



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 01.03.2022

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THE HONOURABLE MRS.JUSTICE R.HEMALATHA

S.A.No.1614 of 1999

and

C.M.P. Nos. 7065 & 7066 of 2000

1. Shanthi

2. Raja

3. Selvan

4. Chitra

5. Saravanan

...Appellants/Plaintiffs

Vs.

1. Rajangam (died)

2. Periasamy (died)

1 and 2nd Respondents/1 & 2
Defendants

3. Samudaravali

4. Kalyanasundaram

5. Veeramani

6. Thavamani

7. Ravi kumar

8. Rajakumari

9. Sasi kumar

10. Sangeetha

11. Ramesh kumar

12. Devi

13. Bhuvaneshwari

14. Prabhakaran

15. Sekar

...Respondents

Respondents 3 to 5 are brought on record as legal representatives of the deceased 2nd respondent vide order of court dated 05.09.2003 made in C.M.P No.2336 & 2337 of 2000.

Respondents 6 to 15 are brought on record as LRs of the deceased 1st respondent vide order dated 20.07.2010 made in M.P. (M.D.) Nos 2 to 4 /2010.

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 05.11.1998 passed in A.S. No.112 of 1998, on the file of the District Judge, Trichy, upholding the decree and judgment dated 29.09.1997 passed in O.S. No.21 of 1990, on the file of the Subordinate Judge, Ariyalur.



For Appellants : Mr. P. Tamilavel
For Respondents 3 to 5 : Mr.C. Parthiban
for Mr. M.V. Krishnan

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JUDGMENT

The unsuccessful plaintiffs before both the courts below have filed the present second appeal.

2. The plaintiffs have filed a suit in O.S. No.21/1990 before the Subordinate Court, Ariyalur, for declaration of their title to the suit property and for a consequential relief of Permanent Injunction restraining the defendants from interfering with their peaceful possession and enjoyment of the suit property and also for a Permanent Injunction restraining the first defendant from alienating the suit property in favour of the second defendant and for costs.

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

4. The minimum facts that are required for the disposal of the present second appeal are as follows:

One Somu is the husband of the first plaintiff and father of the plaintiffs 2 to 5. Rajangam, the first defendant, is the brother of Somu. Somu, Rajangam (first defendant) and one Mani are the sons of Arumugam. One Padmavathi is the daughter of Arumugam. Somu left for Singapore and was having a hair saloon over there. He sent money to his father Arumugam. His family (plaintiffs) was also living with his father Arumugam. From out of the money sent by Somu, Arumugam purchased the suit property in his name through a registered sale deed dated 29.08.1971. A registration copy of the said sale deed was marked as Ex.A4 and the original sale deed was marked as Ex.B1. Somu, during his life time executed a Release Deed dated 26.09.1972 (Ex.B2) in respect of the joint family properties of his family comprising his father and his two brothers, namely, Rajangam (first defendant) and Mani. There was also a partition of the joint family properties between Arumugam and his other two sons through a registered partition deed dated 07.06.1983 (Ex.B3). The suit property was not the subject matter of the partition deed Ex.B3 and according to the plaintiffs since the suit property was purchased by Arumugam from out of the money sent by Somu, it was set apart for Somu. Somu also retained the suit property and two house-sites on the western side of the suit property and relinquished his share in respect of other properties. Somu died of cardiac arrest at Singapore on 08.08.1987. There was a dispute in respect of the suit property between the first defendant and his sister Padmavathi and



therefore, the first defendant forcefully obtained the signature of his father in a registered Settlement Deed dated 14.09.1988 (Ex.B4) and also attempted to interfere with the possession of the plaintiffs over the suit property. The first plaintiff, therefore, preferred a private complaint before the Judicial Magistrate No. I, Ariyalur, against the first defendant. The plaintiffs, being in continuous possession over the suit property, have also prescribed title by way of adverse possession and prescription. The plaintiffs have, therefore, filed the suit for a declaration and injunction.

5. The defendants filed their written statement along with a counter claim. Their contention is that the suit property was not purchased by utilising the funds of Somu and that it is the self acquired property of late Arumugam. According to them, there were no ties with Somu by the rest of the family subsequent to the Release Deed dated 26.09.1972 (Ex.B2) executed by Somu in respect of the joint family properties. It is further averred that a registered Settlement Deed dated 14.09.1988 (Ex.B4) in respect of the suit property was executed by Arumugam in favour of the first defendant and the first defendant in turn executed a registered sale deed dated 19.01.1990 (Ex.B15) in favour of the second defendant. They, therefore, prayed for the dismissal of the suit and in the counter claim, the defendants prayed for declaration of their title to the portion marked as A, I, J, D in the plaint plan (Ex.A1) and also sought for recovery of possession of that portion from the plaintiffs.

6. The trial court, after framing necessary issues and after full contest, dismissed the suit filed by the plaintiffs vide its decree and judgment dated 29.09.1997 and allowed the counter claim of the defendants.

7. Aggrieved over the same, the plaintiffs filed the first appeal in A.S. No. 112 of 1998 before the District Court, Trichy. The learned District Judge, Trichy, after analysing the oral and documentary evidence adduced on both sides, upheld the findings recorded by the trial court.

8. Both the courts below considered two aspects while deciding the question of title of the suit property. Firstly the courts were of the opinion that there was no oral/documentary evidence to uphold the fact that the suit property was purchased by late Arumugam using the funds sent by Somu from Singapore. The courts below further took into account the nature of the sale deeds dated 29.08.1971 (Ex.A4) and 22.04.1974 (Ex.A5). While the property under Ex.A4 was purchased by Arumugam directly in his name, the property under Ex.A5 is registered directly in the names of minor children of Somu by Arumugam, being in the position of guardian/trustee of the minor children. Hence, both the courts were of the opinion that if the property



under Ex.A4 had supposedly been purchased using the funds of Somu, then Arumugam would have very well registered this property also in the names of minor children of Somu. It was also observed that the suit property never found a mention either in the General Power of Attorney Deed dated 05.07.1980 (Ex.A6) given by Arumugam to the appellants or in the partition deed dated 07.06.1983 (Ex.A7) with regard to the joint family properties. Adding to this, it was already stated by the respondents that only joint family properties were mentioned in the partition deed and not the properties which were purchased by individuals using their own funds. Hence, from this, it can clearly be stated that the suit property was self acquired by Arumugam and not purchased from out of the funds of Somu. Both the Courts below also observed that the letters allegedly written by Somu were not properly enveloped in the sense that the postal covers were not adduced in order to prove delivery of those letters and hence cannot be considered as a substantial piece of evidence and further added that the first plaintiff also has no knowledge as to how the money was sent by her husband late. Somu. It was also held that, based on the evidence adduced on both sides, late. Arumugam also had his own source of income which he had earned while working in Singapore and thus both the Courts below concluded that the plaintiffs have not established the title and possession over the suit property and on the other hand the first defendant proved the execution of the settlement deed in his favour and allowed the counter claim filed by the defendants.

9. Now the present second appeal is filed on the following substantial questions of law :

- i. Whether the Courts below were right in holding that Ex.A4 was the property of Arumugam when admittedly Arumugam, who had no independent income and in charge of the affairs of the plaintiff's husband at that time, had not discharged the burden of proof resting on him?
- ii. Whether the Courts below were correct in granting a decree for possession of a suit property which could not be identified and measured even by the Advocate Commissioner as the description of suit property given in the counter claim was vague and inaccurate?

10. Heard Mr.P.Tamilavel, learned counsel for the appellants and Mr.C.Parthiban for Mr.K.V.Krishnan, learned counsel for the respondents.

11. Mr.P.Tamilavel, learned counsel for the appellants contended that when the property under Ex.A5 was subsequent to the release deed Ex.B2, the reliance placed on by both the courts below on Ex.A5 to discredit the case of the plaintiffs is illogical. He would further contend that Arumugam had no independent source of income to purchase the properties in his



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name and their family was also a joint family at the time of purchase of Ex.A4 (suit property). When late. Arumugam handed over the management of Somu's family and his property only during the year 1980 under Ex.A6 it can be easily inferred that Arumugam purchased the property under Ex.A4 only from out of the income of Somu. It is his submission that the alleged Settlement Deed (Ex.B4) had not been proved in accordance with Section 68 of the Indian Evidence Act and hence, the decree and judgment rendered by both the Courts below are perverse.

12.Per contra, Mr.C.Parthiban, learned counsel for the respondents contended that Arumugam was also employed in Singapore and had independent source of income and it is in evidence that the family members of Arumugam purchased several properties in their individual names apart from possessing joint family properties. It is also his contention that only the joint family properties were the subject matter of the partition deed (Ex.B3) and late. Somu relinquished all his rights in respect of joint family properties after taking a consideration of Rs.5000/-. He also drew the attention of this Court to the recitals of the Release Deed and contended that Somu had retained only the properties standing in his name as on the date of release deed and the rest of the family would not acquire any right over the properties standing in his name at the time of execution of Ex.B2 as well as other properties he may acquire in future. He would therefore contend that Somu during his life time never claimed ownership in respect of the suit property. As regards the arguments submitted by the counsel for the appellant that Settlement Deed Ex.B4 had not been proved in the manner known to law, the counsel for the respondents would contend that genuineness of Settlement Deed (Ex.B4) was never questioned by the appellants both before the trial court as well as the first appellate court and therefore it is not open for the appellants to contend that Ex.B4 has not been proved as per Section 68 of the Indian Evidence Act. According to him, the suit property is the self acquired property of late. Arumugam and he had executed a valid Settlement Deed Ex.B4 in favour of the first defendant, who in turn sold the suit property in favour of the second defendant and thus both the courts below based on oral and documentary evidence had rightly dismissed the suit filed by the plaintiffs and allowed the counter claim filed by the defendants. It is also his contention that there are no substantial questions of law involved in the present second appeal.

13.It is seen from the oral and documentary evidence adduced on both sides that late.Arumugam was also doing business in Singapore and earned considerable amount. He possessed of joint family properties which were partitioned through a registered partition deed dated 07.06.1983 (Ex.B3) between him and his two sons, namely, Rajangam (first defendant) and Mani. Somu, husband



of the first plaintiff executed a release deed dated 26.09.1972 (Ex.B2) in respect of the joint family properties. The plaintiffs did not adduce any acceptable evidence to show that the suit property was purchased by Arumugam, father of Somu, in his own name from out of the funds of Somu. They could not also state as to how the money was sent by Somu. It is also seen that certain properties were purchased in the names of minor children of Somu by Arumugam and Power of Attorney was given to the first plaintiff in respect of those properties. In the circumstances, both the courts below were right in holding that the suit property was the self acquired property of Arumugam. The contention of Mr.P.Tamilavel, learned counsel for the appellant that Ex.A5 sale deed in favour of minor children was subsequent to the execution of release deed under Ex.B2 and therefore, both the courts below were wrong in taking into consideration Ex.A5. According to the counsel, the said conclusion is illogical. It is pertinent to state that even as per evidence when the family was living jointly, the members of the family were acquiring properties in their individual names and those properties did not form part of partition. Somu had relinquished his share in the family properties and it is specifically stated in the Relinquishment Deed that he is retaining the properties standing in his name as on the date of partition and other family members do not have any right in respect of his properties or properties which he would acquire in future. There is no recital to the effect that the suit property was purchased by him in the name of his father and that he retained that property also.

14. The genuineness of the Settlement deed (Ex.B4) was not questioned by the appellants/plaintiffs before both the courts below. Their only contention was that in the Settlement Deed the signature of Arumugam was obtained forcefully for which no acceptable evidence was adduced by them. This aspect was also dealt with in extenso by both courts below and I do not want to repeat the same here in the second appeal especially when it is a factual finding recorded by the both the Courts below. Suffice it to say that all the observations of both the Courts below are based on sound principles of law and on the proper analysis of oral and documentary evidence.

15. As far as adverse possession claimed by the appellants, adverse possession is in one sense is based on the theory or presumption that the owner has abandoned the property to the adverse possessor or on the acquiescence of the owner to the hostile acts and claims of the person in possession. It follows that sound qualities of a typical adverse possession lie in it being open, continuous and hostile. Where possession of the property could be referred to a lawful title, it will not be considered to be adverse. The reasons being that a person whose possession can be referred to a lawful title, will not be permitted to show that his possession was hostile to another's



title. In the instant case, the plaintiffs claim their title through the sale deed Ex.B1 and in the circumstances, they cannot claim title to the property by way of adverse possession and prescription as they are mutually contradictory.

16. It is also pertinent to mention that this a second appeal under Section 100 of the Code of Civil Procedure where the jurisdiction of the High Court is confined to substantial questions of law. A full Bench of the Supreme Court in Bholaram Vs. Ameerchand reported in AIR 1981 SC 1209 has held that the High Court cannot interfere with the concurrent factual findings of court below in a second appeal. In view of the reasons stated above, the substantial questions of law are answered against the appellants. In fine, the second appeal fails and is dismissed.

17. In the result,

i. the second appeal is dismissed. No costs. Consequently connected miscellaneous petitions are dismissed.

ii. The decree and judgment dated 05.11.1998 passed in A.S. No.112 of 1998, on the file of the District Judge, Trichy, and the decree and judgment dated 29.09.1997 passed in O.S. No.21 of 1990, on the file of the Subordinate Judge, Ariyalur, are upheld.

Sd/-

Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

bga

To

1. The District Judge, Trichy

2. The Subordinate Judge, Ariyalur

+lcc to Mr.M.V.Krishnan, Advocate, S.R.No.22076

S.A.No.1614 of 1999

AK-II(CO)

RGA(06/05/2022)