

Ranganathan and Another Vs. Damodaran

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Court : Chennai

Decided On : Feb-16-1999

Reported in : 1999(2)CTC446

Judge : A. Raman, J.

Acts : [Evidence Act, 1872](#) -- Sections 3

Appeal No. : Second Appeal No. 927 of 1987

Appellant : Ranganathan and Another

Respondent : Damodaran

Advocate for Def. : Mr. S. Venkateswaran, Adv.

Advocate for Pet/Ap. : Mr. Umashankar for ;M/s. T.V. Krisnamachari, Adv.

Judgement :

ORDER

1. The defendants are the appellants herein.
2. The plaintiff filed a suit for declaration of title and for injunction on the following grounds:-

The suit property viz., Survey No. 162/7, measuring 8 cents, originally belonged to the grand father of the plaintiff Thiruvengada Gounder and his brothers

Ramasamy Gounder, Subba Gounder and Vaiyapuri Gounder. They were in possession and enjoyment of the same. Thiruvengada Gounder died leaving the plaintiff's father became entitled to two cents out of the same. The paternal uncle of the plaintiff viz., Vaiyapuri Gounder sold his two cents to one Periasamy Gounder on 1.3.1932. The same was purchased along with other properties from periasamy Gounder by the plaintiff's father on 25.2.1932. On 31.8.1940, from the wife of Ramaswamy Gounder and his son, two cents out of the same was purchased. Later, the remaining two cents were purchased from Subba Gounder. Thus, the plaintiff's father was in possession of the 8 cents till his death. After his death, the plaintiff and his brothers were in possession and enjoyment of the same, and in a partition between the plaintiff and his brother, which took place 15 years ago, the property was allotted to the plaintiff. The plaintiff closed the well in the suit property and has installed an electric bore and has been irrigating his lands with water drawn from the bore. He has been making payment of kist under Patta No. 210 for the said property. Even otherwise, the plaintiff's possession has been prescribed by adverse possession. On account of enmity, the defendants, are a tempting to disturb the plaintiff's possession and enjoyment, and hence, the suit.

3. The defendants contended as follows:

The suit property originally belonged to Iyyasamy Gounder, the father of Amirthammal, who executed a settlement deed in favour of her daughter on 1,12.1962. The settlement deed was accepted and acted upon. Amirthammal sold the said property to the 1st defendant on 9.11.1966 for a valuable consideration. But, while describing the survey number, it was given wrongly as S.No. 155/2. What was sold and taken possession of by the 1st defendant was only six cents of land in S.No. 162/7. Patta was transferred to the name of the defendant and the defendant has been paying kist for the property and has been in possession and enjoyment of the same. Neither the plaintiff nor the predecessor- in-title were ever held the possession of the said property. The mistake committed in reciting the boundaries was rectified by means of a Rectification Deed, in the year 1983. The defendants therefore pray that the suit may be dismissed with costs.

4. The plaintiff examined himself besides two witnesses on his side, while the 1st defendant examined himself and two witnesses on his side. Exs. A1 to A 8 and B1 to B7 and C1 to C2 were marked. The Principal District Munsif, Villupuram, by her Judgment dated 19.12.1984 decreed the suit partly viz., in respect of tenant alone and dismissed the suit as regards the six cents. The plaintiff aggrieved by the said decision., preferred an appeal in A.S.No. 2 of 1985 to the Sub Court, Villupuram. The Sub Judge, by his Judgment dated 29.8.1986, accepted the appeal and decreed the suit as prayed for. Hence, this second appeal by the defendants.

5. The question of law formulated for consideration at the time of admission, runs as follows:

'Whether the recital in Ex.A2, which is not a transaction inter parties, but between third parties, could be relied upon in evidence.'

6. The Point: The property comprised in the suit is an extent of 8 cents situate in S.No. 162/7 in the village of Ayyankovilpattu, Villupuram Taluk. The suit property includes motor electric pumpset alleged to have been installed in the suit property by the plaintiff. The plaintiff's case is that this property viz., 8 cents belonged to four brothers by name Thiruvengada Gounder, Rangasamy Gounder, Subba Gounder and Vaiyapuri Gounder. The further case is that the plaintiff got two cents. on the death of his father as his heir be seeing the son of Thiruvengada Gounder. According to him, the brother of Thiruvengada Gounder viz., Vaiyapuri Gounder sold two cents to one Periasamy Gounder from whom, the plaintiff's father Rajayya Gounder purchased two cents. It is also the case of the plaintiff that his father purchased another two cents from Amirthammal, wife of Rangasamy Gounder. He would further plead that subsequently, the plaintiff's father purchased the remaining two cents from the other sharer Subba Gounder, and thus the plaintiff's father became entitled to the entire 8 cents in S.No. 162/7. This property, according to the plaintiff, was in possession and enjoyment of the father till his death and thereafter in an oral partition, it came to be allotted to his share and thus, the plaintiff is in possession. It is also alleged in the plaint that this property is comprised in Patta No. 210 and that he is paying the kist for the property.

7. To begin with, it has to be stated that the plaintiff's claim that his father purchased two cents of land from Subba Counter is not established. The plaintiff has not chosen to produce the sale deed. Whereby the said extent is alleged to have been purchased by his father. Along with the plaint, only the sale deed executed by Periasamy Gounder in favour of Rajayya Gounder and the sale deed executed by Amirthammal in favour of Rajayya Gounder are produced. The plaintiff also not produced any document to show that these eight cents belonged to the four brothers, as alleged in the plaint. Neither the chitta extract, nor any other village account is produced to establish the same. In Ex.A.I Sale deed, which is dated 25.2.1932, whereby the plaintiff's father is said to have purchased two cents from Periyasamy Gounder, the description of the property reads as follows:

It is to be pointed out that as regards the sub-division No. 162/7, there is a correction in the sale deed. While the writings in the description of the property are in a particular colour of ink, this sub division -7 appears to be in a different ink, besides bearing a correction. The Registration Copy of the sale deed is not produced - Further, according to the plaintiff's case Vaiyapuri Gounder was entitled to two cents. But the description in the sale deed reads as follows:

This does not tally with the allegation made in the plaint, More over, this recital relating to S.No. 162/7 does not refer to the land in question. It does not say 162.7 on the other hand, it only refers to the well and the construction consisting of the well. It is to be pointed out that the vendor of the plaintiff's father is alleged to have purchased this property from Vaiyapuri Gounder, by means of sale deed dated 1.2.1932. The said sale deed is not produced no any registration copy of the same is produced. Therefore, a reading of Ex.A would show that it does not support the plaintiff's contention or his claim of title to the 8 cents of land. Thus, it is not established that Vaiyapuri Gounder sold two cents of land in S.No. 162/7 to the plaintiff's father.

8. The sale deed dated 1.2.1932 is not produced. The sale deed dated 25.2.1932 does not advance the plaintiff's case. As regards the purchase alleged to have been made from Subba Gounder, there is no document produced. Therefore, as regards 4 cents of land comprised in S.No. 162/7, the plaintiff, on the face of it,

has failed to establish the same. Ex.A2 is the sale deed whereby, it is stated that the plaintiff's father purchased another two cents from Ramasamy Gounder's wife Amirthammal and her son. It is not established that Ramasamy Gounder referred to in the sale deed is the brother of Thiravengada Gounder viz., the uncle of the Vendor under Ex.A2 Of-course, in this document, it is stated that was sold was two cents of land comprised in S.No.162/7 and it refers to the two cents sold, which is the portion bounded on the north by Pambai, on the west by Subba Gounder's share, on the east, by Vaiyapuri Gounder's share and on the south by Vendee's share.

9. As to the possession, the plaintiff has produced the documents, which have been marked as Exs. A3 to All. A3 is the Patta. From a reading of the said document, it is clear that it stands in the name of the plaintiff and six others. The 1st defendant is Ranganathari, S/o, Veerappa Gounder. His name is also found in the patta. It stands in the name of Ranganathan, Thangavel Gounder, Amirthammal, Damodar Gounder, Ramasamy Gounder, Unna Gounder and Armugham. Thus, the property stands in a joint patta, which includes the name of the 1st defendant as well. The patta refers to 162/7 and 190-10, giving a total extent of 28 cents. Thus, according to the revenue records, the property in 162/7 stands in joint patta, and the 1st defendant is also one of the joint patta, and the 1st defendant is also one of the joint pattadars. The kist receipts produced by the plaintiff are marked as Exs. A4 to A7. They are for the Faslis 1369. 1370, 1376 and 1379, viz., for the years 1960, 1961, 1967 and 1970. Though the plaintiff would claim that he has been in continuous possession and enjoyment of the property for over a number of years, the plaintiff has not produced the receipts to establish the same. The plaint was actually presented into court on 25.6.1983 and was take on file on the same day. The last of the kist receipts produced by the plaintiff is only for the year 1970. It is not explained by the plaintiff as to why, he is unable to produce the kist receipts till the date of. suit. Exs. A8 to All are receipts for payment of electricity charges for the month of July 1979, November 1980, July 1981 and April 1983. The service connection number is no mentioned in the plaint. It is also not established that the service connection relates to the motor and pumpset installed in the property. Ex.A12 is the representation made by the plaintiff to the Hon'ble Chief Minister on 30.1.1981, It refers to some occurrence. It

does not mention any property. Exs. A13 to A 15 are the postal acknowledgment for service of the complaint sent by the plaintiff to the various authorities. Thus, the documents produced by the plaintiff do not at all help to establish the fact that the plaintiff was in possession of the entire 8 cents on the date of the suit nor they help to establish the plaintiff's title to the entire extent as claimed in the plaint.

10. Further, the defendants have produced the registration copy of the settlement deed, dated 1.12.1995. Which refers to S.No. 162/7 and the extent of 8 cents comprised therein. The recital in this document is that the Settlor got the properties in the partition 30 years prior to the date of settlement Ex. B.4 is the patta which only shows that the property in S.No. 162/7 stands in the name of seven persons, which includes that on the defendants, Ofcourse, the sale deed, by in favour of the 1st defendant does not mention the suit property, but it is the case of the defendants that it was on account of a mistake in reciting the Survey Number. Subsequently, a rectification deed was executed to mention the suit property as the property conveyed under the said document. The rectification deed is marked as Ex. B2. According to the defendants, the vendor Amirthammal was conveyed only the property comprised in S.No. 162/7 under the settlement deed dated 1.12.1925 and that she did not obtain by property comprised in S.No. 155/2, as he has already dispose of the property under S.No. 155/2. to a 3rd party. The said document is not produced. But, 5 No. 155/2 is mentioned in Ex. B3 and the said property was also settled upon Amirthammal by her father. Further the defendants have also produced the kist receipts for payment of kists towards patta No. 210 for the year 1967 and 1977. Both the parties have not produced the adangal extract for chitta extract of the relevant village accounts. They have also not examined the village officials or the neighbouring land owners. The Commissioner had noted that there are no ridges if demancration. P.W.1 has admitted that he does not know about the sale transactions evidenced by Exs. A1 and A2. He admits that he has not produced the adangal extract to show his possession of the property comprised in S.No. 162/7.

11. The lower appellate Court has relied upon Ex.A2, the sale deedexecuted by Amirthammal, Here it is stated Even assuming that the recital is binding, if at all it can only operate as regardstwo cents of land, for admittedly, the plaintiff's grand

father was entitled to only two cents out of the total extent of eight cents. It is to be pointed out that no documents have been produced by the plaintiff to show that any extent of land is S.No. 162/7 was purchased by his father. There is no definite case put forward in the plaint as to the mode of enjoyment of the eight cents by the grant father of the plaintiff and his brother. It is simply stated that they were in possession of the eight cents. It is not stated that they divided the properties and were enjoying specific portions of property in that 8 cents. The plaintiff also pleads a case of partition between him and his brother. As to when it took place, there are no details given. Nor the brother is examined. Therefore, unless it is proved that there was a partition of the eight cents among the four owners and each were in possession and enjoyment of definite share, the recital in Ex.A2 will not be of any help.

12. It is to be pointed out that in Ex.A1 also, there is no specification of the two cents, as to whether the said two cents conveyed by the vendor they are situated on the northern side, or southern side, or eastern side or western side or in middle. There is one other fact to be pointed out in Ex.A1, it is stated clearly that '162/7 0-8 Therefore, this document recites that the vendor was entitled only to 3/4th share in the well etc., comprised in S.No. 162/7. It also does not fit in with the plaintiff's claim. It is also not explained as to why the plaintiff has not taken steps to examine the person connected with the documents. It is stated that it is not necessary to examine the persons connected with the documents, because it is not a transaction between the defendants-vendor was a party. The plaintiff claims title only from the parties concerned in these transactions. The defendants claim to have purchased from the vendors described' in Ex.A2. There is no proof of partition. Therefore, in that view of the matter, it is necessary for the plaintiff to examine the parties connected with the documents. Here, it is not a dispute with regard to the boundaries, but about the share of the adjoining owners. But I have already pointed out that as to the purchase from Subba Gounder, no material has been produced. As regards the purchase from Vaiyapuri Gounder, the document produced viz., the Sale Deed Ex A1 does not support the case of the plaintiff. It is also not established that Vaiyapuri Gounder referred to in the document was one of the brothers of the plaintiff's grand father. In such circumstances, the lower appellate Court was not justified in accepting the plaintiff's case merely on the basis of the recital in Ex.A2. The suit is filed on the basis of title. The title has to be

established. Merely on the basis of the recital regarding the boundaries, the plaintiff cannot hope to succeed, or so, when it has not been established that the persons referred to had such a share in the property. Hence, the judgment of the lower appellate court based upon Ex.A.2 cannot be sustained.

13. It is no doubt true that it is admitted that the plaintiff is entitled to two cents in Survey No. 162 /7. The trial court has granted decree for declaration and injunction. As to injunction, the decree of the trial court cannot be sustained, because the plaintiff has not established that he is in enjoyment of any specific two cents of the land out of eight cents in S.No. 162/7 Neither in his evidence nor the records produced by him would indicate that he is in possession of any specified extent in the said Survey Number. The patta is a joint patta. The adangal extracts are not produced. Neighbouring land owners and village officials have not been examined. There is nothing to establish the exclusive possession of the plaintiff to any specified portion of property in s.No. 162/7. On the other hand, it appears to be in common. Infact, the Commissioner's report specifies that there are no ridges to demarcate the plaintiff's property or enjoyment from others, Hence the trial court justified in granting a decree the injunction. Therefore, the only remedy available to the plaintiff is, for a declaration, that he is entitled to two cents in S.No. 162/7. It is open to the plaintiff to file a regular suit for partition to have his share demarcated.

14. In an analysis, I am satisfied that the judgment and decree of the lower appellate court cannot be sustained. Therefore, the said judgment has to be set aside.

15. In the result, the appeal is allowed. The judgment and decree of the lower appellate court are hereby set aside. The decree passed by the trial court is modified. The plaintiff is granted declaration that he is entitled to two cents in S.No. 162/7. It is open to the parties to file regular suit for partition to have their share demarcated. In the above circumstances, the parties shall bear their costs own through out.