



WEB COPY

S.A.No.220



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19.07.2024

Coram:

THE HONOURABLE MRS.JUSTICE N.MALA

S.A.No.220 of 2021
and
CMP.No.4361 of 2021

1. Gowriammal
2. Deivanai

...Appellants

Vs.

1. S.Palanisamy
2. P.PremAnand
3. S.Somasundaram
4. S.Sivakumar
5. N.Chenniappan @ Chinnusamy
6. C.Sundaram
7. C.Ramalingam
8. V.Senthilkumar

...Respondents.

Prayer: Second Appeal is filed under Section 100 of the Code of Civil Procedure Code, 1908 to set aside the Judgment and Decree dated 30.11.2020 made in A.S.No. 17 of 2019 on the file of the II Additional Subordinate Judge, Erode reversing the Judgment and Decree dated 03.01.2019 made in O.S.No. 301 of 2014 on the file of Principal District Munsif Court, Erode.

For Appellants : M/s. S.Yogalakshmi
for M.Guruprasad
For Respondents : M/s.A.Sundaravadhanan
for RR 1 to 7

R8 – Exparte vide in EB



JUDGMENT

The plaintiffs are the appellants in the Second Appeal. The Second Appeal is filed against the reversing judgment of the lower appellate court.

Pleadings:

2. According to the plaintiff's the properties originally belonged to one Kolandasamy gounder and Vadiyappa gounder who were brothers. Kolandasamy gounder and Vadiyappa gounder divided the family properties under the partition deed dated 22.01.1971, Ex.A16, wherein Vadiyappa gounder was allotted A-schedule property and Kolandasamy gounder was allotted P.A.3.04 in Old S.F.No.696 D and P.A.0.12 in Old S.F.No.694 in Elumathur village. Ever since the partition, the brothers were in exclusive and peaceful possession of their respective shares. The plaintiff's further case was that during resurvey in 1974, the extent of lands in Old S.F.No.694 was increased and on resurvey, a New S.F.No.512/1 number was allotted with an extent of 0.20 cents. After resurvey the said Kolandasamy gounder and his two daughters, the plaintiffs herein entered into a partition deed dated 10.07.1998 under Ex.A16 and the plaintiffs were allotted the suit property in schedule-B thereunder. Ever since the partition they continued to be in peaceful possession and enjoyment of the suit property. As the defendants tried to disturb the plaintiff's enjoyment and possession of the suit properties, the plaintiffs filed the suit for declaration and permanent injunction on the basis of Ex.A1 and Ex.A16 claiming exclusive ownership and possession of the suit properties.



WEB COPY

3. The 2nd defendant filed written statement which was adopted by the defendants 3 to 8. The defendants contended that the suit property belonged to their ancestors and they were in possession and enjoyment of the same. According to the defendants, the plaintiffs and their predecessors never exercised right and title over the suit properties and they were total strangers to the suit properties. The defendant's contended that the partition deeds relied on by the plaintiffs were not genuine and valid as the same were self serving documents and not binding on them. According to the defendants, the plaintiffs included the suit property in the partition deeds with a view to grab their property. The defendant's further contended that the plaintiffs could not claim right to 20 cents in S.F.No.694, because the extent allotted to the plaintiffs under the partition deed was only 12 cents. The defendants therefore stated that the plaintiffs could not claim any right over and above the 12 cents allotted to them under the partition deeds. According to the defendants, the patta for the suit property stood in the name of the 1st defendant's father, Sellammal wife of Songappa goundar and her sons, 2nd defendant and defendants 4 and 6. During resurvey, notices were sent to the aforesaid persons and after enquiry separate patta was issued to all the persons. The defendants contended that no notice was served on the defendants prior to the issuance of Patta and inclusion of plaintiffs name in the revenue records relating to the suit properties. The defendants on the aforesaid grounds prayed for dismissal of the suit.



WEB COPY

4. Before the trial court, the plaintiffs marked Ex.A1 to Ex.A16, the 1st plaintiff examined herself as P.W1 and examined one other witness as P.W.2. The 6th defendant examined himself as D.W1 and Ex.B1 to Ex.B6 were marked on the side of the defendants.

5. The trial court after framing necessary issues held that the plaintiffs were entitled for the relief of declaration and for permanent injunction as prayed for. The lower appellate court on consideration of the entire materials placed before it allowed the appeal filed by the defendants by setting aside the judgment and decree of the trial court. Aggrieved by the reversing judgment of the lower appellate court, the plaintiffs have filed the above Second Appeal.

6. The parties will be referred to as per their litigative rank before the trial court.

7. The substantial question of law was re-framed, after hearing respective counsels as follows:

“Whether the lower appellate court is right in dismissing the suit in entirety despite its own finding that on the basis of Ex.A1 and Ex.A16, the plaintiffs and their father were entitled to an extent of 12 cents in S.No.694 (New S.No.512/1) in Elumathur village.”



WEB COPY

8. The learned counsel for the appellants submitted that the lower appellate court having categorically found that the plaintiffs had established their right to 12 cents in suit S.F.No.694 (New.S.F.No.512/1) by virtue of Ex.A1 and Ex.A16 erred in dismissing the suit in toto.

9. The learned counsel for the respondents referring to para '6' of the written statement submitted that the defendants did not dispute the entitlement of the plaintiff to an extent of 12 cents alone under the partition deeds Ex.A1 and Ex.A16.

10. I have heard both the learned counsels and I have perused the materials placed on record.

11. It is seen that Kolandasamy gounder and Vadiyappa gounder divided the suit properties and other properties under the partition deed dated 22.01.1971 marked as Ex.A16. In the said partition 'A' schedule mentioned properties were allotted to Vadiyappa gounder and 12 cents in Old S.No.694 along with S.F.No.696 D was allotted to Kolandasamy gounder. The said brothers in pursuance of the partition were in peaceful possession and enjoyment of their respective shares. While so, in 1974 the resurvey proceedings were initiated and the extent in old S.F.No.694 was increased and S.F.No.694 was given new S.F.No.512/1 with an extent of 20 cents. After the resurvey, the said Kolandasamy gounder and his two daughters, the



S.A.No.220

plaintiffs entered into a partition on 10.07.1998 under Ex.A1 and the suit property in 'B' schedule was allotted to the plaintiffs. By virtue of the above documents the plaintiffs claim exclusive right, title, possession and peaceful enjoyment of the suit property. Even the revenue records like patta, A-register pertaining to the suit property were mutated in the name of the plaintiffs. The defendants who were the adjacent owners of the plaintiffs property demanded the plaintiff to sell the property and as the plaintiff refused, they interfered with their peaceful possession and enjoyment of the suit property. Hence the plaintiffs were constrained to file the suit for declaration and permanent injunction.

12. The defendants case on the other hand was that the suit property belonged to their ancestor and after them the defendants were in peaceful possession and enjoyment of the suit properties. The defendants contended that the plaintiffs contrary to the extent given in Ex.A1 and Ex.A16 claimed 20 cents in the suit S.F.No.512/1 on the basis of resurvey and increase in extent on resurvey. The defendant specifically stated that plaintiffs were not entitled to any extent over and above the extent covered by Ex.A1 and Ex.A16. The defendants further stated that the plaintiffs in order to grab the defendants property had filed the vexatious suit for the aforesaid relief.



WEB COPY

13. The issue to be decided is whether the plaintiff is entitled to the extent of 12 cents in S.No.694 which is the extent covered by Ex.A1 and Ex.A16.

14. The lower appellate court in its judgment clearly found that the plaintiffs were allotted 12 cents in S.F.No.694 under Ex.A1 dated 10.07.1998. The lower appellate court also found that the extent given under Ex.A1 tallied with the extent given in the Ex.A16, the earlier partition deed dated 22.01.1971. The lower appellate court also found that there was absolutely no evidence on the side of the plaintiff to establish that they were entitled to larger extent of 20 cents over and above the 12 cents allotted under Ex.A1 and Ex.A16. As rightly contented by the appellant's counsel, the lower appellate court having found that the plaintiff was entitled to 12 cents under Ex.A1 and Ex.A16, ought not to have dismissed the suit in toto. The lower appellate court in my view, ought to have restricted the decree for declaration of title and permanent injunction to the extent of 12 cents it found the plaintiff to be entitled to under Ex.A1 and Ex.A16. In my view, the lower appellate court erred in dismissing the suit in toto in the light of its own findings on Ex.A1 and Ex.A16. Hence the judgment and decree of the lower appellate court is set aside and a decree for declaration of title and permanent injunction is granted restricting the same to the extent covered under Ex.A1 and Ex.A16.



WEB COPY

15. In view of the above discussions, the reframed substantial question of law is answered in favour of the appellant. The judgment and decree of the lower appellate court is set aside and the relief of declaration and permanent injunction is granted restricting the same to the extent of 12 cents in S.No.694 (New S.No.512/1) in Elumathur village covered under Ex.A1 and Ex.A16.

Accordingly, the Second Appeal is partly allowed. No costs. Consequently connected CMP is closed.

19.07.2024

Index:Yes/No
Neutral Citation:Yes/No
Speaking order:Yes/No
dsn



S.A.No.220

To

1. The II Additional Subordinate Judge,
Erode.

2. The Principal District Munsif Court,
Erode.



WEB COPY



S.A.No.220

N.MALA,J.

dsn

S.A.No.220 of 2021
and
CMP.No.4361 of 2021

19.07.2024