



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A.(MD)No.487 of 2010

WEB COPY

1.P.Ravisankar

2.P.Vijaya Kumar ... Appellants / Appellants / Defendants

-Vs-

1.Sanjeevi

2.Alagumathi ... Respondents / Respondents / Plaintiffs

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree made in A.S.No.18 of 2008, dated 16.06.2009 on the file of the Sub Court, Sivakasi, confirming the judgment and decree made in O.S.No.110 of 2004, dated 18.02.2008 on the file of the District Munsif Court, Sattur.

For Appellants : Mr.M.Thirunavukarasu

For R1 & R2 : Mr.K.Govindarajan
for Mr.V.Sasikumar

JUDGMENT

The defendants in O.S.No.110 of 2004 on the file of the District Munsif Court, Sattur are the appellants in this second appeal.

2. The respondents herein filed the said suit seeking the reliefs of declaration and permanent injunction. The first defendant Ravisankar filed written statement controverting the plaint averments. The second defendant adopted the stand of the first defendant. The trial court framed the necessary issues based on the rival pleadings. The suit was filed by the plaintiffs through their power agent. That became the bone of contention and that is why, when the suit was decreed, the first appellate court interfered with the same and remanded the matter. After remand, the first plaintiff Sanjeevi examined himself as P.W.1. Ex.A1 to Ex.A15 were marked. The first defendant Ravisankar examined himself as D.W.1. Ex.B1 to Ex.B4 were marked. The surveyor was examined as third party witness and the court exhibit 1 was marked through him. After consideration of the evidence on record, the trial court by judgment and decree dated 18.02.2008 decreed the suit as prayed for.



Aggrieved by the same, the defendants filed A.S.No.18 of 2008 before the sub court, Sivakasi. The first appellate court by judgment and decree dated 16.06.2009 dismissed the appeal and confirmed the decision of the trial court. Challenging the same, the second appeal came to be filed. On 14.06.2010, it was admitted on the following substantial questions of law:-

"1. Whether the courts below are right in holding that the suit is not barred by non-joinder of necessary parties?

2. Whether the courts below are correct in shifting the burden on the defendants by ignoring the settled proposition of law that the plaintiff should fall or succeed according to her own case and she should not rely upon the weakness of the defendant's case?

3. Whether the courts below are right in decreeing the suit by ignoring the vital documents Ex.B2 wherein the name of the Sangakudumban's son are found?"

3. The learned counsel appearing for the appellants submitted that there is no dispute that the suit property originally belonged to one Sangakudumban. There is again no dispute that Sangakudumban had three sons namely Veerappan, Perumal and Vellaisamy. The appellants herein are the sons of the second son Perumal. Sangakudumban died intestate. Sometime in the year 1962, there was oral partition among the three brothers and the suit property was allotted to the second son Perumal. Patta No.228 was also issued in the name of Perumal. When the defendants came to know that the plaintiffs have unauthorisedly purchased the same from the first branch, they issued legal notice dated 25.04.2004 (Ex.A12) cautioning the plaintiffs that they should stay away from the suit property. The appellants also asserted that they are very much in possession of the suit property and that they are paying the property tax in their names.

4. The submission of the learned counsel for the appellants is anchored on Section 101 of the Indian Evidence Act. The appellants might have failed to prove that in the oral partition, the property was allotted to Perumal. But then, this weakness in the side of the defendants cannot be taken advantage by the plaintiffs. The plaintiffs having come to the Court for relief were obliged to prove their case. If on either side there is a paucity evidence as regards oral partition and the allotment of the suit property, then, the plaintiffs will have to necessarily fail. The learned counsel also passed on a photocopy of patta No.228 which refers to the suit property and which indicates that the suit property stood in the name of the appellants' father Perumal. Of-course, he fairly conceded that even though this was referred to in the legal notice issued by the defendants, it is not finding place in the list of exhibits. He would further contend that Ex.B2_ clearly shows that the suit property stood in the names of three sons of Sangakudumban and therefore, the plaintiffs cannot claim exclusive title over the suit property when they admittedly had no transaction with the defendants. The defendants are the children of the second son of Sangakudumban.

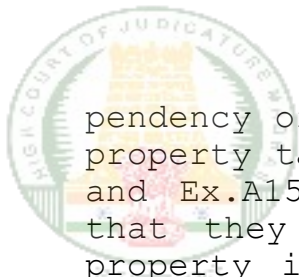


The learned counsel called upon this Court to answer the substantial questions of law in favour of the appellants and set aside the impugned judgment and decree and allow this appeal and dismiss the suit.

5. Per contra, the learned counsel appearing for the respondents submitted that the impugned judgment and decree do not call for any interference.

6. I carefully considered the rival contentions and went through the evidence on record. There is no dispute that Sangakudumban originally owned the suit property. I sustain the contention of the learned counsel appearing for the appellants that there is very little evidence adduced on either side to show that there was oral partition in the year 1962 and that the property in question was allotted in favour of either Veerappan or Perumal. Now the primary question that falls for consideration is whether by invoking Section 101 of the Indian Evidence Act, the plaintiffs should be non-suited. The learned counsel appearing for the respondents took me through the evidence of Ravisankar who was examined as D.W.1. Ravisankar had admitted that he was not born in the year 1962 when there was oral partition among three brothers. But then, he concedes that the oral partition took place in the year 1962. To this extent, there is consensus between the parties. The only question is whether the property was allotted to Veerappan or whether it was allotted to Perumal. It has been effectively brought out in evidence that Veerappan the elder son of Sangakudumban settled the suit property in favour of his son Veerasamy vide Ex.A3 dated 10.04.1987. The suit property measures 2 acres and 92 cents. It was sold in two parcels by Veerasamy in favour of one Ganapathy under two deeds of sale dated 28.10.1987 and 02.03.1988 (Ex.A4 & Ex.A5). In turn, the said Ganapathy sold the property to one Vijayalakshmi and Rajeswari vide sale deed dated 22.01.1992 (Ex.A6). Vijayalakshmi and Rajeswari thereafter sold the suit property in favour of the present plaintiffs Sanjeevi and Alagumathi under sale deed dated 01.09.1997 (Ex.A7). Ex.A8 is the order effecting mutation of the revenue record in favour of the plaintiffs. I went through the contents of Ex.A8. It clearly states that the patta (revenue entry) stood in the name of Vijayalakshmi and Rajeswari and that thereafter, it was being mutated in favour of the plaintiffs Sanjeevi and Alagumathi.

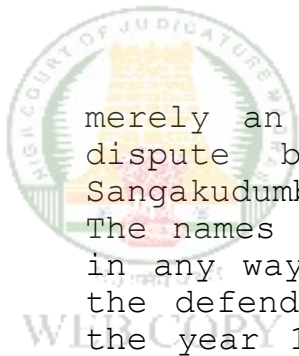
7. The present suit came to be filed on 28.07.2004. Ex.A9, Ex.A10 and Ex.A11 are the receipts for the kist remitted by the plaintiffs in respect of the suit property. Ex.A9 is dated 26.07.2004. It is virtually on the eve of filing of the suit. But, Ex.A11 is dated 23.03.2001. From this one can safely conclude that atleast 3 ½ years prior to the filing of the suit, the plaintiffs have paid the kist in respect of the suit property. The cause of action for filing the suit was issuance of the legal notice dated 25.04.2004 by the appellants herein (Ex.A12). During the



pendency of the suit also, the plaintiffs have been remitting the property tax in respect of the suit property as evidenced by Ex.A14 and Ex.A15. Thus, the plaintiffs have convincingly demonstrated that they are in possession of the suit property. The suit property is of-course a vacant site. Hence, the possession will of-course follow title in the absence of any other evidence. In this case, there is substantial evidence in the form of revenue records to show that the plaintiffs are in possession of the suit property.

8. On the other hand, the appellants have not filed even a scrap of evidence to show that they are in possession of the suit property. Therefore, the courts below were justified in granting the relief of permanent injunction in favour of the plaintiffs. Of-course, the relief of permanent injunction in this case was claimed as a consequential relief. Therefore, I will have to see if the courts below were justified in granting the relief of declaration also. Even though the defendants admitted that they are also the residents of the very same village, the first son of Sangakudumban namely Veerappan executed a deed of settlement in favour of his son as early as on 10.04.1987 (Ex.A3). Verasamy son of Veerappan sold the suit property to one Ganapathy in the year 1987 and 1988 in two parcels. Ganapathy in turn sold it to Vijayalakshmi and Rajeswari in the year 1992. Vijayalakshmi and Rajeswari in turn sold the suit property to the present plaintiffs in the year 1997. Thus, the property had changed multiple hands. The standard of proof applicable to a civil proceeding is only balance of probabilities. The standard of proof beyond reasonable doubt applies only in a case of criminal prosecution. The patta has also changed hands. When the suit was filed, it was standing in the name of the plaintiffs. Mutation in the revenue records had taken place in favour of the plaintiffs more than three years prior to the filing of the suit. Inferring from such facts, the courts below held that the plea that the property was allotted to Veerappan in the oral partition held in the year 1962 is more probable. The courts below have not taken advantage of any weakness on the side of the defendants. The plaintiffs by a positive evidence had proved their case. I therefore answer the second substantial question of law against the appellants. The plaintiffs have sought the relief of declaration and permanent injunction only against the appellants.

9. It is true that Sangakudumban had one another son by name Vellaisamy. Vellaisamy was not impleaded as defendant in the suit. It is admitted that Vellaisamy had settled in Germany. In any event, the plaintiffs did not seek for the relief of partition. Only in the case of partition, all the parties concerned will have to be impleaded. In the case of declaration and injunction, the relief is given only against the defendants who have been named. Therefore, the question of the suit being bad for non-joinder of necessary parties will not arise at all. I therefore answer the



merely an extract of the original revenue record. There is no dispute between the parties that the property belonged to Sangakudumban. Following his demise, it devolved on his three sons. The names of the three sons are reflected in Ex.B2. This does not in any way improve the case of the defendants. Even according to the defendants, there was partition among the three brothers in the year 1962. Ex.B2 has no role to play in deciding the issue between the parties. Therefore, the court below rightly ignored Ex.B2. The third substantial question of law is also answered against the appellants. No case has been made out for interference. The second appeal is dismissed. No cost.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

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Sub Assistant Registrar(CS)

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To

1.The Sub Judge, Sivakasi.

2.The District Munsif, Sattur.

Copy To

The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai. (2 COPIES)

+1 CC to M/s.V.SASIKUMAR, Advocate (SR-7193[F] dated 18/02/2022)

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18.02.2022

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