

(2015) 08 MAD CK 0126

In the Madras High Court

Case No : Second Appeal No. 306 of 2009 and M.P. No. 1 of 2009

Meera and Others

APPELLANT

Vs

Kamala Ammal

RESPONDENT

Date of Decision : 13-08-2015

Acts Referred:

Citation : (2015) 08 MAD CK 0126

Hon'ble Judges : Pushpa Sathyanarayana, J

Bench : Single Bench

Advocate : R. Subramanian, for the Appellant; K.B. Arul, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Pushpa Sathyanarayana, J—The unanimous decision of the Courts below in a suit for declaration and injunction is challenged by the unsuccessful plaintiffs in this Second Appeal.

2. According to the plaintiffs, the suit property measuring an extent of 5 Cents in S. No. 212/2.A in Palla Edayampatti Village was owned by one Kanna Panditar by virtue of a house site patta issued by the Tahsildar, Vellore, in which he was living till his death by constructing a thatched hut. After his death, his widow and his sons were in possession of the same and thereafter, the property was divided among his legal heirs and they have been in enjoyment of the same. It is the case of the plaintiffs that the defendant managed to obtain patta for the eastern half extent of the property and claimed ownership over the same. Apprehending entry by the defendant, the plaintiffs filed suit for permanent injunction in O.S. No. 558 of 2006 on 29.8.2006, on which date, according to the plaintiffs, the defendant raised a wall in the suit property. The further allegation of the plaintiffs is that the defendant entered into the suit property on 05.9.2006 claiming title over the same. Hence, they have filed suit O.S. No. 696 of 2006 for declaration of title to the suit property and for mandatory injunction directing the defendant to remove the construction made by her and also for permanent injunction

restraining her from making any further construction in the suit property.

3. Resisting the suit, the defendant filed written statement wherein she denied all the allegations made by the plaintiffs. According to her, the suit property was in joint possession and enjoyment of her husband Arumugam Panditar and his brother Kanna Panditar and subsequently, by oral partition, they had taken possession of their respective shares of the suit property in which western half was allotted to Kanna Pandithar and the eastern half was allotted to her husband. Denying the partition averred by plaintiffs, it is stated by the defendant that since separate patta has been issued by the Tahsildar, Vellore Taluk, in respect of the property left behind by her husband, she became the absolute and exclusive owner in respect of the eastern half of the property in which she has constructed a terraced house. On these grounds, she prayed for dismissal of the suit.

4. Before the trial Court, the third plaintiff examined himself as P.W.1 and marked as many as eleven documents, viz., Exs. A.1 to A.11. To nullify the case of the plaintiffs, the defendant besides examining herself as D.W.1, examined four more witnesses as D.W.2 to D.W.5 and marked Exs. B.1 to B.10.

5. The trial Court / learned Additional District Munsif, Vellore, after analysing the oral and documentary evidence available on record, by judgment dated 29.02.2008, finding that the plaintiffs have not established their right and title over the suit property, has come to a resultant conclusion that they are not entitled for the reliefs as prayed for and accordingly, dismissed the Suit. On appeal, the Lower Appellate Court / learned Subordinate Judge, Vellore, on appreciation of the facts and the materials available thereon, concurred with the finding of the trial Court and dismissed A.S. No. 35 of 2008 by judgment dated 28.11.2008. Feeling aggrieved by the dismissal of suit by the Courts below, the plaintiffs are before this Court with this Second Appeal.

6. At the time of admission of this Second Appeal, this Court formulated the following questions of law for consideration:-

"1. Whether the Courts below are right in accepting the plea of oral partition of land granted by the Government in favour of Kanna Pandhitar overlooking settled position of law that a grant by the Government is always personal in nature and especially when there is no specific plea regarding existence of a joint family and the blending of the assigned land with the joint family properties?

2. Whether the Lower Appellate Court was right in accepting revenue records as proof of title?"

7. Heard Mr. R. Subramanian, learned counsel appearing for the appellants / plaintiffs and Mr. K.B. Arul, learned counsel appearing for the respondent and perused the records.

8. The fight between the legal heirs of two brothers centers around the 5 Cents of land in S. No. 212/2A situate in Palla Edayampatti Village. The relationship

between the parties is not in dispute.

9. Learned counsel appearing for the plaintiffs / appellants contended that the suit property was assigned to the father of the plaintiffs Kanna Pandithar, on 07.10.1967 as per Ex. A.1 and after his death, the same devolved upon the plaintiffs who are in enjoyment of the same. The plaintiffs had also produced a partition deed Ex. A.2 dated 04.8.2005 among the family of Kanna Pandithar which is self- serving. So also the documents Exs. A.6 and A.7. However, the plaintiffs have not established their exclusive possession of the suit property from the date of Ex. A.1 till the date of suit.

10. Per contra, the defendant has clearly deposed that the property was divided east and west and according to their possession, eastern portion was allotted to the defendant's husband and western portion was allotted to his brother Kanna Pandithar. She has further stated specifically that she and her husband were enjoying the suit property jointly till a division was effected between the brothers for convenient enjoyment.

11. To substantiate the same, the Village Administrative Officer was examined as D.W.2. He has categorically stated that the old survey number 212/2 in respect of the suit property, which was assigned new number as 662/79, was further subdivided into 662/79A in favour of the Legal Representatives of Kanna Pandithar and 662/79 B in favour of the defendant. Ex. B.8 is relied on by defendants for the change of patta proceedings. The appellants / plaintiffs, who were also assigned patta have not challenged the same.

12. Learned counsel for the appellants contended that there cannot be an oral partition of land granted by the Government in favour of Kanna Pandithar as Government property is personal in nature. Though such claim is made, it is not proved by the plaintiffs that the assignment conditions were violated while granting patta in favour of defendant under Ex. B.3.

13. From the materials available on record, it is seen that even Ex. B.1 is only a joint patta issued in favour of plaintiffs' father and the defendant's husband in the year 1993 and the same was also not challenged. It is further seen that earlier, the plaintiffs filed suit O.S. No. 558 of 2006 for permanent injunction and the same was not pressed. Both the Courts below have rightly rejected the claim of the plaintiffs and this Court is of the view that there is no scope for interference in this Second Appeal as no question of law, much less, substantial question of law arises for consideration. The appeal, thus, has no force and is liable to be dismissed.

In the result, the Second Appeal fails and the same is dismissed confirming the concurrent finding of the Courts below. In view of the relationship between the parties, there will be no order as to costs. Consequently, connected Miscellaneous Petition is closed.