



S.A(MD)No.299 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 22.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A(MD)No.299 of 2015

1.V.Lakshmi

2.V.Saravanakumar

3.V.Senthilkumar

... Appellants/Respondents/Plaintiffs

Vs.

1.Santhosh

2.Muthu Pillai

... Respondents 1 & 2/Appellants 1 & 2
/Defendants 1 & 2

3.Pownthai

4.Rajalakshmi

5.Pethammal

6.Muthumari

7.Sundaram Ammal

8.Prabhavathy (Died)

9.Shanmugapriya

10.Umarani

...Respondents

(8th respondent died and the respondents 9 and 10, who are already on record, are recorded as LRs of the deceased 8th respondent vide Court order dated 21.12.2022 made in C.M.P(MD)No.3900 of 2022 in S.A(MD)No.299 of 2015 by SSJ)



S.A(MD)No.299 of 2015

PRAYER :-

WEB COPY

This Second Appeal is filed under Section 100 of the Civil Procedure Code, against the judgment and decree, in A.S.No.47 of 2014, dated 25.11.2014 passed by the Principal Subordinate Judge, Dindigul, reversing the judgment and decree in O.S.No.17 of 2010, dated 05.06.2014 passed by the District Munsif Court, Nilakottai, Dindigul District.

For Appellants : Mr.R.Ganesan

For R1, R3 to R7, : Mr.M.Arjunvarman
R9 & R10 for Mr.T.Lajapathi Roy

JUDGMENT

The plaintiffs are the appellants. They have filed a suit for declaration and injunction. The suit was decreed by the trial Court. On appeal filed by the respondents, the First Appellate Court set aside the decree passed by the trial Court and dismissed the suit. Aggrieved by the same, the appellants are before this Court.

2.According to the appellants, the suit property originally belonged to one Alagammal. She had a son namely Velan and daughter namely Muthupillai. After death of Alagammal and her husband, Velan and Muthupillai enjoyed the suit property. On 21.04.2001, the said Velan died



S.A(MD)No.299 of 2015

leaving behind the appellants herein namely his wife and sons as legal representatives and they entitled to succeed the estate. Thereafter, there was a partition between the appellants and sister of Velan namely Muthupillai on 12.06.2007, where under the suit properties were allotted to the share of appellants. Thus, the appellants claimed right and possession over the suit property. It was further averred that the first respondent, who had no right over the property issued a notice making claim over the suit property and the same was suitably replied by the appellants. It was further averred that the respondents created some bogus documents so as to claim right over the suit property. It was also averred in the plaint that the respondents tried to interfere with peaceful possession of the appellants and hence, the appellants were constrained to file a suit for declaration and consequential relief of injunction.

3.The respondents herein filed a written statement stating that the suit property originally belonged to one Pethammal and she had four daughters namely Alagammal, Sundarammal, Lakshmiammal and Vedachi. According to the respondents, Pethammal settled the suit property in favour of Alagammal, Sundarammal, Lakshmiammal and her grand son Vaiyapuri



S.A(MD)No.299 of 2015

through her daughter Vedachi under a registered settlement deed, dated 21.11.1940 marked as Ex.B1. It was further claimed by the respondents that the legal heirs of Sundarammal, Lakshmiammal and Vaiyapurai sold their 3/4th share in the suit property in favour of the first respondent under sale deed, dated 16.03.2009. It was further pleaded that the other settlee Alagammal had son namely Velan and daughter namely Muthupillai. The father of the appellants 2 and 3 namely Velan had a first wife called Muthupillai and through her, he got a daughter by name Amuthavalli. The said Muthupillai and Amuthavalli sold 1/16th share in the suit property in favour of the first respondent under sale deed, dated 02.07.2009. Thus the respondents claimed that the first respondent had got 13/16th share in the suit property and he had been in possession and enjoyment of the same as the absolute owner. It was also pleaded that as a power agent of 13/16th share in the suit property, he sold the same to one Baghiyaraj under sale deed, dated 06.07.2009 and the suit is bad for non-joinder of said Baghiyaraj. It was also pleaded that Alagammal being the eldest daughter of original owner Pethammal, the patta for the suit property had been obtained in the name of Alagammal. But however, the property had been in possession and enjoyment of all the settlees under Ex.B1. Therefore, denying the exclusive title of the



S.A(MD)No.299 of 2015

appellants over the suit property, the respondents sought for dismissal of the suit.

4.The trial Court came to the conclusion based on the revenue records in the name of Alagammal that the plaintiffs proved the case and granted a decree for declaration and injunction. Aggrieved by the same, the respondents herein filed an appeal suit in A.S.No.47 of 2014 on the file of the Principal Sub Court, Dindigul. The First Appellate Court based on earliest documents namely, Ex.B1 came to the conclusion that the suit property originally belonged to Pethammal and it was settled in favour of Alagammal and three others and therefore, the appellants/plaintiffs failed to prove their exclusive title over the suit property and consequently, reversed the findings of the trial Court and dismissed the suit. Aggrieved by the same, the appellants are before this Court.

5.The learned counsel for the appellants assailing the judgment passed by the First Appellate Court submitted that Ex.B1 – Settlement Deed was not acted upon and in view of the fact that the revenue document namely patta stands in the name of Alagammal, the findings rendered by the First Appellate



S.A(MD)No.299 of 2015

Court, as if, the appellants failed to prove exclusive title and possession over the suit property is liable to be set aside. The learned counsel also submitted that there is no evidence available on record to show Ex.B1 – Settlement Deed executed by Pethammal was relating to the suit property and hence, the First Appellate Court ought not to have given weightage to Ex.B1 and non suited the appellants.

6.The appellants herein claimed that the suit property originally belonged to Alagammal and in order to prove the same, the patta stands in the name of Alagammal was marked as Ex.B1. However, the appellants have not pleaded that how Alagammal got the property. On the contrary, the respondents in the written statement pleaded that property originally belonged to Alagammal's mother Pethammal and she settled the suit property to Alagammal and three others under Ex.B1 and hence, the exclusive title as claimed by the appellants cannot be entertained. Ex.B1, is the earliest document produced by the parties. It is a registered document, whereunder, Pethammal settled her property in favour of her daughters Alagammal, Sundarammal, Lakshmiammal and her grand son Vaiyapuri. In the description of property under Ex.B1, the survey number of the property dealt with under



S.A(MD)No.299 of 2015

the document was mentioned as 1279/3. However, the present suit has been filed in respect of S.No.1279/4. The Settlement Register in respect of suit property is marked as Ex.B2, wherein, it is clearly mentioned that the old S.No.1279/3 was subsequently assigned with new S.No.1279/4. Therefore, the respondents succeeded in proving that Ex.B1 is relating to the suit property. Even as found in Ex.B1, Alagammal is the eldest daughter of Pethammal and hence, merely because revenue documents stands in the name of Alagammal, it cannot be said the entire property belongs to her exclusively. The explanation offered by the respondents that being a eldest settlee under Ex.B1, the patta was taken in the name of Alagammal is more probable. Further, the respondents marked Ex.B6 to show that Muthupillai, namely, first wife of Velan and his daughter through his first wife namely Amuthavalli executed a sale deed in respect of their 1/16th share in the suit property in favour of the first respondent. Though the appellants denied the status of Muthupillai and Amuthavalli, the Service Register of father of appellants 2 and 3 namely Velan, which was marked as Ex.B12, make it clear that there was an entry in Service Register that Amuthavalli was his daughter. Therefore, the appellants/plaintiffs are not entitled to seek declaration of exclusive title without impleading the said Amuthavalli as party in this suit.



S.A(MD)No.299 of 2015

7. In view of the discussions made earlier the findings of the First Appellate Court that the appellants failed to prove their exclusive title over the suit property is found to be correct and there is no substantial question of law involved in this Second Appeal.

8. In fine,

(a) the Second Appeal stands dismissed and the judgment and decree passed by the learned Principal Subordinate Judge, Dindigul, dated 25.11.2014 made in A.S.No.47 of 2014 stands confirmed;

(b) in the facts and circumstances of the case, there would be no order as to costs.

22.02.2023

NCC : Yes/No
Index : Yes / No
vsd

To

- 1.The Principal Subordinate Judge,
Dindigul.
- 2.The District Munsif Court,
Nilakottai, Dindigul District.
- 3.The Record Keeper,
Vernacular Records,
Madurai Bench of Madras High Court, Madurai.

8/9



WEB COPY



S.A(MD)No.299 of 2015

S.SOUNTHAR, J.

vsd

S.A(MD)No.299 of 2015

22.02.2023