



SA.No.894/2017

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

SA.No.894/2017 & CMP.No.22490/2017

G.Gnanam

.. Appellant

Vs.

1.Rathanavathy

2.Murugan

.. Respondents

Prayer:- Second Appeal preferred under 100 of CPC against the judgment and decree in AS.No.351/2010 dated 10.07.2017 on the file of the learned I Additional Judge, City Civil Court, Chennai, setting aside the judgment and decree passed in OS.No.3644/2002 dated 02.09.2006 on the file of the learned XVI Assistant Judge, City Civil Court, Chennai.

For Appellants : Mr.G.S.Mohan

For Respondents : No appearance



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JUDGMENT

- (1) The plaintiff in the suit in OS.No.3644/2002 has preferred the above Second Appeal as against the judgment and decree of the learned I Additional District Judge, City Civil Court, Chennai, dated 10.07.2017 made in AS.No.351/2010 reversing the judgment and decree of the learned XVI Assistant Judge, City Civil Court, Chennai, dated 02.09.2006 made in OS.No.3644/2002.
- (2) The appellant filed the suit in OS.No.3644/2002 for permanent injunction restraining defendants and their men from interfering with the peaceful possession and enjoyment of the suit property by the plaintiff. The suit property is described as land and building bearing Door No.14, Kamarajar Road, Thirumangalam, Chennai-101, measuring an extent of 1610 sq.ft., [35x46 feet] within the limits of Chennai Corporation.
- (3) The appellant's case in the plaint can be summarised as follows:-
The plaintiff is residing in the suit property along with her daughters by name Bama and Malini and her husband Mr.V.Gopal.
The suit property is classified as Village Natham and this land was



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occupied along with adjacent land by her parents. Originally, the suit property was owned by the mother of the plaintiff Mrs.Palayammal and during her life time, she equally distributed the land to her four daughters. The elder sister of the plaintiff died in the year 1962 and hence, the plot allotted to the elder sister of the plaintiff, was sold to a third party. The other sister by name Janaki, is settled at Door NO.151, A.R.Lane, St. Thomas Mount, Alandur, Chennai-16 and the 1st defendant who is the third sister, also sold her portion to a third party and residing now at a different premises bearing No.278, in N.V.N.Nagar, New Thirumangalam, Chennai. The plaintiff is in possession and enjoyment of the schedule mentioned properties for the past 30 years from the date of her marriage and got the land and house as her share from her mother. Stating that the defendants 1 and 2 objected to the construction proposed by plaintiff, the suit for injunction was filed.

- (4) The suit was contested by the defendants specifically denying the averments made in the plaint that the mother of the plaintiff and 1st defendant were already allotted the property as suggested by the



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plaintiff. It is also the case of the defendants that the suit property originally belonged to the mother by name Palaiyammal and that she was peacefully enjoying the suit property. Stating that all the four daughters of Palaiyammal are entitled to equal share and that the entire property had been divided among the four daughters after her life time and all of them are enjoying their respective shares allotted to them. The defendants contended that the plaintiff and defendants are residing there in their respective portions and hence, suit is not maintainable. The defendants contended that the suit is filed to grab the property of the 1st defendant.

(5) The Trial Court did not go into the question of title. However, based on the documents, the Trial Court came to the conclusion that the plaintiff has proved her possession and decreed the suit as prayed for. Aggrieved by the same, the appellants preferred an Appeal in AS.No.351/2010 before the I Additional City Civil Court, Chennai.

(6) The Lower Appellate Court after going through the entire evidence, came to the conclusion that the property originally was owned by



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the plaintiff's mother and the plaintiff has no exclusive title in respect of any portion of the suit property. The Lower Appellate Court also found that no records have been produced by the appellant/plaintiff to prove that the entire property was in possession and enjoyment of the defendants. Based on the pleadings, the Lower Appellate Court framed an issue whether the plaintiff/appellant has been in possession and enjoyment of the entire suit property and entitled for the relief of permanent injunction as prayed for and the second point for determination was whether the judgment and decree of the Trial Court are liable to be set aside.

- (7) The Lower Appellate Court examined the case of the plaintiff and found that the appellant has not even pleaded in the plaint as to what extent the mother of the plaintiff was entitled to and the manner and time the alleged partition was effected among the four daughters of Tmt.Palayammal, mother of the plaintiff and the 1st defendant. Since the defendants have specifically disputed the allotment of entire suit property to plaintiff, the Lower Appellate



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Court came to the conclusion that the partition pleaded by the plaintiff is not proved. The Trial Court decreed the suit mainly because the defendants have not produced any document to show their possession as it was contended by them in the written statement. However, the Lower Appellate Court after allowing both parties to adduce evidence, found that the defendants have let in Exs.B1 to B14 as additional documents by examining DW2 and that the documents produced by the defendants would prove their case that they are also in possession of portion of the suit property. The Lower Appellate Court found that some of the documents produced by the plaintiff are questionable and that the discrepancies found that in the document [Ex.A2-Adangal extract] is not explained by the plaintiff. The Lower Appellate Court considered that DW1 had earlier instituted a suit in OS.No.3316/2002 as against the plaintiff and her husband and that an exparte decree was also passed on 13.11.2003. Though the exparte decree was passed on 13.11.2003 in the said suit, there is no further evidence as to any subsequent proceedings and the



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Lower Appellate Court did not focus much on the finality or the legal consequences of the pendency or the exparte disposal of the suit in OS.No.3316/2002. After considering the entire evidence on record and the evidence of all the witnesses examined by the respective parties, the Lower Appellate Court came to the conclusion that the judgment and decree of the Trial Court is liable to set aside and allowed the Appeal Suit. Aggrieved by the judgment and decree of the Lower Appellate Court, the above Second Appeal is filed by the plaintiff.

(8) In the Second Appeal, the appellant has raised the following questions of law:-

- a) *Whether the Lower Appellate Court has considered the evidence with regard to the Ex.2 to Ex.20 which failed to consider that the defendants never lived and possessed the entire suit property right from the beginning.*
- b) *Whether the Lower Appellate Court has based on its judgment solely on the statement of the appellant regarding the mother of the appellant's Ration Card which shows residence*



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of Palayammal along with their mother in the suit property. Whereas the addresses of others given in the Lower Appellate Court are care of address using mother's physical possession in the suit property to create false possession of the suit property.

c) The Lower Appellate Court has considered the entire evidence of the parties as if it were patta land but it is only classified as Grama Natham Poramboke land finding relevance to the issue involved in the suit property.

- (9) There is no dispute with regard to the relationship between the plaintiff and the 1st defendant who are admittedly, sisters. The plaintiff being the youngest daughter and the 1st defendant is the third sister of the plaintiff. It is admitted by the plaintiff herself that the suit mentioned property is classified as natham and land was occupied along with adjacent land by her parents. It is admitted that the land was owned by the plaintiff's mother Tmt.Palayammal. It is her specific case that her mother equally distributed the land to her three daughters. It is her further case that the 1st defendant and two other sisters of the plaintiff sold their respective plots allotted to



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them to third parties and that they were residing elsewhere. It is therefore, contended that she is the exclusive owner of the property as it was given to her by her mother Tmt.Palayammal. Even in the pleadings, there is no mention about the total extent of land owned by Tmt.Palayammal. What was the properties that was allotted to other sisters, are not indicated. Though the plaintiff states that all her three sisters sold their respective properties to third parties, she has not filed any document to prove any alienation by any of the sisters admitting partition or any Gift Deed executed by their mother.

- (10) The suit was contested by the respondents/defendants claiming joint possession and on the basis of the right of 1st defendant as one of the legal heirs of Tmt.Palayammal. Despite the fact that the question of exclusive title is specifically denied by the defendants, the plaintiff did not implead the other legal heirs of Tmt.Palayammal nor amended the plaint for declaration of her title. From the description of the documents, it is seen that Ex.A1 is the House Site Ownership Certificate and Ex.A2 is the Adangal Extract



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in favour of the plaintiff. It is to be seen that the suit property is admittedly the land and building classified as village natham. However, the house site ownership certificate is issued by Karnam/Maniyam. The Lower Appellate Court is right in holding that the plaintiff has not proved the authenticity of the document Ex.A1 by calling upon any official witness. The property classified as "natham" is a residential portion of a village. Since it is not a ryotwari land, patta or adangal extract in favour of persons in possession is not being given earlier. Revenue documents may not be available to prove one's ownership. From the plaintiff's documents except Exs.A1 and A2, all other documents are ration card, EB receipts, Voters' List, Urban Land Tax receipts etc. It is not in dispute that the plaintiff is in possession of the suit property. However, the question whether the 1st defendant is in joint possession of the property was considered by the Lower Appellate Court and held that the 1st defendant has proved her joint possession by the additional documents filed through DW2. When there is no records to show that any Gift Deed or Settlement Deed



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in favour of the plaintiff or a Partition Deed or a family arrangement to indicate that the plaintiff was allotted the suit property exclusively, the case of the plaintiff claiming exclusive title cannot be accepted unless there is clear pleadings or proof for ouster. When it is admitted that the plaintiff's mother was in possession and enjoyment of the property as the owner of the residential plot, this Court finds that there is no proper pleading or evidence to sustain the claim of exclusive title by the plaintiff. No doubt, a suit for bare injunction against a stranger is permissible if the plaintiff proves a better title than the defendant against whom he/she pleads permanent injunction. When the plaintiff has filed a suit for permanent injunction against her sister and both of them are the legal heirs of their mother, there must be proper pleading and proof about the allotment or conveyance.

- (11) The first question of law raised by the appellant/plaintiff on the basis of Exs.A2 to A20, cannot be considered as a pure question of law, especially having regard to the findings of the Lower Appellate Court placing reliance on the additional documents filed by the



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defendants marked as Exs.B1 to B14. The second question of law raised by the appellant/plaintiff also indicate that the argument is on the appreciation of evidence by the Lower Appellate Court. Admittedly, no patta was granted in favour of the plaintiff. Since the property is classified as gramanatham or natham poramboke, there may be records under Natham Settlement for the house site. However, from the nature of pleadings, the Lower Appellate Court is right in holding that the plaintiff has not proved her case by establishing the manner of family arrangement to establish allotment of property to the plaintiff and her three sisters including the 1st defendant. The plaintiff has not even examined any other sister to prove her case as to the manner of division or allotment of properties by mother herself during her lifetime. When the fact that the suit property originally belonged to the mother of the plaintiff and 1st defendant is admitted, the appellant/plaintiff has to prove as to how she is entitled to the property exclusively. No Gift Deed or Settlement Deed is pleaded in this case in favour of the appellant/plaintiff. In the absence of any independent evidence, this



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Court is unable to find any substance in any of the questions of law raised by the appellant/plaintiff. Hence, this Court does not find any merit in the Second Appeal.

- (1) In fine, the Second Appeal stands **dismissed** confirming the judgment and decree dated 10.07.2017 made in AS.No.351/2010 by the learned I Additional Judge, City Civil Court, Chennai, setting aside the judgment and decree dated 02.09.2006 passed in OS.No.3644/2002 by the learned XVI Assistant Judge, City Civil Court, Chennai. No costs.

02.03.2022

AP

Internet : Yes

To

1.The I Additional District Judge,
City Civil Court, Chennai.

2.The XVI Assistant Judge,
City Civil Court, Chennai.

3.The Section Officer
VR Section, High Court
Chennai.



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S.S.SUNDAR, J.,

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