



S.A.No.1257 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.02.2024

CORAM:

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

S.A.No.1257 of 2013 &

M.P.No.1 of 2013

Jothi @ Arul Jothi

... Appellant

Vs.

1.Sankar

2.Kavitha

3.Santhammal

... Respondents

PRAYER: Second Appeal filed under Section 100 of Code of Civil Procedure against the Judgment and Decree passed by the learned Subordinate Judge, Vanniyampadi, Vellore District in A.S.No.28 of 2012 dated 16.07.2013 by confirming the Judgment and Decree passed by the learned Principal District Munsif Court, Ambur Vellore District in O.S.No.37 of 2010 dated 05.11.2012.

For Appellant

: Ms.G.Arul Selvi



S.A.No.1257 of 2013

For Respondents : No appearance

WEB COPY

JUDGMENT

The present Second Appeal arises against the judgment and decree of the court of Subordinate Judge, Vanniyampadi at Vellore in A.S.No.28 of 2012, dated 16.07.2013 in confirming the judgment and decree of the Court of the District Munsif, Ambur at Vellore in O.S.No.37 of 2010, dated 05.11.2012.

2. O.S.No.37 of 2010 is a suit which had been presented for declaration of title and for injunction.

3. For the sake of convenience, the parties shall be referred to as their ranks in the suit.

4. The case of the plaintiff is that the property fell to the share of



S.A.No.1257 of 2013

WEB COPY

his father Sambantha Mudaliar by virtue of a partition deed entered into between Sambantha Mudaliar and his brothers on 25.07.1971. Sambantha Mudaliar had four sons namely Govindan, Gopal, Jothi @ Aruljothi (plaintiff) and Sathyamoorthy. The plaintiff is the third son/Jothi @ Aruljothi and the defendants are son, daughter-in-law and wife of his brother/Govindan.

5. The plaintiff had pleaded that Govindan left the joint family in and around the year 1979 and to that effect, after a receipt of Rs.200/-, he executed a registered release deed. In 2003, the remaining three brothers entered into a partition deed. As per the partition deed, A schedule property was allotted to Gopal and B schedule property was allotted to the plaintiff. Though the legal heirs of Govindan did not have the right in and over the property, they attempted to trespass into the same and interfered with the rights of the plaintiff. Hence, the suit.



S.A.No.1257 of 2013

WEB COPY

6. The defendants in their written statement pleaded that the second item of the B schedule property which the plaintiff claims, was allotted to their father Govindan by virtue of an oral partition between the brothers. They claimed to be in possession of the property for over 41 years and denied that Govindan had executed any release deed in favour of his brothers. Curiously enough, they also took a defence that Govindan, being a drunkard, could have executed the document being induced under a false pretext. Therefore, the defendants sought for dismissal of the suit.

7. On the basis of these pleadings, the trial court framed the following issues:

“ 1. Whether the plaintiff are entitled for the relief of declaration of title ?

2. Whether the plaintiff are entitled for decree of permanent injunction ?

3. Whether any oral partition had been made between the parties ?



S.A.No.1257 of 2013

WEB COPY

4. *Whether the release deed executing in the suit by is valid and genuine and binding ?*

5. *To what other relief the plaintiff are entitle to ? ”*

8. On the side of the plaintiff, he examined himself as P.W.1 and marked five documents. The relevant documents being Ex.A1 and Ex.A4 which are the partition deed entered between the brothers on 07.11.2003 and the release deed executed by Govindan on 23.05.1979.

9. The learned trial judge came to the conclusion that the plaintiff had proved his title over both the items of the property. He further held that the plea of oral partition had not been proved and therefore, rejected the contention of the defendants. On the ground that the plaintiff has failed to prove the cause of action in the suit and also to the fact that he had not proved his possession over the vacant land, the learned trial judge finally dismissed the suit insofar as both the items 1 and 2 of B schedule attached to the partition deed.



S.A.No.1257 of 2013

WEB COPY

10. Aggrieved by the same, a regular appeal was filed before the learned Subordinate Judge at Vaniyambadi. Learned Subordinate Judge took a view that as the daughters of Sambantha Mudaliar namely Vasantha and Vaijeyanthi had not been made as parties to the partition deed, the plaintiff cannot claim exclusive right over the same and thereby, confirmed the decree, against which the present second appeal has been preferred.

11. On 02.11.2013, the second appeal was admitted on the following substantial questions of law:

“1. Whether the appellate Court justified in setting aside the finding in judgment of the trial Court when none of legal heirs had not challenged/disputed the said partition deed in Ex.A1 document No.2939 of 2003, dated 07.11.2003 ?

2. Whether the appellate Court has justified while rejecting the findings of the trial Court regarding release deed Ex.A4 in Doc.No.882 of 1979, dated



WEB COPY



S.A.No.1257 of 2013

23.05.1979 executed by 1st and 2nd respondent father and 3rd respondent husband S.Govindan in favour Plaintiff/Appellant and others legal heirs when the same was not disproved by the respondents before the trial Court ?

3. Whether the appellant/plaintiff entitled for injunction on the basis of title deed (i.e.) partition deed Ex.A1 and revenue records (i.e.) Ex.A2 and A4 reflects the appellant's possession of the suit properties (i.e.) deemed to have been vested absolutely and the same was held by the Supreme Court of India in (2013) 4 SCC 280; State of Uttar Pradesh Vs. Hari Ram and also both the Court failed to consider rule of "Possession follows title"? "

12. I heard Ms.G.Arulselvi, learned counsel on 16.02.2024. I adjourned the matter to today, so as to enable the counsel for the respondents to make his submission. Ms.G.Arulselvi confirms that she informed the learned counsel for the respondents and he has not been present in court



S.A.No.1257 of 2013

today also.

WEB COPY

13. I have gone through the judgments of the trial court and the lower appellate court and to the records in the suit.

14. It is clear that Sambantha Mudaliar and his four sons were enjoying the property in common. Govindan his first son, on receipt of Rs.200 had executed a release deed as early as on 23.05.1979. On execution of the release deed, Govindan loses his right over the property and the property was enjoyed by the other three brothers viz., Gopal, Jothi and Sathiyamoorthy. These three brothers amongst themselves have executed a partition deed under Ex.A1 dated 07.11.2003. By this document, the property fell to the share of the plaintiff.

15. In order to substantiate that there was an oral partition, after the execution of the release deed by Govindan/the eldest brother, Gopal was



S.A.No.1257 of 2013

WEB COPY

examined as DW2. The trial court which had the benefit of looking at DW2 has disbelieved his evidence and has concluded that there was no oral partition and on the contrary, it has come to the conclusion that the property fell to the share of Jothi@Aruljothi/the plaintiff. Unfortunately, the suit was dismissed on the ground that there was no cause of action for the suit.

16. The cause of action is not dependent on a stray sentence in a paragraph, but the entire plaint has to be read in order to discern the same.

17. A careful reading of the plaint shows that there are two items of property, which fell to the share of Jothi @ Aruljothi. Insofar as the first item is concerned, there is no dispute on either side, but the entire dispute is only relating to the second item of the property. Therefore, the court below, having come to the conclusion that the plaintiff has proved his title to the property, ought to have granted a decree for title.



S.A.No.1257 of 2013

WEB COPY

18. The position of law insofar as the vacant lands are concerned, is settled that once a party proves that he is the owner of the property, insofar as such lands are concerned, possession follows the title. Therefore, the learned Trial Judge erred in dismissing the suit, after having come to the conclusion that the plaintiff proved his title to the property.

19. A meaningful reading of the plaint as set forth above shows that the legal heirs of the separated brother attempted to interfere with the possession of the plaintiff and hence, he was constrained to move the suit.

20. The written statement also shows that insofar as the second item of the property is concerned, the plaintiff's right over the same was denied and the defendants claimed to be in possession of the property. That itself is a cause of action for the court to decide.

21. Unfortunately, having come to the conclusion that the plaintiff is the owner, the trial court dismissed the suit. Instead of rectifying the mistake, in appeal, the lower appellate court took a new plea that since the daughters of the deceased Sambantha Mudaliar were not made parties to the



S.A.No.1257 of 2013

partition deed, the document does not confer title on the plaintiff.

WEB COPY

22. This is a *sympliciter* suit for declaration of title which operates *in personam*. Neither Vaijeyanthi nor Vasantha have come before the court to plead that the document is invalid. It is the son, wife and the daughter-in-law of the deceased Govindan, the separated brother, who have interfered with the possession of the plaintiff. In such a proceeding, the presence of Vaijeyanthi or Vasantha are totally irrelevant.

23. I am satisfied that the plaintiff has title to the property by virtue of Ex.A1 and Ex.A4. Since possession follows title, the court below ought to have decreed the suit. They have not applied their minds to the two documents, which render the judgments perverse. Consequently, the substantial questions of law are answered in favour of the appellant.

24. The judgment and decree of the court of Subordinate Judge, Vaniyambadi at Vellore in A.S.No.28 of 2012 dated 16.07.2013 in confirming the judgment and decree of the learned District Munsif, Ambur at Vellore in O.S.No.37 of 2010 dated 05.11.2012 are set aside. The suit in



S.A.No.1257 of 2013

O.S.No.37 of 2010 shall stand decreed as prayed for.

WEB COPY

25. In fine, Second appeal is allowed. Costs throughout.

Consequently, connected miscellaneous petition is closed.

19.02.2024

nl

Index : Yes/No

Speaking order/Non-speaking order

Neutral Citation : Yes/No

To

1.The Subordinate Judge, Vanniyampadi, Vellore District

2.The Principal District Munsif Court, Ambur Vellore District



WEB COPY



S.A.No.1257 of 2013

V.LAKSHMINARAYANAN, J.

nl

S.A.No.1257 of 2013



WEB COPY



S.A.No.1257 of 2013

19.02.2024