

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 27-02-2008

CORAM

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

Second Appeal No.1556 of 1996

1.Ramaswamy Pillai (deceased)

2.Mangai Ammal

3.Murugesan

(Appellants 2 & 3 are brought on records as LRS of the deceased sole Appellant vide order of Court dt.27/7/2007 made in CMP.No.18754/99 in S.A.No.1556/96)

.. Appellants/Plaintiff

1.Sowbhagyammal

2.Jayaraman

3.Kannan

4.Paunambu Ammal

.. Respondents/Defendants

PRAYER: Appeal against the judgment and decree of the Additional District Judge, Villupuram in A.S.No.151 of 1994, dated 30.04.1996, reversing the judgment and decree of the Court of the District Munsif, Thirukoilur, dated 28.02.1994, made in O.S.No.759 of 1986.

For Appellants : Mr.V.Raghavachari

For Respondents : Mr.A.Thiyagarajan Senior Counsel for
Mr.S.V.Vijaya Prasanth

WEB COPY JUDGEMENT

This second appeal has been filed against the judgment and decree of the Additional District Judge, Villupuram, dated 30.04.1996, made in A.S.No.151 of 1994, reversing the judgment and decree of the District Munsif, Thirukoilur, dated 28.02.1994, made in O.S.No.759 of 1986.

2. The plaintiff in the suit in O.S.No.759 of 1986 is the appellant in the present second appeal. The suit had been filed by the plaintiff for the relief of declaration and for permanent injunction against the defendants who are the respondents in the present second appeal.

3. The brief facts of the case, as stated in the plaint, are as follows:

Originally, the suit property belonged to Valambu Ammal, W/o. Manicka Chettiar of Aasanur village. The said Valambu Ammal had sold the suit property to Maniappillai, the father of the plaintiff, on 27.11.1954, for a consideration of Rs.100/-. Thereafter, Maniappillai has been in enjoyment of the suit property till his death, in the year 1970. The plaintiff is the only son of Maniappillai. Item No.1 of the suit property has been registered as a joint patta, in Patta No.135, in the name of the father of the plaintiff and Item No.2 of the suit property has been registered in the name of the father of the plaintiff separately in Patta No.151. After the death of the father of the plaintiff, the first item of the suit property has been registered in the joint patta in the name of the plaintiff in Patta No.955. The second item of the suit property has been registered separately in the name of the plaintiff in Patta No.612. The father of the plaintiff, and after his death, the plaintiff has been paying the kist with regard to the suit property and at the time of the filing of the suit, the plaintiff is in enjoyment of the suit property. Since the plaintiff has been in enjoyment of the suit property for more than 30 years, he has got the title by adverse possession.

4. The 5th defendant is the sister of Valambu Ammal, who had sold the suit properties to the father of the plaintiff. The details of the said sale is known to the first and the fifth defendant. The 5th defendant does not have any right in the suit property. The 5th defendant had purchased 0.02 cent in the first item of the suit property and 0.01 cent in the second item of the suit property from the first defendant, on 26.02.1982. The said sale is neither true nor valid. According to the said sale, the first defendant and his wife, who is the second defendant and their sons, who are the third and the fourth defendants in the suit, had attempted to illegally encroach on the suit property. The plaintiff had prevented them from doing so. Therefore, the plaintiff has preferred the suit praying for the relief of declaration and for a permanent injunction, restraining the respondents and their men from in any way interfering with the peaceful possession and enjoyment of the suit properties by the plaintiff.

5. In the written statement filed by the third defendant and adopted by the defendants 2 and 4, the claims made by the plaintiff have been denied. It has been stated that the suit properties had not belonged to Valambu Ammal, exclusively. The sale deed, dated 27.11.1954, executed in favour of the plaintiff's father is not valid in law. The plaintiff has not been in enjoyment of the suit properties after the death of his father. The plaintiff has been employed in the Corporation at Delhi even before the death of his father. The suit properties had belonged to one Iyyasamy the father of the 5th defendant and he has been in enjoyment of the suit

properties and he had died nearly 30 years back. The 5th defendant and Valambu Ammal are his daughters. In order to defeat the rights of the 5th defendant in the suit properties Valambu Ammal had executed the sale deed in favour of the plaintiff. On 01.08.1962, one Vembu Ammal, Valambu Ammal and the 5th defendant had partitioned the suit properties along with the other properties. Accordingly, 0.02 cent in the first item of the suit property had been allotted to the 5th defendant. The first defendant who is the father of the 3rd defendant had purchased the said properties, on 22.06.1982, for a sum of Rs.976/-. Since then the father of the 3rd defendant and the third defendant have been in enjoyment of the properties and they have been paying the kist for the properties. Since the third defendant's father and his ancestors had been in the enjoyment of the suit properties for the past 24 years, they have got title over the properties by adverse possession. The allegation that the defendants had encroached upon the suit properties, on 14.9.1986, had been denied. The third defendant's father had been in enjoyment of the suit trees forming the fence in the 0.33 cent of the property purchased by him. The suit property is not in the possession and enjoyment of the plaintiff. Therefore, the suit filed by the plaintiff is to be dismissed with costs.

6. Based on the pleadings, the trial Court had framed the following issues for consideration:

- "1) Whether the sale deed, dated 27.11.1954, executed by Valambu Ammal in favour of the father of the plaintiff is true and valid.
- 2) Whether the plaintiff has title to the suit properties by adverse possession?
- 3) Whether the sale deed, dated 26.02.1982, in respect of 0.02 cent of the 1st item of the suit property and the 2nd item of the property, executed by the 5th defendant in favour of the first defendant is true and valid?
- 4) Whether the 5th defendant has been allotted 0.01 cent in the first item of the suit property and 0.02 cent in the second item of the suit property by the partition, dated 01.08.1962?
- 5) Whether the plaintiff is entitled to the relief of declaration and permanent injunction in the suit?
- 6) To what other relief, the plaintiff is entitled to?"

7. Based on the evidence adduced, the trial Court had found that Valambu Ammal had sold some properties to the father of the plaintiff, on 27.11.1954. The said properties had belonged to Iyyasamy, the father of Valambu Ammal. Ponnusamy Chettiar, Valambu Ammal and Paunambu Ammal were the legal heirs of Iyyasamy. Ponnusamy Chettiar had died prior to the death of Iyyasamy and before the partition of the property. At that time, Vembu Ammal, W/o. Ponnusamy Chettiar, was alive. Therefore, Valambu Ammal, Paunambu Ammal and Vembu Ammal were the legal heirs, who were entitled to the suit

property. While so, it has been stated by Valambu Ammal that she alone had sold the said properties. The said properties had not been partitioned, on 27.11.1954, when it had been sold. Since, her father was unwell she had taken consent from her sisters and her mother before selling the properties. When the other legal heirs were alive one of them alone cannot have the right to sell the property. In such circumstances, even though the sale deed, dated 27.11.1954 is true, it cannot be held to be valid in law. The trial Court had also held that the plaintiff cannot claim title by adverse possession, since the chitta and adangal are in the name of both the plaintiff as well as the defendants.

8. With regard to the third issue, the trial Court had held that the 5th defendant, Paunambu Ammal, had sold the properties to the first defendant Rengaswamy Reddiar, on 26.02.1982. The said properties had been sold for a consideration of Rs.976/-. The sale includes 0.02 cent in the first item as well as the second item. The sale is true and it includes not only the properties belonging to her but also the other properties. With regard to the 4th issue it was found that Paunambu Ammal, Valambu Ammal and Ponnusamy Chettiar are the legal heirs of Iyyasamy. After the death of Ponnusamy Chettiar, his wife Vembu Ammal, Paunambu Ammal and Valambu Ammal had partitioned the properties, on 01.08.1962. Accordingly, 0.02 cent of the first item and 0.01 cent of the second item of the suit property alone were allotted to the 5th defendant as her share. With regard to Issue No.5, it was held that the plaintiff Ramasamy is the son of Maniappillai. The chitta and adangal are in the name of the plaintiff and the first defendant. Therefore, the properties have been in enjoyment of both the plaintiff and the defendants. Since the plaintiff is entitled to the suit property, the trial Court had granted the relief of declaration and title and permanent injunction in favour of the plaintiff, restraining the respondents from interfering with the possession and enjoyment of the suit properties by the plaintiff.

9. Aggrieved by the said judgment and decree of the trial Court, dated 28.02.1994, made in O.S.No.759 of 1986, the defendants had filed an appeal in A.S.No.151 of 1994, before the Additional District Judge, Villupuram.

10. Based on the contentions raised, on behalf of the plaintiff, as well as the defendants and the records available, the First Appellate Court had framed the following points for consideration:

"1. Whether Maniappillai, the father of the plaintiff had purchased the first and second items of the suit properties from Valambu Ammal, sister of the 5th defendant, by a sale deed, dated 27.11.1954?

2. Whether the first defendant had purchased the first and second items of the properties from the 5th defendant by a sale deed, dated 26.02.1982?

3. Whether the plaintiff has title to the suit properties by adverse possession?

4. Whether the first respondent/plaintiff is entitled to the relief of declaration and permanent injunction as prayed for?

5. To what relief the Appellants/defendants 2 to 4 are entitled to in the appeal?"

11. With regard to the first and second points arising for consideration, the First Appellate Court had found that the 5th defendant is entitled to half share in the Items 1 and 2 of the suit properties. Since the 5th defendant had sold her property to the first defendant by a sale deed, dated 26.2.1982, marked as Ex.B-8, the first defendant is entitled to $\frac{1}{2}$ share in the suit properties. Since the first defendant is in enjoyment of $\frac{1}{2}$ share of the suit properties, which has been purchased from the 5th defendant, the plaintiff's father Maniappillai cannot be said to have any interest in the said properties. Therefore, the claim that plaintiff's father had purchased the entire suit properties in both the first and second items from Valambu Ammal, by a sale deed, marked as Ex.A-1, cannot be accepted. Since, Valambu Ammal was entitled to half share in the first and second items of the suit properties, only the said half share in the suit properties could have been conveyed by the sale deed, dated 27.11.1954, marked as Ex.A-1. According to the sale deed, dated 26.2.1982, marked as Ex.B-8, the first respondent Rangasamy Chettiar was held to have purchased $\frac{1}{2}$ share in the first and second items of the suit properties belonging to Paunambu Ammal.

12. With regard to the third point for consideration, the First Appellate Court had held that since the plaintiff is entitled to half share in the first and second items of the suit properties and since the first defendant, Rangasamy Chettiar is entitled to the other $\frac{1}{2}$ share in the first and second items of the suit properties and as it is seen that the patta and the kist receipts are in the name of both of them, it cannot be concluded that the entire suit properties belonged to the plaintiff's father, Maniappillai, according to Ex.A-1. Consequently, the plaintiff cannot be held to have right over the entire suit properties by adverse possession. Since, Valambu Ammal was entitled to only half share of the first and second items of the suit properties belonging to Iyyasamy Chettiar, she could have conveyed only such properties to Maniappillai, the father of the plaintiff. Therefore, Maniappillai could have been in possession and enjoyment of 0.01 cent in S.No.217/21 in Aasanur Village, being the first item of the suit property and 0.02 cent in S.No.217/22 in the same village. Thus, the plaintiff cannot be said to have right by adverse possession of the other half share of the suit properties.

13. With regard to the fourth point for consideration, it has been held that the first and the second items of the suit properties belonged to both the plaintiff as well as the first defendant in equal shares and it cannot be declared that the plaintiff is entitled to the entire suit properties and the relief of permanent injunction cannot be granted as prayed for. In such circumstances, the Appellate Court had set aside the judgment and decree of the trial Court by denying the claims made by the plaintiff in the suit.

14. Aggrieved by the judgment and decree of the First Appellate Court, dated 30.04.1996, made in A.S.No.151 of 1994, the plaintiff in the suit has filed the present second appeal before this Court.

15. The second appeal has been filed raising the following substantial questions of law:

"1. Whether the Lower Appellate Court is right in holding that the plaintiff had not prescribed his title by adverse possession in view of the documents under Ex.A-1, A5 to A15 and whether it should not have seen that the plaintiff is in continuous and uninterrupted possession and enjoyment of the suit property for over the prescribed period.

2. Whether the Lower Appellate Court should not have held that the purchase by the respondent is speculative and with the sole intention of interfering with the appellant's possession.

3. Whether the Court below ought not to have held that any partition subsequent to the sale is not binding on the appellant and in the present case P.W.2 has deposed that the 5th defendant is aware of the sale and when the same had remained unimpeached whether Lower Appellate Court ought not to have confirmed the judgment of the trial Court and that the 5th defendant is estopped from challenging the same.

4. Whether the judgment and decree of the lower Appellate court is not against the evidence of D.W.1 and 2 and whether its judgment is even otherwise illegal, incompetent, irregular, opposed to the material evidence on record and in any event liable to be set aside on such other substantial questions of law."

16. The learned counsel appearing on behalf of the appellants had contended that the trial Court had come to the correct conclusion, after analysing the evidence on record, by granting the reliefs as prayed for in the suit, in O.S.No.759 of 1986. It was submitted that the lower Appellate Court ought to have seen that the plaintiff's father had purchased the properties under Ex.A-1 from Valambu Ammal and had been in continuous possession and enjoyment of the same. In order to substantiate the said claim Ex.A-6 to A-15 had been marked on behalf of the plaintiff. Ex.A-2 was the patta issued in the name of the plaintiff's father and Ex.A-2 and A-4 were in the name of the plaintiff. Since the plaintiff and his predecessors-in-title had been in continuous and uninterrupted possession and enjoyment of the suit properties, the trial Court ought to have upheld the claim of the plaintiff with regard to adverse possession. Further, the defendants had accepted that the plaintiff was in possession of the suit properties. The partition, which is alleged to have taken place subsequent to the sale under Ex.B-3, would not affect the rights of the prior purchaser. In such circumstances, the first Appellate Court ought to have confirmed the judgment and decree of the trial Court, dated 28.02.1994, made in O.S.No.759 of 1986.

17. The learned counsel appearing on behalf of the respondents had denied the claims made on behalf of the appellants and had contended that the lower Appellate Court was right in coming to its conclusions by dismissing the suit by its judgment and decree, dated 30.04.1996, made in A.S.No.151 of 1994.

18. On a perusal of the records available before this Court and in view of the contentions raised on behalf of the appellants, as well as the respondents, it is clear that the lower Appellate Court was right in coming to the conclusion that the plaintiff as well as the first defendant were having half share each in the first and second items of the suit properties. It is clear that the plaintiff's father Maniappillai could have got only half share of the first and second items of the suit properties from Paunambu Ammal, by way of the sale deeds marked as Ex.A-1, dated 27.11.1954, and by Ex.B-8, dated 26.2.1982, the first defendant had got title to half share in items 1 and 2 of the suit properties from Paunambu Ammal.

19. However, at this stage of the hearing of the second appeal both the learned counsels appearing on behalf of the appellants as well as the respondents had submitted that in view of the findings of the lower Appellate Court with regard to Issue Nos.1 and 2 arising for consideration the appellants are entitled to half share in Items 1 and 2 of the suit properties. Therefore, it was submitted that the first Appellate Court had committed an error in passing a decree by merely setting aside the judgment and decree of the trial Court, dated 28.02.1994, made in O.S.No.759 of 1986, on the file of the District Munsif Court, Thirukoilur. It has been admitted that the First Appellate Court ought to have passed a decree granting half share to the plaintiff and his legal heirs, who are the appellants in the present second appeal, instead of setting aside the entire judgment and decree of the trial Court.

20. Based on such submissions and in view of the findings of the First Appellate Court this Court is of the considered view that the plaintiff and his legal heirs, the appellants herein, are entitled to half share in Items 1 and 2 of the suit properties. The second appeal is ordered accordingly. No costs.

WEB COPY
Sd/
Deputy Registrar

/true copy/

csh

Sub Asst. Registrar

To

1. The Additional District Judge, Villupuram.
2. The District Munsif, Thirukoilur.