

Kamatchi Vs. Janardhanan

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SooperKanoon Citation : sooperkanoon.com/964651

Court : Chennai

Decided On : Mar-21-2013

Judge : G.Rajasuria

Appellant : Kamatchi

Respondent : Janardhanan

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED :

21. 03.2013 Coram: THE HONOURABLE MR.JUSTICE G. RAJASURIA
S.A.No.150 of 2013 and M.P.No.1 of 2013 Kamatchi .. Appellant Vs.

1. Janardhanan 2. Subramaniyan 3. Prabhakaran .. Respondents This second Appeal is focussed as against the judgment and decree dated 13.03.2012 passed by the learned Principal Subordinate Judge, Tindivanam in A.S.No.16 of 2009 in confirming the judgment and decree dated 28.01.2009 passed by the learned Principal District Munsif, Tindivanam in O.S.No.418 of 1999. For appellant : Mr.A.Muthukumar for Mr.V.Ramesh JUDGMENT This second appeal is focussed by the plaintiff, animadverting upon the judgment and decree dated 13.03.2012 passed by the learned Principal Subordinate Judge, Tindivanam in A.S.No.16 of 2009 in confirming the judgment and decree dated 28.01.2009 passed by the learned Principal District Munsif, Tindivanam in O.S.No.418 of 1999.

2. The parties are referred to here under according to their litigative status and ranking before the trial Court.

3. A resume of facts, absolutely necessary and germane for the disposal of this Second Appeal would run thus: (a) The appellant/plaintiff filed the suit for declaration and injunction in respect of the property bearing an extent of 1 acre and 3 cents as found described in the schedule of the plaint on the main ground that as many as three vendors, viz., Pavunammal, Pakkirisamy and Mannakati sold the property vide Ex.A1 sale deed dated 06.01.1988 in her favour. While, so, the defendants are trying to disturb the peaceful possession of the suit property without any basis. The suit property originally belonged to Subramaniam Chettiar, the husband of Pavunammal and father of Pakkirisamy and Mannakati and after his death, anterior to 1956, Pavunammal had life estate initially and her sons had shares in the suit property. Subsequently, after the advent of the Hindu Succession Act, 1956, so to say, as per Section 14 (1) of the Act, the life estate of Pavunammal got enlarged and as such the wife and the two sons of Subramaniam Chettiar were entitled to one share each. Wherefore, the plaintiff's title to the suit property is perfect and unnecessarily, the defendants are trying to interfere with the same. (b) Per contra, D1 by way of challenging and impugning the averments/allegations in the plaint, filed the written statement, which was adopted by D3 and D4, a thumb nail sketch of the same would run thus: The property originally belonged to Ambalavannan and his brother Subramaniam Chettiar and there emerged a partition suit in O.S.No.254 of 1967 and ultimately the decree was passed on 15.09.1970 allotting the suit property in favour of Ambalavannan. Thereafter, the legal heirs of Ambalavannan, viz., D2 and D3 sold the suit property in favour of D1. D4 is the brother of D1. As such, the plaintiff, who claims to be the purchaser of the suit property from the wife and the sons of deceased Subramaniam Chettiar vide sale deed Ex.A1 dated 06.01.1988 had no title to the property and she is not in possession and enjoyment of the suit property. Accordingly, they prayed for the dismissal of the suit. (c) The trial Court framed the relevant issues. (d) Up went the trial, during which the second plaintiff/Kamatchi examined herself as P.W.1 along with P.W2 and Exs.A1 to A5 were marked; and on the defendants' side one Rajaraman examined himself as D.W.1 and Exs.B1 to B7 were marked.

4. Ultimately the trial Court dismissed the suit, as against which the appeal was filed for nothing but to be dismissed by the first appellate court confirming the judgment and decree of the trial court.

5. Being aggrieved by and dissatisfied with the judgments and decrees of both the courts below, this second appeal has been filed on various grounds, suggesting the following substantial questions of law:

1. Whether the judgment and decree in O.S.No.254 of 1967 and A.S.No.93 of 1976 which is a suit for partition would disentitle the appellant for the relief of declaration and possession especially when they are not in possession of the property? 2. Whether the respondents have taken any steps to seek recovery of possession from the appellant and her predecessors in title before or after the suit for partition in O.S.No.254 of 1967? 3. Whether the appellant is entitled for the relief of declaration and permanent injunction based on the sale deed dated 06.01.1988 and possession? (extracted as such) 6. Heard the learned counsel for the appellant.

7. The learned counsel for the appellant would mainly focus his attention on one fact so to say, the wife of Subramaniam Chettiar was not a party to the decree passed in O.S.No.254 of 1967. As per Section 14 of the Hindu Succession Act, she had 1/3rd share in the suit property and as such, to that limited extent atleast the court should have recognised the right of the plaintiff.

8. A mere running of the eye over the judgments of both the fora below would indicate and exemplify that in the previous litigation admittedly, the two sons of Subramaniam Chettiar happened to be parties. As revealed by Exs.B1 to B4 the suit property was allotted to the share of D2 and D3 the legal heirs of Ambalavanan. In such a case, the question of the plaintiff who claimed to have purchased the share of Subramaniam Chettiar from the legal heirs of Subramaniam Chettiar cannot claim to be the owner of the suit property.

9. No doubt, the learned counsel for the appellant/plaintiff would canvass the point based on the maxim *res inter alios acta alteri nocere non debet* [Things done between others ought not to injure an outsider (not party to them)], so to say, the

wife of Subramaniam Chettiar was not a party and in such a case, the judgments and orders emerged under the previous litigation would not bind her and ultimately that would not bind the plaintiff who obtained derivative title from the wife of Subramaniam Chettiar.

10. I would like to point out that it is not as though the legal heirs of Subramaniam Chettiar were totally excluded from participating in the proceedings. Pakkirisamy and Mannangati being the sons of Subramaniam Chettiar participated in the partition proceedings and in that alone the suit property was allotted to the side of Ambalavanan. In such a case, the plaintiff, who as per Ex.A1 claims to have purchased from the legal heirs of Subramaniam Chettiar cannot press into service the plea that the earlier decree was vitiated because of the non-impleadment of Pavunammal and such a plea on the part of the plaintiff is a far fetched one and it cannot be countenanced. Whereas, the side of Subramaniam Chettiar was represented by his two sons and simply because the wife Pavunammal was not impleaded, it cannot be held that the entire proceedings stood vitiated because the plea by the plaintiff is not one by any of the legal heirs of Subramaniam Chettiar; but only by the plaintiff, who claimed to have obtained derivative title from the legal heirs of Subramaniam Chettiar.

11. The first appellate court, being the last of court of facts, adverted to all the points and observed as under in its judgment: VERNACULAR (TAMIL) PORTION DELETED As such, the findings of the learned Judge is based on earlier court documents, hence, the first appellate court, being the last court of facts, after analysing the facts as set out supra, confirmed the judgment and decree of the trial court, warranting no interference in this second appeal.

12. In the result, I am of the considered view that no substantial question of law is involved in this matter for consideration and accordingly, this second appeal is dismissed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed. vj2 To 1. The Principal Subordinate Judge, Tindivanam 2. The Principal District Munsif Tindivanam