



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 24.02.2022

DELIVERED ON : 01.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

S.A(MD)No.146 of 2019

and

C.M.P(MD)No.3446 of 2019

Rengammal

... Appellant/Appellant/
2nd Plaintiff

Vs

Muthulakshmi

... Respondent/ Respondent/
Defendant

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code 1908, against the judgment and decree, dated 20.06.2012 made in A.S.No.73 of 2010 on the file of the learned Sub-Court, Paramakudi, confirming the judgment and decree, dated 25.04.2007 made in O.S.No.39 of 1997 on the file of the learned District Munsif Court, Kamuthi.

For Appellant : Mr.M.S.Jeyakarthik
For Respondent : Mr.Y.Prakash

JUDGMENT

The second plaintiff is the appellant herein.

2. The plaintiff filed O.S.No.39 of 1997, before the District Munsif Court, Kamuthi, for declaration of title, recovery of possession and for mandatory injunction for removal of constructions in the suit schedule property. The plaintiff further prayed for a decree for permanent injunction not to put up any further construction. The suit was dismissed by the trial Court. The plaintiff filed A.S.No.73 of 2010, before the Sub Court, Paramakudi. The learned Subordinate Judge dismissed the appeal. As against the same, the present Second Appeal has been filed by the plaintiff.

3. The plaintiff had contended that the suit schedule properties were originally purchased by one Alagiya Sundharathammal under a registered sale deed, dated 01.08.1923 under Exhibit A1. After her death, the property devolved upon her only daughter namely, Rengammal. The said Rengammal had died intestate leaving behind her two sons namely, Sethuramu Pillai and Sakthivel Pillai. The said Sakthivel Pillai had died issueless. The plaintiffs are the



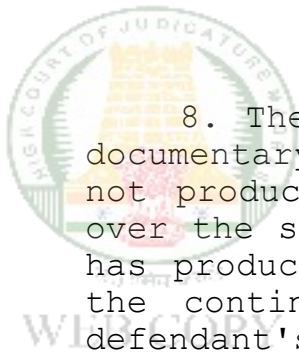
sons of Sethuramu Pillai.

4. According to the plaintiff, they have put up a house property in the said suit schedule property and they are residing in the said house. Five years prior to the filing of the suit, the plaintiffs have demolished the house and wanted to put up a new construction. The plaintiff has also fenced the suit schedule property on all the four sides. The plaintiffs were away from town due to family circumstances for the past six months. During the said period, the defendant has encroached upon the suit schedule property and they are constructing a house. Though the defendant has agreed in a Panchayat for purchasing the suit schedule properties from the plaintiffs, the defendant has not come forward to purchase the suit schedule properties. The defendant has also started to dispute the title of the plaintiff in the suit schedule properties. Hence, the present suit for declaration of title, recovery of possession and mandatory injunction.

5. The defendant filed a written statement admitting that Alagiya Sundharathammal is the original owner of suit schedule properties but she had mortgaged the suit schedule properties under a registered mortgage deed, dated 02.08.1923 under Exhibit B5 in favour of one, Nagalinga Mudhaliyar. The said mortgage is an usufructuary mortgage. Thereafter, neither Alagiya Sundharathammal nor her descendants have redeemed the said Othi. Hence, Nagalinga Mudhaliyar had become the owner of the suit schedule properties. He had executed a settlement deed in favour of his three daughters on 15.10.1942 under Exhibit B24. A partition took place among the three daughters of Nagalinga Mudhaliyar on 09.03.1945 under Exhibit B26. In the said partition, the suit schedule property was allotted to the share of Vellammal, who is one of the daughters of Nagalinga Mudhaliyar.

6. According to the defendant, the said Vellammal had executed a registered sale deed on 01.01.1951 under Exhibit B27 in favour of one, Muthuramalinga Thevar. The said Muthuramalinga Thevar had executed a registered sale deed on 09.01.1970 under Exhibit B2 in favour of one Ramalinga Thevar. The said Ramalinga Thevar had executed a registered sale deed on 31.05.1985 in favour of the defendant under Exhibit B3. From the date of purchase, the defendant is in possession and enjoyment of the suit schedule properties.

7. The defendant further contended that since the Othi was not redeemed by the ancestors of the plaintiff, the ancestors themselves have lost title to the suit schedule properties. Since an usufructuary mortgage was created under Exhibit B25, the possession was also lost by the ancestors of the plaintiff. Hence, the contention of the plaintiffs that they have inherited the suit schedule properties from Alagiya Sundharathammal is not legally sustainable. Hence, they prayed for dismissal of the suit.



8. The trial Court after careful consideration of the oral and documentary evidence, arrived at a finding that the plaintiffs have not produced any document to establish their title and possession over the suit schedule properties. On the other hand, the defendant has produced a sequence of documents which would clearly establish the continuation of the title and possession in favour of the defendant's predecessor in title. The defendants have also produced patta and tax receipts in the name of their predecessors in title. Based upon the said findings, the trial Court dismissed the suit.

9. The First Appellate Court also concurred with the findings of the trial Court and held that no revenue records have been produced on the side of the plaintiff in the name of anyone of the ancestors of the plaintiff. On the other hand, it has been proved by the defendant that Exhibit B25 Othi has not been redeemed by anyone of the ancestors of the plaintiff. The defendant has produced Exhibits B2, B3, B24 to B27 to establish their title over the suit schedule properties. The defendant has also produced Exhibits B4 to B20 tax receipts and B23 patta transfer order in favour of the defendants to establish their possession over the suit schedule properties. Based upon the said findings, the First Appellate Court dismissed the appeal. As against the concurrent findings, the present Second Appeal has been filed by the plaintiff.

10. The learned Counsel for the appellant contended that the defendant themselves have admitted that the plaintiff's ancestor namely, Alagiya Sundharathammal is the owner of the suit schedule properties. Based upon Exhibit A1 sale deed, dated 01.08.1923, the plaintiffs and their ancestors were alone in possession of the suit schedule properties. The defendant has suddenly encroached upon the suit schedule properties just six months prior to the filing of the suit. The defendant has no title or possession over the suit schedule properties and he started construction over the suit schedule properties without any right or title. He further contended that the Courts below were carried away by a series of documents filed on the side of the defendant which do not affect the right, title and possession of the plaintiff. He further contended that the plaintiff has been residing in the suit schedule property till five years prior to the filing of the suit. Since the building has become dilapidated, they have demolished the same and intended to put up a new construction. When they were away from the town, the defendant has encroached the suit schedule properties. The learned Counsel for the appellant further contended that they have produced Exhibits A2 and A3 property tax receipts relating to the suit schedule property to establish their possession over the suit schedule property. According to the learned Counsel for the appellant, the Courts below have not properly appreciated Exhibits A1 to A3 and proceeded to non-suit the plaintiff.

11. Per contra, the learned Counsel for the respondent contended that the plaintiff's ancestor Alagiya Sundharathammal had



created a registered Othi deed in favour of Nagalinga Mudhaliyar under Exhibit B25 on 02.08.1923. Thereafter, the said Othi was never redeemed by any of the descendants of Alagiya Sundharathammal. In view of the non-redemption of usufructuary mortgage, the said Alagiya Sundharathammal and her descendants have lost their title and right of possession over the suit schedule properties. Thereafter, the said Nagalinga Mudhaliyar had executed a registered settlement deed in favour of her daughters and after series of transactions, finally the defendant had purchased the property under Exhibit B3 on 31.05.1985. From then onwards, the defendant is in possession and enjoyment of the suit schedule properties. Hence, the contention of the appellant that they have encroached upon the suit schedule property just six months prior to the filing of the suit is just imaginary. The Courts below have arrived at a concurrent factual finding that the plaintiff has not proved his title and possession over the suit schedule properties. Hence, the said factual findings may not be disturbed by this Court under Section 100 of the Civil Procedure Code.

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

13. It is admitted by both the parties that originally suit schedule properties belonged to one Alagiya Sundharathammal by way of a registered sale deed, dated 01.08.1923 marked as Exhibit A1. The plaintiff in his pleadings has not referred to the usufructuary mortgage created by the said Alagiya Sundharathammal in favour of one Nagalinga Mudhaliyar under Exhibit B25, dated 02.08.1923. Since it is an usufructuary mortgage, the possession was also handed over to the said Nagalinga Mudhaliyar.

14. Neither Alagiya Sundharathammal nor her descendants have redeemed the said Othi at any point of time. The said Othi has become time barred and the mortgagee namely Nagalinga Mudhaliyar had become the absolute owner of the suit schedule properties. Thereafter, a series of settlement deeds and sale deeds have been executed under Exhibits B2, B24, B25 and B26. After the said transactions, finally the defendant has purchased the property under Exhibit B3 on 31.05.1985. Patta has also been transferred in the name of the defendant under Exhibit B23. Tax receipts, stand in the name of the defendant which are marked as Exhibits B4 to B20.

15. The plaintiffs are claiming title to the suit schedule properties, based upon their ancestors title under Exhibit A1. The said ancestor in title namely, Alagiya Sundharathammal had lost the title in view of non-redemption of the usufructuary mortgage created in favour of Nagalinga Mudhaliyar. The plaintiff is not able to produce any registered document or revenue records in their favour from the year 1923 till the date of filing of the suit. On the other hand, the defendant has produced series of documents from the year 1923 till 1985. The defendant has also produced revenue records to



16. In view of the above said discussion, the Courts below have arrived at a concurrent factual finding that the plaintiff has not established his title and possession over the suit schedule properties. This Court does not find any question of law much less a substantial question of law to interfere in this Second Appeal. Therefore, the Second Appeal stands dismissed at the admission stage itself. 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 Sub Court,
Paramakudi.

2.The District Munsif Court,
Kamuthi.

+1 CC to M/s.M.S.JEYAKARTHIK, Advocate (SR-9478[F] dated 02/03/2022)

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01.03.2022

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