SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Jothiprakasam and Another Vs. Dhanagopal, Another

Jothiprakasam and Another Vs. Dhanagopal, Another

SooperKanoon Citation : sooperkanoon.com/1187368

Court : Chennai

Decided On : Nov-09-2016

Judge : T. Ravindran

Appeal No. : S.A.No. 82 of 2011 & M.P.No. 1 of 2011

Appellant : Jothiprakasam and Another

Respondent : Dhanagopal, Another

Judgement :

(Prayer: Second Appeal is filed under Section 100 of Civil Procedure Code, against the Judgment and Decree of the Subordinate Judge, Neyveli made in A.S.No.8 of 2009, dated 29.01.2010 confirming the Judgement and Decree dated 27.11.2008 made in O.S.No.23 of 2005 on the file of the District Munsif-cum-Judicial Magistrate, Neyveli.)

1. Challenge in this second appeal is made by the defendants 1 and 2 against the judgement and decree dated 29.01.2010 made in A.S.No.8 of 2009 on the file of the Subordinate Court, Neyveli, confirming the judgment and decree dated 27.11.2008 made in O.S.No.23 of 2005 on the file of the District Munsif - cum - Judicial Magistrate, Neyveli.

2. The suit has been laid for declaration and mandatory injunction.

3. The averments contained in the plaint, in brief, are stated as follows:

The suit property belonged to Murugesa Padayachi as his ancestral property and he was employed in NLC and died on 06.06.1982 leaving his wife Saradhambal as his sole heir. They have no issues. The plaintiff's mother Kasiammal is the younger sister of Saradhambal. As Saradhambal and Murugesa Padayachi did not have any issues, they brought up the children of Kasiammal as their own children. After the death of Murugesa Padayachi, Saradhambal expressed her desire to take her sister's son viz., the plaintiff in adoption and Kasiammal was willing to give the plaintiff in adoption to Sardhambal, at that time, the plaintiff's natural father Ilangovan was not alive and accordingly, on 25.08.1988, Kasiammal gave the plaintiff in adoption to her sister Saradhambal and the adoption took place and Datta Homam was performed and from that moment onwards, the plaintiff became the adopted son of Saradhambal. Later, on 21.06.1991, the deed of adoption was executed by Saradhambal and Kasiammal. It is to evidence the adoption that took place on 25.08.1988 and thus, the plaintiff is the only heir to the estate of Saradhambal. After the death of Murugesan and later, after the death of Saradhambal, the plaintiff, as their only legal heir, is entitled to succeed to the suit property. Further, there is a decree in O.S.No.1298 of 1990, wherein, the plaintiff's status, as the adopted son of Saradhambal, has been declared. The suit A schedule property is a patta land and after the death of Murgesa Padayachi, patta was transferred to the name of his wife Saradhambal and under the Natham Survey also, patta was granted to Saradhambal. It was originally in sub-division No.9 in Survey No.234 and during the Natham Survey in 2001, the sub-division was changed to 5A. Subsequently, patta was also granted in favour of the plaintiff. Thus, the plaintiff has been in possession and enjoyment of the suit property. The property, to the North of the suit property namely Survey No.234/4, belonged to the second defendant and there are two survey stones on the East and West to show the boundary line of the plaintiff's property dividing the property of the second defendant. During the Natham Survey, Dhanasekaran got patta for the property situated to the North of the suit property. The plaintiff has been residing in the residential house put up in the A Schedule property for more than 35 years. While re-building his house, the second defendant unlawfully encroachedintothe plaintiff's property to a breadth of one metre and length of six metres and thereby, interfered with the plaintiff's possession and enjoyment of the suit property. The

portion encroached by the second defendant has been described as B Schedule property. The second defendant has subsequently sold the property to the first defendant giving false measurements. Inasmuch as the first defendant has no right over the B schedule property and illegally put up construction on the same, the plaintiff has been constrained to lay the suit.

4. The avernments, in the written statement filed by the second defendant and adopted by the first defendant, are as follows:

The suit is not maintainable either in law or on facts. After denying all the allegations contained in the plaint, according to the defendants, the second defendant, one Dhanalakshmi and Rajendran are brothers and sister, who are the children of Murugesa Padayachi's elder brother and as Murugesan and Saradhamabal did not have any issues, Murugesan looked after the second defendant and his brother and sister as their own children. Murugesan, in the year 1976, remarried one Lakshmi of Kumanangulam and on coming to know about her husband's second marriage, Saradhambal colluded with her sister Kasiammal and caused the death of Lakshmi by giving poison and on the death of Murugesan, his last rites were performed by Rajendran, the brother of second defendant and all the expenses to perform the last rites of Murugesan were borne by Rajendran and the second defendant. After the death of Murugesan, Saradhambal was given employment on Compassionate grounds and Saradhambal started avoiding the second defendant and his brother and sisterand at the instigation of Kasiammal, they have started claiming that the plaintiff has been taken in adoption by Saradhambal falsely. Saradhambal died on 12.03.2003. The plaintiff has got some documents claiming to be the son of Saradhambal and has also got death benefits and other monetary benefits in NLC, on the basis of those documents. Now, on the same line, he is attempting to grab the suit property without any legal title over the same. The second defendant has been in possession and enjoyment of the suit property for several years and the plaintiff is a stranger to the suit property. The plaintiff is not having any claim or title over the suit property and has instituted the suit on false allegations. The defendants are not parties in O.S.No.1298 of 1990 and the decree passed is the said suit is not binding on the defendants. The suit is barred by limitation and hence, the suit, without cause of action, is liable to

be dismissed.

5. In support of the plaintiff's case, PWs1 and 2 were examined. Exs. A1 to A 13 were marked. On the side of the defendants, DW1 was examined. Exs.B1 was marked. Exs.C1 to C3 were marked.

6. On a consideration of the oral and documentary evidence adduced by the respective parties, the trial Court was pleased to decree the suit as prayed for. Aggrieved over the same, the defendants 1 and 2 preferred the first appeal and the first appellate court also, on a reappraisal of the evidence, was pleased to confirm the Judgement and decree of the trial Court. It appears that in the first appellate Court, Exs.B2 to 20 were marked as Additional evidence on the side of the defendants. As against the judgement and decree of the first appellate court, the present second appeal has been preferred by the defendants 1 and 2.

7. The plaintiff has laid the suit against the defendants, on the footing that he is the adopted son of Saradhambal, his maternal aunt. That the suit A schedule property inclusive of B Schedule property originally belonged to Murugesan is not disputed. That Saradhambal is the wife of Murugesan is also not in dispute. That Murugesan died on 06.06.1982 leaving behind his wife Saradhambal as his sole heir is also not in dispute. Now, according to the plaintiff, as Murugesan and Saradhambal had no issues, they brought up the plaintiff, who is the son of Saradhambal's sister viz., Kasiammal, as their own son and after the death of Murugesan, Saradhambal expressed her desire to take the plaintiff in adoption and as Kasiammal had also given her consent to the same, according to the plaintiff, after due religious ceremonies, the plaintiff wasgiven in adoption by his natural mother Kasiammal to Saradhambal on 25.08.1988 and accordingly, from that moment onwards, the plaintiff has become the adopted son of Saradhambal.

8. It is the further case of the plaintiff that in recognition of Saradhambal taking the plaintiff as her adopted son, an adoption deed was also executed by Saradhambal and Kasiammal on 21.06.1991 and therefore, the above said adoption deed, copy of which has been marked as Ex.A4 would go to show that the plaintiff is the adopted son of Saradhambal. Further, according to the plaintiff, his status as the adopted son of Saradhambal has also been declared in O.S.No.1298 of 1999 and

the copy of the decree has been marked as Ex.A5. Therefore, according to the plaintiff, Murugesan and Saradhambal and after the death of Murugesan, Saradhambal and after the death Saradhambal, the plaintiff had been all along enjoying the A schedule property inclusive of the B schedule property by seeking necessary mutation in the revenue records and according to the plaintiff, patta in respect of B schedule property, in particular, had been granted in favour of Saradhambal and subsequently, in his favour and inasmuch as defendants 1 and 2 unlawfully encroached into the B schedule property, without any authority and put up construction, the plaintiff has been necessitated to file the suit against them.

9. Per contra, the case of adoption pleaded by the plaintiff has been stoutly denied by the defendants. According to the second defendant, the second defendant, one Rajendran and one Dhanalakshmi are elder brother's children of Murugesan and as Murugesan and his wife Saradambal had died issueless, they being class-II heirs, are entitled to succeed to the properties belonging to Murugesan and Saradambal and therefore, according to the second defendant, the plaintiff has no title to the B schedule property and on the other hand, the second defendant, his brother Rajendran and his sister Dhanalakshmi are the owners of B schedule property and the same is in their possession and enjoyment and therefore, the plaintiff's suit should be rejected.

10. Inasmuch as the plea of adoption set up by the plaintiff has been controverted, as rightly argued, the onus is upon the plaintiff to establish that he has been taken in adoption by the deceased Saradhambal. According to the specific case of the plaintiff, even during the life time of Murugesan and Saradhambal, he had been treated by them as their own son and further, according to him, after the death of Murugesan, Saradhambal had taken the plaintiff in adoption on 25.08.1988 and in evidence of the same, the adoption deed was later executed on 21.06.1991, a copy of the adoption deed has been marked as Ex.A4. According to the plaintiff, inasmuch as the original adoption deed has been marked in some other case, the same could not be marked in this case and the certified copy of the same has been marked. A perusal of Ex.A4 would go to show that the plaintiff has been taken in adoption by Saradhambal. In this connection, the plaintiff's counsel relies upon the presumption, that could be raised in the case of the registered document

relating to adoption under Section 16 of the Hindu Adoptions and Maintenance Act, 1956. According to the plaintiff's counsel, inasmuch as the defendants 1 and 2 have not established or produced any material to dislodge the presumption that could be raised under Section 16 of the Hindu Adoptions and Maintenance Act, 1956, the Courts below have rightly held that the plaintiff has been taken in adoption by Saradhambal. As rightly put forth by the plaintiff counsel, the defendants 1 and 2 have not placed any material to dislodge the presumption that could be taken in respect of Ex.A4 adoption deed.

11. That apart, it could also be seen that in O.S.No.1298 of 1990, the plaintiff had also obtained the decree of declaration that he is the adopted son of Saradhambal and with reference to the same also, till date, the defendants 1 and 2 have not placed any material to evidence that they have taken steps to impugne the same. No doubt, the defendants 1 and 2 are not parties to the above said suit. Be that as it may, after coming to know about the said decree, till date, the defendants 1 and 2 have not chosen to challenge the same. This would only go to show that the defendants 1 and 2 have also accepted the decree passed in O.S.No.1298 of 1990 declaring that the plaintiff is the adopted son of Saradhambal.

12. Not stopping there, it could also be seen from the evidence adduced on behalf of the defendants, that the plaintiff has been brought up as the son of Saradhambal and that, it is only the plaintiff, who has been enjoying the property left behind by Murugesan and Saradhambal. In this connection, as rightly found by the lower appellate Court, DW1, the first defendant has, during his cross examination, admitted that it is only the plaintiff, who has been residing in the property belonging to Murugesa Padayachi and further, he has also admitted that he has not placed any document to show that the encroached portion in B schedule property belongs to him and that, no patta has been granted in his favour in respect of the suit property. Therefore, it could be seen that inasmuch as the plaintiff has been taken in adoption by Saradhambal and Saradhambal had enjoyed the suit property till her life time and thereafter, by her adopted son viz., the plaintiff, it has to be construed that it is only the plaintiff, who has been enjoying the property, left by Murugesan and there is no document to show the title and possession of the defendant in respect of the suit property. DW2

Krishnasamy examined on behalf of the defendants' case has admitted that he does not know when Saradhamabal died and the Survey Number of the property, to which she is entitled to and further, he has also admitted that there is no document to evidence that defendants 1 and 2 had been residing with Murugesan and Saradhambal and it is only the plaintiff, who has been residing in the house built up by Saradhambal. Therefore, from the evidence of DW2 also, this court could gather that as the plaintiff had been brought up by Murugesan and Saradhambal and later, taken in adoption by Saradhambal, it could be seen that it is only the plaintiff, who has been residing in the property belonging to them. That apart, DW3 Ilavarasan also, in his evidence, has admitted that it is only the plaintiff, who has been residing in the house belonging to Saradhambal. Therefore, as rightly put forth by the plaintiff's counsel, even from the evidence of DWs2 and 3, cumulatively, it could be seen that it is only the plaintiff, who had been, all along, enjoying the suit property inclusive of the disputed property viz., "B" schedule property. As rightly argued, if the plaintiff had no nexus or relationship with Saradhambal's family, in any manner, it does not stand to reason as to how come the plaintiff would have been enjoying the suit property belonging to Murugesan and Saradhambal and particularly, when it has also been admitted that the plaintiff had been living with Saradhambal even during her life time.

13. Murugesan died in harness and he was employed in NLC. With reference to the above aspect, evidence has also been adduced that even the NLC management has recorded that the plaintiff is the adopted son of Sardhambal and this could be seen from the pro forma issued by the NLC marked as Ex.A11. To evidence that Saradhambal and Murugesan had died, their death certificates have been marked as Exs.A8 and 9. The legal heir ship certificate has been marked as Ex.A10.

14. To buttress the plaintiff's case of possession and enjoyment of the suit property, the patta in respect of "B" schedule property, which had been granted in favour of Saradhambal, has been marked as Ex.A1 and A2 and to show that the same has been mutated in favour of the plaintiff, the patta issued in favour of the plaintiff has been marked as Ex.A6 and A7.

15. Therefore, it could be seen, considering the above mentioned oral and documentary evidence, adduced on the side of the plaintiff and when the defendants have not placed any material other than marking Ex.B1 to repudiate the plaintiff's case or to dislodge the presumption, that could be taken in support of the plaintiff's case under Ex.A4, the Courts below have rightly held that the plaintiff is the adopted son of Saradhambal and after the death of Saradhambal, it is only the plaintiff, who is entitled to the property belonging to Saradhambal. As adverted to earlier, it is not the case of the defendants 1 and 2 that Saradhambal had no title to the disputed "B" schedule property. Therefore, it could be seen that on the demise of Saradhambal, the plaintiff, being her adopted son, would be entitled to inherit the estate of Saradhambal. According to the plaintiff, the defendants without any authority had encroached the "B" schedule property, which forms part of "A" schedule property and put up some construction and therefore, he was constrained to lay the suit seeking the relief of declaration and mandatory injunction.

16. It is contended by the defendants' counsel that the plaintiff has not established that he has title to the disputed property viz., "B" schedule property. On the other hand, as seen earlier, the plaintiff has marked the patta issued in his favour and also, in favour of Saradhambal, and further, the plaintiff has also established his plea of adoption. Therefore, it could be seen that the plaintiff, being the sole heir of Saradhambal, is entitled to succeed to the "B" schedule property.

17. The defendants' counsel, during the course of arguments, has pointed out that there are certain discrepancies in the measurements found in the pattas marked under Ex.A6 and A7 for which no proper explanation is furnished and according to him based upon the same, the Courts should have held that the plaintiff has failed to establish that he has title to the "B" Schedule property as described in the plaint. As rightly argued by the plaintiff's counsel, the defendants 1 and 2 in their written statement have not taken any plea that the description of the property particularly "B" schedule property is not properly given by the plaintiff in the plaint. It is also not the case of the defendants in their written statement that the measurement given in the description of the "B" schedule property is incorrect. In such circumstances, the plea, now projected by the defendants' counsel that the plaintiff has failed to

establish the conflicting measurements found in Exs.A6 and 7 and on the said footing alone, the plaintiff should be non suited cannot be countenanced. Accordingly, when the defendants have not taken any specific plea disputing the description and measurement of the disputed property and when it is found that the disputed property belongs to Saradhambal, thereafter to the plaintiff, as her adopted son, and when, as adverted to earlier, the defendants have failed to establish that they have legal right to claim title to the "B" schedule property and that, the same is in their rightful enjoyment and possession, it could be seen that the defendants, without any authority, had unlawfully encroached into the "B" schedule property and therefore, it could be seen that the encroachments put up by the defendants in the "B" schedule property are liable to be removed as claimed by the plaintiff.

18. It is further argued by the defendants' counsel that even though the plaintiff claims to be the adopted son of Saradhambal, even in the plaint, his father's name is shown as Ilangovan and also in the police complaint and revenue records, marked as Exs.A6 and 7,the plaintiff's father's name is shown as Ilangovan and even in Ex.B1, the plaintiff's father's name is shown as Ilangovan and the subsequent conduct of the plaintiff, describing his father as Ilangovan, would lead to the conclusion that the plaintiff was not taken in adoption by Saradhambal and therefore, it is argued that the plaintiff's claim to the "B" schedule property, as adopted son, should be rejected. However, the above argument cannot be accepted straightaway. As regards Ex.B1, it could be seen that the trial Court has adverted to the same in the right perspective and found that on that document solely, no credence could be attached to the defence put forth by the defendants for holding that the plaintiff is not the adopted son of Saradhambal. Therefore, the reason given by the trial Court to disregard Ex.B1 does not call for any interference. Similarly, merely because in the proceedings of revenue authorities marked as Ex.A6 and A7 and also in Ex.A3 or in the plaint, the plaintiff has shown his father's name as Ilangovan, would not disentitle the plaintiff to claim the "B" schedule property on the footing that he is the adopted son of Saradhambal. It is the specific case of the plaintiff that he is the adopted son of Saradhambal and not the adopted son of Murugesan. It is also the case of the plaintiff that only after the death of Murugesan, Saradambal being issueless had taken the plaintiff in

adoption from her sister Kasiammal.

19. In such circumstances, when the plaintiff's title to the suit property is on the footing that he is the adopted son of Saradhambal and when the same has also been established beyond any reasonable doubt, as adverted to earlier, it could be seen that mere description of the plaintiff's father's name as Ilangovan in certain documents, as found supra, would not, on its own, lead to the conclusion that the plaintiff has not been taken in adoption by Saradhambal. Therefore, as rightly argued by the plaintiff's counsel, when the defendants have not placed any material to dislodge the presumption that could be raised under Section 16 of the Hindu Adoption and Maintenance Act, 1956, and when the plaintiff has also established his case by producing other materials, as seen earlier, in the nature of preponderance of probabilities and when the defendants have failed to establish their claim to the suit property by adducing any iota of evidence, it could be seen that the plaintiff's case cannot be disregarded, merely on the footing that he has mentioned his father's name as Illangovan, in certain places/documents.

20. The counsel for the defendants, in support of his arguments put forth, relied on the authorities (i) AIR 2002 Supreme Court 1428 (Jai Singh Vs. Shakuntala), (ii) AIR 1964 Supreme Court 136 (V 51 C 10) (A.Raghuvamma and another Vs. A.Chenchamme and another), (iii) AIR 1983 Supreme Court 114(1) (Madhusudan Das Vs. Smt. Narayani Bai and others), (iv) (2000) 1 Supreme Court Cases 434 (Ishwar Dass Jain (Dead) Through LRs. Vs. Sohan Lal (Dead) By LRS.), (v) 1999 (III) CTC 304 (Kammavar Sangam Through its Secretary R.Krishnasamy Vs. Mani Janagarajan) and (vi) AIR 2014 Supreme Court 937 (Union of India and others Vs. Vasavi Co-op. Housing Society Ltd. and others). However, as rightly argued by the plaintiff's counsel, those authorities would not be applicable to the facts and circumstances of the present case, as the plaintiff has, by overwhelming evidence, established that he is the adopted son of Saradhambal and he is entitled to succeed to the suit property and also seek the reliefs sought for in the plaint, as the adopted son of Saradhambal. The Principles of Law enunciated in the above said decisions are taken into consideration and followed as applicable to the facts and circumstances of the present case.

At the end, I do not find any substantial question of law involved in this second appeal and hence, the second appeal is found to be devoid of merits and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com