

(2002) 03 MAD CK 0062
In the Madras High Court
Case No : S.A. No. 1371 of 1987

N.S. Ramanathan and N.R. Panchamirtha Iyer	APPELLANT
Vs	
N. Krishnamoorthy Iyer (Died), Chandran @ Chandrasekaran, Mohan, N. Ayyasamy, N. Narayanan, N. Sankaran, N. Srinivassan, Madhuram (Died), P. Srinivasan, Vatsala, Ganesan and Rama	RESPONDENT

Date of Decision : 01-03-2002

Acts Referred:

Citation : AIR 2003 Mad 78

Hon'ble Judges : K. Sampath, J

Bench : Single Bench

Advocate : K. Hariharan, for the Appellant; C.R. Rukmani, for the Respondent

Final Decision : Dismissed

Judgement

K. Sampath, J.—Defendants 1 and 2 in O.S.No.207/82 on the file of the learned District Munsif, Chengalpattu, are the appellants in the

second appeal. The first respondent herein filed the suit for declaration of his title over B Schedule property to the plaint and for a permanent

injunction. He died pending second appeal. His legal representatives were brought on record as respondents 4 to 8. The eighth respondent also

passed away and her legal representatives were brought on record as respondents 9 to 12.

2. The case of the plaintiff was as follows:

The suit A Schedule property was a vacant site allotted to him in a partition suit in O.S.No.97/61 on the file of the Sub Court, Chengalpattu. He

was having his house opposite to this site. This house also fell to his share in the partition. Prior to this suit, it was enjoyed by the plaintiff's family

exclusively. He had put up a small construction and was enjoying the same. On the eastern side of the property, he had grown velikathan trees and

using this portion for tethering cattle and also parking carts. The property in dispute is shown as B Schedule property being the eastern portion of

A Schedule property. The defendants did not have any right or title over the same and as they were attempting to interfere with the plaintiff's

possession as if the property belonged to them, the present suit for declaration of his title to B Schedule property and for injunction against the

defendants came to be filed.

3. The first defendant filed a written statement and the same was adopted by the second defendant. It was false to state that the suit property was

allotted to the plaintiff in a partition and that he was in possession of the same. The plaintiff never enjoyed the eastern 23 feet east west shown as B

Schedule in the plaint. The B Schedule property originally belonged to one Duraiswamy Iyer and later inherited by his only son Viswanatha Iyer,

who endowed the property by way of a gift deed along with his major sons on 27-10-1965. The defendants were enjoying the properties as

trustees of the Vinayagar Temple. The entire A Schedule property was not allotted to the plaintiff's share in the partition suit. The fact that there

was a partition and a compound wall on the eastern side would itself show that there was no right, title or interest to the plaintiff over the B

Schedule property.

4. On the pleadings, the trial Court framed the necessary issues and on the oral and the documentary evidence, held by judgment and decree dated

28-4-1987 that the plaintiff had established his title over the B Schedule property and that he was entitled to the relief of injunction prayed for.

5. On appeal by defendants 1 and 2 in A.S.No.89/87 the learned District Judge, Chengalpattu, confirmed the decision of the trial Court. It is as

against that, the present second appeal has been filed.

6. At the time of admission the following substantial questions of law were framed for decision in the second appeal:

1. The plaintiff having filed the suit for declaration of title and for injunction, can the title be established without any title deed or document of title?;

and

2. Ex.A-1 which alone is contended to be the document of title being only a

judgment or order can the suit property be identified without their being a decree?

7. Mr. K. Hariharan, learned Counsel for the appellants, submitted that the lower Appellate Court failed to see that the plaintiff having specifically

come forward with the case of declaration regarding B Schedule property, part of A Schedule property, had not given the actual extent and that

from the description given, no identification was possible. Ex.A-1 under which he claimed title to the suit property and he had been allotted the suit

A Schedule property, did not refer to the suit property and in the absence of final decree in the partition suit, no property could be identified from

Ex.A-1, which is a mere judgment. According to the learned Counsel, none of the exhibits filed on the side of the plaintiff would in any way help his

case to establish his title. The approach by the Courts below is that the defendants having admitted the plaintiff's possession, there was no need for

the plaintiff to prove title independently. As the plaintiff, it was for him to establish his title and he could not say that the defendants had not

established their case. In any event, according to the learned Counsel, Ex.B-2 the report of the Commissioner in the earlier suit, would clearly

show that the suit B Schedule property had not been allotted to the plaintiff. The learned Counsel also made a point of the fact that before the

Appellate Court, the appellants sought to produce an ancient document dated 10-11-1911. It would clearly identify the suit property and establish

the title of the defendants to the suit property.

8. Per contra, Mrs. C.R. Rukmani, learned Counsel for the contesting respondents, submitted that in the earlier proceedings, the property had

been described as a vacant site though without measurement and it was not the case of the appellants that there was any vacant site other than the

suit site, which was the subject matter of the earlier suit. Further, the defendants had not put forward their claim for the suit property at any earlier

point of time and in fact, they had admitted that they were not in possession of any portion of the suit survey number as would be evident from the

reply notice Ex.A-12 issued by them during the prior suit.

9. During the course of the hearing, I directed the contesting respondents' Counsel to produce the final decree and accordingly, she has produced

the final decree passed by the Court in the earlier suit. Ex.A-1 which is the

printed copy of the judgment in the earlier suit O.S.No.97/61, shows that the second and the third items in the schedule to the earlier plaint, viz., the house at Nemmeli Village and the vacant site in that village were allotted to the plaintiff's share. No doubt, from Ex.B-1, copy of the plaint in the earlier suit, in A Schedule, for the second item, the house at Nemmeli Village and the third item, the site opposite to the Nemmeli house shown as item 2, no measurements are given. Whatever the family possessed in Nemmeli Village, viz. the house (item 2) and the site (item 3) came to be allotted to the plaintiff's share. In the Commissioner's report in the previous suit marked as Ex.B-2 in the present suit, the measurements are given as 22.3 feet by 184.3 feet extending practically till the next street. There is nothing to show that there was any other property to the east of this vacant site in the same survey number belonging to anybody else and in particular, defendants 1 and 2 herein. This is fortified by the contents of Ex.A12. Ex.A-12 is the reply notice given by the first defendant herein to the notice Ex.A-11 given on behalf of the plaintiff herein on 31-12-1971. Ex.A-11 runs as follows:

My client has been appointed as receiver in I.A.No.310/71 in O.S.No.97/61 by the Additional Sub Judge, Chengalpattu. You are in possession of Gramanatham S.No.150/7 a vacant site opposite to the suit house. In your letter dated 24-10-1971, you have stated that 8 marakkals of chilli was harvested by you during March, 1971. There were number of trees which you have cut and the late Advocate Commissioner Thiru C.V. Krishnaswamy Iyengar auctioned it previously. You know that the properties are under civil litigation. You said that 4 marrakals of chill was taken by you as waram. The balance of 4 marrakkals you have to account for my client. You are hereby prohibited from interfering with the said land without previous sanction from my client or the Court.

Ex.A12, which is the reply from the first defendant herein on 26-1-1972 runs as follows:

I am not aware of your client being a receiver. I am not in possession of S.No.150/7. In January, 1971 I approached your elder brother for permission to raise chilly crop. As I had arranged to raise a similar crop on the vacant land adjoining the said survey number and I also tried to contact your client, who was then living at Kancheepuram, but since your client

was not available and as the season for raising the chilly crop was closing, I have raised the crop. I am in possession of the said vacant site after harvest of the chilly crop was over. I do not propose to interfere with your client's possession as I have a lot of landed properties.

10. As rightly pointed out by the Courts below, this reply should clinch the issue in favour of the plaintiff. Defendants 1 and 2 do not claim any right in S.No.150/7 in which the suit property is situate. When once there is a vital admission on the side of the contesting defendants disowning any claim in the suit property, they cannot try to take advantage of the want of measurements to the suit property in the previous suit. At no point of time did they claim that they were in possession of the present suit as trustees of Vinayagar Temple. They are estopped from claiming any right in the suit property in view of the prior admission of plaintiff's right to be in possession under Ex.A-12.

11. The learned Counsel for the appellants wanted to point out that the measurements given by the commissioner in the previous suit did not at all tally with the claim made by the plaintiff in the present suit. May be with regard to measurements the plaintiff has not tallied. But, that by itself will not disprove his right to the suit property. As long as defendants 1 and 2 have not produced any material to show their title to the suit property, they cannot defend the present suit.

12. The lower Appellate Court also dealt with the application for reception of additional evidence and in my view, rightly rejected the same on the ground that the defendants failed to produce any documents between 1911 and 1961 to prove that B Schedule property was allotted to their predecessor in title long after the document sought to be produced as additional evidence. The suit property had been divided in the family of the plaintiff and the same had been allotted to the share of the plaintiff.

13. On the records available, the Court is entitled to find title in favour of either of the parties. When it has been established that defendants 1 and 2 have no right whatsoever in the suit property, in view of the prior proceedings and the vital admission made by the first defendant in Ex.A-12, the plaintiff's suit has been rightly decreed by the Courts below. The substantial questions of law are answered against the appellants.

14. The second appeal fails and the same is dismissed. There will be no order as

to costs.