



Reserved on :	04.03.2024
Pronounced on :	30.04.2024

C.M.P. No.27439 of 2023
in
A.S.No. 784 of 2023
RMT.TEEKAA RAMAN, J.,

The unsuccessful plaintiffs are the Appellants herein. For the sake of convenience, the parties are referred as per their litigative status before the Trial Court.

2. The plaintiffs/Appellants filed a suit in O.S.No. 304 of 2019 seeking for declaration of title and for permanent injunction in respect of 'B' schedule property against the first, second and third respondents from interfering with the peaceful possession and enjoyment of the suit property.

3. The plaint proceeds on the basis that after purchase from various persons, the schedule property came to the hands of one Venkatachalam who had two wives by name Kamatchi and Asalambal.

4. Due to the debtors problems of his father in law Nataraja Padayachi, sold the property to and in favour of the son of law Venkatachalam (Husband of Kamatchi) through sale deed dated 17.01.1944 thereafter the father in law Nataraja Padayachi is not having any property. In order to give some property out of respect for the father in law, the son in law Venkatachalam had executed gift deed in the nature of settlement deed dated 18.09.1952 and thereafter taking



note of the kind gesture of the son in law Venkatachalam shown to the father in law Nataraja Padayachi, the said Nataraja Padayachi alleged to have executed a Will on 21.03.1959 and he died on 1964 and his wife Muthukannu died in the year 1994.

5. The plaint further proceeds that pursuant to the Ex.A5 Will, Venkatachalam was administering the property on his own strength. The Venkatachalam through his another wife Asalambal had one daughter and seven sons who are the plaintiffs in the suit in O.S.No.304 of 2019. The Venkatachalam died on 21.09.1988 and thereafter the plaintiffs are enjoying the property on their own. Since the defendants herein trying to interfere with the property during the September 2019, the present suit has been filed.

6(a). The defendants have filed the written statement tracing of the title in respect of the property up to the hands of the sale of the property by Nataraja Padayachi on 17.01.1944 in favour of his son in law Venkatachalam are admitted.

6(b). In respect of the settlement deed dated 18.09.1952 by son in law Venkatachalam to father in law Nataraja Padayachi, the defendants had projected the case that it is a pre-arrangement between the son in law and father in law to avoid debtors. Accordingly to the defendants, the item Nos. 5 and 6 in the suit property are the exclusive properties of the Muthukannu. After the death of Muthukannu, the defendants being legal heirs of the one of the daughters of Muthukannu. Vaiyapuri (husband of Kalyani) is entitled to the property and they claims to be the possession of the property.



7. For sake of convenience for better understanding of relationship between the parties, the Nataraja Padayachi and Muthukannu had two daughters by name Kalyani and Kamatchi. The Kalyani's legal heirs are the defendants. Kamatchi died without issues, she was married to Venkatachalam, the said Venkatachalam also married the cousin sister of said Kamatchi (Daughter of Pachamuthu Padayachi and Sampooranam). The Pachamuthu Padayachi is the elder brother of Nataraja Padayachi. The relationship between the parties are not in dispute.

8(a). In the trial, the seventh plaintiff examined himself as P.W.1 and marked Ex.A1 to A21. The second defendant examined as D.W.1 and marked Ex.B1 to B15. The Ex.A5 is a unregistered will dated 21.03.1959, whereby it is alleged that the properties that are donated by son in law Venkatachalam to the father in law Nataraja Padayachi.

8(b). During the Trial, the Trial Court has observed that the attestors were served with notice of appearance and reported as died. Then in connection with the Ex.A5 none has been examined and hence the Trial Court has disbelieved the evidence and held that Ex.A5 Will has not proved in the manner known to law.

8(c). Further entertained suspicion that when the Nataraja Padayachi has another daughter Kalyani and their sons, for unknown reasons, the branches of Kalyani has been given a go by and no share has been given to the said branch of Kalyani and entire property was given to Venkatachalam (who is the son in



law of the Nataraja Padayachi) and on this two ground, the learned District Judge

has dismissed the suit and hence the appeal.

9. The appeal is admitted in Civil Miscellaneous Petition has been moved by the plaintiffs for injunction.

10. Heard both sides and also perused the typeset of papers.

11. Both the learned counsel would stated that their parties are in possession of the property. Much reliance has been placed on the Ex.A8 and Ex.A9 by the Plaintiffs and by the Defendants/Respondents Ex.B10 and Ex.B11 and to the typeset of papers the documents are also being filed.

12. Tracing of the title up to the point of Nataraja Padayachi in respect of item Nos. 1 to 4, 7 and 8 are not in dispute. With regard to the item Nos. 5 and 6, the learned District Judge has rendered findings that the item No. 5 and 6 belongs to Muthukannu (Wife of Nataraja Padayachi) and hence the same cannot be included as a property covered under the Will. Admittedly in the said Will, no schedule of property was given and recital in the said Will is to the effect that all the properties are owned by said Nataraja Padayachi.

13. On perusal of the written statement, I find that the defendants had admitted all the original documents in connection with the suit properties or with the plaintiffs who are the legal heirs of the said Venkatachalam and they assigned various reasons. Even as per the written statement, the defendants have admitted

Nataraja Padayachi father in law sold some more properties to the



Venkatachalam son in law and also admitted the execution of the gift deed by the son in law Venkatachalam in favour of the father in law Nataraja Padayachi on 18.09.1952. The admitted factual position is that the son in law has gifted the property to the father in law in the year 1952. All those properties are purchased by the said son in law from the father in law for valuable consideration on 17.01.1944 and hence the counter arguments raised by the defendants that it is the sham and nominal cannot be countenanced. Since both are registered documents of the year 1952 and 1944 and are ancient documents.

14(a). The settlement deed executed by the son in law Venkatachalam is admitted and hence the schedule of property which is executed by the Nataraja Padayachi are nothing but the property gifted by the son in law to the father in law. This vital factor appears to have been overlooked by the Trial Court. Rather entertained the suspicion that the father in law Nataraja Padayachi has chosen to give the property to the son in law but not to the branch of the another daughter.

14(b). It is to be noted that when the beneficiaries under the Will namely Venkatachalam is none other than the donor of the very same property. In view of the admitted settlement deed dated 18.09.1952 such a suspicion entertained by the Trial Court is unreasonable. Based upon the evidence due to the debtors problem the father in law Nataraja Padayachi sold the property for valuable consideration to the son in law Venkatachalam and in turn he had settled the property in the year 1952.

14(c). Hence the reasoning observed by the learned District Judge for



entertaining the doubt that one Branch namely Kalyani Branch was not considered for giving the property is appears to be unreasonable.

14(d). Yet another point is that by instrument of Will it is for the testator to give the property to any one and by its very nature it is likely to deviate normal line on Succession. Mainly because the Will has given different line of Succession. The same cannot be a reason to disbelieve the Will. On this point, whether, merely because the Will has deviated the line of normal line of law Succession, amounts to suspicion, is no longer res integra. The Apex Court already answered in negation.

15. The appeal suit is continuation of the Trial, it is always open to the plaintiffs to lead Additional evidence, if they, so, be advised in connection with the Ex.A5 Will.

16. Now coming to the point of possession, after perusing the Ex.A8 and Ex.A9 which is issued in the year 1984, the patta in Patta No. 281 and receipts was issued in the name of Venkatachalam viz., the father of the plaintiffs herein and in respect of the Item No. 5 and 6, the joint patta was given in the name of Muthukannu Wife of Nataraja Padaiyachi. Admittedly the Muthukannu died only in the year 1994, in the patta, lands in Survey No. 129/6 and 144/8 were shown and stands covered.

17. However, in respect of alleged possessions, the defendants have filed documents Ex.B5, B6, B7 and B8. On perusal of these documents, I find that they are all came into existence in and around last week of August 2019 where



the present suit was filed on 31.10.2019.

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18. In other words, the said Nataraja Padayachi was died in the year 1964 and Muthukannu died in the year 1994. For more than 27 years, the defendants have not dealt with the property has could be seen from Ex.B5 to B11. On the contrary, the appellants/plaintiffs have filed Ex.A8 and A9 to show that patta in patta No. 281 was issued in favour of his father Venkatachalam as early as on 21.09.1984 and they are in possession and also filed a documents of receipts and hence taking into consideration of Ex.A8 and A9 are after the death of the Nataraja Padayachi and before the death of the Muthukannu was in favour of the plaintiffs/Appellants case. The respondents/defendants have filed settlement deed and internal partition deed only during the month of August 2019. Within two months of time, the suit has been filed assumes significance.

19. As a sequel, I find that the plaintiffs have made out a *Prima Facie* as to the possession of the property as their father Venkatachalam was in possession of the property by obtaining patta in patta No. 281 as early as on 21.09.1984 as could be seen from Ex.A8 to A9 and and hence I find that the balance of convenience is in favour of the plaintiffs/ Appellants in respect of the possession of the property.

20. In this result, the learned District Trial Judge, based upon the Ex.B2, B3 and B4 shown that Item Nos. 5 and 6 is the suit property are the properties of Muthukannu who was alive on the date of the death of the Nataraja Padayachi and therefore, I am not inclined to grant any injunction order in respect of Item



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Nos. 5 and 6 namely 129/6 and 144/8 in Kaaraiyur Village, Thittakudi Taluk and
in respect of Item Nos. 1 to 4 and 7 to 8, there shall be order of injunction as
prayed for.

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