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S.A.No.689 of 2005

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 15.12.2023

Delivered on: 14.02.2024

CORAM

THE HONOURABLE Mr. JUSTICE P.DHANABAL

S.A.No.689 of 2005

Dhanam ...4th plaintiff/4th Respondent/appellant

Vs

1. Parvatham ammal

2. Natarajan

3. Mahesh

.. Defendants 1,3 and 4 /Appellants 1,2 and 3/Respondent 1,2,3

4. Padmavathi(Died)

5. Jeyam

6. Rajambal

.. Plaintiffs 1,2 and 3 /Respondents 1,2 and 3 /Respondent 4,5,6

7.Sakunthala

8. Sulochana

9.Tamilarasi

. Defendants 6,8 and 9 /Respondents 5,7 and 8/Respondent 7,8 and 9

10.Loganathan

11. Sadagoparamanujam

12. Venugopal

13. Indirani

14.Mythili

15.Manivannan

(Rrs 10 to 12 are brought on record as LR's of the deceased 4th respondent viz. Padmavathi and Rrs 13 to 15 brought on record as LR's of the deceased 11th respondent viz, Sadagoparamanujam(died) vide court order dated 02.08.2021 made in CMP. 6212,6214,6218 of 2020 and CMP 10971 of 2021 in SA 689 of 2005)

PRAYER: Second Appeal is filed under section 100 of the Civil Procedure Code as against Judgement and Decree of the Principal



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District Court, Namakkal in A.S. No.282 of 2002 dated 19.02.2004, reversing the the judgment and decree of the Principal District Munsif, Namakkal in O.S. No.203 of 1987 dated 20.10.1994.

For Appellants : M/s. Uma Maheshwari

For R1 to R3,5,7 &8 : M/s.P.Manish
for M/s.S.Saravanakumar

J U D G M E N T

This Second Appeal has been preferred as against the decree and judgment passed in A.S.No.282 of 2002 on the file of the Principal District Court, Namakkal where in the first appellate Court has allowed the appeal by reversing the judgment and decree passed in O.S. No.203 of 1987 dated 20.10.1994 on the file of the Principal District Munsif Court, Namakkal, wherein the appellants in the second appeal have filed suit for declaration and consequential relief of permanent injunction and the suit was decreed in favour of the plaintiffs therein. As against the decree and judgment of the trial Court the defendants therein have preferred first appeal before the Sub Court, Namakkal and thereafter the same was transferred to the Principal District Court, Namakkal in A.S. No. 282 of 2002. The first appellante court reversed the judgment of the trial Court and dismissed the suit. Now the plaintiff's have preferred this second appeal.



2. For the sake of convenience and brevity, the parties hereinafter will be referred to as per their status/ranking in the Tribunal.

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3. The brief averments of the plaint are as follows:

The plaint schedule properties originally belonged to the predecessor of the plaintiffs and they are entitled to the property through partition deed dated 28.02.1982. In the partition deed the suit properties were allotted to the plaintiffs as 'É' Schedule properties and from the date of partition itself the plaintiff's have been in possession and enjoyment of the properties. The defendants have lands adjacent to the lands of the plaintiffs. The defendants 1 and 2 are husband and wife. The defendants 3 and 4 are children of first and second defendants. In suit survey No. 106/4, the plaintiffs are entitled to 1.12 acres land and the first defendant is entitled to 12.2 acres, to that effect joint patta was also given by the revenue officials. The plaintiffs are residing 2kms away from the suit properties. Taking advantage of the same, the defendants attempted to encroach the property by altering the ridges between the lands of the plaintiffs and the defendants. Whiles on 18.02.1997 the defendants attempted to encroach the property and the same was averted by the plaintiff. Because of the same, the complaint was given by the defendants and there are proclaiming to disturb the possession of the property and the defendants have no right, interest, title and possession over the propertis. Therefore the plaintiff's have filed the suit for the releif of



declaration and injunction.

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4. The written statement filed by the second respondent and adopted by the other defendants are as follows:

The suit is false and not maintainable either in law or facts. The above said partition referred in the plaint will not binding upon the defendants and the said partition suit was executed between the parties for their convenience. The plaintiffs are not entitled to the property by way of adverse possession. The plaint schedule property are not under the possession and enjoyment of the plaintiffs . It is false to that the extent of 1.21 acres belongs to the plaintiff in S.F.no. 106/4. For the land situated in 1.64 as per the settlement patta number was given as 108. The above said property called as west and east of Thonguvetti Pallam punjai. The settlement patta was given in the name of Kondichetti for S.F. No.106/4 since the same was under the possession and enjoyment of Konduchetti who is the predecessor of the defendant ie., the father of the first defendant and the father -in-law of the second defendant. Under UDR Scheme patta was granted in favour of the defendants 1 and 2. Whiles, the plaintiffs by playing fraud and by supressing facts included their names in the patta as joint pattadharars. It is false to that the plaintiffs attempted to encroach the properties in S.F. Nos. 101/1 and 107/1. The above said land belongs to predecessor of the defendants and they are enjoying the properties from time immemorial as such the defendants are entitled to the suit



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properties. Even the plaintiffs claim any property, the defendants are entitled to the properties by way of adverse possession also. S.F.No. 107/1B for acre 3.83 patta number was given as 534 in the name of first defendant. In S.F. 107/1, the property to an extent of 2.5 acres belongs to the first defendants. In S.F.No.107/5, 20 cents of land belongs to the first defendant and the same was under his possession and enjoyment. In said S.F.No. 107/5 the second respondent purchased properties of 30 cents from Krishnasamy Chettiyar. As per settlement records the pattas were given and thereafter in the UDR Scheme also pattas were given in the name of the defendants for the above said properties. The Tahsildar without considering the records and possession of the defendants erroneously transferred the patta to some of the properties in the name of the plaintiff and included the plaintiff as joint pattadhars in S.F.No.106/4. The Tahsildhar is not the competent person to decide the title of the property. The plaintiffs are attempting to grab the properties by claiming a false claim and there is no cause of action for the suit, therefore the suit is liable to be dismissed.

5. Based on the above said pleadings and hearing both sides, the trial Court has framed the following issues:

- 1) தாவா சொத்துக்கள் பூராவுமே வாதிகளுக்கு பாத்தியப்பட்டவையா?
- 2) தாவா சொத்துக்கள் வாதிகள் அனுபவத்தில் உள்ளனவா?
- 3) வாதிகள் கோருவது போல எதிர் அனுபோகப்படி தாவா சொத்துக்களில் வாதிகளுக்கு உரிமை ஏற்பட்டுள்ளதா?



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- 4) வாதிகள் கோரும் விளம்புகை பரிகாரமானது நிரந்திர உறுத்துக்கட்டளை பரிகாரமாவது கிடைக்குமா?
- 5) வாதிகளுக்கு கிடைக்கமுடியுப பரிகாரம் யாது?

6. Before the trial Court on the side of the plaintiff they have examined P.W.1to P.W.4 and marked document Exs.A.1 to A.12. On the side of the defendants they have examied D.W.1 and D.W.2 and marked Exs.B.1 to B.6. After analysing the evidence addued on either side the trial Court has decreed the suit through its judgment and decree dated 20.10.1994. As against the judgment and decree the unsuccessful defendants have preferred first appeal before the Sub Court, Namakkal in A.S. No. 22/1995 and thereafter the appeal was transferred to Principal District Court, Namakkal and re-numbered as A.S. No.282 of 2002. The first appellate Court allowed the appeal by reversing the judgement of the trial Court and dismissed the suit. The trial Court based on the Ex.A.1 and A.11 decreed the suit and the first appellate court reversed the judgement on the ground that the documents referred in the Ex.A.11 partition deed have not been purchased and the A11 documents mentioned in the properties are not tallied with the plaint scheduled property and the Ex.A11 was not referred in the Ex.A.1. Therefore the plaintiffs have failed to prove the case and reversed the judgment of the trial Court.

7. This Court has heard both sides and perused the records.



8. As against the decree and judgment passed by the first appellate Court the present second appeal has been filed on various grounds. At the time of admitting the second appeal the following substantial questions of law were framed by this Court.

i) Whether the reasons given for rejection of Ex.A1 partition deed and Ex.A11 sale deed by the lower appellate Court are sustainable in law?

ii) Whether the lower appellate Court acted illegally in not acting upon Exs.A2 to A5?

First Substantial Question of Law.

9. This is the case filed by the appellants herein before the trial Court for the relief of declaration and permanent injunction. According to the appellants/respondents/plaintiffs they are entitled to the properties through partition deed/Ex.A1 dated 28.02.1982. The said partition deed was executed between the family members of the plaintiffs where there is a recital that properties are belongs to their father through Will, but the Will referred in the partition deed has not been produced by the plaintiff. The defendants also denied the title of the plaintiff, thereby it is the duty of the plaintiff's to prove the title through sufficient documents. In the above said partition deed/Ex.A.1 the 'E'schedule properties were allotted to the plaintiffs and there is no reference as to how the properties were acquired by the predecessor of



the title and no parental deed referred in the partition deed. The only reference made in the deed is Will but the said Will has not been produced and there is no particulars about the Will. Therefore the plaintiffs have not proved the title how they derived the title of the suit property referred in the partition deed.

10. Another document relied by the plaintiff is that Ex.A.11 . In Ex.A.11 there is no recital that the property was purchased by the predecessor of the plaintiffs, and there is no mention about the survey number and four boundaries are not tallied with the plaint schedule. More over as per Ex.A.11 the extent was mentioned as 2.79 acres by referring three items of the properties. All the three properties were included in the same patta but patta number was not given. In this context, the learned counsel appearing for the appellants has argued that Ex.A.11 is pertaining to the year 1943 and i.e., before the Estate of Abolition and conversion of Ryotwari Act , 1948. Therefore the description of the property given in Ex.A.11 does not contain the survey number and only it describes four boundaries. Even as per four boundaries mentioned in Ex.A.11 they are not tallied with the four boundaries mentioned in the plaint as well as Ex.A.1 plaint schedule. In Ex.A.1 no four boundaries mentioned for the properties allotted tot he plaintiff. This is the case of suit for declaration and permanent injunction, thereby it is the duty of the plaintiff to establish the case on their own and they cannot pick a holes or take advantage of the



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weakness of defendants case. Further in Ex.A.11 the four boundaries mentioned as Kadaimalaikuttai but in the properties it is mentioned as Thonguvettipallam. Even after the amendment made by the plaintiff in the appeal in respect of the first item of the property four boundaries were mentioned as “பர்வதம்மாள் வகையறாவுக்கு மேற்படி நிலத்தில் பாத்தியப்பட்டுள்ள நிலத்திற்கும் தெற்கு, கிருணசாமி ரெட்டியார் நிலத்திற்கும் மேற்கு துரைசாமி செட்டியார் மற்றும் கிருணசாமி ரெட்டியார் நிலத்திற்கும் கிழக்கு ” and the same has not been tallied with Ex.A.11. Therefore the plaintiff failed to prove the identification of the property. Per contra the defendants also claiming right over the properties by referring the pattas and by referring the sale deed in the year 1986 but they also failed to prove the case.

11. In this context PW.4 and 5 were examined and they categorically deposed that for the first item of the property in the settlement Registrar the name of the Kondi chetti was recorded . The above document is pertaining to the year of 1960 and the copy of the settlement Register was marked as Ex.B.1 and the same would reveal that for S.F. No. 106/4 was in the name of Kondichetti who is the predecessor of the defendants. S.F.No.106/1 belongs to Ramasamy Reddiyar who is the predecessor of the plaintiff, therefore in this case there is no dispute that the first item of the property is Thonguvettipallam but in the Thonguvettipallam S.F. No.106/1 belongs to the predecessor of the plaintiff, Ramasamy Reddiyar and S.F.



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No.106/4 belongs to the predecessor of the defendants, Kondi chetti.

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12. In the settlement Register S.F.No.106/1 divided into two parts. One part is East of Thonguvettipallam and another part is west of Thonguvettipallam. The east of Thonguvettipallam contains an extent of 54 cents and west of Thonguvettipallam contains extent of 54cents. In S.F.No.106/1 properties of east of Thonguvettipallam is owner name mentioend as Ramasamy chetti and the Thonguvettipallam west the owner name is mentioned as Kondichetti. Similarly in the same settlement Register the S.No. 106/4 described as east Thonguvettipallam mentioned an extent as 4.30 cents and owner name mentioned as Kondi chetti. For the property of Thonguvettipallam east, in S.F. NO. 106/1, Bimas number was given as 1898. For the west Thonguvettipallam Bimas number was given as 1904. In S.F. No. 106/4 west Thonguvettipallam bimas number was given as 1910. In the above settlement register contain two parts and one part is per the survey the another part is as per settlement. The above referred particulars of property of S.F.No. 106/1 and 106/4 are as per the survey.

13. As per settlement S.F. No. 106/1 entire property was mentioned to an extent of 1.03 acres and the owner name mentioned as kondi chetti S/o.Venkatarama chetti and number of land marked as 108. In S.No. 106/4 extent mentioned as 2.42 and owner name and



number of the land is mentioned as 108, Kondichetti S/o.Venkataramachetti . Therefore from the above it is clear that S.F. No. 106/1 was divided into two parts, one is east of Thonguvettipallam and another is west of Thonguvettipallam The east Thonguvettipallam is extent of 0.51 acres which stood in the name of the Ramasamy Reddi as per survey. Thereafter without any reference in the settlement the name of Kondichetti alone mentioned. Therefore the above said settlement register Ex.B1 it reveals that the property situated in west of Thonguvettipallam belongs to Kondichetti and the properties situated in east of Thonguvettipallam belongs to Ramasamy Reddi i.e., predecessor of the plaintiff. In Ex.A11 also the property of east of Thonguvettipallam was purchased for an extent of 54 cents and another extent of 0.74 acres was also purchased east of Thonguvettipallam Therefore as per Ex.P.11, the properties situated in east of Thonguvettipallam for an extent of 1.28 acres belongs to the plaintiff. Therefore from the above said settlement deed and Ex.A.11 are tallied to the extent of 1.28 acres.

14. Therefore as aforesaid the plaintiffs have proved that properties in east of Thonguvettipallam belongs to the plaintiff. As per Ex.A.11 the plaintiff's predecessor purchased the properties without survey numbers. As per Ex.B.1 settlement register shows 106/1 east of Thonguvettipallam belongs to plaintiff's predecessor. 106/1 west of Thonguvettipallam belongs to defendant's predecessor. 106/4 west of



Thonguvettipallam belongs to the defendant's predecessor. As per Ex.A.11 two properties were purchased east of Thonguvettipallam for an extent of 54 and 74 cents. Therefore it is clear that the plaintiff's are entitled to properties through Ex.A.11 and only east of Thonguvettipallam whereas the properties of defendants predecessor are situated as west of Thonguvettipallam. The S.F.No.106/4 entire property is situated at west of Thonguvettipallam. Therefore the plaintiff schedule properties are not described properly. Even according to the plaintiff though the survey numbers mentioned as S.No.106/4, as per the settlement register the property of the predecessor of the plaintiff is mentioned in S.No. 106/1. Therefore the plaintiffs have not identified the properties properly and S.F. No.106/4 situated in west of Thonguvettipallam. Therefore plaintiffs have not filed the suit with proper identification of the property. Therefore they are not entitled to the declaration for the properties in S.F. No.106/4. But at the same time the plaintiffs are at liberty to file fresh suit by mentioning the appropriate survey numbers, therefore the first appellate Court has failed to consider the above said aspects and rejected Ex.A.1 and A.11 on different context.

15. As far as other properties are concerned according to the plaintiffs they are entitled to the properties through Ex.A.1, partition deed. In the partition deed the properties of S.F.107/1-3.83 acres, S.F.No.107/2-1.37 acres, S.F.107/5-0.20 acres and 107/7-0.98 acres



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belongs to the plaintiffs. According to the defendants S.F.No.107/1-2.50 acres, S.F.No.107/5-0.20 acres. S.F.No.107/5- 0.30 acres belongs to them. The plaintiffs only relied upon Ex.A.1, partition deed and no other documents filed. The defendants also relied upon the patta in the name of their predecessors and also sale deed in the name of the third defendant. As per evidence of P.W.4 and P.W.5 for S.F. No.107/1,2,5 and 7 patta nos 534 was given in the name of Ramasamy chetti i.e, predecessor of the plaintiff. As per Ex.A.1- S.F.No.107/1 an extent of 3.83, in S.F.No.107/2 an extent of 1.37, in S.F.No.107/5 an extent of 0.20 acres and in S.F.No.107/7 an extent of 0.98 acres were allotted to the plaintiff. No four boundaries given. There is no records produced by the plaintiffs to prove the available extent in the properties. The defendants also claiming rights over the properties in S.F. No.107/1 an extent of 30 cents and S.F. No.107/5 an extent of 20 cents through sale deed dated 06.05.1986. In that sale deed S.F. No.107/1 total extent mentioned as 3.83acres and sold 30 cents through that sale deed likewise in S.F. No.107/5- 0.20 acres was also sold by one Krishnasamy to one Anandan. In the same sale deed the property 107/2 has been mentioned as Government pathway. Therefore the property mentioned in the plaint are not clear in respect of their identity. Therefore the plaintiffs are not entitled to the relief of documents and it is appropriate to the plaintiff to grant liberty to file fresh suit with correct particulars of properties. The trial Court with out considering the above aspects erroneously decreed the suit and the first appellate Court also



rejected Ex.A.1 and sale deed Exp.A.11 on different context. Thus the first substantial question of law is answered.

Second substantial question of law:

16. The plaintiffs have relied on documents Ex.A2 to A5 and pattas granted in the name of the plaintiffs and their predecessors. Ex.A.2 dated 21.07.1984 in the name of Ramsamy reddy who is the father of the plaintiff. In the said Ex.A.2 for the first item of suit property patta number was mentioned as 108 and for other properties patta number was given as 534.. As far as A3 and A4 are concerned those documents are pattas transferred in the name of the plaintiffs based on Ex.A.1/partition deed. Earlier patta stood in the name of the brother of the plaintiff and thereafter based on the partition deed it was transferred in the name of the plaintiff. Ex.A4 is patta in respect of S.F. No.107/1. In that patta the name of the plaintiff was included and Ex.A.5 is the order of inclusion of the names of the plaintiffs in the patta for the properties in S.f. No.106/4. Therefore the first appellate Court has not acted upon Exs.A2 to A5. Already this Court in the previous point decided that the suit properties were not properly identified and these deeds Ex.A2 to A5 are pertaining to those properties which were not properly identified thereby these documents are subject to the findings of the previous points. Already in the previous point, this Court decided that the suit properties are wrongly mentioned and liberty was granted to the plaintiff to file fresh suit if so advised. The plaintiffs are entitled to the benefit of Section 14 of



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Limitation Act. Thus the substantial question of laws are answered.

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17. In the result, this second appeal stands dismissed with above observation and directions. No costs.

14.02.2024

Index : Yes/No

Internet:Yes/No

Speaking order/non-speaking order

aav

To

1. The Principal District Court, Namakkal
2. The Principal District Munsif, Namakkal



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P.DHANABAL, J.,

aav

Pre-Delivery judgment in
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