
(2007) 02 MAD CK 0097
In the Madras High Court
Case No : S.A. No. 20 of 1998

Ramasamy (Alias) Sathiyaraj (died) and Others	APPELLANT
Vs	
Sivaprakasam and Others	RESPONDENT

Date of Decision : 08-02-2007

Acts Referred:

Citation : (2007) 02 MAD CK 0097

Hon'ble Judges : S.K. Krishnan, J

Bench : Single Bench

Advocate : V. Ragavachari, for the Appellant; A.G. Rajan, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Krishnan, J.—Aggrieved by the judgment and decree dated 26.11.1996 made in A.S. No. 76 of 1996 passed by the Civil Judge, Senior Division, Kallakurichi, confirming the judgment and decree passed in O.S. No. 103 of 1987, dated 19.10.1992 by the District Munsif, Kallakurichi, the plaintiff has come forward with this second appeal.

2. The facts leading to the filing of the filing of this second appeal are as follows:

a. The suit property was the self acquired property of the father of the plaintiff. The plaintiff has two brothers, namely, Balaraman and Paramasivam, who died in the year 1983. The plaintiff's father died in 1966. The plaintiffs father sold some items to his brother Balaraman on 9.7.1963 under a registered sale deed. Paramasivam was given 0.33 cents in R.S.240/6 and he subsequently sold the same to one Boomadevi Ammal. The plaintiff was allotted 0.31 cents in R.S.150/6 as it was a valuable Nanja land. The said Paramasivam and this plaintiff have also given statement to the Sub Registrar, Cooperative Development Bank, Kallakurichi on 10.4.1975 stating that they had no Interest in the property allotted and enjoyed by their brother Balaraman. Defendants 1 and 2 are the sons of one Arunachalam alias Porpidungi of Thandalai Village and their mother is one Kannammal. Defendants 3 to 5 are the daughters of

Paramasivam through his first wife one Valli. Later the said Kannammal joined Paramasivam and was living with him. In view of the endorsement and statement, the legal heirs of the deceased Paramasivam namely D3 to D5 are estopped from denying the title of the plaintiff to the suit property. Thus, the plaintiff has been in possession and enjoyment of the suit property, openly, adversely and continuously for more than the statutory period, thereby he perfected his title by adverse possession. Even during the life time of Paramasivam, he had relinquished all his rights, if any. Thus the defendants have no right to the suit property. While so, the defendants issued notice to the defendants to which the plaintiff gave a reply. The defendants are now trying to dispossess the plaintiff denying his title from the second week of February 1987. Hence, the above suit was filed by the plaintiff for declaration and permanent injunction.

3. Denying the averments made in the plaint, the defendants have filed their written statement.

4. At the conclusion of trial, on the basis of oral and documentary evidence, the Trial Court dismissed the suit and the appeal was also dismissed. Hence, the present appeal was filed by the plaintiff.

5. The second appeal was admitted on the following substantial questions of law:

a. Whether the Court below are right in not holding the division had taken place between Paramasivam, Balaraman and Ramasamy (Plaintiff) especially when the parties have been enjoying the property and dealing with it as an Individual and separate property vide Ex.A28 and A29?

b. Whether the Court should not have held that the legal heirs of Paramasivam are estopped from challenging the partition particularly after the execution of sale deed by Paramasivam under Ex.A28?

c. Whether the Court below should not have seen under Ex.B.10 Paramasivam had sold the joint family property to Boomadevi Ammal, signifying the division in the Hindu Joint Family?

d. Whether the court below should not have appreciated that under Ex.A24 and A27 Paramasivam and Ramaswamy had affirmed title in Balaraman in respect of a joint family property and by the conduct of the party, the court ought to have inferred partition among the members of the family?

6. Heard both sides.

7. The appellant is the plaintiff in O.S. No. 103 of 1987 on the file of the District Munsif, Kallakurichi, wherein, the appellant/plaintiff instituted the suit against the defendants for the relief of declaration and permanent injunction in respect of 31 cents, which is situated in Survey No. 150/6. The said property is a piece of land out of 12.5 acres.

8. It is an admitted fact that originally this property was purchased by the father

of the appellant one Pavadai, under Ex.A.22, dated 25.1.1943. The said Pavadai has got three sons, namely, Balaraman, Paramasivam and Ramasamy, who is the plaintiff in this case. Paramasivam died during the year 1983. The defendants are the sons of Paramasivam. Paramasivam has got two wives, namely, Valli and Kannammal. Through Valli, he has got three issues, namely, the defendants 3 to 5. Through Kannammal he got two issues, the defendants 1 and 2.

9. The learned Counsel for the appellant/plaintiff would vehemently contend that the appellant/plaintiff is in possession and enjoyment over the suit property from 1954. The learned Counsel appearing for the appellant/plaintiff based on the first substantial question of law advanced his arguments before this Court.

10. It is emphasised by the learned Counsel that there was partition among the sons of Pavadai and that of Paramasivam. The suit property was allotted to the plaintiff as his share for his exclusive enjoyment.

11. In support of his contention, the learned Counsel would rely on Ex.A.26, which is a sale deed executed by Pavadai and Paramasivam jointly during the year 1963, which contains a recital with regard to partition.

12. Further, the learned Counsel would point out that under Ex.27, dated 10.4.1975, which is a statement given by Paramasivam to the Secretary, Cooperative Land Development Bank, wherein, it is stated that the said land was allotted to Balaraman, who is in exclusive possession of the same, and therefore, there is no objection for granting loan by pledging that property in the name of Balaraman. This document was produced to show that the property enjoyed by the sons of Pavadai was already divided.

13. Ex.A.28 relates to an execution of a sale deed by one Paramasivam in favour of his brother Ramasamy. The said document was executed on 26.10.1983. In that sale deed, it is referred to as follows:

14. Emphasising the reference with regard to the exclusive enjoyment by the sons of Pavadai, Ex.A.28 has been filed on the side of the appellant/plaintiff.

15. It is emphasised by the learned Counsel that in Ex.A.24 also there is a reference about the partition and enjoyment as under.

16. Emphasising the above facts referred to in those documents with regard to partition, separate and exclusive enjoyment over the property, the learned Counsel would submit that In the said partition, the suit property was allotted to the plaintiff and from the date of allotment, he is in possession and enjoyment over the property. In such circumstances, the appellant/plaintiff is entitled to declaration and permanent injunction in respect of the property. To prove his possession over the property, the plaintiff also filed Exs.A1 to A21.

17. Per contra, the learned Counsel appearing for the respondents/defendants would submit that the property which is In dispute is not the property of the appellant/plaintiff. It is a common property, in which, all the legal heirs of

Pavadai have got right of enjoyment over the property. The said property never allotted as a share to the appellant/plaintiff. Even though there was oral partition which was effected between the sons of Pavadai, however, this property was not at all allotted to any sons of Pavadai for exclusive enjoyment.

18. Taking advantage of the situation, the appellant/plaintiff, who has not satisfied with the properties already allotted to him, is now trying to grab the property left behind by his father Pavadai for the common enjoyment of all legal heirs. Therefore, the learned Counsel would point out that nothing is warranted to interfere with the decisions arrived at by Courts below.

19. It is emphasised that both the Courts have categorically not accepted the case stated by the appellant/plaintiff. Therefore, the concurrent findings of the Courts below have to be affirmed by this Court.

20. On a careful analysis of the submission and rival submission advanced by both sides, this Court is inclined to pass the following order.

21. As already stated above, even though the learned Counsel appearing for the appellant/plaintiff advanced his arguments on the line of the first substantial question of law framed, no material is produced or available for coming to the conclusion that there was a partition on the particular day between the sons of Pavadai and in that partition the suit property was allotted as a share to the appellant/plaintiff for his exclusive enjoyment. Even though, this Court has come to a certain conclusion that there was a partition effected between the sons of Pavadai, however, the question remains unanswered by the appellant/plaintiff that the suit property was allotted to him for his exclusive enjoyment. That question was not at all answered by the appellant/plaintiff either by producing documentary evidence or any satisfactory oral evidence.

22. Moreover, as already pointed out by the trial Court as well as the first appellate Court the documents relied on by the appellant/plaintiff under Exs.A1 to A21 are not at all relevant to the suit property. The case filed by the appellant/plaintiff has no connection with the suit property and therefore, both the courts have totally rejected the case of the appellant/plaintiff.

23. When the appellant/plaintiff is not at all able to establish his case that there was partition effected between the sons of Pavadai on a particular day and year and the suit property was allotted as a share to him for his exclusive enjoyment, both the Courts have categorically rejected the case of the appellant/plaintiff.

24. In such circumstances, this Court does not find any valid reason to consider the case of the appellant/plaintiff. Moreover, there is no merit in the second appeal and hence, this second appeal is dismissed confirming the judgment and decree of the Courts below. No costs.