

Kuppuswamy Naidu and anr. Vs. Kuppuswamy Naidu and ors.

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SooperKanoon Citation : sooperkanoon.com/829864

Court : Chennai

Decided On : Jun-14-1997

Reported in : (1998)2MLJ648

Appellant : Kuppuswamy Naidu and anr.

Respondent : Kuppuswamy Naidu and ors.

Judgement :

ORDER

A. Raman, J.

1. The plaintiffs are the appellants. The suit was filed by the plaintiffs for declaration of title to the suit property and for injunction.
2. The plaintiff's case is: the plaintiffs are members of the joint Hindu family. The first plaintiff on 20.5.1975, for consideration of Rs. 9,270 purchased the suit property from defendants 1 and 2. The original documents of title were also handed over to the first plaintiff and ever since the plaintiffs are in possession of the suit property. The defendants have no right whatsoever. Anyhow, defendants 3 and 4 with the help of defendants 1 and 2 are attempting to trespass into the suit property. Hence, the suit.
3. The defendants 1 and 2 remained absent and were set ex parte.

4. The written statement filed by the third defendant was adopted by 4th defendant. It is contended as follows. The sale deed dated 20.5.1975 in favour of the plaintiff has been fraudulently corrected and forged. It has been done by the second plaintiff and the first defendant with a view to cause loss to the 3rd defendant. Out of 1.38 acre, one acre was purchased on 20.5.1978 from the first defendant by the third defendant and the third defendant is in possession and enjoyment of the same. The southern 38 cents belongs to the 4th defendant. The 4th defendant is in enjoyment of the same for over 30 years. The 1.00 acre in Survey No.236/4 has been in the possession and enjoyment of the family of the plaintiffs and the 3rd defendant and they sold the same to the first defendant for proper consideration in 1971. It has been wrongly mentioned in the document dated 9.8.1971 that the entire 1.38 acre was sold. But the southern 38 cents belong to 4th defendant. Therefore, plaintiffs are not entitled to 1.38 acre in Survey No.236/4.

5. An additional written statement was filed by the 3rd defendant contending as follows. The sale deed filed by the plaintiff is forged and the truth and validity of the same is disputed. The plaintiff is not entitled to any relief on the basis of the same. The patta for the suit property stands only in the name of the 3rd defendant.

6. The 4th defendant subsequently filed a written statement contending as follows: An extent of 38 cents belonged to Ramanuja Naidu. It was settled in favour of his wife by means of a gift deed dated 13.7.1946. Eversince then the 4th defendant is in possession and enjoyment of the same. The plaintiff is not entitled to the 38 cents.

7. The plaintiff filed a reply statement disputing the truth and validity of the settlement deed dated 13.7.1946. It was further contended that the 38 cents was never enjoyed by the 4th defendant.

8. The learned Additional District Munsif, Cuddalore, framed as many as six issues for trial. Before him, the first plaintiff examined himself as P.W.1 besides examining three other witnesses as P.Ws.2 to 4. On the side of the defendants, the third defendant examined himself as D.W.1 while one Tmt. Alamelu Ammal was examined as D.W.2. Exs.A-1 to A-15 were marked on the side of the plaintiffs

while on the side of the defendants Exs.B-1 to B. 12 were all marked.

9. The learned District Munsif by judgment dated 6.5.1982 decreed the suit in part holding that the first plaintiff is entitled to only 1.00 acre out of 1.38 acre and granted consequential injunction in respect of the same.

10. Aggrieved by the judgment of the trial court, the plaintiffs preferred an appeal in A.S.No.38 of 1983 in Sub Court, Cuddalore. The 3rd defendant for his part, filed appeal in A.S.No.41 of 1983. The learned Subordinate Judge by his judgment dated 30.6.1983, while confirming the judgment and decree of the trial court, dismissed both these appeals. Therefore, the plaintiffs have now come forward with this Second Appeal.

11. The points that arise for consideration in this appeal are:

1. Whether the gift deed dated 13.7.1946 has been properly proved?

2. Whether the decision of the lower court that the plaintiffs are entitled to only 1.00 acre out of 1.38 acre in S.F.No.236/4 is erroneous?

12. The points: The 4th defendant who subsequently filed a written statement on 15.3.1982 raised the contention that 38 cents out of 1.38 acre in Survey No.236/4 originally belonged to Ramanuja Naidu. The said Ramanuja Naidu executed a settlement deed in favour of Rengammal, w/o. Ramakrishna Naidu on 13.7.1946. and thus the 4th defendant is entitled to 38 cents of land out of 1.38 acre of land in Survey No.236/4. The original of the settlement deed dated 13.7.1946 has been produced on the side of the defendants and marked as B-7. The suit is of the year 1979. The document was produced into court in 1980. It is a registered settlement deed. The learned Counsel appearing for the appellants contended that the 4th defendant has stated that she does not know anything about the settlement deed and therefore, in view of the evidence of the 4th defendant, the courts below erred in holding that the settlement deed has been proved. The 4th defendant was examined in court on 9.3.1982. She was aged 70 on that date. The settlement deed was executed in the year 1946. She has, in the course of her chief-examination, stated that the settlement deed was executed. No doubt it has been

stated by her that she does not know who all have attested and she is not able to say on what basis she has deposed that the attestors of the document are not alive. Merely because she has tendered evidence. So, it cannot be taken that there is no proof of valid execution and attestation of the settlement deed only in such circumstances, Section 90 of the Evidence Act comes into play. Here, there is no dispute whatever that the document has been produced for part from proper custody. The property is claimed to be in enjoyment of the 4th defendant in pursuance of the settlement and she has produced in original settlement deed. Therefore, when this document produced from her custody, the court may presume the valid execution and alteration of the same and hold that it was properly and validity executed and attested. To refute this presumption, we have no material. Therefore, in such circumstances the findings of the court below that the settlement deed produce from proper custody and has been validly executed and attested is a finding well based upon the provisions of Section 90 of the Indian Evidence Act. The Presumption has been properly drawn and applied. I do not for a moment think that any error has been committed by the Courts below in coming to such a conclusion in this regard. Therefore, I have no hesitation in holding that the settlement deed has been properly proved as duly executed and attested, applying the presumption under Section 90 of the Indian Evidence Act.

13. Now coming to the other question, we have the documents produced by the defendants which have been marked as Ex.B-7 to Ex.B-2 in support of the case of the 4th defendant. The 4th defendant has been in possession and enjoyment of 38 cents in pursuance of the settlement deed. The possession of 38 cents of land for over number of years by the 4th defendant is established. The property was originally purchased by the first defendant. The first plaintiff has resorted to the correction of the sale deed. This is amply demonstrated by the judgment rendered in C.C.No.473 of 1980. Of course, on appeal this judgment has been set aside. But there is a clear indication in the judgment that the first plaintiff has attempted to tamper with the sale deed. The 4th defendant produced the patta which has been transferred in her name as evidenced by Ex.B-20, The other documents produced on the side of the 4th defendant to which I have already referred to Exs.B-7 and B-8 also establish that the 4th defendant has been in enjoyment of 38 cents out of 1.38 acre. Therefore, the trial court had rightly come to the conclusion

that the plaintiffs are if at all entitled to a declaration, it is only in respect of 1.00 acre of land out of 1.38 acre. This finding in the trial court arrived at on of proper appreciation of the oral and documentary evidence placed before of the trial court. There is nothing to show that the appreciation of the lower court is in any manner perverse. It cannot be stated that it is possible to arrive at a different conclusion from the same set of finding. The appreciation of the trial court has been found to be satisfactory by the lower appellate court. It has affixed its seal of approval to the same conclusion, confirming the judgment and decree of the trial court. There is no other question of law involved in this regard. After proper appreciation, the courts below have come to a conclusion with regard to 38 cents of land its title and possession, when it has not been shown to be vitiated in any manner this Court sitting in Second Appeal is barred under Section 100, C.P.C. from reappraising the case and the evidence. Therefore, I am satisfied that the judgments of the courts below holding that the first plaintiff is entitled to only 1.00 acre out of 1.38 acre in Survey No.236/4 is a finding arrived at by the courts below on a proper approach and appreciation and that it does not suffer from any palpable error of law. Therefore, this Court cannot interfere with the same and hence these points are accordingly holding that the settlement deed Ex.B-7, dated 13.7.1946 has been proved properly and in the circumstances of the presumption arising under Section 90 of the Indian Evidence Act has been properly drawn and applied to the facts of the case and that the judgments of the courts below holding that the first plaintiff is entitled to only 1.00 acre out of 1.38 acre cannot be set aside.

14. In the result, the Second Appeal is dismissed with costs, confirming the judgment and decree of the courts below: Consequently, C.M.P.No. 17257 of 1983 is also dismissed.