

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.07.2010
CORAM

THE HONOURABLE MR.JUSTICE M.VENUGOPAL

S.A. No.186 of 1997

1.Murugesa Mudaliar (died)

2.Subramania Mudaliar ...Appellants
(Second Appellant and 2nd Respondent
is brought on record as L.R. Of
the deceased First Appellant vide order of Court dated
2.12.2008 made in Memo presented in Court
in S.A.No.186/97.

v.

1.Ramu Mudaliar

2.Singaravelu Mudaliar ...Respondents
(R2 givenup)

Prayer: Appeal filed under Section of 100 of C.P.C. against the Judgment and Decree dated 25.03.1996 in A.S.No.179 of 1994 on the file of the Learned Principal District Judge, Villupuram reversing the Judgment and Decree dated 20.04.1994 made in O.S.No.265 of 1986 on the file of the Principal District Munsif, Thirukoilur.

For Appellant : Mr.R.Balakrishnan

For Respondents : Mr.B.Soundarapandian for R1
R2 -Given up

ज्ञानवान् अयते
J U D G M E N T

The First Appellant/First Defendant (during his life time and later Deceased) and the Second Appellant/Second Defendant have projected this Second Appeal before this Court as against the Judgment and Decree dated 25.03.1996 in A.S.No.179 of 1994 on the file of the Learned Principal District Judge, Villupuram.

2. The First Appellate Court viz., the Learned Principal District Judge, Villupuram in the Judgment in A.S.No.179 of 1994 dated 25.03.1996 has among other things observed that 'the suit properties have not been made mention off in Ex.B2 Settlement Deed dated 07.05.1975 and also that the Defendants have not established that they have been in enjoyment of the suit properties and

instead, the First Respondent/Plaintiff has established through documents that he has a right over the suit properties and also, he has filed Receipts to prove that he has been in continuous enjoyment of the suit properties and resultantly, held that the First Respondent/Plaintiff is entitled to get the relief of Declaration and the consequent permanent injunction and allowed the Appeal with costs by setting aside the Judgment and Decree of the trial Court made in O.S.No.265 of 1986.'

3. The trial Court has framed in all six issues for determination. Before the trial Court, on behalf of the Plaintiff, Witnesses P.Ws.1 and 2 have been examined and Exs.A1 to A21 have been marked. On the side of the Defendants, D.Ws.1 and 2 have been examined and Exs.B1 to B3 have been marked.

4. The trial Court on an appreciation of oral and available documentary evidence on record has come to a resultant conclusion that though the First Respondent/ Plaintiff has been in enjoyment of the suit properties yet the heirs of Ramachandran in respect of the suit properties have executed a Settlement Deed in favour of the Defendants and as such the First Respondent/ Plaintiff has no right over the suit properties and consequently, dismissed the suit without costs.

5. At the time of admission of the Second Appeal, the following Substantial questions of Law have been framed for rumination:

- i) Whether the Lower Appellate Court is correct in finding the ownership with the Respondent/ Plaintiff when the trial Court has given a finding that the Appellants had perfected title by Adverse Possession?
- ii) Whether the Lower Appellate Court is correct in accepting the oral partition between the Plaintiff's Father Venkatachalam and his brother Govindasamy Mudaliar in the absence of any Registered Deed?"

CONTENTIONS, DISCUSSIONS AND FINDINGS ON POINTS 1 AND 2:

6. The Learned counsel for the Appellants (appearing for the L.Rs. of the First Appellant/First Defendant and the Second Appellant/Second Defendant) submits that the First Appellate Court viz., the Learned Principal District Judge, Villupuram has failed to appreciate that the First Respondent/ Plaintiff who traces his title through his grandfather has failed to prove the title of his grandfather and moreover, the First Appellate Court has committed an error in not accepting the case of the Appellants that the property originally belonged to Muthusamy Mudaliar, which has been inherited by his son Periyasamy and after his demise, his son Ramachandran and after his demise, Ramanchandran's Mother and Wife

and ultimately by the Appellants through Ex.B2 Settlement Deed dated 07.05.1975.

7. Advancing his arguments, the Learned counsel for the Appellants contends that the First Appellate Court has failed to see that the trial Court on the basis of evidence let in the case has come to the conclusion that the original owner Narayanasamy Mudaliar has no title to the suit property.

8. The pith and substance of the contention of the Learned counsel for the Appellants is that the First Appellate Court has not taken into account the material factual aspects of the matter in a proper perspective, which has resulted in miscarriage of justice and therefore, prays for allowing the Second Appeal in furtherance of substantial cause of justice.

9. According to the Learned counsel for the Appellants, the property belonged to one Muthusamy Mudaliar and on his demise, it belongs to Periyathambi Mudaliar and that Periyathambi Mudaliar's wife Mangala Lakshmi and Ramachandran's Wife Dhanalakshmi have executed Ex.B2 Settlement Deed dated 07.05.1975 in favour of Subramania Mudaliar and his brother Singaravelu (Defendants 2 and 3) and they have acquired title by Adverse Possession.

10. It is the categorical submission of the Learned counsel for the Appellants that in Ex.B2 Settlement Deed dated 07.05.1975 by mistake, the two S.No.194/2 and Grama Natham have been left out and in fact, in Law, the Defendants need not prove title.

11. It is the plea of the Learned counsel for the Appellants that the First Respondent/ Plaintiff has to prove his case and it is for him to prove his title.

12. In this connection, it is not out of place for this Court to refer to the First Respondent/ Plaintiff's averments made in the plaint. As a matter of fact, the First Respondent/ Plaintiff has inter alia pleaded in the plaint that the suit properties originally belonged to Narayana Mudaliar and that the said Narayana Mudaliar has enjoyed the suit properties and later, after his demise, his sons Venkatachala Mudaliar and Govindasamy Mudaliar have enjoyed the suit and other properties and in between them, there has been an oral partition 50 years ago in and by which the properties have been divided and that the suit properties have been allotted to the share of the First Respondent/ Plaintiff Venkatachala Mudaliar who enjoyed the suit properties by digging a Bore, etc., and later, he died before 40 years.

13. The case of the First Respondent/ Plaintiff is that he as an heir of Venkatachala Mudaliar has enjoyed the suit properties and other properties by planting trees, keeping haysticks, etc., Also, the contention of the First Respondent/ Plaintiff is that the Defendants have no manner of right over the suit properties and that the Defendants have attempted to trespass into the suit properties by claiming wrongful right on 11.10.1983 and therefore, the Deceased First Appellant has been given a Lawyer's Notice dated 18.10.1983.

14. However, the First Appellant (Deceased) after receipt of the First Respondent/ Plaintiff's Notice dated 18.10.1983 has caused a Reply Lawyer's Notice dated 09.11.1983 inter alia mentioning that the suit properties and other non suit properties originally belonged to Periyathambi Mudaliar and later after his death, his wife Mangai Nayagiammal and his Daughter-in-Law Dhanalakshmiammal have obtained the same and both Mangainayagiammal and Dhanalakshmi have executed a Settlement Deed to the Second and Third Defendants in respect of the suit properties and other non suit items and therefore, the First Respondent/ Plaintiff has not been enjoying the suit properties. According to the First Respondent/ Plaintiff, either the Mangainayagiammal or the Dhanalakshmiammal have no right over the suit properties and they have not enjoyed the suit properties at any point of time and the purported execution of the Settlement Deed by MangaiNayagiammal and Dhanalakshmiammal are not valid in law.

15. A perusal of the plaint candidly points out that the First Respondent/ Plaintiff has claimed the relief of Declaration in respect of the suit properties and also sought his relief of permanent injunction restraining the Defendants, men, agents from interfering with the Plaintiff's enjoyment of the suit properties.

16. Before the trial Court, the First Appellant/First Defendant (Deceased) has filed the Written Statement which has been adopted by the Defendants 2 and 3. In the Written Statement, the First Appellant/First Defendant (Deceased) has averred that the suit properties and other properties originally in Paiyar Village belonged to Muthusamy Mudaliar and after his demise, his son Periathambi has inherited the same and enjoyed the same and after Periathambi, the suit properties have been inherited by Periathambi's only son Ramachandran alias Ramu Mudaliar and he has obtained patta for the first item of the suit property and has been paying kists and has been in enjoyment of the second item of the property as a Garden and therefore, the suit property belongs to Ramu alias Ramachandra Mudaliar ancestrally.

17. The Defendants also pleaded that after the death of Ramachandran (who had no issues), his Wife Dhanalakshmi and Ramachandran's Mother Mangalakshmi who are the heirs have been in enjoyment of the suit properties and other properties and on 07.05.1975, Dhanalakshmi and Mangalakshmi have executed Ex.B2 Settlement Deed dated 07.05.1975 in favour of the Defendants 2 and 3 and that the Defendants 2 and 3 have accepted the Settlement Deed and have been in enjoyment of the properties.

18. Apart from the above, the contention of the Defendants is that Dhanalakshmi and Mangalakshmi have expired 8 years ago and in Ex.B2 Settlement Deed dated 07.05.1975, the suit properties have been omitted to be mentioned inadvertently and inspite of the same, the Defendants 2 and 3 have been in enjoyment of the suit properties with the other properties. Even otherwise, the Defendants 2 and 3 have acquired the Adverse Possession and have a prescriptive title over the suit properties.

19. The Learned counsel for the Appellants in support of the contention that the First Respondent/ Plaintiff has to succeed or fail on the title that he has to prove, relies on the decision of the Hon'ble Supreme Court BRAHMA NAND PURI V. NEKI PURI, (1965) 2 SCR 233 at page 234, wherein it is laid down as follows:

"The appellant's suit being one of ejectment he had to succeed or fail on the title that he established; if he could not succeed on the strength of his title, his suit must fail notwithstanding that the Defendant in possession had no title to the property."

20. The Learned counsel for the First Respondent/ Plaintiff submits that the First Appellate Court viz., the Learned Principal District Judge, Villupuram has taken into account all the relevant facts and circumstances of the case in an integral manner and after analysing the oral and documentary evidence available on record has come to a clear conclusion that the First Respondent/ Plaintiff has proved his claim in respect of the Declaratory relief sought for by him over the suit properties and accordingly, granted the relief of Declaration to the First Respondent/ Plaintiff in respect of the suit properties and also the relief of permanent injunction and allowed the Appeal to prevent an aberration of justice and the same need not be interfered with by this Court sitting in Second Appeal.

21. To lend the Court to the contention that the Defendants have to prove the plea of Adverse possession, the Learned counsel for the First Respondent/ Plaintiff cites the decision of this Court A.RAJAGOPAL (DECEASED) AND OTHERS V. MUTHULAKSHMI AMMAL AND ANOTHER, (2005) 2 M.L.J. 224 at page 225, wherein it is held hereunder:

"It is settled law that the party who claims adverse possession, has to establish his uninterrupted possession and enjoyment as against the original owner for more than the statutory period to the knowledge and hostile to the said person."

22. PW1 (First Respondent/ Plaintiff) in his evidence has deposed that the suit property initially belonged to his grandfather Narayana Mudaliar and later, his sons Venkatachalam and Muthusamy have orally partitioned the same and his father Venkatachala Mudaliar who died 45 years ago and that in respect of the first item of the suit property viz., 7 cents Punja lands Ex.B1 is the Patta and Ex.A2 is UDR Patta and the second item of the property is Grama Natham and he is in enjoyment of the second item of the suit properties and the Defendants have no right in respect of the suit properties.

23. It is the evidence of PW2 that the suit property has not been enjoyed by either Ramachandran or his wife and that he does not know about the writing and execution of the Settlement Deed.

24. DW1 (the Second Defendant) in his evidence has stated that his father is the First Appellant /First Defendant (Deceased) and that the suit properties belonged to them and one item is Natham and another item is 7 cents Punja land and the survey Number of the suit properties have been omitted to be mentioned in the Settlement Deed.

25. DW1 in his evidence has also stated in Ex.B2 Settlement Deed dated 07.05.1975 that there is no mention as Ramu alias Ramachandran and even in the Reply Notice, it is not mentioned as Ramu alias Ramachandra Mudaliar.

26. DW2 in his evidence has deposed that in Ex.B2 Settlement Deed dated 07.05.1975, he has signed as a witness and since Dhanalakshmi has no heirs, the Settlement Deed has been executed in favour of the Second and Third Defendants and Ramachandra Mudaliar has been called as Ramu and Dhanalakshmi and Mangalakshmi have executed Ex.B2 Settlement Deed dated 07.05.1975 in favour of the Defendants 2 and 3 and that he does not know about the Settlement Deed and he has affixed his signature.

27. As far as the present case is concerned, it is to be pointed out by this Court pertinently in Ex.B2 Settlement Deed dated 07.05.1975 executed by Periathambi Mudaliar's Wife Mangalakshmi and Ramachandra Mudaliar's Wife Dhanalakshmi to and in favour of one Subramania Mudaliar and to Singaravelu the suit 1 and 2 items of properties have not been made mention of. But the reason assigned on behalf of the Appellants for non mentioning of

the two items of the suit properties is that the same have been inadvertently omitted in Ex.B2 Settlement Deed dated 07.05.1975. In the instant case on hand, the Appellants/ Defendants have not established to the satisfaction of this Court that they have been in enjoyment of the suit properties. Even in Ex.A4 Notice, there is no mention of inadvertent omission of the suit items. Exs.A1 and A2 Documents Patta and UDR Patta relates to the first item of the suit property. Exs.A15 to A18 are the kist Receipts paid by the First Respondent/ Plaintiff.

28. Ex.A19 is the Bogium Deed dated 12.10.1954 executed by Ramachandra Mudaliar in favour of Masila Mani. Ex.A20 is the Bogium Deed dated 31.08.1956 in favour of Govindasamy Gounder executed by Ramachandra Mudaliar. Ex.A21 is the Bogium Deed dated 16.11.1959 executed by Ramachandra Mudaliar in favour of Arumuga Pillai. Unfortunately, the trial Court has wrongly taken the view that Ex.B2 Settlement Deed dated 07.05.1975 covers the suit items. A careful scrutiny of the said Settlement Deed clearly indicates that there is no mention of the suit items either expressly or impliedly whatsoever.

29. In Ex.A1, the first item is mentioned as S.No.190/2 0.07 cents. In this, the owner of the Land is mentioned as Ramu Mudaliar and his father Venkatachala Mudaliar and that the suit property is in Paiyur village bearing Patta No.11. Even in Ex.A2 UDR Patta for S.No.194/2, the new patta is mentioned as No.676. For the grant of Ex.A1 and A2 Pattas, no protest or objection appears to have been raised by the Defendants. It is the clear cut evidence of PW1 that the second item of the suit property viz., Grama Natham, etc., are in his enjoyment.

30. That apart, PW2 in his evidence has clearly mentioned that Ramachandran has not been called as Ramu Mudaliar and that Ramachandra Mudaliar has expired 20 years ago and he has not been in enjoyment of the suit property and further, either Ramachandra Mudaliar or his Wife have not enjoyed the suit properties. Suffice it for this Court to point out that the First Respondent/ Plaintiff has proved to the satisfaction of this Court that the suit properties have been in his enjoyment and that he has a right over them (and therefore he is entitled to claim the declaratory relief as possessory title). Also, it cannot be held in any manner that the Appellants have perfected title by means of Adverse Possession in respect of the suit properties. Even though both sides have no document to show that there has been a partition and when a case has been projected that an oral partition has been taken place between the Plaintiff's Father Venkatachala Mudaliar and brother G.Govindasamy Mudaliar in the absence of any documentary proof, there is nothing wrong in the First Appellate Court accepting the plea of oral partition and in

that view of the matter, this Court answers the substantial questions of law Nos.1 and 2 against the Appellants and is in favour of the First Respondent/ Plaintiff and consequently, the Second Appeal fails.

31. In the result, the Second Appeal is dismissed leaving the parties to bear their own costs. Resultantly, the Judgment and Decree of the First Appellate Court viz., the Principal District Court, Villupuram are confirmed by this Court for the reasons assigned in the Second Appeal.

vri

To

1. The Principal District Judge,
Villupuram.

2. The Principal District Munsif,
Thirukoilur.

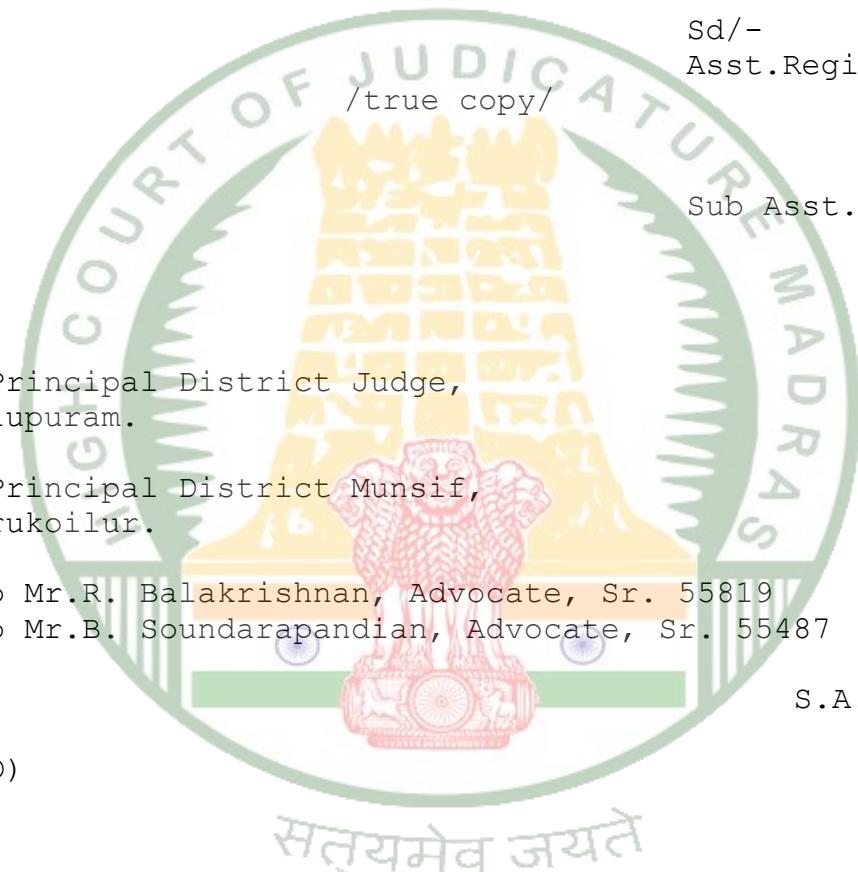
1 cc to Mr.R. Balakrishnan, Advocate, Sr. 55819

1 cc to Mr.B. Soundarapandian, Advocate, Sr. 55487

Sd/-
Asst.Registrar.

/true copy/

Sub Asst.Registrar.



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