

Sornathai and Others Vs. Muthathal and Another

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Court : Chennai Madurai

Decided On : Nov-24-2016

Judge : The Honourable Ms. Justice V.M. Velumani

Appeal No. : S.A.(MD)No. 893 of 2008 & M.P.(MD)No. 2 of 2008

Appellant : Sornathai and Others

Respondent : Muthathal and Another

Judgement :

(Prayer:Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 12.04.2007 made in A.S.No.27 of 2005 on the file of the Subordinate Court, Sankarankovil, modifying the Judgment and decree dated 18.02.2004, made in O.S.No.16 of 2002 on the file of the Principal District Munsif Court, Sankarankovil.)

1. This Second Appeal has been filed against the judgment and decree dated 12.04.2007 made in A.S.No.27 of 2005 on the file of the Subordinate Court, Sankarankovil, modifying the Judgment and decree dated 18.02.2004, made in O.S.No.16 of 2002 on the file of the Principal District Munsif Court, Sankarankovil.
2. The appellants are the plaintiffs, who succeeded in the Trial Court, but lost partly in the first appellate Court. The respondents are the defendants in the suit and the appellants in the first appeal. The appellants filed the suit in O.S.No.16 of 2002 before the Principal District Munsif Court, Sankarankovil, for declaration and

permanent injunction.

3. Facts of the case:-

(i) The suit property measuring 18-3/4 cents and another extent of 6-1/4 cents in S.No.380/9 at Kurukkalpatti Village, originally belonged to one Ponnammal, W/o.Vadivel Nadar and she sold the property to one Vellaidurai Thevar, by the Deed of Sale, dated 30.04.1985. The said Vellaidurai died intestate on 09.10.1997. From that date, the appellants are in possession and enjoyment of the suit property. Patta No.1880 was issued to the appellants for the portion of the properties and Joint Patta No.1281 in respect of Well was issued for the suit property. The appellants are paying Kist and enjoying the suit property for more than 15 years openly as owners and they perfected their title by adverse possession also. The respondents/defendants are the daughters of one Muthiah Thevar. The father of the respondents Muthiah Thevar purchased a portion, measuring 6- cents from Ponnammal, by the Deed of Sale, dated 23.07.1969. After the death of Muthiah Thevar, the respondents are in possession and enjoyment of the said property by constructing a house. On 24.12.2001, the respondents tried to interfere with the possession of the appellants in the suit property. Hence, the appellants have filed the suit for the relief stated above.

(ii) The first respondent filed written statement and the same has been adopted by the second respondent. The respondents denied the various averments made in the plaint and submitted that the property measuring 25 cents originally belonged to one Chockalinga Thevar, Periyasamy Thevar and Vellaiappa Thevar. The said Chockalinga Thevar was given 9 cents in the middle of 25 cents and Vellaiappa Thevar was given 6-1/4 cents on the southern side. Periyasamy Thevar was allotted 9-3/4 cents on the northern side of the suit property.

(iii) The respondents father Muthiah Thevar and one Sankarapandi Thevar are the legal heirs of Chockalinga Thevar. Sankarapandi Thevar died issueless. Therefore, the entire 9 cents allotted to Chockalinga Thevar, was in possession and enjoyment of the respondents.

(iv) Periyasamy Thevar died leaving behind Ramaiah Thevar and Sankarapandi Thevar as his legal heirs. Ramaiah Thevar died issueless. Therefore, the said Sankarapandi Thevar inherited the entire 9-3/4 cents allotted to Periyasamy Thevar and subsequently, their legal heirs, viz., Subbiah, Ramaiah, Murugan and Vellaidurai were jointly in possession and enjoyment of the property.

(v) The property allotted to Vellaiappa Thevar on the southern side, measuring 6-1/4 cents was inherited by one Madasamy Thevar, S/o.Vellaiappa Thevar. He was in possession and enjoyment of the same. The said Madasamy Thevar sold larger extent of land i.e., more than 6-1/4 cents to Vadivel Nadar. When it was questioned, the legal heirs of Vadivel Nadar, namely, Ponnammal and her son - Jeyaraj executed a registered Sale Deed to the respondents' father Muthiah Thevar. Madasamy Thevar and Vadivel Nadar were not in possession and enjoyment of larger extent of the land, sold to Vadivel Nadar.

(vi) The first respondent has put up a construction on the northern side and the second respondent has put up a construction on the southern side and they are in possession and enjoyment of the same. They have obtained separate Patta Nos.1885 and 1886 for 6-1/4 cents. Further, in the patta issued in respect of 9 cents allotted to Muthiah Thevar, father of the respondents, it has been wrongly mentioned as 2 Ares. To correct the same, proceedings were initiated and the same is pending. The appellants fraudulently obtained Patta for 18-3/4 cents, dated 30.04.1985, which was executed by Ponnammal, as the said Ponnammal did not have title for 18-3/4 cents.

(vii) Based on the pleadings, the learned Principal District Munsif, Sankarankovil, framed necessary issues.

(viii) Before the Trial Court, the second appellant examined himself as P.W.1 and one Thambiraja was examined as P.W.2 and marked four documents as Exs.A.1 to A.4. On behalf of the respondents, the second respondent examined herself as D.W.1 and Ponnammal was examined as D.W.2 and marked 6 documents as Exs.B.1 to B.6. The Commissioner filed his report along with the sketch. These documents were marked as Court documents i.e., Exs.C.1 to C.5.

(ix) The learned Principal District Munsif, Sankarankovil, considering the pleadings, oral and documentary evidence adduced by the parties and arguments of the learned counsel appearing for the parties, by the judgment and decree, dated 18.02.2004, decreed the suit.

(x) Against the said judgment and decree, dated 18.02.2004, the respondents have filed A.S.No.27 of 2005 before the Subordinate Court, Sankarankovil.

(xi) The learned Subordinate Judge, Sankarankovil, framed necessary points for consideration.

(xii) The learned Subordinate Judge, Sankarankovil, independently considering the pleadings, oral and documentary evidence, judgment of the Trial Court and arguments of the learned counsel for the parties, by judgment and decree, dated 12.04.2007, partly allowed the appeal filed by the respondents. The learned Subordinate Judge held that the appellants proved their title with regard to 18-3/4 cents in S.No.380/9. The learned Subordinate Judge also took note of the fact that S.No.380/9 was sub-divided into S.Nos.380/9A, 380/9B and 380/9C and S.No.380/9A, measuring 13.5 cents is in possession and enjoyment of the appellants and 5 cents in S.No.380/9B1 is in possession and enjoyment of the respondents, granted injunction only for 13.5 cents in S.No.380/9A and dismissed the relief in respect of 5 cents in S.No.380/9B1.

4. Against the said judgment and decree, dated 12.04.2007, the present second appeal is filed.

5. At the time of admitting the second appeal, this Court framed the following substantial questions of law:

a) Whether the 1st appellate court is correct in not granting the relief of injunction alone without giving any finding as to how the reasons stated by trial Court is wrong?

b) Whether the 1st appellate Court is correct in modifying the decree without following the principle possession follows title regarding vacant land?

6. The learned counsel for the appellants submitted that the learned Subordinate Judge, Sankarankovil, having held that the appellants are the owners of 18-3/4 cents of the suit property, erred in holding that the appellants are not in possession of 5 cents. The learned Subordinate Judge erred in holding that the appellants are not in possession of 5 cents in S.No.380/9B1 and ought to have granted injunction for 5 cents also. The learned Subordinate Judge ought to have seen that the subdivision is without notice to the appellants and without following the procedure. The learned Subordinate Judge failed to see that the suit property is vacant land and title follows possession.

7. In support of his submissions, the learned counsel for the appellants relied on the following judgments:

(i) 2001 (3) CTC 393 [Murugaiyan and 2 others Vs. Subbaiyan]

(ii) 2013 (8) MLJ 530 [C.Chinnasamy Vs. M.C.Murugan]

8. Per contra, the learned counsel for the respondents submitted that the respondents have proved their possession in respect of 5 cents, which was subdivided as S.No.380/9B1. The appellants themselves admitted that patta is in the name of Muthiah Thevar, the father of the respondents. The respondents are in possession and enjoyment of the property as per patta. The learned Subordinate Judge considered all the materials, both oral and documentary evidence, has rightly rejected the relief of injunction with regard to 5 cents and prayed for dismissal of the second appeal.

9. In support of his submissions, the learned counsel for the respondents relied on the following judgments:

(i) AIR 1993 Supreme Court 957 [Vinay Krishna Vs. Keshav Chandra and another]

(ii) 2002 (1) MLJ 419 [Saravanan Pillai Vs. A.S.Mariappan and others]

10. I have carefully perused all the materials available on record and the judgment and decree of the Courts below and considered the arguments advanced by the learned counsel appearing for the parties.

11. The issue to be decided in the second appeal is whether the learned Subordinate Judge erred in rejecting the relief of injunction in respect of 5 cents in S.No.380/9B1. The appellants have come out with the suit claiming declaration in respect of 18-3/4 cents in S.No.380/9 and injunction. They have proved their title in respect of the suit property in S.No.380/9, measuring 18-3/4 cents. Both the Courts below appreciating all the records in proper perspective, granted the relief of declaration.

12. As far as the injunction is concerned, the learned Subordinate Judge considered the fact that S.No.380/9 was sub-divided into S.Nos.380/9A1, 380/9B1 and 380/9B3. The appellants have admitted that in respect of S.No.380/9A, measuring 13.5 cents, patta was issued to them and patta was issued to the father of the respondents Muthiah Thevar for 5 cents in S.No.380/9B1 and also admitted that the respondents are in possession and enjoyment of 5 cents in the suit property. As far as injunction is concerned, the said relief can be granted only when the party claiming injunction, proves his possession. In the present case, the appellants have failed to prove that they are in possession of 5 cents. On the other hand, the said 5 cents is in possession and enjoyment of the respondents as per evidence of P.W.1. The learned Subordinate Judge has appreciated this fact in proper perspective and dismissed the relief of injunction only in respect of said 5 cents in S.No.380/9B1. Therefore, the judgments relied on by the learned counsel for the appellants are not applicable to the facts of the present case. There is no error in the said judgment of the learned Subordinate Judge. Therefore, the substantial questions of law framed are answered against the appellants.

13. In the result, the second appeal is dismissed. The judgment and decree, dated 12.04.2007, made in A.S.No.27 of 2005, modifying the judgment and decree, dated 18.02.2004, made in O.S.No.16 of 2002, is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

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