

(2011) 08 MAD CK 0184
Madras High Court (Madurai Bench)
Case No: S.A. No. 1302 of 1996

Varuvel Yesuvadiyan Nadar

APPELLANT

Vs

Kandasami, Maharaja Nadar and
Santhi Ammal

RESPONDENT

Date of Decision: Aug. 1, 2011

Hon'ble Judges: M.M. Sundresh, J

Bench: Single Bench

Advocate: S. Vangalakshmi, for the Appellant; R. Thamodaran, for Respondents No. 1, for the Respondent

Final Decision: Dismissed

Judgement

M.M. Sundresh, J.

The unsuccessful Plaintiff is the Appellant. The suit is filed for declaration and permanent injunction and for damages for a sum of Rs. 300/-.

2. It is the case of the Appellant/Plaintiff that the suit property has been purchased by him by sale deed dated 18.12.1963 from one Nainar Thevar, Eswara Thevar and Madasamy Thevar under Exs.A3 and A4. Thereafter, out of the total extent of 9 Acre 82 Cents in S. No. 454/1 of Nedungulam Village, an extent of 4 Acre 50 Cents was sold in favour of one Kumarasamy on 05.04.1966. According to the Appellant, the remaining extent of 4 acre 50 cents was also sold to Kumarasamy orally on 05.04.1966. Thereafter, the Plaintiff has got the entire extent of 9 Acres 82 cents by way of gift deed under Ex.A.1 dated 31.12.1980 from the sons of the purchaser by name Kumarasamy. Based upon the same, the Petitioner has filed the suit. The trial Court after considering the entire evidence, both oral and documentary was pleased to dismiss the suit. Aggrieved against the same, the Appellant has preferred an appeal. The appeal preferred in A.S. No. 293 of 1991 on the file of Sub Court, Thoothukudi was also rejected. Thereafter, the Appellant has come forward to file the present appeal.

3. At the time of admitting the Second Appeal, the following substantial questions of law have been framed:

(1) Whether the courts below are right in holding that adverse possession would not count from a period from prior to the date of coming into force of the Inam Abolition Act especially when it is the same property in which the Plaintiff and his predecessor had been in continuous possession from even prior to such coming into force of the Act?

(2) Whether the courts below could dismiss the suit in entirety when there is no dispute with regard to a major portion of the suit property?

(3) Whether the courts below are right in holding that patta Ex.A-8 having been obtained in 1986 subsequent to the suit has no probative value in view of the fact that when the settlement order Ex.B.1 was passed in 1972, the patta transfer takes place for the entire property even on that date in favour of Plaintiff though the formal document was issued in 1986?

4. The learned Counsel for the Appellant submitted that the Appellant having originally purchased the property in the year 1963 cannot be non-suited on the ground that the Respondents 2 and 3 have been allotted a smaller extent of land. It is further submitted that when a larger relief had been sought for, the Courts below ought to have considered the lessor relief, even assuming that the Respondents are entitled to the extent allotted to them. According to the learned Counsel, the document filed under Ex.A.2 being the encumbrance certificate has not been taken into account. The counsel further submitted that from the date of purchase -from 18.12.1963, the Appellant has been in possession and enjoyment of the suit property. Therefore, on the ground of adverse possession also, the suit is liable to be decreed. Hence, the learned Counsel submitted the judgments and decrees of the Courts below required interference at the hands of this Court.

5. It is seen that the suit property is in S. No. 203 on the entire extent involving 2063.62 Acres. The said extent of land was originally an Enam land and Ryatwari patta was also issued by the Settlement Tahsildar and it has been divided into 81 1/2 shares as early as on 21.01.1897. Of the said shares, 20 shares have been given to the Village by name Amuthavannankudi, 20 shares to the Village Nedungulam, 27 shares to the Village Velamputhukulam and the remaining 14 1/4 share was allotted to the Village Ilamankulam as seen from Ex.A.1. The said 14 1/4 share consists of 750 Acre and only for that extent the Settlement Tahsildar has initiated proceedings to issue Ryatwari Patta. Against the said proceedings a suit has been filed in O.S. No. 180 of 1961, by which it has been held by the civil Court as confirmed by this Court that the said 14 1/4 shares belongs to Ilamankulam Agricultural Union. The Courts below were pleased to hold that the suit property forms part of it and the Appellant's vendors not being the members of the Ilamankulam Agricultural Union, there is no title vests with them.

6. The suit has been filed against the Defendants 1 to 3. The first Defendant has stated that he has got no interest with the suit property. The second Defendant is said to have purchased an extent of 2 Acre 74 Cents from one Para massive under Ex.A.2. Similarly the third Defendant has also purchased 3 Acres 53 Cents in S. No. 454/1 under Ex.B4. The lower appellate Court has further held that the Appellant being the Plaintiff has to establish his possession and title and therefore, considering the fact that the Appellant has not proved the same, the relief cannot be granted.

7. As found by the Courts below, the Appellant has not established his title by way of documentary evidence. The concurrent finding of fact has been rendered by the Courts below to the effect that the Appellant has not established his title and the Courts below have taken into consideration the earlier civil proceedings as well as documents filed on behalf of the Defendants while dismissing the suit. In so far as the question of adverse possession is concerned, it is well settled principle of law that the plea of adverse possession can only be maintained against the principle owner. The contention of the learned Counsel for the Appellant is that the Appellant is claiming higher extent of land and therefore, the Courts below ought to have granted lesser relief even assuming the Respondents are entitled to be remained in possession, cannot be accepted for the reason that the Appellant has not made the necessary parties to the present proceedings. Hence, on a consideration of the facts involved and after going through the judgment and decree rendered by the Courts below, this Court is of the view that there is no substantial question of law involved in this Second Appeal.

8. Accordingly, the Second Appeal fails and the same is dismissed. However, the dismissal of this Second appeal will not stand in the way of the Appellant claiming his right against the Ilamankulam Agricultural Union, if so advised. No costs.