession in favour of the said Subbaiah Devar has been confirmed. It is pertinent to point out that in the said suit the present first plaintiff was the first defendant.

14.The plaintiffs 2 to 5 herein made a second attempt to grab the suit schedule property by filing O.S.No.112 of 1968 before District Munsif Court, Manamadurai claiming $\frac{1}{2}$ share in the suit schedule property. The said suit was dismissed under Exhibit B6 and confirmed in the first appeal under Exhibit B7. As against the same, the second appeal was filed and it was dismissed in the admission stage itself. The plaintiffs after suppressing the Court auction sale, the decree suffered by then in O.S.No.246 of 1963 and the decree in O.S.No.112 of 1968, have come out with the present suit for declaration of title and permanent injunction.

15.A narration of the above said facts make it clear that the plaintiffs have not approached the Court with clean hands. The plaintiffs have filed four documents on their side. Exhibits A1 to A3 are the patta granted in favour of the plaintiffs' father namely Kandasamy Devar. Exhibit A1 is of the year 1954, Exhibit A2 is of the year 1932 and Exhibit A3 is of the year 1954. Hence, it is evident that all the three documents are prior to the Court auction sale. Exhibit A4 is dated 12.12.1989 which is subsequent to the present suit. Hence, no document has been filed to establish the title or possession to the suit schedule property. The plaintiffs who are the legal heirs of the deceased Kandasamy Devar are making this third attempt to grab the suit schedule property by suppressing the previous proceedings between the parties. The defendants are



property based on the documents as well as the judgment and decree in the previous proceedings. Hence the issue that whether the defendants have acquired title to the possession does not arise at all. On the other hand, Exhibits B1, B4, B5, B6 and B7 judgments will clearly operate as *res judicata*. Hence, this Court has no hesitation to arrive at a conclusion that the present suit for declaration of title and permanent injunction is clearly barred under Section 11 of C.P.C.

16. In view of the above said discussions, the judgment and decree of the Courts below are confirmed and all the substantial questions of law are answered as against the appellants. The second appeal is dismissed with cost.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

msa

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 Subordinate Judge,
Aruppukkottai
2. The District Munsif
Manamadurai
3. The Section Officer
V.R. Section
Madurai Bench of Madras High Court
Madurai

+1 CC to M/s.T.S.Mohamed Mohidheen, Advocate (SR.No.38893)

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14.12.2021

MGJ(05.03.2022) 6P 6C