

(2013) 04 MAD CK 0155

In the Madras High Court

Case No : S.A. No. 1101 of 2010 and M.P. No"s. 1 and 2 of 2010

D. Manickam

APPELLANT

Vs

The President, The District Collector and The Tahsildhar

RESPONDENT

Date of Decision : 25-04-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Registration Act, 1908 — Section 17

Transfer of Property Act, 1882 — Section 123

Citation : (2013) 5 CTC 177 : (2013) 5 MLJ 805

Hon'ble Judges : P.R. Shivakumar, J

Bench : Single Bench

Advocate : V. Bharathidasan, for the Appellant; N. Manokaran, for the Respondent

Final Decision : Dismissed

Judgement

P.R. Shivakumar, J.—The plaintiff in the original suit is the appellant in the second appeal. The appellant filed the suit on the file of the

learned District Munsif cum Judicial Magistrate, Perundurai, i) for a declaration that he is the absolute owner of the suit property, ii) for a

permanent injunction restraining the first respondent from interfering with his alleged peaceful possession and enjoyment of the suit property and iii)

for a mandatory injunction directing the first respondent to assign new door number to the suit property and receive house tax and other charges

from the appellant/plaintiff and his heirs. After trial, the suit was dismissed by the trial court by its judgment and decree dated 25.07.2005. On an

appeal preferred by the appellant/plaintiff as A.S. No. 88/2008 on the file of the learned Principal District Judge, Erode, the decree of the trial

court was confirmed and the appeal was dismissed by the lower appellate court

by its judgment and decree dated 03.08.2010. Aggrieved by the same, the appellant/plaintiff has approached this court with the present second appeal on various grounds set out in the Memorandum of Grounds

of second appeal. The original suit was filed by the appellant/plaintiff based on the plaint averments, which are in brief, as follows:

i) The appellant/plaintiff got the suit property by virtue of a Gift Deed dated 04.02.1964 executed by the Correspondent and Reverend of C.S.I.

Schools. Right from the date of the said gift deed, the appellant/plaintiff was in possession and enjoyment of the suit property continuously and

without any interruption. Even if the gift deed turns out to be invalid, the appellant/plaintiff has perfected title by adverse possession. In July 1997,

the first respondent assigned new door numbers to the other houses in the area and omitted to assign new door number to the suit property. When

the appellant/plaintiff volunteered to pay house tax, the first respondent/first defendant refused to receive the same. Hence the house tax was sent

through money order and the same was also refused on the premise that the plaintiff's name was not found in the house tax demand register.

ii) On 18.01.1998, the first defendant trespassed into the suit property and fell trees worth Rs. 50,000/- that were standing in the suit property. A

complaint was also made to the District Collector regarding the non-assignment of new door number to the suit property and regarding the other

acts of the first defendant, but the said complaint evoked no response. On 21.01.1999, the son of the appellant/plaintiff applied to the District

Revenue Officer, Erode for the grant of patta in respect of the suit property, but the same was not granted. Under the said circumstances, on

14.08.1999, the first respondent/first defendant attempted to effect forcible entry into the suit property and the same was thwarted by the

appellant/plaintiff with the help of his neighbours. Hence the appellant/plaintiff was constrained to approach the court with the suit for the above

said reliefs.

2. The suit was originally filed against the first respondent/first defendant alone. Since the first defendant took a defence plea that the suit is bad for

non-joinder of necessary parties, the appellant/plaintiff impleaded respondents 2 and 3 as defendants 2 and 3. The respondents 2 and 3/defendants

2 and 3 did not actively contest the suit and they remained ex-parte. The first

defendant alone contested the suit on the basis of the averments made in the written statement. Apart from the general and specific denial of the plaintiff allegations, the first respondent/first defendant has made the following averments.

i) The suit without proper description of the suit property giving survey number and extent is not maintainable. From the plaintiff averments, it transpires that the gift deed, by which the appellant/plaintiff claims to have derived title, is an unregistered one and the same shall not be a valid document. The said document could have been a forged and fabricated one. The claim of the plaintiff that he had been in continuous, exclusive and uninterrupted possession of the suit property for more than 35 years is also false. The appellant/plaintiff is not in possession and enjoyment of the suit property. The property had been allotted by the Panchayat for running a school and the Correspondent of the school had no right to execute any kind of document gifting the property to the appellant/plaintiff. At present, the suit property is under the control of the Panchayat Board and the appellant/plaintiff is not in possession and enjoyment of the same.

ii) The other allegations regarding the felling of trees in the absence of the appellant/plaintiff and the lodging of a complaint with the District Collector and also the alleged attempt to make forcible entry into the suit property are all false. They have been invented by the appellant/plaintiff for the purpose of filing the present suit. The first defendant alone is the owner of the suit property and the suit property is in possession and enjoyment of the first defendant and hence there was no necessity to effect forcible entry into the suit property as contended by the plaintiff. The cause of action alleged in the plaint is also false and the suit should be dismissed with cost.

3. Based on the above said averments, the learned trial judge framed the following issues and additional issues:

Issues:

1) Whether the plaintiff is entitled to a declaration that the suit property belongs to him by virtue of the Gift Deed dated 12.04.1964 and that the first defendant cut down trees worth Rs. 50,000/- and again attempts to trespass into the property? Whether the plaintiff is entitled to a consequential permanent injunction and also a mandatory injunction directing

assignment of new door number to the suit property and issuance of property tax receipt to the plaintiff?

2) Whether the contention of the first defendant that a school is run in the suit property and hence the Correspondent of the school has got no right

to convey valid title to the plaintiff in respect of the suit property is sustainable?

3) Whether the contention of the first defendant that the suit property does not belong to the plaintiff and on the other hand it belongs to the first

defendant is true?

4) To what reliefs?

Additional Issues:

1) Whether the contention of the first defendant that the suit property belongs to the government and the suit is bad for non-joinder of necessary

parties in so far as the State and Perundurai Panchayat Union have not been impleaded as defendants is correct?

2) Whether the contention of the first defendant that the plaint contains incorrect description of the suit property and incorrect valuation is true?

3) Whether the contention of the first defendant that the suit property is in possession and enjoyment of the first defendant is true?

4. Three witnesses were examined as PWs. 1 to 3 and 21 documents were marked as Exs. A1 to A21 on the file of the appellant herein/plaintiff

and two witnesses were examined as DWs. 1 and 2 and three documents were marked as Exs. B1 to B3 on the side of the defendants. The

learned trial judge, at the end of the trial, heard the arguments advanced on both sides, considered the pleadings and evidence and upon such

consideration, decided the issues against the appellant/plaintiff and dismissed the suit without cost by judgment and decree dated 25.07.2005. The

learned lower appellate Judge (Principal District Judge) dismissed the appeal preferred by the appellant herein in A.S. No. 88 of 2008 and

confirmed the decree of the trial court dismissing the original suit. The judgment and decree of the lower appellate court were made on

08.03.2010.

5. As against the concurrent judgments non-suiting the appellant herein/plaintiff for the reliefs sought for in the suit, the plaintiff has come forward

with the present second appeal on various grounds set out in the Memorandum

of Grounds of Second Appeal.

6. Section 100 of the CPC provides for an appeal from the appellate decree of a court subordinate to the High Court. But it provides a restriction

by imposing a condition that such appeal (second appeal) against the decree of the lower appellate court shall lie to the High Court only on a

substantial question of law. The party filing the second appeal is duty bound to formulate the exact substantial question/s of law and incorporate the

same in the grounds of appeal. The High Court hearing the second appeal shall admit the second appeal if it feels that such a substantial question of

law or more than one substantial question of law are involved in the second appeal. In such an event, the High Court shall precisely formulate the

substantial question of law/substantial questions of law for the resolution of which the second appeal is admitted. Thereafter, at the time of final

hearing, the appellant cannot raise any other substantial question of law except with the permission of the court. At the same time, the respondents,

who support the decree of the lower appellate court, can contend that any one of the questions framed as substantial questions of law is not in fact

a substantial question of law involved in the second appeal or that the answer to such substantial question of law should not be in favour of the

appellant and should be in favour of the respondent. In this case, the appellant/plaintiff has formulated and incorporated in the grounds of appeal

the following as substantial questions of law:

1) Whether the courts below are correct in dismissing the suit and appeal without considering the Ex. A1?

2) Whether the courts below are correct in rejecting the Ex. A5 to A15?

3) Whether the courts below are correct in coming to conclusion that Ex. A1 to A15 not related to the suit property? and

4) Whether the courts below are correct in there is no revenue record or parental document showing the suit property belong to the London

Mission to that considering the F.M.B. Ex. A21?

7. Without admitting the second appeal, this court directed notice before admission to be given to the respondents. Besides directing notice to be

issued to the respondents, this court also directed that the records be made available for consideration in the second appeal. Accordingly, the

records have been received from the courts below. After notice, the first

respondent has entered appearance through counsel. The arguments advanced by Mr. V. Bharathidasan, learned counsel for the appellant/plaintiff and by Mr. N. Manokaran, learned counsel for the first respondent/first defendant were heard. The materials available on record were also perused.

8. The appellant/plaintiff has provided in the plaint the following description for the suit property:

Erode Registration District, Perundurai Sub Registration District, Perundurai taluk, Periyaveerasangili village, Gray nagar in Oornatham, the house

property bearing the door number 1/29, situate within the following boundaries, to the north of Highway's vacant site,

to the south of the school,

to the east of the main street,

to the west of the Vijayamangalam Tar road

(Karuppu road)

the aforesaid land measuring 11 cents and the tiled house constructed thereon together with all door names, door ways, windows, vacant site, right

way easements appurtenances etc.,

9. Though the appellant/plaintiff in his plaint has stated that he got the property by virtue of a Gift Deed dated 14.02.1964 executed by the

Correspondent/Reverend of C.S.I. Schools and he had perfected title to the suit property by adverse possession even if such Gift Deed would turn

out to be an invalid one, he has not stated any word in the plaint as to who was his predecessor in title and what was the authority of the

Correspondent/Reverend of C.S.I. School to execute the Gift Deed in his favour. The said Gift Deed dated 14.02.1964 has been produced and

marked as Ex. A1 on the side of the appellant/plaintiff. Admittedly, the same is an unregistered Gift Deed. The question projected by the appellant

as first substantial question of law revolves around the reliability and admissibility of the Gift Deed dated 14.02.1964 allegedly executed by the

Correspondent/Reverend of C.S.I. Schools. The same has been marked as Ex. A1. Admissibility of the said document as a piece of evidence is

questionable. As per section 123 of the Transfer of Property Act, 1882, any gift of immovable property worth not less than Rs. 100/- shall be

made only by way of a registered document signed by or on behalf of the donor and attested by at least two witnesses. In this case, the appellant/plaintiff relies on Ex. A1-Gift Deed dated 14.02.1964 as the document by which he derived title to the suit property. But the value of the property has not been provided in the said document. Perhaps the same was the reason why he was able to push through the same as a document to be marked on his side. Apart from the fact that Ex. A1 does not contain the value of the property allegedly gifted therein, there is no iota of evidence to show what was the value of the property as on the date on which Ex. A1 was allegedly executed. When such is the case, the finding of the courts below that the admissibility of Ex. A1 - Gift Deed is affected by section 17 of the Registration Act cannot be found fault with.

10. In addition, the above said question projected as the first substantial question of law has been couched in such a way that the courts below non-suited the plaintiff without considering Ex. A1. A perusal of the judgments of the courts below will clearly show that apart from holding that Ex. A1 is inadmissible for want of registration, the courts below have proceeded to observe that, even if it is assumed that Ex. A1 shall be admissible as a piece of evidence, the genuineness and reliability of the same is questionable. The courts below have pointed out the fact that the document, which was allegedly executed on 14.02.1964 at Erode has been written on 2 x 1.25 rupees non-judicial stamp papers, which had been purchased in the name of one Palanisamy of Dharapuram, who had nothing to do with the said document. In addition, there are corrections in the document and also the same has been attested by a single witness by name Paramanandam. The said Paramanandam has also not been examined as a witness on the side of the plaintiff. In addition, the description of property does not contain either the survey number or the door number of the suit property.

11. PW. 2 - Aasirvadham, who was examined on the side of the plaintiff to prove the alleged gift made by the Correspondent of C.S.I. Schools, has signed a proof affidavit containing averments that the plaintiff got the suit property consisting of house and land 40 years prior to his examination as a witness and from the date of the gift, the plaintiff and his legal heirs were enjoying the said property. It has also been stated in the

proof affidavit that the total extent of the land is 11 cents and the Panchayat Board President, along with his people, cut and removed trees worth

Rs. 50,000/- standing in the suit property four years prior to his examination as a witness. The proof affidavit was signed on 12.04.2004. The

trustworthiness and reliability of the evidence of the witness in the chief examination in the form of proof affidavit, has to be tested by the acid test

of cross-examination. During cross-examination, PW. 2 stated that there was no door number for the suit property and it did not have any

electricity connection or water connection. He has also admitted that the plaintiff is having another house at some other place. Besides the said

admission, he has also admitted that he did not know the year in which the plaintiff got the property as a gift and the person who gave it to the

plaintiff as a gift. There is a further admission on his part that he did not see the document relating to the suit property and the extent had been given

by him as 11 cents approximately. It is also his further admission that he does not know either the survey number or the four boundaries of the suit

property. The courts below have considered the evidence of PW. 2 in proper perspective and came to a correct conclusion that he was not a

reliable witness and his evidence would not be helpful to prove the case of the appellant/plaintiff.

12. The other witness, namely PW. 3, examined on the side of the plaintiff is the Taluk Surveyor of Perundurai Taluk. His evidence is also not

helpful to the appellant/plaintiff to prove his case of acquisition of the property by way of gift. The courts below have also considered the fact that

no document had been produced by the appellant/plaintiff to prove that the executant of Ex. A1 did have the power to gift the said property to the

plaintiff. There is also no clear cut evidence to show that the signatory to Ex. A1-document was authorised by the London Mission, which is

projected by the plaintiff as the owner of the land. All these aspects were considered by the courts below and the courts below have come to the

correct conclusion that Ex. A1 is not genuine and reliable. For all the above said reasons, this court comes to the conclusion that the question

projected by the appellant as the first substantial question of law is not at all a substantial question of law and the same has been formulated and

projected on the erroneous assumption that the courts below did not consider the admissibility, genuineness and reliability of Ex. A1.

13. The question Nos. 2 to 4 sought to be projected as substantial questions of law by the appellant are only questions of fact and not in fact either

questions of law, much less substantial questions of law. Clear evidence has been adduced through the witnesses examined on the side of the

defendants to the effect that the land had been donated for the purpose of running a school; that the suit property is situated within a few feet from

the main building of the school; that the school was earlier run by C.S.I. And thereafter the same was taken over by the government and the

property stands vested with the government and that the school is now being run by the Panchayat Union. The above said stand taken by the first

defendant is not disputed by the plaintiff, who figured as PW. 1. The plaintiff would contend that the property was gifted to him for his services as a

teacher in the C.S.I. school and also for his religious service. A property, which was donated for running a school, could not have been given as a

gift to an individual to be used for any purpose other than the purpose of school. There are clear evidence to the effect that residential quarters had

been put up in the school campus itself and the Head Master of the school was given accommodation in the residential quarters; that the plaintiff,

who served as Head Master of the said school, when the same was in the management of C.S.I. could have been allowed to reside there as a post

attached quarter and based on which, the documents produced as Exs. A5 to A15 could have been obtained; that before the school was taken

over by the government and entrusted to the Panchayat union, the petitioner was transferred to some other school run by C.S.I. and on such

transfer, he should have vacated the house and that only subsequent to the taking over of the school by the government to be run by the Panchayat

union, the petitioner seems to have created Ex. A1 and filed the present suit as a gambling.

14. It is pertinent to note that if at all Ex. A1 would have been true and he had derived title to the suit property by virtue of a gift made to him under

Ex. A1, he would have asked for transfer of patta in his name. While deposing as PW. 1, he has admitted that he did not make any application for

transfer of patta or grant of patta in his name. On the other hand, admittedly before the filing of the suit he had made his son to submit an

application to the Revenue authorities for the grant of patta in his name. Even in that application Ex. A1 was not referred to. There is also an

admission by the plaintiff himself as PW. 1 that the school in Gray Nagar is under the management and control of London Mission and the same

has been transferred to the administration of Panchayat union. It is his further admission that he was transferred to another school after the said

school was taken over by the government and handed over to the Panchayat union. He is also aware of the condition that a teacher transferred

from Gray Nagar school to some other school, should vacate the quarters given to him as a teacher of the Gray Nagar school. The plaintiff as PW.

1, has admitted that long back he was transferred from Gray Nagar school. But, he would plead loss of memory as to the year in which he was

transferred. He has also answered that he did not remember whether such transfer would have been made 25 years prior to the date of his

examination as witness in this case before the trial court. Though the plaintiff as PW. 1 would have stated that the property did not belong to the

government, he would also state that he did not mention the survey number in the description of property in the plaint, because he did not know the

same. He would also state that he did not know whether the suit property is in natham poramboke. However, the plaintiff has claimed that even if

A1 could not be a valid one, he had perfected title to the suit property by adverse possession, as he had been in exclusive, continuous and

uninterrupted possession for more than 35 years.

15. The evidence adduced on both sides were analysed by the trial court and re-analysed by the appellate court properly and both the courts have

come to the conclusion that the plaintiff has not proved that he was in possession of the suit property on the date of filing of the suit. The courts

below have also clearly held that the suit property belongs to the panchayat union and it forms part of the Gray Nagar's Panchayat Union School.

The Taluk Surveyor examined on the side of the plaintiff as PW. 3 has produced the FMB for Survey No. 6/2, marked as Ex. A21. From Ex.

A21-FMB and the evidence of PW. 3, it is obvious that the property comprised in the said survey number has been shown to be government

poramboke in Revenue records and there are two buildings in the said survey number belonging to school.

16. Of course, the evidence of PW. 3 shows that Gray Nagar school was originally in the management of London Mission. The same has not been

disputed by the respondents/defendants. On the other hand, it is their contention that the suit property had been given for running the school and

the school run by the erstwhile management (CSI) has been taken over by the government and the management is now with the Panchayat union

and that the building to which the plaintiff stakes claim forms part of the school campus. It is their clear case that the same was used as residential

quarters for the teachers working in the said school and that the appellant/plaintiff having been transferred from the said school long back before 25

years had not vacated the same and now in order to make wrongful gain, he has created Ex. A1 and claimed title to the property by filing the suit.

Apart from claiming derivative title under Ex. A1 with an antedate, the appellant/plaintiff has also contended that he has perfected title by adverse

possession. To succeed in his plea of adverse possession, he should show that such possession was open, continuous and uninterrupted and to the

knowledge of the real owner. The appellant/plaintiff is not in a position to show, who is the real owner against whom he claims adverse possession.

If at all the property belonged to London Mission before it was taken over by the government for the purpose of Panchayat union school, the

plaintiff having chosen to make his claim based on Ex. A1, cannot contend that his possession was adverse. Without having the knowledge as to

who is the real owner and without admitting the ownership of the person, the possession at any length of time will not amount to adverse

possession. Such a possession should be in defiance of the right of the rightful owner. Mere possession not coupled with the animus required for

constituting such possession as adverse possession, shall not be enough to claim perfection of title by adverse possession. In this case, both the

courts below, on proper appreciation of evidence, have arrived at a conclusion regarding the fact in issue that the plaintiff was not in possession of

the property and he had not perfected title by adverse possession and on the other hand, the property continued to be in the hands of the

Panchayat union after the school was taken over by the Panchayat union as part of the school campus. The said finding of the courts below cannot

be termed perverse in which event alone, the question of fact can be elevated to the level of a substantial question of law. This court finds no defect

or infirmity, much less perversity in the said concurrent findings of the courts below warranting interference by this court in the second appeal. For

all the reasons stated above, the court holds that the other three questions, namely question Nos. 2 to 4 projected as substantial questions of law

are not in fact substantial questions of law based on which the appellant can succeed in the appeal. There is no merit in the second appeal and the

same deserves dismissal.

In the result, the second appeal is dismissed with cost. Consequently, the connected miscellaneous petitions are closed.