

Manickam Vs. Respondent

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Court : Chennai

Decided On : Apr-04-2014

Judge : G.Chockalingam

Appellant : Manickam

Respondent : Respondent

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED: 04.04.2014 CORAM THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM S.A.(MD)No.1135 of 2009 Manickam : Appellant/Plaintiff versus 1.C.Suthandiram 2.Sudhaman 3.Kaja @ Kajendran : Respondents/Defendants Prayer This second appeal filed under Section 100 of CPC against the judgment and decree in A.S.No.87 of 2008, dated 18.04.2009 on the file of the II Additional Sub Court, Madurai, confirming the judgment and decree, dated 15.02.2008 in O.S.No.350 of 2002 on the file of the District Munsif Court, Madurai, Taluk, Madurai.

!For Appellant : Mr.S.Ramachandran ^For Respondents : Mr.M.Sadiq Raja for M/s.K.Muthu Ganesa Pandian :

JUDGMENT

Challenge in this second appeal is to the judgment and decree, dated 18.04.2009 passed in A.S.No.87 of 2008 by the II Additional Subordinate Judge, Madurai thereby, confirming the judgment and decree, dated 15.02.2008 passed by the

District Munsif, Madurai in O.S.No.350 of 2003.

2.The appellant herein as plaintiff has instituted Original Suit No.350 of 2002 on the file of the trial Court seeking the relief of permanent injunction, wherein the present respondents has been shown as defendants.

3.It is averred in the plaint that the suit property belonged to one C.Chinnasamy ancestrally and he had a son, by name Chinnasamy, who was a postman, who used to give his name as 'K.C.Chinnasamy' in the official record and he died in the year 1952, leaving behind two sons, by namely S.Chinnasamy and K.C.Krishnasamy.

The said S.Chinnasamy died in the year 1987 leaving behind his 1st wife Nagammal and a son by name Sudhanthiram, through his 1st wife and 2nd wife, namely Panchalai and a son Ramraj through 2nd wife.

The said K.C.Krishnasamy died leaving behind two sons, by name K.K.K.Prabhakaran and K.Rajamanoharan.

Even during the life time of the said S.Chinnasamy and his brother K.C.Krishnasamy, they have divided various ancestral and family properties except the suit property and therefore, in the suit schedule properties each are entitled undivided half share.

The said K.C.Krishnasamy also died in 1990 leaving behind Rajammal(wife).K.K.K.Prabhakaran and K.Rajamanoharan, son of the said K.C.Krishnasamy along with their sister Nalinichandravathi sold the undivided half share in 1 acre 70 cents under a sale deed, dated 23.10.1996 to the plaintiff and there is a customary practice in the village that in dividing landed property, normally northern portion would be allotted to elder son in the family.

Though, the plaintiff has purchased the undivided half share of 1 acre 70 cents, as per the above said village customary practice and for the convenient enjoyment, the plaintiff took specific and actual possession of northern portion of 85 cents and ever-since, his purchase the plaintiff has been enjoying the possession of northern 85 cents and one Pandi has been in possession and enjoyment of 1 acre 70 cents

for more than the past 30 years as cultivating tenant in the said property and on his death, his wife Pushpam and son Alagarsamy, inherited the cultivating rights and they were cultivating the entire extent of 1.70 acres till the purchase of the schedule property by the plaintiff and the above said cultivating tenants have executed a release deed, dated 23.10.1996 releasing their cultivating rights in favour of the vendors to the plaintiff Rajammal and 2 others and in the meantime, on 03.07.2012, the 1st defendant all of sudden developed animosity against the plaintiff and started interfering with the peaceful possession and enjoyment of the suit property on 03.07.2002.

Hence, the suit is filed for the relief of permanent injunction.

4. In the written statement as well as the additional written statement filed on the side of the defendants, it is averred as follows:- The suit property absolutely belonged to the 1st defendant's father Chinnasamy and it is not belonged to Krishnasamy as stated by the plaintiff.

It is false to state that plaintiff was allotted northern 85 cents in a customary manner and the plaintiff was no enjoyment over the northern portion and there was no division like northern and southern portion.

It is true that the 1st defendant's father Chinnasamy was in enjoyment to an extent of 1 acre 70 cents and after his death, the defendant's and their brother Ramaraj are in possession and after that, the 1st defendant's and his brother Ramaraj are in possession and enjoyment of the suit property and 1 acre 70 cents was not enjoyed by Pandi as a cultivating tenant and the total extent is 1 acre 90 cents and the 1st defendant's mother Nagammal has filed a suit before the Sub Court, Madurai, in O.S.No.159 of 1994 for permanent injunction against Pandi and the court has granted injunction and allowed I.A.No.98 and 94, on 18.02.1994.

It is false to say that Pandi was enjoying the suit property as a cultivating tenant.

Pandi has filed O.S.No.394 of 1993 before this court against the 1st defendant for permanent injunction and the above suit was dismissed and there is no right or enjoyment either by Rajammal or by his son and daughters and Pandi also cannot

obtain any right from them.

The plaintiff has to prove the cause of action alleged against the defendants.

and the suit for permanent injunction is not maintainable without the relief of declaration and the legal heirs of Krishnasamy Naidu have no right and enjoyment over the property and Krishnasamy Naidu has not claimed any right over the suit property against his brother Chinnasamy Naidu or his wife Nagammal or the plaintiff or 1st defendant's brother Ramaraj.

The 1st defendant brother Ranaraj is a necessary party to the suit, but he was not impleaded as a party.

The suit is bad for non-joinder of necessary party.

Hence, the suit is liable to be dismissed with costs.

5.The trial court, after considering the rival evidence adduced on either side, has dismissed the suit.

Against the judgment and decree passed by the trial court, the plaintiff as appellant has preferred the A.S.No.87 of 2008 on the file of the fiRs.appellate court.

The fiRs.appellate court, after hearing both sides and upon reappraising the evidence available on record, has dismissed the appeal, thereby confirming the judgment and decree passed by the trial court in O.S.No.350 of 2002.

Against the concurrent finds of the both the courts below, this second appeal has been preferred at the instance of the plaintiff as appellant.

6.At the time of admitting the present second appeal, the following substantial questions of law have been formulated for consideration:- (1)Whether the courts below have erroneously treated a suit for bare injunction as if a title suit and held a suit for bare injunction is not maintainable on the basis of mere denial of appellant's title by the respondent?.

(2)Whether the lower appellate court's discarding of 5 oral evidence on the plaintiff's side and giving a finding that the possession of the appellant is not proved is perverse and no reasonable person would have arrived at such a finding particularly when the respondents have not let in any oral evidence to prove their possession?.

(3)Whether the lower appellate court's decision that in the enquiry under section 145 Cr.P.C it did not say in which portion the appellant is in possession is erroneous and perverse and no reasonable person would have arrived at such a decision?.

7.The learned counsel for the appellant/plaintiff has argued that both the courts below, without considering the documents produced and the oral evidence adduced on the side of the appellant/plaintiff, erroneously dismissed the suit and the FIRs.appellate court also failed to analyse the Executive Magistrate proceedings and the trial court erroneously passed an order that the suit for permanent injunction, without declaration of title will not lie and without, considering 145 Proceedings both the courts below erroneously dismissed the claim of the appellant/plaintiff.

Hence, the concurrent findings of the both the courts below are liable to be set aside and therefore, the second appeal has to be allowed.

8.It is argued on the side of the respondents/defendants that the suit is for mere injunction, but the title of the appellant/plaintiff denied emphatically by the respondents/defendants and even according to the appellant/plaintiff, he purchased the undivided half portion in the suit property and in the joint family property, the appellant/plaintiff is not at all have any right to enter into possession of the properties, without filing a suit for partition and the trial court was right in dismissing the suit for injunction, without praying for declaration of title and the appellant/plaintiff was not in enjoyment of the specific portion of the suit property and therefore, the trial court was right in dismissing the suit and therefore, the second appeal has to be dismissed in toto.

9.It is admitted by both the parties that the entire suit properties belonged to one C.Chinnasamy and subsequently, his sons K.C.Chinnasamy and K.C.Krishnasamy and K.C.Chinnasamy died in the year 1952.

10.On the side of the appellant/plaintiff, it is argued that the appellant/plaintiff purchased the property as per Ex.A1, Sale Deed on 23.10.1996 and K.C.Krishnasamy had two sons, namely K.C.K.Prabhakaran and K.Rajamanoharan and S.Chinnasamy wife's name is Nagammal and Sudhanthiram born through is fiRs.wife and Ramraj through his second wife.

11.It is an admitted fact that since the suit filed for permanent injunction, the appellant/plaintiff has to prove before the court that he is in possession of the specified portion of 85 cents, as claimed by him.

The appellant/plaintiff's vendor entered into a sale agreement, dated 11.10.1996, which was marked as Ex.A14, in which description was stated as follows:- ".....Mf mapl;lk; 4f;Fk; bkhj;jk; 1 Vf;fh; brd;l; 70y; ghjp g';F85brd;L kw;Wk; mjpy; ml';fpa fpzw;wpy; ghjp g';Fk; cs;s e".;ir epyk; ,jw;F ehd;F khy; ,jpy; fpHf;F gf;fk;/ Rg;gpukzpa gps;is e".;irf;Fk;nkw;F nf/v!;/kzp gpshl;Lf;Fk;bjw;F Jiuf;fz;Qq e".;irf;Fk;fpHf;F uhkrhkp gps;is e".;irf;Fk; g{r;rpehlhh; e".;irf;Fk;/ //..tlf;F12Even according to the above sale agreement deed executed on 11.10.1996 by the vendor of the plaintiff, he agreed to sell eastern 85 cents of 1 acre and 70 cents.

But it is argued on the side of the appellant/plaintiff that the appellant/plaintiff is in possession of northern 85 cents.

So it is contrary to Ex.A14 sale agreement.

13.Further in Ex.A2, it is stated as follows:- 1 Vf;fh; 70 brz;L cs;s e".;ir epyKk; mjpy; cs;s rpwpa ciwfpzW xd;Wk; cs;s i& bkhj;jr; brhj;jpy; j';fSf;Fhpa gphptpidapd;wpa ghjp ghfkhd 85 brz;L cs;s e".;ir epyk; kl;Lk;...14.Hence, on the date of execution of Ulavadi release deed-Ex.A2, dated 23.10.1996, the property was not divided and the appellant/plaintiff purchased only undivided half portion of 85 cents.

Further, on the side of the appellant/plaintiff, it is argued that the appellant/plaintiff is in possession of the northern portion of 85 cents and for that, on the side of the appellant/plaintiff, no document has been produced stating that from which date, the appellant/plaintiff is entitled to northern half, when the property was divided among the shareRs. Further, even in the plaint, the allegations of the appellant/plaintiff is that after purchase, as per customary practice prevailing in the village, he has taken the northern half of 85 cents.

But there is specific averment regarding to whether the other sharers have agreed to partition the undivided property.

If agreed, on what date, whether it is oral or reduced into writing and whether any documents are executed to that effect and no documentary evidence was produced on the side of the appellant/plaintiff.

According to the plaintiff, entire property belonged to K.C.Chinnasamy, who is the elder of the family and even in the sale agreement, only eastern half was agreed to sell, but in the sale deed without mentioning specific eastern half, the entire property is mentioned and undivided half was also mentioned.

Hence, it is made clear that the appellant/plaintiff purchased the undivided half of the suit property.

Therefore, without partition with the other sharers and without following the basic principle of law, the appellant/plaintiff has no right to enter into the possession of the land.

Without filing the suit for partition against the sharers in this case, there is no proof for the partition of the suit property and the plaintiff was allotted the northern portion for the suit property .

15. Further, in support of his contention the learned counsel for the appellant/plaintiff relied upon the following judgments:- (1) AIR 1993 SUPREME COURT 398 [Shri Bhagwan Sharma versus Bani Ghosh]. 2. AIR 1995 MADRAS 375 [A. Munuswami versus R. Raman]. 3. 1996 (2) ALT 389 [Chepana Peda Appalaswamy versus Chepana Appalanaidu and

others].4.2009(3)CTC493[R.Pannerselvam versus A.Subramanian and another].5.2011-1-L.W.525 [Municipal Committee, Hoshiarpur versus Punjab State Electricity Board & others].6.2019(2)CTC262[Bothumani versus K.Rameena and another.

7.2012(6)CTC892[Syed Dhasthakeer versus Navab john].8.2013(1)CTC409[Hardevinder Singh versus Paramjit Singh].9.2006(1)CTC112[A.anand versus A.Perumalsamy.

16.The above said judgements are not applicable to the facts of this case, because the appellant/plaintiff herein purchased only undivided half share in the suit property has suo-motu declared that he is entitled for northern portion as per customary practice, which is not proved in this case.

Hence, the decisions cited on the side of the appellant/plaintiff are not applicable to the facts of this case.

17.Further, the learned counsel for the respondent/defendants has relied upon the following judgments in support of his contention:- 1.(2010).MLJ85[Jothi Ramalingam versus M.N.Sivagnana Prakasam and others].2.2009(5)CTC380[Gajara Vishnu Gosavi versus Prakash Nanasaheb Kamble and others].18.The decisions relied upon by the learned counsel appearing for the respondents/defendants are squarely applicable to the facts of this case and even on the side of the respondents/defendants denied the title of plaintiff to the suit property.

But the appellant/plaintiff has not filed the suit for declaration of title.

19.Further, it is clearly held by the courts below that the appellant/plaintiff has purchased the undivided property belonged to the joint family and only purchased the undivided half share and only his right is to file the suit for partition and therefore, the suit filed for permanent injunction is not at all maintainable.

Hence, the courts below are right in deciding the question as to whether the appellant/plaintiff is entitled in possession of the northern of 85 cents is only the question of fact.

It was decided by the trial court as well as the fiRs.appellate court and held that the appellant/plaintiff's possession of northern half of 85 cents is not proved and the appellant/plaintiff has no right to file a suit for injunction and rejected the prayer of the appellant/plaintiff.

This court is of the considered view that there is no illegality or infirmity in the judgment of the courts below and the concurrent findings of the courts below need not be interfered with in this second appeal and the second appeal is liable to be dismissed.

20.Accordingly, the substantial questions of law answered.

21.In the result, the second appeal is dismissed and the concurrent findings of the courts below are confirmed.

Considering the facts and circumstances of the case, both parties are directed to bear their own costs.

er To, 1.The II Additional Sub Court, Madurai.

2.The District Munsif, Madurai.

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