



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 22.02.2022

DELIVERED ON : 25.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

S.A(MD)No.133 of 2019

and

C.M.P(MD)No.3218 of 2019

1.Karuppaiah

2.Rajendran

... Appellants/
Appellants/
Defendants

Vs

Nagu

... Respondent/
Respondent/
Plaintiff

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code, against the judgment and decree passed, dated 10.07.2018 made in A.S.No.70 of 2014 on the file of the Sub Court, Sivagangai, Sivagangai District, confirming the judgment and decree passed, dated 23.06.2014 made in O.S.No.37 of 2012 on the file of the District Munsif Court, Sivagangai, Sivagangai District.

For Appellants : Mr.G.Gomathi Sankar

For Respondent : Mr.K.Mahendran

JUDGMENT

The defendants are the appellants herein.

2. The plaintiff filed O.S.No.37 of 2012, before the District Munsif Court, Sivagangai, Sivagangai District, for declaration of title and permanent injunction. The suit was decreed by the trial Court. The defendants filed A.S.No.70 of 2014 before the Sub Court, Sivagangai. The learned Subordinate Judge was pleased to dismiss the appeal. Hence, the present Second Appeal has been filed by the defendants.

3. The plaintiff has contended that the suit schedule property was purchased by the plaintiff on 21.05.1999 under Exhibit A1. Since the original has been deposited before the Bank, he has produced the SRO copy. According to the plaintiff, he has borrowed loan, based upon the said document. He further contended that there is a Well in the suit schedule property and the free electricity service



connection for the motor pumpset in the Well stands in the name of the plaintiff. According to the plaintiff, the defendants are his brothers. The plaintiff and the defendants have partitioned the joint family properties long back. The plaintiff is working in Sakthi Sugars and out of his self-earnings, he has purchased the suit schedule properties. The defendants do not have any right, title or possession over the suit schedule properties. However, they are attempting to disturb the possession of the plaintiff. Hence, the present suit for declaration of title and permanent injunction.

4. The defendants filed a written statement contending that though Exhibit A1 sale deed stands in the name of the plaintiff, both the defendants have contributed money for the purchase of the suit schedule properties. The defendants disputed the existence of Well in the suit schedule properties. The defendants further contended that the survey number of the suit schedule property is 165/2 and there is no Well in the said property. According to the defendants, to the South of suit schedule property, Survey No.165/3 is located, which is also owned by the plaintiff. There is a Well in Survey No.165/3 and the said Well is common to both the plaintiff and the defendants. The defendants admitted that there was an oral partition between the plaintiff and the defendants. But the defendants contended that it was agreed during the said oral partition that the plaint schedule property should be retained as a common property for all the three brothers. Hence, the defendant prayed for dismissal of the suit.

5. The trial Court found that the suit schedule properties stands in the name of plaintiff by way of a sale deed under Exhibit A1. The defendants have not produced any oral or documentary evidence to establish the fact that they have contributed for purchasing the property in the name of the plaintiff under Exhibit A1. The trial Court also found that the revenue records standing in the name of the plaintiff would establish that he is in possession of the suit schedule properties. The trial Court also found that as per the Commissioner's report under Exhibits C1 and C2, the Well, Motor room and electricity service connection are located only in the suit schedule properties. Based upon the said findings, the trial Court decreed the suit as prayed for.

6. The First Appellate Court through independent analysis and consideration of the oral and documentary evidence concurred with the findings of the trial Court. The First Appellate Court held that the plaintiff has established his title over the suit schedule properties. The First Appellate Court further held that the suit Well is located in suit Survey No.165/2B on the basis of Exhibits A10 to A13 Sagupadi Agangal receipts. The First Appellate Court further found that the defendants have not produced any evidence whatsoever to prove their pleading that, they have also contributed for the purchase of the property under Exhibit A1. Based upon the



concurrent findings, the defendants have filed the above Second Appeal.

7. The learned Counsel for the appellants contended that plaintiff has not proved his source of income for purchasing the property under Exhibit A1 by marking documents and letting in oral evidence. He further contended that the plaintiff has not proved the identity of the suit schedule properties. The learned Counsel for the appellants further contended that the Courts below have erroneously shifted the burden of proof on the defendants. The learned Counsel for the appellants further contended that when a property is purchased in the name of a co-owner, out of the funds from the joint family income, the said property should also be treated as a joint family property. In such circumstances, though the property is standing in the name of the plaintiff, it should be construed to be a joint family property and the decree for declaration of title ought not to have been granted by the Courts below.

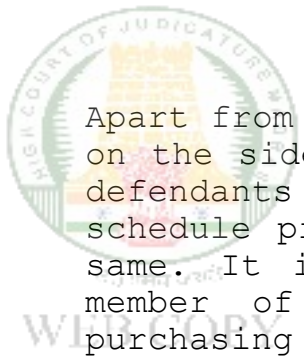
8. Per contra, the learned Counsel for the respondent contended that the plaintiff has specifically pleaded that he has purchased the suit schedule property under Exhibit A1 through his independent source of income by working in Sakthi Sugars. The said aspect has not been specifically disputed in the written statement. He further contended that though the defendants have pleaded that they have contributed money for the purchase of Exhibit A1 property, they have failed to produce any oral or documentary evidence to the said effect. He further contended that as per the Commissioner's report and plan, the Well, Motor pumpset and electricity service connection are located only in the suit schedule property and hence, the contention of the defendants that, it is located in a different survey number, is not correct. He further contended that the Courts below have arrived at a concurrent finding, that the plaintiff has established his title and possession over the suit schedule properties and the said findings may not be interfered under Section 100 of the Civil Procedure Code.

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

10. It is the specific case of the plaintiff that he has purchased the suit schedule properties under Exhibit A1. The plaintiff has further contended that he is employed in Sakthi Sugars and out of the said income, he has purchased the suit schedule property. On the other hand, the defendants have contended that the defendants have also contributed for the purchase of the suit schedule property and hence, it is not the exclusive property of the plaintiff.

11. On the side of the defendants they have produced Exhibits B1 to B3 which are settlement deeds said to have been executed by the defendants in favour of the first defendant and second defendant.

<https://hcdirectorsportal.in/fcservices/>



Apart from these three documents, no other documents have been filed on the side of the defendants. When it is the specific case of the defendants that, they have also contributed for purchasing the suit schedule property, the entire burden is upon them to establish the same. It is seen from the plaint, the plaintiff is the youngest member of the family and hence, there is no possibility of purchasing any property using joint family income in the name of the youngest member of the family, unless some special reasons are assigned by the defendants. In the present case, the defendants have not let in any oral or documentary evidence to convince the Court that the defendants have also contributed for purchasing the suit schedule property. Hence, this Court can safely come to a conclusion that the plaintiff has established his title over the suit schedule properties.

12. The plaintiff has produced Exhibits A2 to A6 revenue records to establish his possession over the suit schedule properties. The plaintiff has also produced Exhibits A10 to A13 adangal extracts to establish his possession over the suit schedule properties. On the other hand, the defendants have not produced any document at least, to prove joint possession over the suit schedule properties.

13. The defendants have further contended that there is no Well in the suit schedule properties as alleged by the plaintiff. In fact, a Well is located only in the adjacent survey number namely, 165/3. The plaintiff as well as the defendants are having equal right to draw water from the said Well. The Commissioner's report clearly indicates that the suit Well is located only in the suit schedule property. That apart, Sagupadi Adangals marked as Exhibits A10 to A13, on the side of the plaintiff will establish that suit Well, motor room and electricity service connection are located within the said survey numbers. Hence, the contention of the defendants that the suit schedule property does not consist of a Well is factually incorrect.

14. In view of the above said discussion, the Courts below have arrived at a concurrent finding, that the plaintiff has established his title and possession over the suit schedule properties. There is no question of law much less a substantial question of law that arises for consideration in the above Second Appeal. Therefore, the Second Appeal stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

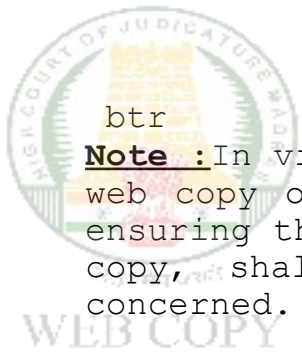
Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)



btr

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,
Sivagangai,
Sivagangai District.

2.The District Munsif,
Sivagangai,
Sivagangai District.

Copy to:

The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 COPIES)

+1 CC to M/s.G.GOMATHI SANKAR, Advocate (SR-8827[F] dated 25/02/2022)

+1 CC to M/s.K.MAHENDRAN, Advocate (SR-9082[F] dated 28/02/2022)

S.A(MD)No.133 of 2019

25.02.2022

_RD(10.03.2022) 5P 7C