



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.04.2022

CORAM

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

S.A.NO.1535 OF 2011

AND

M.P.NO.1 OF 2011

N.Thandavarayan

...Appellant/
Plaintiff

Vs.

Boosi Narasimma Reddy (Died)

1.Manickammal

2.Muniammal

3.Thilakammal

... Respondents/
2nd Defendant/LR's of 1st Defendant

Prayer :

Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 16.11.2010 passed in A.S. No.50 of 2006, on the file of the Additional District Court/Fast Track Court No.II, Ranipet,Vellore District, upholding the decree and judgment in O.S.No.232 of 2004 dated 28.07.2005 on the file of the District Munsif Court, Sholingur.

For Appellant : Mr.B.Harish
for M/s.K.M.Vijayan Associates

For Respondents : NA

JUDGMENT

The unsuccessful plaintiff before both the Courts below has filed the present second appeal.

2. The suit was filed by the plaintiff for the following reliefs:



- i. a declaration for the plaintiff's right and title over the suit properties.
- ii. directing the defendants to deliver vacant possession of the suit properties.
- iii. granting permanent injunction restraining the first defendant from alienating the suit properties to the 2nd defendant or any other third party.
- iv. directing the defendants to pay to the plaintiff the costs of the suit.

3. For the sake of convenience, the parties are referred to as per their ranking before the trial Court and at appropriate places, their rank in the present appeal would also be indicated.

4. The case of the plaintiff, in nutshell, is as follows:

The first defendant is the father of the plaintiff. The plaintiff's mother Kullammal had purchased certain properties in her name from and out of her own income through a registered sale deed dated 05.04.1957 (Ex.A1). The plaintiff's mother died in the year 1959, leaving behind the plaintiff, first defendant and two other female children as her legal heirs. The first defendant sold Kullammal's property and purchased suit Item No.1 through a registered sale deed dated 15.07.1973 (Ex.A2). The second Item of the suit property is the ancestral property of the plaintiff and the first defendant. The first defendant was leading a wayward life after the death of his wife Kullammal. According to the plaintiff, there was a family arrangement between him and his other family members in the presence of elders pursuant to which the suit properties were allotted to his share and he is also in possession and enjoyment of the same by paying necessary tax to the Government (Ex.A3). It is his further contention that the defendants 1 & 2 trespassed into the suit property six months prior to the filing of the suit and are now in illegal possession. He therefore, filed the suit for a declaration of his title to the suit properties and for recovery of possession of the same from the defendants.

5. The suit was resisted by the defendants on the following grounds:

- i. The plaintiff has no right or title over the suit properties.
- ii. The first defendant purchased Item No.1 of the suit properties through a registered sale deed dated 15.07.1973 (Ex.A2) for a valuable consideration and therefore it is his self acquired property.



iii. The first defendant married the second defendant after his first wife Kullammal died in the year 1959.

iv. Item No.2 is a Government land and the first defendant is in possession of the same.

Therefore, the defendants prayed for dismissal of the suit.

6. The trial court, on the basis of the above pleadings, framed the following issues.

- i. Whether the plaintiff has got right over the suit properties?
- ii. Whether the plaintiff is entitled for recovery of possession?
- iii. Whether the plaintiff is entitled for a permanent injunction restraining the defendants 1 & 2 from alienating the suit properties in favour of the third parties?
- iv. Whether Item 1 & 2 of the suit properties absolutely belonged to the defendants?
- v. To what other relief, the plaintiff is entitled?

7. In the trial Court, the plaintiff examined himself and two other witnesses and marked Ex.A1 to Ex.A4. The defendants 1 & 2 examined themselves and marked Ex.B1 to Ex.B9.

8. After full contest, the learned District Munsif, Sholingur, dismissed the suit filed by the plaintiff vide his decree and judgment dated 28.07.2005.

9. Aggrieved over the same, the plaintiff filed an appeal in A.S.No.50 of 2006 before the Additional District Court (Fast Track Court No.II), Ranipet, Vellore District. The learned Additional District Judge, after analysing the oral and documentary evidence adduced on both sides, dismissed the appeal filed by the plaintiff vide his decree and judgment dated 16.11.2010. Both the Courts below dismissed the suit filed by the plaintiff mainly on the following grounds :

- i. The plaintiff did not adduce any documentary evidence to show that Item No.2 of the suit property is an ancestral property.
- ii. The first item originally belonged to Kullammal. Ex.A1 is her title deed dated 05.04.1957. This property was sold to a third party through a sale deed Ex.A4 and this sale was necessitated for the performance of the marriage of Muniammal (third respondent). However, since first defendant purchased the said property again through a sale deed dated 15.07.1973 (Ex.A2), it has become his exclusive property. The plaintiff did not adduce any evidence to show that Item No.1 of the suit property was purchased by the first defendant from out of the assets of Kullammal.



WEB COPY

10. Now the present second appeal is filed by the plaintiff. Notice of motion was ordered in the second appeal and after several adjournments, it is posted for final hearing today (07.04.2022). Substantial questions of law raised in the grounds of appeal, are extracted hereunder:

- i. Whether the lower Court is correct in decreeing the suit when the plaintiff proved that there is no separate source of income for the first respondent to purchase the property?
- ii. Whether both the Courts below were right in decreeing the suit in favour of the second respondent also who is not legally wedded wife of the first respondent?
- iii. Whether the presumption that acquisition of the property for the benefit of family can be treated as common ?

11. Mr.B.Harish, learned counsel appearing for the appellant would contend that the plaintiff had adduced sufficient evidence to hold that there was a family arrangement in the family consisting of the plaintiff, first defendant (father of the plaintiff) and other two sisters and that the suit properties were allotted to the share of the plaintiff and that both the Courts below did not take this aspect into consideration before dismissing the suit filed by the plaintiff. It is also his contention that the evidence of P.W.1 clearly shows that the Item No.2 is an ancestral property and that Item No.1 of the suit property was purchased from out of the assets of Kullammal. He therefore contended that the appeal is to be allowed.

12. During the pendency of the first appeal, the first defendant died and therefore his legal heirs were brought on record as respondents 3 & 4. There is no representation on behalf of the respondents though their names are printed in the cause list.

13. At the outset, it may be observed that the plaintiff has filed the suit contending that Item No.1 of the suit property originally belonged to his mother Kullammal through a registered sale deed dated 05.04.1957 (Ex.A1) and this property was sold to a third party through a registered sale deed dated 19.07.1961 (Ex.A4). It is his contention that Item No.2 of the suit property is an ancestral property.

14. A perusal of the sale deed (Ex.A4) shows that Item No.1 of the suit property was sold by the first defendant, plaintiff and the respondents 3 & 4 in favour of one Munusamy Reddy. There is a recital in Ex.A4 to the effect that the suit property was sold for performing the marriage of the third respondent Muniammal. It is seen from the sale deed dated 15.07.1973



(Ex.A2) that the first defendant purchased Item No.1 of the suit property again and therefore, it has become the first defendant's exclusive property. The plaintiff did not adduce any acceptable evidence to show that Item No.1 of the suit property was purchased from the assets of Kullammal. The plea of family arrangement during the year 1985, has also not been substantiated by the plaintiff.

15. As far as Item No.2 of the suit property is concerned, it is a house and though the plaintiff claims that it is an ancestral property, it is pertinent to note that the patta (Ex.B3) stands in the name of the first defendant. House tax (Ex.B4 to Ex.B8) is also paid by the first defendant. No documentary evidence was adduced by the plaintiff to show that Item No.2 of the suit property is his ancestral property and he has a share in it. He has also not substantiated that defendants 1 & 2 trespassed into this property.

16. Considering all these aspects, both the Courts below had rightly held that the plaintiff did not prove any of his contentions by adducing acceptable evidence. All the observations made by both the Courts below are based on oral and documentary evidence. In fact, there is no substantial question of law involved in the present second appeal. Therefore, the second appeal fails and is dismissed.

17. In the result,
- i. the second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.
 - ii. the decree and judgment dated 16.11.2010 passed in A.S. No.50 of 2006, on the file of the Additional District Court/Fast Track Court No.II, Ranipet, Vellore District, and
 - iii. the decree and judgment in O.S.No.232 of 2004 dated 28.07.2005 on the file of the District Munsif Court, Sholingur, are upheld.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

mtl



To

1. The Additional District Judge/Fast Track Court No.II,
Ranipet,
Vellore District.

2. The District Munsif,
Sholingur.

+lcc to M/s.K.M.Vijayan Associates, Advocate, S.R.No.24238

S.A.No.1535 of 2011
and M.P.No.1 of 2011

SSN(CO)
PM/30/05/2022