
(2002) 08 MAD CK 0126

In the Madras High Court

Case No : Second Appeal No.1807 of 1990

P. Subramania Chettiar

APPELLANT

Vs

Smt. Amirtham, Pandi and Duraipandi

RESPONDENT

Date of Decision : 27-08-2002

Acts Referred:

Citation : (2003) 2 LW 303 : (2002) 3 MLJ 718

Hon'ble Judges : M. Karpagavinayagam, J

Bench : Single Bench

Advocate : K. Kannan, for the Appellant; V. Natarajan, for the Respondent

Final Decision : Dismissed

Judgement

M. Karpagavinayagam, J.—Subramania Chettiar, the defendant is the appellant herein.

2. Tmt. Amirtham and her minor children, the respondents herein filed the suit for declaration and permanent injunction against the appellant. The trial Court decreed the suit. Aggrieved by the same, the appellant filed the appeal before the lower appellate Court, which in turn dismissed the appeal, while confirming the judgment and decree passed by the trial Court. Hence, the second appeal by the defendant/appellant.

3. The case of the plaintiffs is as follows:

"The suit house originally belonged to one Palaniandi Chettiar. He died leaving behind two sons Gopal and Nagappan. In the oral partition between the said Gopal and Nagappan, the suit house was allotted to Nagappan. The first plaintiff is the wife of the said Nagappan and other plaintiffs are their children. Nagappan died in 1976. The plaintiffs continued to be in possession and enjoyment of the suit house from then onwards for more than 25 years. So, by inheritance and by virtue of possessory title, they have become entitled to the suit house. While so, Subramania Chettiar, the defendant claims that he purchased the suit property

from Palaniandi Chettiar's wife Muthammal in the year 1953 and is trying to interfere with the plaintiffs' possession. Prior to 1956, as per Hindu Succession Act, women were not entitled to any property right. Therefore, the said sale deed was not a valid one. Moreover, the sale deed had not been given effect to. The defendant was never in possession of the suit house. Hence, the suit for declaration and permanent injunction."

4. The case of the defendant is as follows:

"The first plaintiff is not the wife of Nagappan Chettiar, the son of the original owner Palaniandi Chettiar. The plaintiffs had not been in possession and enjoyment of the house for more than 25 years. Palaniandi Chettiar died leaving behind two minor sons and his wife Muthammal. Muthammal as a guardian had incurred debts. Muthammal did not have necessary funds to deepen the family well. For family necessity and for necessity of the minors, she incurred debts. Since she could not discharge the debts, she sold the suit property to the defendant. From then onwards, the defendant enjoyed the property. The defendant was originally employed in the Army. After retirement, he settled at Madras. The suit house was let out to several tenants from time to time. In 1980, the first plaintiff requested the defendant to let out the house to her for rent of Rs. 15/- per month. She paid rent for some time in lump sums. Taking advantage of the absence of the defendant in the suit village, she claimed the property as her own. So, he asked the first plaintiff to vacate the house. Therefore, the plaintiffs filed the suit. The plaintiffs were never in possession of the house before 1980. They have been in possession of the house only as tenant. Therefore, the suit is liable to be dismissed."

5. On the basis of the above pleadings, the necessary issues were framed by the trial Court. On behalf of the plaintiffs, P.Ws.1 and 2 were examined and filed Exs. A1 to A12. The defendant examined himself as D.W.1 and filed Exs. B1 to B12.

6. On consideration of the entire materials placed before it, the trial Court accepted the plaintiffs' case and decreed the suit as prayed for. Aggrieved by the said judgment and decree, the defendant filed an appeal before the lower appellate Court. Since the appeal was dismissed, the present appeal has been preferred before this Court by the defendant/appellant.

7. At the time of admission, this Court formulated the following substantial questions of law:

1) Whether it is open to the trial Court as well as the first appellate Court to give a declaration about the validity of a document, which is only a voidable document, where the plaintiff has not asked for such a relief?

2) Whether the finding of the Courts below that the plaintiff has perfected title by adverse possession is based on no evidence?

8. In elaboration of these questions of law, Mr. Kannan, the learned counsel appearing for the appellant would submit that the defendant has a valid title to

the suit property as he purchased it under a registered sale deed for a valuable consideration and the Courts below ought not to have entertained the plea of the plaintiffs that they were the owners of the suit property on the one hand and on the other hand, that they had acquired title to the suit property by adverse possession which is mutually contradictory and these two contradictory pleas cannot be made together. It is further contended that the sale deed executed by Muthammal as a guardian of the minor children Gopal and Nagappan in favour of the defendant by selling the suit house for the family necessity and as such, it is a valid document and consequently, the plaintiffs cannot claim that they are entitled to the suit house by inheritance.

9. In reply to the said submission, Mr. Natarajan, the learned counsel appearing for the respondents/plaintiffs would contend that the reasonings given by both the Courts below for passing decree in favour of the plaintiffs are justified and the same may not be interfered in the second appeal, as there is no substantial question of law.

10. Both the counsel would cite several authorities for substantiating their respective pleas.

11. According to the plaintiffs, the suit property originally belonged to Palaniandi Chettiar. This is not disputed by the defendant. The said Palaniandi Chettiar died leaving behind two minor sons, namely Gopal and Nagappan. This is also not in dispute.

12. The first plaintiff's claim that she is the daughter-in-law of the original owner being the wife of the said Nagappan, is disputed by the defendant by stating that the first plaintiff in order to grab the suit property falsely claims as the wife of Nagappan, the son of the original owner.

13. This defence is atrocious in the light of the fact that it was not debated that the second and third plaintiffs are the sons of the said Nagappan. The claim for the suit property by the plaintiffs is through their inheritance. In order to prove inheritance, plaintiffs filed Exs. A8 to A12 to show that the first plaintiff is the wife of Nagappan, the son of the original owner.

14. Ex. A8 is the registered Othi deed dated 30.6.1962 wherein Nagappan Chettiar is described as the son of Palaniandi Chettiar. Ex. A9 is the certified copy of mortgage deed wherein the first plaintiff Amirtham has been described as the wife of Nagappan Chettiar. Ex. A10 is the order passed by the Special Tahsildar, Usilampatti in which the first plaintiff has been described as the wife of Nagappan Chettiar. Ex. A11 is the notice sent by the Tahsildar to the first plaintiff describing her as the wife of Nagappan Chettiar. Ex. A12 is the notice sent to Nagappan Chettiar. In the said document, he has been described as the son of Palaniandi, the original owner.

15. The very fact that these original documents have been produced by the plaintiffs and the fact that the first plaintiff filed the suit on her behalf and on

behalf of the second and third plaintiffs, who are the minor children of the said Nagappan Chettiar, which is not in dispute, would clearly go to show that the first plaintiff is the daughter-in-law of the original owner Palaniandi Chettiar.

16. Apart from these documents which proved her relationship with the original owner, she filed Exs. A1 to A6 to show that from the year 1979 she has been paying the tax in respect of the suit property till the date of suit. When there was a threat of dispossession by the defendant, she issued a paper publication Ex. A7 in 1980 itself stating that the said house originally belonged to her father-in-law and devolved upon the first plaintiff's husband and his brother and that after the death of the first plaintiff's husband, she has been enjoying the same in her own right for more than 25 years and that Subramania Chettiar, on the strength of a secret sale deed, claimed to have been executed by the mother-in-law of the first plaintiff in the year 1953, was trying to claim the title over the property and the said claim is false as the secret sale deed was not valid and it would not bind her.

17. The evidence of P.W.1, the first plaintiff and the evidence of P.W.2 and Exs. A1 to A12 would show that the plaintiffs claim the title through inheritance and they have been in possession for more than 30 years till the filing of the suit.

18. According to the defendant, the suit property was purchased from Muthammal, the wife of the said Palaniandi Chettiar by the sale deed dated 11.3.1953. Ex.B1 is the registration copy of the said sale deed. Apart from Ex. B1, the defendant filed Exs. B2 to B12 to show that he has paid tax in the year 1959 and subsequently up to 31.3.1965.

19. It is contended by the plaintiffs that the sale deed is not valid as the widow of the original owner had no right to sell the property in the year 1953 on behalf of the minors.

20. This aspect has been dealt with by both the Courts below in detail. Though the trial Court would state that the woman, a widow cannot inherit the property under the Women's Right to Property Act 1937, the lower appellate Court would hold that a woman in the absence of her husband or after the death of her husband, as the mother on behalf of the minor children, can alienate joint family property for legal necessity. The lower appellate Court would further hold that in the present case, it was not established that the sale deed was executed by Muthammal, the wife of Palaniandi Chettiar out of legal necessity.

21. In this context, it would be relevant to refer to some of the observations given in the Hindu Law by Mulla:

"A widow or other limited heir does not take merely an estate by life, for, as will be seen presently, she can, in certain cases, dispose of the whole estate inherited by her which she could not do if she were a mere life-tenant. What vests in her is not mere life-estate, but the whole estate. Further, she represents the estate completely, and it is for this reason that in certain cases, a decree passed against her with reference to property inherited by her, binds not only

herself, but also the reversioners, though the reversioners were not parties to the suit. In other words, the estate of a Hindu widow is an absolute one, subject to certain restrictions."

22. The principles relating to the widow's power to alienate property were dealt with by the Supreme Court in *Jaisri Sahu Vs. Rajdewan Dubey and Others*, , which are as follows:

"When a Hindu widow succeeds as heir to her husband, the ownership in the properties, both legal and beneficial, vests in her. She fully represents the estate, the interest of the reversioners therein being only spes successions. The widow is entitled to the full beneficial enjoyment of the estate and is not accountable to any one."

23. It is held in *Smt. Rani and Another Vs. Smt. Santa Bala Debnath and Others*, as under:

"Recitals in a deed of legal necessity do not by themselves prove legal necessity. The recitals are, however, admissible in evidence, their value varying according to the circumstances in which the transaction was entered into. The recitals may be used to corroborate other evidence of the existence of legal necessity. The weight to be attached to the recitals varies according to the circumstances."

24. On the strength of these decisions and observations, it is contended by the counsel for the appellant/defendant, the legal necessity has been established by the defendant through the recital mentioned in Ex. B1.

25. This contention, in my view, cannot be countenanced. It is held in the very same decision *Smt. Rani and Another Vs. Smt. Santa Bala Debnath and Others*, that legal necessity to support the sale must be established by the alienees. In other words, the onus of proving legal necessity shall be discharged by the alienee by proof of actual necessity or by proof that he made proper and bona fide enquiries about the existence of the necessity and that he did all that was reasonable to satisfy himself as to the existence of the necessity.

26. However, the evidence of D.W.1 would clearly show that no such enquiry had been made by him. As a matter of fact, D.W.1 would state that he did not know as to whether the well was dug up on receipt of sale consideration.

27. Hindu Law by Mulla contains the following observation:

"Besides legal necessity, a widow or other limited heir may alienate the estate "for the benefit of the estate". An alienation of property to meet the costs of litigation necessary for preserving the estate is alienation "for the benefit of the estate". So too is alienation for making necessary repairs to properties belonging to the estate; so also is an exchange of land for effective management of the estate. However, alienation for developing or improving the properties is not one "for the benefit of the estate", though it may bring additional income, and it does not bind the reversioners (*HURRY v. GONESH* (1884) 10 Cal 823)".

28. Under those circumstances, the plea of the defendant that the property belongs to him through the sale deed executed out of legal necessity has not been established by the defendant. On the other hand, as held above, the title through the inheritance has been established by the plaintiffs.

29. Furthermore, it is the case of the defendant that after the purchase in 1953, the defendant was in possession of the property and was let out to several parties and in 1980, the suit property was let out to the plaintiffs. As correctly found by both the Courts below, there is absolutely no record to show that there was any such tenancy agreement between the plaintiffs and the defendant.

30. According to the defendant, in fact, as per the written statement, the defendant was serving in the Army and after retirement, he settled at Madras. No evidence was adduced as to the details of the tenants who occupied in the suit house prior to 1980 and no documentary evidence was produced to show that the defendant has been receiving the rent from the plaintiffs. If the tenancy agreement has been entered into in the year 1980, there is no necessity for the first plaintiff to send a paper publication Ex.A7 on 19.8.1980 to claim that the suit property is in her possession as the same devolved upon her after the death of her husband Nagappan Chettiar. the son of the original owner. Under those circumstances, the claim of the defendant has to be rejected.

31. However, one other aspect is to be considered in the light of the plea of adverse possession. The counsel for the defendant would emphatically state that there cannot be contradictory pleas. According to the plaintiffs, the claim for the title is through inheritance and at the same breath, they claimed adverse possession as they have been in possession for more than 25 years. As a matter of fact, both the Courts below, while holding that the plaintiffs have established their title through inheritance, would observe that they have perfected title through adverse possession as well.

32. There are decisions, viz., Mr. Thanisias (deceased) and nine others Vs. Ms.Selvam Ammal (died) and four others, , Annasaheb Bapusaheb Patil and others Vs. Balwant alias Balasaheb Babusaheb Patil (dead) by LRs. and heirs etc., and Kannappan Vs. Pargunan and 9 others, , wherein it is held that the plaintiff can contend adverse possession only when he admits that another person has got title.

33. On the contrary, the counsel for the plaintiffs cited the decisions in MUNICIPAL BOARD, ETAWAH v. MT.RAM SRI AIR 1931 All 670, THANGAMANI v. SANTHIAGU 2000 III M.L.J.589, The Karnataka Wakf Board Vs. State of Karnataka and others, and SADASIVA GOUNDER v. PURUSHOTHAMAN 2000 III M.L.J. 785, wherein it is held that where the occupier has been in open and continuous occupation asserting positive title in themselves and against every one, the said occupier can claim adverse possession and the pleas of title and adverse possession cannot be said to be inconsistent pleas.

34. These decisions would make it clear that the plaintiffs, while claiming title,

would be entitled to make an alternative plea of adverse possession. But in this case, we need not go into the question of adverse possession, especially when it is established by P.W.1, the first plaintiff that she has been in possession for a long number of years through inheritance, as, in my view, the same would not be the relevant consideration in the present facts of the case where the plaintiffs do not admit the title of the defendant.

35. Therefore, though this Court would not go into the aspect of adverse possession, as it is unnecessary, this Court would hold that the plaintiffs have established their title through inheritance as found by both the Courts below in the light of the materials available on record. As this factual finding is based upon the relevant and acceptable materials placed by the plaintiffs, I do not find any substantial question of law in this case. Hence, the second appeal is dismissed with costs.