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(2014) 10 MAD CK 0328

Madras High Court (Madurai Bench)

Case No: S.A. (M.D.) No. 257 of 2006

A. Muthu APPELLANT

Vs

P. Angammal RESPONDENT

Date of Decision: Oct. 20, 2014

Hon'ble Judges: R. Karuppiah, J

Bench: Single Bench

Judgement

R. Karuppiah, J.
The appellants who are the plaintiffs in the original suit preferred this Second Appeal against the decree and judgment dated 05.10.2005 made in A.S. No. 41 of 2005 on the file of Subordinate Court, Devakottai, wherein allowed the appeal in part and modifying the decree and judgment dated 11.04.2005 passed in O.S. No. 204 of 2004 on the file of Additional District Munsif Court, Karaikudi.

2. For the sake of convenience, the plaintiffs in the original suit in O.S. No. 204 of 2004 referred as appellants and the defendants in the above said suit referred as respondents hereafter.

3. The appellants/plaintiffs filed a suit for declaration and permanent injunction in respect of A-schedule property and also prayed for mandatory injunction in respect of B schedule property to remove the super-structure built up by the respondents 1 to 3 and hand over to the appellants. It is also prayed for declaration that the UDR patta issued by 5th respondent/Tahsildar in D.K. 8A 257/1410 dated 10.10.2000 as null and void.

4. Briefly the case of the appellants/plaintiffs is that "A" schedule suit property originally belonged to one Karuppiah Konar and he died intestate in the year 1957 and his wife namely Meyyarammal also died. After their death, their only son namely Adiyakonar entitled to the suit property and he died in the year 1979 and his wife namely Kaliyammal also died in the year 2001. The appellants are sons and Karuppayee and Muthammal are daughters of Adiyakonar and Kaliyammal. Both daughters are living separately for 30

years and 20 years respectively after their marriage. After death of Adiyakonar and his wife, the appellants are in possession. The appellants" sister not claimed any right in the suit A schedule (i.e.) entire property and therefore, the appellants are entitled to the "A" schedule suit property. The 2nd appellant, namely Srinivasan put up a thatched shed and also terrace house in "A" schedule suit property and living in the above said house. The 5th respondent/Tahsildar issued patta No. 1020 for S. No. 224/21 an extent of one acre 8 cents in the name of Adiyakonar. The appellants paid tax receipts from 1368 pasali. It is also averred in the plaint that even during the life time of Adiyakonar, on 26.12.1951, he sold a portion of property under a registered sale deed measuring East-West 85 kaladi, North-South 120 kaladi (i.e.) about 15 cents to his sister namely Adhammai. The above said Adhammai put up a thatched shed and later converted as tiled house in the above said portion. Later, the appellants came to know that the respondents 1 to 3 who are legal heirs of Adhammai gave false information and obtained UDR patta in their name also in the year 2001 and hence, the appellants objected the same on 21.01.2001 and also on 05.03.2001 before the 5th respondent/Tahsildar. But, the 5th respondent/Tahsildar wrongly issued joint patta in the name of the appellants and also 1st respondent on 10.10.2000 in D.K. 8A 257/1410. As per the above said UDR patta, the entire "A" schedule suit property (i.e.,) S. No. 224/21 sub divided as 224/21A, 224/21B, 224/21C, 224/21D and 224/21E and issued patta for 224/21 A for an extent of nine acres in the name of appellants, 224/21B for an extent of one and half acres in the name of 1st respondent and the plaintiffs jointly, 224/21C for an extent of 9 acres in the name of 1st respondent alone, S. No. 224/21D for an extent of 3 acres in the name of appellants and S. No. 224/21E for an extent of 21 acres in the name of 1st respondent. The above said order passed by 5th respondent/Tahsildar without giving any opportunity to the appellants and hence, the above said order is illegal and also it is not binding on the appellants. According to the appellants, the respondents had unlawfully encroached a portion of "A" schedule property an extent of 31 + cents in S. No. 224/21B, C and E which is shown as "B" schedule property. Hence, the suit.

5. The 1st respondent filed a written statement, which was adopted by other respondents, in which, denied the contention of the appellants that the suit "A" schedule property originally belonged to Karuppiah konar and after his death, entire "A" schedule property was in possession of his son Adiyakonar. It is true that Adiyakonar died in the year 1979 but, even before the death of Adiyakonar, the 1st respondent as a daughter of Adhammai enjoying the entire "A" schedule suit property. According to the 1st respondent, her mother Adhammai purchased the property in S. No. 224/21E in the year 1951 under registered sale deed and now, the 1st respondent used northern portion in S. No. 224/9 as Hey Stack and southern portion in S. No. 224/21 E as vacant site and it is lies on the west of the appellants" property. On the western side of the above said property, the respondents put up a fence and constructed a house and enjoying the same. According to the 1st respondent, on the west of S. No. 224/21C being used by both appellants and respondents as pathway by consent. S. No. 224/21B about 6 X 150 ft., being used as common property by both appellants and respondents. On the west of the above said

common property S. No. 224/21B, S. No. 224/21A are situated. Therefore, the respondents denied the contention of the appellants that the mother of the respondents entitled only to 85 X 120 sq. ft., on the North-West as false. Further, the respondents enjoying the above said property more than statutory period. The Revenue Authorities also accepted the contention of the respondents and issued joint patta in S. No. 224/21B and separate patta in respect of S. No. 224/21C and Sur. No. 224/21E. Therefore, the contention of the appellants that the respondents put up house in S. No. 224/21E as averred in the plaint is false. Therefore, S. No. 224/21C and S. No. 224/21E are separate property of the appellants and S. No. 224/21B is joint property of both appellants and the respondents. Hence, the appellants are not entitled to any relief as prayed for in the plaint.

6. The respondents 4 and 5, have jointly filed separate written statement, in which, it is stated that the entire suit schedule property lies in two survey numbers (i.e.) S. Nos. 224/9 and 224/21. S. No. 224/9 originally registered in the name of Madhavan and S. No. 224/21 registered in the name of Adiyakonar. Since Adhammai purchased the property in S. No. 224/9, steps have been taken to change of name in the patta. On 25.03.1987, under UDR scheme Tahsildar passed an order in Na.Ka. D. 1743/86 and directed separate patta for the respondents and joint patta in the name of appellants and respondents in respect of the suit properties and also given opportunity to prefer an appeal. But, the appellants failed to prefer any appeal. The contention of the appellants that joint patta was wrongly issued is not correct. According to the respondents 4 and 5, as per records, it is unable to find out that whether the respondents 1 to 3 are encroached the property or not and therefore, prayed for to dismiss the suit.

7. The trial court framed necessary issues and on the side of the appellants examined two witnesses as PWs 1 and 2 and marked 10 documents as Exs. A1 to A10. On the side of the respondents 1 to 3 examined one witness as DW1 but, on the side of the respondents 4 and 5 not examined any witness. On the side of the respondents 1 to 3, 9 documents were marked as Exs. B1 to B9. On the side of the respondents 4 and 5 have not produced any documents. Five documents have been marked as Court documents as Exs. C1 to C5.

8. The trial court has discussed the above said oral and documentary evidence adduced on either side and finally dismissed the suit. Aggrieved over the above said finding of the trial court, the appellants preferred a first appeal before the Subordinate Court, Devakottai as A.S. No. 41 of 2005. The first appellate court partly allowed the appeal and granted decree for declaration and injunction in respect of S. No. 224/21 about 41 cents and dismissed in respect of other portions and also other reliefs. Aggrieved over the above said findings of the first appellate court, the appellants/plaintiffs preferred this second appeal. The respondents/defendants have not preferred any appeal.

9. This court admitted the Second Appeal on the following substantial questions of law:-

"Whether the dismissal of the suit in the 1st Appellate Court for a portion of the suit property, namely, 55 cents is correct, inasmuch as it has not taken into consideration that, to that extent, the plaintiffs were divested in the settlement proceedings without any notice ?"

10. Heard the learned counsel appearing on both side and perused the materials available on record.

11. On a perusal of the trial court judgment revealed that the trial court mainly dismissed the suit on the ground that the appellants have not proved the suit entire A-schedule property originally belonged to Karuppiah konar and after his death, the Adiyakonar alone entitled the property by adducing documentary evidence. Further, the trial court has held that patta for the entire A-schedule property was not issued in the name of the appellants. Further, the trial court has held that the appellants have stated in the plaint as portion of the property was sold by the appellants'' father Adiyakonar in favour of Adhammai under sale deed dated 26.12.1951, but, the above said sale deed not produced. Further, the trial court has held that the appellants have not produced the alleged patta issued by the 5th respondent/Tahsildar dated 10.10.2000 in D.K. 8A 257/1410 even though, the appellants seeking relief of declaration that the above said patta is not valid in law. Further, the trial court has held that absolutely not proved on the side of the appellants that the 1st respondent trespassed in ''B'' schedule (i.e.) portion of the entire A-schedule property. In view of the above said reasons, the trial court has dismissed the suit filed by the appellants.

12. On a perusal of the first appellate court''s judgment revealed that the first appellate court has held that in the plaint, on a clerical error stated the date of sale deed as 26.11.1951 instead of the sale deed dated 26.12.1951 vide Ex. B1 marked on the side of the respondents. Further, the first appellate court discussed the description of property stated in Ex. B1 sale deed dated 26.12.1951 wherein, the 4th item was sold by Adiyakonar in favour of Adhammai, in respect of portion of the suit A-schedule property. Further, the first appellate court has considered Ex. B2 sale deed marked on the side of the respondent, wherein Adhammai purchased the property in S. No. 224/9 from one Ramakrishnapillai. The first appellate court has discussed in the judgment that as per Ex. B4, old bypass No. 224/9 total extent of 2 acres 68 cents but, at the time of sub-division, the Revenue Authorities sub-divided and recorded as in S. No. 224/9 to an extent of 1 acre 60 cents and S. No. 224/21 to an extent of 1 acre 08 cents and wrongly issued patta accordingly. The first appellate court has also held that Adhammai, mother of the respondents purchased 2 acre 12 cents from the above said Ramakrishnapillai in Old bypass No. 224/9 as per Ex. B2 sale deed and also Adhammai purchased 15 cents under Ex. B1 from the appellants and their father Adiyakonar and therefore, the appellants are entitled to only 41 cents in the entire property in new S. No. 224/21. For the above said reasons, the first appellate court has granted the relief of declaration and injunction in respect of 41 cents alone in S. No. 224/21 and dismissed the remaining portions. The first appellate court has also held that the appellants have failed to prove that the 1st

respondent had encroached the property and put up construction in the year 2000 as alleged in the plaint. The first appellate court has also discussed about the Commissioner''s report Exs. C1 to C5 and held that the above said construction was put up in the year 1974 as stone affixed in the building and also considering the fact that 20 or 25 years old trees planted by the respondents are available in the property and hence, rejected the relief of mandatory injunction sought for by the appellants. Further, the first appellate court has held that the appellants have seeking relief of declaration that the patta issued by 5th respondent/Tahsildar dated 10.10.2000 as invalid document but, the appellants failed to produce the above said document and therefore, the above said relief also not granted by the first appellate court. Finally, the first appellate court partially allowed the first appeal and granted relief of declaration and injunction in respect of 41 cents in S. No. 224/21 alone and rejected all other reliefs sought for by the appellants.

13. The learned counsel appearing for the appellants would submit that as per Ex. A1 patta, the appellants are entitled to an extent of 1 acre 08 cents and out of the above said extent, only 15 cents sold by the appellants and their father under Ex. B1 to the mother of the respondents Adhammai and therefore, the appellants are entitled to remaining 93 cents in the above said survey numbers.

14. As rightly discussed in detail in the first appellate court''s judgment, and also from oral and documentary evidence adduced on the either side revealed that in old bypass No. 224/9 the total extent 2 acre 68 cents but, the Revenue Authorities subsequently wrongly divided as S. No. 224/9 as 1 acre 60 cents and S. No. 224/21 as 1 acre 08 cents. It is also revealed from the evidence that the respondents mother namely Adhammai purchased 2 acre 12 cents from one Ramakrishnapillai under Ex. B2 sale deed and also admitted that the above said Adhammai purchased 15 cents from the appellants'' father namely Adiyakonar under Ex. B1 sale deed. Further, the Commissioner was appointed to measure the properties and the Commissioner filed his report and plan under Exs. C1 to C5. From the above said documentary evidence and also the oral evidence adduced on either side clearly revealed that the finding of the first appellate court are not perverse finding as contended by the learned counsel appearing for the appellants. The first appellate court has correctly discussed in detail about the oral and documentary evidence adduced on either side and finally held that the appellants are entitled to only 41 cents and the appellants are not entitled the remaining portion of 55 cents as contended by the appellants. Further, as rightly pointed out by the learned counsel appearing for the respondents that there is no question of law particularly substantial question of law arises since the above findings only regarding facts and also the finding of the first appellate court are not perverse or illegal and therefore, the second appeal is liable to be dismissed.

15. In the result, the second appeal is dismissed and confirmed the decree and judgment passed by the first appellate court. No order as to costs.