

N. Savithri and Others Vs. Manonmani and Others

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Court : Chennai

Decided On : Feb-24-2017

Judge : R. Subramanian

Appeal No. : A.S. No. 624 of 2003

Appellant : N. Savithri and Others

Respondent : Manonmani and Others

Judgement :

(Prayer: This appeal is filed Under Order 41 Rule 1 of Civil Procedure Code against the judgment and decree dated 30.09.2002 made in O.S.No.23 of 1999 on the file of the Hon'ble Additional District Court, Karaikal.)

1. The plaintiffs whose suit for declaration and recovery of possession was dismissed are the appellants. The 1st plaintiff Natesan, the husband of the 2nd plaintiff and the father of the plaintiffs 3 to 6 died pending suit and the plaintiffs 2 to 6 were recorded as his legal representative.

2. According to the plaintiffs, the suit properties belonged to one Thirumenipillai and Govindasamy Pillai. In a partition that took place on 05.10.1926, the brothers were allotted 55 Kuzhies of land each. While Thirumenipillai had three sons namely, Natesan, Packirisamy and Ramaiyan, Govindasamy died issue less. The widow of Govindasamy namely, Govindammal @ Gangai Ammal settled an extent of 55 cents allotted to Govindasamy in the partition deed dated 05.10.1926, in

favour of Natesan and Ramaiyan. The respondents 1 to 3 in the appeal who were defendants 1 to 3 in the suit, are the wife and children of Ramaiyan. Respondents 4 to 6 who were the defendants 4 to 6 in the suit, are the wife and children of Packirisamy. Respondents 7 and 8, who were defendants 7 and 8 in the suit, neighbouring land owners are the actual contesting respondents.

3. According to the plaintiff, the property described in schedule-B to the plaint, is the property that was allotted to Govindasamy, which is the subject matter of the settlement by the Govindammal @ Gangai Ammal on 09.01.1975. Therefore, B-schedule property belonged to plaintiffs and defendants 1 to 3 (Appellants and respondents 1 to 3). The C-schedule property that was allotted to Thirumenipillai devolved on his three sons namely, Natesan, Packirisamy and Ramaiyan. Therefore, the plaintiffs and defendants 1 to 6 (appellants and respondents 1 to 6) would be entitled to C-schedule property.

4. According to the plaintiffs, defendants 7 and 8, who are neighbouring owners, have trespassed into the suit property without any right, title or interest. A notice came to be issued by the plaintiffs and Ramaiyan on 28.11.1992 to which a reply was sent on 08.12.1992 by the defendants 7 and 8, denying the claim of the plaintiffs over the suit properties. According to the plaintiffs, the 7th defendant acknowledged the title of the plaintiffs by an agreement dated 25.01.1994. On 25.04.1994, Ramaiyan made a paper publication claiming title over the suit property.

5. The respondents 7 and 8 have issued a reply denying the claim of Ramaiyan and setting up title in themselves. Therefore, the 1st plaintiff Natesan and Ramaiyan together filed O.P. 2 of 1995, seeking leave to file the suit as indigent persons. The said application was however, dismissed as not pressed on 26.08.1997. Thereafter, the present suit came to be filed by Natesan. Upon his death the appellants herein were brought on record as his legal representatives.

6. On the above pleadings and on the strength of partition deed dated 05.10.1926 and settlement deed dated 09.01.1975, marked as Exs.A2 and A3 respectively, the plaintiffs have sought declaration of title and recovery of possession. The defendants 7 and 8 have alone contested the suit. The defendants 1 to 6 were set

exparte.

7. The defendants 7 and 8 in their written statement would contend that the plaintiffs have no title over the suit property. The devolution of title claimed by the plaintiffs, was denied pointing out that the suit schedule does not disclose the survey number of the property. The suit property as described in the plaint has not been correlated with the properties of the subject matter of the partition deed or settlement deed, namely Exs.A2 and A3.

8. On the above pleadings, the defendants have sought for dismissal of the suit.

9. Considering the rival pleadings, the learned Additional District Judge, Karaikal, who tried the suit framed the following issues:

1. Whether the plaintiffs are entitled to declaration as prayed for?

2. Whether the suit is barred by limitation?

3. Whether the suit is bad for non-joinder of necessary parties?

4. To what other reliefs, are the parties entitled to ?

10. Three witnesses were examined on the side of the plaintiffs and Ex.A1 to A16 were marked. The defendants examined two witnesses and marked Exs.B1 to B4.

11. Upon a consideration of the evidence on record, the learned Trial Judge concluded that the plaintiffs have not established the title to the suit properties. The learned Trial Judge took note of the fact that the survey number of the property has not been stated in the plaint. The boundaries described in the partition deed of the year 1926 and the settlement deed of the year 1975 did not tally. It was also found in the revenue records particularly, matrice cadastre stands in the names of the defendants.

12. On the above findings, the learned Trial Judge dismissed the suit, holding that the plaintiffs are not entitled to any relief. Aggrieved by the said judgement and decree, the plaintiffs have come forward with this appeal.

Samadhu Thakku

13. The following points arise for determination in this appeal.

1. Whether the plaintiffs have established their title to suit B and C schedule properties?

2. Whether the plaintiffs are entitled to recovery of possession?

14. I have heard Dr.R.Gowri, learned counsel appearing for the appellants and Mr.Mohamed Yusuf, learned counsel appearing for the respondents 7 and 8. The other respondents have been served and they have not chosen to appear.

15. Dr.R.Gowri, the learned counsel appearing for the appellants would contend that the description of the property in Ex.A2 partition deed is named Samadhu Thakku and it is an admitted case that the suit properties are also known as Samadhu Thakku . The extent is also shown as 110 Kuzhies. Relying upon the said description, the learned counsel would contend that the suit properties are the properties shown in item-6 of the partition deed dated 05.10.1926. According to the learned counsel the partition deed being the document of the year 1926 cannot be said to have been created and the plaintiffs have established their title over the suit properties.

16. Per contra, Mr.Mohamed Yusuf, the learned counsel appearing for the 7th and 8 respondents would contend that the plaintiffs have deliberately omitted to give the survey number of the property in the plaint. The settlement deed dated 09.01.1975 under which the plaintiffs claimed title to the B-schedule property shows a different survey number as well as totally different description to the suit property. Therefore, the learned counsel would contend that the plaintiffs have not established their title to the suit properties. The description of the B and C schedule properties in the plaint is as follows:

DESCRIPTION OF PROPERTY (B Schedule)

In Pondicherry registration district, Kariakal sub-Registry, Kottucherry Commune, Varichikudy (North) Village dry land total Extent 110 Kuzhies in this North 55

Kuzhies in extent locally known as SAMADHU THAKKU, Boundaries:

West of Poraiyar Road

East of R.S.Nos.210/6B, 217/5, 6 and 7

South of R.S.No.210/7 and 8

North of 'C' Schedule property described hereunder.

'C' SCHEDULE

In Pondicherry Regn. District, Karaikal Sub-Registry, in Kottucherry Commune, Varichikudy North Village, Dry land, Total extent 110 Kuzhies in this Southern half--

55 Kuzhies, also known as SAMATHU THAKKU Boundaries:

West of Porayar Road

East of R.S.Nos.210/6B, 217/5, 6 and 7

South of ' B ' Schedule property

North of R.S.Nos.218/5, owned by Shri A.P.C.

As could be seen from the above descriptions, the plaintiffs have not given the survey numbers of the suit properties.

In Ex.A2 dated 05.10.1926, the description of Item-6 is as follows:

TAMIL

In Ex.A3 dated 09.01.1975, the description of the suit property is as follows:

TAMIL

17. From the above three descriptions that are available, the Eastern boundary in the partition deed dated 05.10.1926 is shown as Porayar Road. The same is

adopted in the plaint also. However, in the settlement deed of the year 1975, it could be seen that the Eastern boundary is not shown as Road. It is shown as the land belonging to one Ramesh. It is not the case in evidence that Poraiyar Road shown as Eastern boundary has ceased to exist. Though the survey numbers are shown as 678 and 679 in the settlement deed of the year 1975, the plaintiffs have carefully omitted to include the survey numbers in the suit schedule.

18. It could also be seen while describing Eastern Southern boundaries of B-schedule and Eastern, Southern and Northern boundaries of C-schedule, the plaintiffs have given the survey numbers as boundary 210/6B 217/5,6,7 and 210/7 and 8 and 218/5. But survey numbers shown in the settlement deed of the year 1975 are 678 and 679.

19. The plaintiffs have failed in their attempts to correlate the old survey numbers with the new survey numbers. Realizing the said difficulties, Dr.R.Gowri, learned counsel appearing for the appellants based her arguments on Ex.A6, which is said to be an agreement under which 7th defendant has admitted the title of the plaintiff, the 7th defendant has denied his signature in the said agreement. The plaintiff have not taken any steps to establish the signatures of the 7th defendant in the said agreement. The Trial Court has held that Ex.A6 has not been proved in accordance with law and it is unsafe to rely upon the said document.

20. Mr.Mohamed Yusuf, learned counsel appearing for the 7th respondent would point out the defendants have sued Ramaiyan for damages for defamation because he had issued a public notice accusing the defendants 7 and 8 for having trespassed into the suit property. The said suit was decreed on 31.07.1995 and the said decree has also become final. I do not think that the decree in the suit for damages have any bearing on the present suit for declaration. Dehors the said decree, if the plaintiffs are able to prove the title they will be entitled to decree for declaration and recovery of possession. The evidence that is available, as discussed above, would show that the plaintiffs have not established their title to the properties as described in the plaint. Once the survey numbers differ, it is for the plaintiffs to have correlated the same by marking the revenue records. The said attempt has not been made by the plaintiffs. However, they were satisfied

with the description of the properties as shown in the partition deed of the year 1926.

21. In the light of the above, the plaintiffs having failed to establish their title, cannot seek recovery of possession of the properties from the defendants 7 and 8. For the foregoing reasons, the appeal fails and is dismissed confirming the judgment and decree of the Trial Court. However, the parties shall bear their own costs in this appeal. Consequently the connected C.M.P.No.20164 of 2003 is closed.

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