

(2010) 09 MAD CK 0162

In the Madras High Court

Case No : Second Appeal No. 112 of 2006, Cross Objection No. 16 of 2008 and C.M.P. No. 2884 of 2007

Raghupathi

APPELLANT

Vs

V. Rangarajulu Naidu
V. Rangarajulu Naidu Vs
Raghupathi

RESPONDENT

Date of Decision : 27-09-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 31
Registration Act, 1908 — Section 17

Citation : (2010) 09 MAD CK 0162

Hon'ble Judges : M. Jeyapaul, J

Bench : Single Bench

Advocate : R. Sunil Kumar, for the Appellant; P. Gopalan, for the Respondent

Judgement

M. Jeyapaul, J.—The Appellant is the plaintiff in the suit filed by him for declaration of title and also for permanent injunction. The Trial Court decreed the suit as prayed for and as a result of which, the Defendant preferred an appeal before the first appellate court. The first appellate court rendered a finding that neither the plaintiff nor the Defendant has established his respective title to the properties. Ultimately, the judgment and decree passed by the Trial Court was upset by the first appellate court as the plaintiff, who is bound to establish his title to the properties, failed to do so. The plaintiff has now preferred the second appeal aggrieved by the judgment and decree passed by the first appellate court. The Defendant has filed cross objection with respect to the finding given by the first appellate court that the Defendant failed to establish his title to the properties.

2. The plaintiff has contended that the properties described as items 1 and 2 in the plaint schedule have been in possession and enjoyment of the family of the plaintiff from time immemorial. After the demise of his grandfather, the plaintiff's father Senthamarai Kannan had been in possession and enjoyment of the same. After his death, the plaintiff got the properties in the partition that took place

between the brothers. It is contended by the plaintiff that the second item of the suit properties was leased out to one Srinivasulu Naidu on 30.1.1973 and the first item of the suit was leased out to him as per the lease deed dated 5.2.1986. After the said Srinivasulu Naidu vacated the suit properties in the year 1990, the thatched house, which was in a dilapidated condition, was removed by the plaintiff. Claiming that the father of the plaintiff had been in enjoyment of the same having obtained patta in his name and thereafter he has been in possession and enjoyment of the suit properties, the plaintiff filed the suit for the reliefs as stated supra. The plaintiff also has claimed adverse possession contending that the plaintiff and his predecessors in title have been in continuous possession of the suit properties for more than the statutory period without any interruption.

3. The Defendant, in his written statement, has contended that the lease agreements were fabricated for the purpose of this case. It was only the Defendant, who has been in possession and enjoyment of both the items of the suit properties for several decades, it is contended. The Defendant would also allege that the entry found in the "A" Register had been manipulated by the father of the plaintiff as he was working as Deputy Collector. The first item of the suit properties originally belonged to the plaintiff's paternal uncle Govindasamy Naidu. He executed a registered sale deed in favour of the Defendant's father Varadarajulu Naidu for a valuable consideration of Rs. 200/-. The plaintiff's father Senthamarai Kannan was one of the executants of the said sale deed. It is contended that there was no oral partition in the family of the plaintiff as projected by the plaintiff. The second item of the suit properties was orally sold to the Defendant's mother by Govindasamy Naidu for a sum of Rs. 100/-. The Defendant also sets up title by adverse possession over a statutory period to the knowledge of the plaintiff as far as the second item of the suit properties is concerned. Therefore, the Defendant has contended that the suit is liable to be dismissed.

4. The Trial Court framed three issues for determination. Those issues are found to be very formal in nature inasmuch as the first issue was whether the plaintiff was entitled to a declaration of title, the second issue was whether the plaintiff was entitled to permanent injunction and the third issue was whether the plaintiff was entitled to the reliefs sought for by him.

5. The Trial Court, having taken note of the admission made by DW1, the Defendant herein that the properties originally belonged to the grandfather of the plaintiff and that Ex.B3 did not relate to the suit properties and relied upon "A" Register extract Ex.A1 standing in the name of the father of the plaintiff, Exs.A4 and A5 lease agreements relating to the suit properties, Exs.A6 to A10 House Tax Receipts and Ex.A23 the deed of power of attorney executed by the brother of the Defendant in favour of a third party, arrived at a conclusion that the plaintiff has established his right and title to the suit properties as well as possession thereof and therefore, he is entitled to the reliefs sought for.

6. The first appellate court virtually gave a negative approach to the case and having found that both of the parties have failed to establish their respective title to the suit properties, dismissed the suit filed by the plaintiff and ultimately upset the judgment and decree of the Trial Court.

7. The following substantial questions of law were formulated for determination at the time of admitting the second appeal:

1. Whether the continuous possession of the property by the plaintiff/Appellant evidenced through conferment of patta and payment of kist and entries in cultivation accounts are not relevant for establishing proof of possession and consequently of title by adverse possession.

2. Whether the Subordinate Judge was justified in reversing the well considered judgment of the Trial Court without even setting out the reasons as required by law for setting aside the decree of the trial court as required to be done under Order XLI Rule 31 of Code of Civil Procedure

8. During the course of arguments, the following additional substantial question of law was formulated:

Whether the judgment of the first appellate court is vitiated by non-appreciation of the relevant materials on record.

9. Learned Counsel appearing for the Appellant/plaintiff would submit that the plaintiff need not establish his title flowed from the grandfather of the plaintiff, as the same has been admitted unambiguously by the Defendant both in the written statement and also in the evidence. Even otherwise, the plaintiff has come forward with the available materials to establish that the father of the plaintiff has got the properties from his father and as a result of which, his name figured in the "A" Register and the properties were also dealt with by the plaintiff by leasing out the same to third parties. The said third party had been in possession of the properties and had been paying House Tax also. Referring to the admission made by DW1, he would submit that Ex.B3 did not have any bearing on the suit properties. Referring to the evidence of DW1, he would submit that the second item of the suit properties was alleged to have been purchased for a sum of Rs. 100/-. As per Section 17 of the Registration Act, a sale transaction which took place even for a sum of Rs. 100/- is compulsorily registrable and inasmuch as such a sale transaction was not registered, the Defendant cannot make any claim over the second item of the suit properties also. The Trial Court has rightly referred to various documents produced by the rival parties and has arrived at a decision that the plaintiff has established his right and title to the suit properties, he would submit.

10. Per contra, learned Counsel appearing for the Respondent/defendant would submit that the suit properties have been shown as vacant site and therefore, the same would not have been leased out to any third party. The oral partition pleaded by the plaintiff was not established. The plaintiff, who has come out with

a contradictory plea that he was entitled to declaration based on title and also by prescription of title by adverse possession, cannot maintain the suit. The plaintiff's grandfather, who had executed Ex.B3 with the attestation of the plaintiff's father, could not have retained any title over the suit properties. Based on the "A" Register entry which has been created misusing the office of the plaintiff's father as Deputy Collector, the plaintiff cannot set up his title. Even otherwise, the revenue record cannot be construed as a document of title, it is submitted. Even for the worst case, if the court comes to the conclusion that the Defendant has not come forward with any document of title to the suit properties, it is only the plaintiff, who has come forward with a suit for declaration of title and for permanent injunction, shall establish his title independently based on his own pleadings and proof adduced before the court. Referring to Exs.A4 and A5, he would submit that the plaintiff has given much credence to unregistered lease deeds which could be created at any point of time. Therefore, he would submit that the first appellate court has rightly held that the plaintiff failed to establish his title to the suit properties and therefore, he is not entitled to declaration of title and also for permanent injunction. But, at the same time, the first appellate court has erred in giving a finding that the Defendant, on his part has failed to establish his title to the properties in a suit for declaration to declare the plaintiff's title to the suit properties.

11. As rightly pointed out by the learned Counsel appearing for the Appellant/plaintiff, the Defendant categorically admits in the written statement that the suit properties originally belonged to the grandfather of the plaintiff viz., Govindasamy Naidu. The Defendant, who was examined as DW1, has virtually reiterated the stand taken in the written statement to the effect that it was only Govindasamy Naidu who was the original owner of the suit properties. On such admission made by the Defendant, the burden of proof on the plaintiff to establish that Govindasamy Naidu was the rightful owner of the suit properties is mitigated or rather diluted.

12. It is not the case of the plaintiff that Govindasamy Naidu purchased the said properties in his name and had been in possession and enjoyment of the same based on the sale deed in his name. It is the case of the plaintiff that the properties were originally owned and possessed by the family right from the days of Govindasamy Naidu. As there is no pleading that Govindasamy Naidu purchased the properties in his name, the plaintiff cannot be expected to produce any sale deed in the name of Govindasamy Naidu. Further, as already pointed out by this Court, the plaintiff need not establish that the properties belonged to his family inasmuch as there is a clear admission on the side of the Defendant that the suit properties originally belonged to the family of the plaintiff. The admitted facts need not be established before the court of law.

13. The Defendant projected the sale deed, Ex.B3 to show that he purchased the first item of the suit properties for a sum of Rs. 200/- from Govindasamy Naidu. It is true that Govindasamy Naidu's son Senthamarai Kannan had attested the

said sale deed. DW1 has admitted that Ex.B3 has no connection with the suit properties. Apart from such admission, it is found that Ex.B3 does not refer to the survey number of the suit properties nor does it refer to the exact extent of the first item of the suit properties. In view of the above, it appears that the Trial Court has rightly come to the conclusion that Ex.B3 does not relate to the suit properties.

14. An oral sale transaction with respect to the second item of the suit properties was projected by the Defendant. Ex.B3 came into existence on 19.6.1924. The second item of the suit properties was allegedly purchased under oral sale transaction in the year 1927. It is found that a lesser extent was purchased for a sum of Rs. 200/- about three years earlier but, the larger extent was alleged to have been purchased for a lesser amount after a lapse of about three years. To top it all, the Defendant has assertively deposed before the court that the second item of the suit properties was purchased for a sum of Rs. 100/-. As per Section 17 of the Registration Act, any sale transaction which takes place for a sum of Rs. 100/- and above shall be compulsorily registered. Therefore, such a sale transaction for a sum of Rs. 100/- which took place orally cannot be taken cognizance of by the court of law. It is the admission of DW1 that he is bereft of any document to prove his title and possession of the suit properties.

15. The plaintiff has produced Ex.A1 to establish that the suit properties stood in the name of his father Senthamarai Kannan in the revenue records. The plaintiff had produced documents to prove some lease arrangements with PW2 under Ex.A4 in the year 1973 and under Ex.A5 in the year 1986. It is true that those lease agreements which were not registered could be created at any point of time. But, the veracity of those two documents has been fortified by the House Tax receipts, Exs.A6 to A10 issued in the name of PW2. Though Exs.A6 to A9 had come into existence in the year 1975, the fact remains that those receipts were obtained by PW2. If at all PW2 had no connection with the suit properties, there would have been no occasion for PW2 to obtain House Tax Receipts way back in the year 1975 in his name.

16. Ex.A23 is a power of attorney executed by the Defendant's brother to a third party. Though the Defendant has nothing to do with the said document, it is found that the very brother of the Defendant has specifically shown the suit properties as that of the family of the plaintiff while describing one of the boundaries of the properties under Ex.A23. There would have been no occasion for the brother of the Defendant to refer to the properties located close by the properties dealt under Ex.A23 as that of the properties of the family of the plaintiff if the family of the plaintiff had no right or interest in the suit properties.

17. It is true that the plaintiff has come forward with a case that the suit property was a vacant site. It is to be noted that the plaintiff has set up a plea that the structure in occupation of PW2 was removed after he vacated the premises as the structure was in a dilapidated condition. No wonder the plaintiff referred the suit properties as a vacant site in the plaint.

18. The plaintiff has come out with to pronged pleas in the plaint. One of the pleas is that the suit properties originally belonged to his grandfather and the same has been in possession and enjoyment of the family from time immemorial. The contradictory plea the plaintiff has set up in the suit is that he has prescribed title by adverse possession.

19. In this context, the learned Counsel appearing for the Defendant/Respondent cited a decision of the Supreme Court in Karnataka Board of Wakf Vs. Government of India and Others, wherein it has been held that the plaintiff filing a title suit should be very clear about the origin of title over the property and he must specifically plead the same and whenever the plea of adverse possession is projected, inherent in the plea is that someone else was the owner of the property. The pleas on title and adverse possession are mutually inconsistent and the latter does not begin to operate until the former is renounced.

20. That was a case where the Government of India could establish that it had obtained title under the provisions of the Ancient Monuments Preservation Act. But, the alternative plea of adverse possession by the Union of India was found not sustainable as there was no specific plea made by the Government of India that Government of India was in possession of the suit properties to the exclusion of the Karnataka Board of Wakf with the animus to possess it and no proof to establish such adverse possession was also forthcoming. There is no bar for the plaintiff to come forward with an alternative plea that in case his title to the properties based on documentary proof is rejected, his alternative plea that he has acquired title by adverse possession could be considered by the court. In the instant case, it is found that though the plea of adverse possession is set up in the plaint, the Trial Court has not framed an issue as to whether the plaintiff has prescribed title by adverse possession. When there was no issue, the plaintiff had no occasion to putforth his case based on the plea he had set up in the plaint that he had prescribed title by adverse possession. Further, such a plea made by the plaintiff in the pleadings pale into insignificance on account of the admission made by the Defendant in the written statement itself that the suit properties originally belonged to the family of the plaintiff. That would have been the reason why the Trial Court chose not to frame an issue as to whether the plaintiff had perfected his title by adverse possession.

21. Though the plaintiff has pleaded prescriptive title by adverse possession, he had carried forward such a plea during the course of trial as there was a clear admission by the Defendant as to the title to the properties. No issue also was framed by the Trial Court. Under such circumstances, the court finds that the above decision rendered by the Supreme Court does not come to the rescue of the Defendant.

22. Of course, the plaintiff must succeed or fail on the strength of his own case and not on the basis of the weakness in the case of the Defendant. (See P. Panneerselvan Vs. A. Baylis, .

23. This is not a case where the plaintiff chose to rely upon the weakness of the Defendant. Any admission made by the Defendant can be taken advantage of by the plaintiff. In other words, the admission unambiguously made by the Defendant lightens the burden of the plaintiff to establish his case. When the Defendant has unambiguously admitted that the suit properties originally belonged to the grandfather of the plaintiff, the question of establishing the fact that the suit properties originally belonged to the family of the plaintiff pales into insignificance.

24. It is the fundamental principles of law as held in Corporation of the City of Bangalore Vs. M. Papaiah and Another, that revenue record is not a document of title. Firstly, the plaintiff has not set up his title based on a document of title in the name of his grandfather. On account of long possession and enjoyment of the suit properties from time immemorial, the properties belonged to the family of the plaintiff, it has been contended by the plaintiff. Such a stand of the plaintiff has been admitted by the Defendant. The plaintiff has come forward with the available documents including "A" Register extract to establish that the suit properties belonged to the family of the plaintiff and the same has been recognised by the revenue authorities. When the plaintiff has not sought for a declaratory relief based on "A" Register extract, the above ratio will not apply to the facts and circumstance of this case.

25. The revenue records produced by the plaintiff would go to fortify the stand of the plaintiff that the family of the plaintiff has been in possession and enjoyment of the suit properties. The plea of adverse possession set up by the plaintiff has been left in the half way on account of the admission made by the Defendant as to the title to the properties. It is found that the first appellate court completely ignoring the admission made by DW1 and the telling materials available on record, has simply upset the judgment of the Trial Court without actually assigning cogent reasons. Therefore, it is held that the judgment of the first appellate court is vitiated by non-appreciation of the relevant materials on record. Consequently, all the substantial questions of law formulated by this Court are answered accordingly.

26. In view of the above, the judgment and decree passed by the first appellate court is set aside and the judgment and decree passed by the Trial Court is restored and as a result of which, the second appeal stands allowed. The cross objection stands dismissed. There is no order as to costs. The connected Miscellaneous Petition is closed.