



WEB COPY

S.A.No.1267 of 2012



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.02.2024

PRONOUNCED ON : 27.03.2024

CORAM

THE HON'BLE MR. JUSTICE **G.ARUL MURUGAN**

S.A.No.1267 of 2012

K.Mohan Kumar

... Appellant

(Cause title accepted vide order of Court
dated 11.12.2012 made in MP.No.2/2011 in
SA.Sr.No.38892 of 2011)

Vs.

Ponnammal (Died)

1.Sellappa Gounder

2.Ramasamy

3.Kannammal

... Respondents

(The Respondents 1 to 3 are the legal heirs of the
deceased sole respondent)

PRAYER: Second Appeal filed under Section 100 of C.P.C. against the
judgment and decree dated 18.02.2011 made in AS.No.27 of 2010 on the



S.A.No.1267 of 2012

file of Subordinate Judge, Dharapuram confirming the judgment and decree dated 18.09.2010 made in OS.No.330 of 2007 on the file of the District Munsif Court, Kangayam.

For Appellant : Mr.V.P.Sengottuvel, Senior Counsel for
Mr.P.Navaneetha Krishnan

For Respondents : Mr.P.Dinesh Kumar

JUDGMENT

The defendant in the suit is the appellant in the above appeal. The Second Appeal is filed against the judgment and decree dated 18.02.2011 in A.S. No.27 of 2010 on the file of Subordinate Judge, Dharapuram, confirming the judgment and decree dated 18.09.2010 in OS.No.330 of 2007 on the file of District Munsif Court, Kangayam, Erode District.

2. For the sake of convenience, the parties are referred to as per their ranking before the Trial Court.



3. **The brief facts, which gave rise to this Second Appeal, are**

as follows:

According to the plaintiff, her father Kandasamy Gounder has purchased the suit property on 23.09.1937 in Ex.A.4. Pursuant to his death, the plaintiff had inherited the suit properties and she is in possession and enjoyment of the suit property for more than 40 years.

The house situated in the suit property got damaged and at present, the suit property is vacant and except the plaintiff no one else has any right over the suit property. When her father purchased the suit property, the property of one Karupatthal, Kandasamy Gounder and Chenniyappa Gounder was on the northern side, property of Ponnathal on the eastern side and the lands belonging to Pattaiya Gounder was on the western and southern side of the suit property. The same has also been shown in the schedule to the sale deed in Ex.A.4 purchased by her father. As of now, one Chinnasamy Gounder, the legal heir of Ponnathal is on the eastern side and Palanisami Gounder and Subbaraya Gounder, legal heirs of

Chenniyappa Gounder are on the northern side and the defendant by



name Mohankumar who has purchased the property is on the southern and western side. As such, the suit boundaries has been given as per the

existing situation. On 10.02.2006, the defendants purchased the properties on the western and the southern side of the properties of Pattaiya Gounder. While the defendant purchased his property, he has shown the eastern side boundaries of the plaintiff as the eastern side in his document. The defendant while mentioning the house of Ponnathal on the eastern side has wrongly mentioned as property of Chinnasamy Gounder on the eastern side. The defendant on 01.07.2007 attempted to sell the suit property in favour of the 3rd persons as such, the plaintiff has issued the legal notice on 01.08.2007 for which the defendant had issued evasive reply and as such, the plaintiff has come up with the suit for declaration of title and injunction.

4. The defendant has resisted the suit by filing the written statement that the suit property is in Natham Survey no. 454/20 and that the plaintiff or her ancestors had no right in the said property and also



they had not been in enjoyment of the property. The defendant has also

denied the contention of the plaintiff that the father of the plaintiff had

purchased the suit property on 23.09.1937. In fact what was purchased

by the plaintiff was only two Anganam roof facing east and another 3

anganam roof and both of which is only two cents. According to the

defendant, the suit property is no way connected with the property

purchased by the plaintiff's father. The defendant had denied the

plaintiff's statement that she has lived in the suit property for nearly 40

years. The defendant further contended that the suit property originally

belonged to one Ponnammal and after her demise, it was inherited by her

legal heirs. In respect of amount borrowed by Pattaiya Gounder from his

brother Sivanmalai Gounder, he instituted a suit in OS.No.355 of 1956

on the file of District Munsif Court, Dharapuram. Pursuant to the decree,

Execution Petition in EP.No.178/1967 was filed in which the properties

were brought for auction, and Papapammal wife of Sivanmalai Gounder

purchased half share of Pattaiya Gounder in court auction sale. Since the

other half share belonged to Sivanmalai Gounder himself and his wife



became the owners of the Natham re-survey no.262/1 and the present re-survey no.454/20. Muthulakshmi and Palanisamy being the legal heirs of papapammal and Sivanmalai has also inherited the property and from the legal heirs of papapammal, the defendant had purchased the suit properties on 10.02.2006 and he also availed the electric service connection and also paid the house tax. As such, the defendant has prayed for dismissal of the suit.

Evidence and Documents:

5. During trial, the plaintiff examined herself as PW.1 and another witness one Muthusamy as PW.2 and marked Ex.A.1 to Ex.A.4. On the side of the defendants, DW.1 to DW.3 were examined and Exs.B.1 to B.6 were marked. Through witness DW.3, Ex.X.1 and X.2 were marked.

Findings of the Courts below:

6. The Trial court after appreciating the evidence and documents, decreed the suit. The Trial Court found that even though the plaintiff's



father had purchased only an extent of 2 ½ cents through Ex.A.4, from Ex.A.4 it could be seen that already, the plaintiff was having lands on the northern side. Further, in view of the categorical admission by DW.1 that he had purchased the property which originally belonged to Pattaiya Gounder and also that the property purchased by him in Court auction and the suit property are not the same. Aggrieved by the judgment and decree of the Trial Court, the defendant filed AS.No.27 of 2010 on the file of Sub-ordinate Judge, Dharapuram.

7. The Lower Appellate Court after reappraising the evidence dismissed the appeal. The Lower Appellate Court found that in the sale certificate in Ex.B.1, no resurvey has been given but natham resurvey no.454/20 is mentioned in Ex.B.2. Aggrieved by the concurrent findings of the Courts below, the defendant is before this Court on appeal.

Substantial questions of law:

8. This Court by order dated 02.01.2013 framed the following



substantial question of law.

WEB COPY

“1. Whether the non-framing of the necessary issue regarding the suit being bad for non-joinder of necessary parties has resulted in a perverse finding that the plaintiff is the absolute owner of the suit property?

2. Whether the Courts below have relied on an inadmissible document to sustain the claim of the plaintiff?

3. Whether Courts below have wrongly cast the burden on the defendants and consequently decided the issues in favour of the plaintiff?”

Submissions on both sides:

9. Mr.V.P.Sengutovel, learned Senior Counsel appearing for the appellant argued that when the plaintiff has filed her title deed purchased by her father on 23.09.1937 in Ex.A.4, by which he purchased only an extent of 2 ½ cents, the suit filed by the plaintiff for declaration in respect of 10 cents is not sustainable.



WEB COPY

10. The learned Senior Counsel further argued that through the document in Ex.B.1, an extent of around 5,847 ½ square feet has been purchased in the Court auction sale by the vendors and the defendant had purchased the same on 10.02.2006 in Ex.B.2. When admittedly, the plaintiff's father Kandasamy Gounder has female children, the suit filed by the plaintiff for the declaration in respect of the entire suit properties without including the other legal heirs as a party is not sustainable and her suit is bad for non-joinder of necessary party.

11. The learned Senior Counsel further contended that when the plaintiff has come up with the suit for declaration on the basis of the document in Ex.A.4 which covers only an extent of 2 ½ cents, the plaintiff has not filed any other document to prove the title for the entire suit property and further the plaintiff has not filed any document to show that she is in possession of the suit property.



12. The learned Senior Counsel further contended that the plaintiff in the suit for declaration is bound to plead and prove her title and she has to succeed on her own strength and cannot rely merely on the weakness of the defendant. The learned Senior Counsel further contended that the defendant on the contrary, filed documents in Ex.B.3 to B.6 which are the electricity receipts charges and the house tax receipts to establish that the defendant is in possession of the suit property.

13. The learned Senior Counsel in support of his arguments relied on the following decisions:

1. **R.Krishnasamy Vs. Mani Janagarajan** reported in **1999 (III) CTC 304**
2. **Ramachandra Sakharam Mahajan Vs. Damodar Trimbak Tanksale** reported in **(2007) 6 SCC 737**
3. **Pappannan and Ors. Vs. Kolandasamy** reported in **2012(3) MWN (Civil) 536**
4. **Union of India and Ors. Vs. Vasavi Cooperative Society and Ors.** reported in **(2014) 2 SCC 269**



WEB COPY

5. **Balamani Vs. Govindammal and Ors** in SA.No.329 of 1999

6. **Subramaniam and Ors Vs. Thangamuthu and Ors** in SA.No.22

of 2007.

14. The decisions relied are mainly for the proposition that when the plaintiff has not established the title, she is not entitled for the relief of declaration of title as against the defendant who is having a better title



and also that the plaintiff has to succeed on her own strength and not on the weakness of the defendant.

15. The learned Senior Counsel further contended that both the courts below have not appreciated the documents and evidence produced by the defendant and the finding of the fact arrived at by the courts below are not based on the materials available on record and therefore perverse and sought for interference of this Court.

16. Per contra, Mr.P.Dinesh Kumar, learned counsel for the respondent argued that the document filed by the plaintiff in Ex.A.4 dated 23.09.1937 clearly shows that the plaintiff's father had purchased 2 ½ cents land and in the boundary of the sale deed itself it shows that on one side, it is bounded by the property belonging to the plaintiff's father. It is therefore amply clear that already the plaintiff's father was the owner of the 7 ½ cents and he had purchased another 2 ½ cents in Ex.A.4 and the plaintiff thereby is the owner of the 10 cents of the suit property.



WEB COPY

17. The learned counsel further argued that even in the sale certificate in Ex.B.1 boundaries have been correctly noted but however only when the defendant purchased the properties in Ex.B.2, the eastern side boundary has been wrongly given. The learned counsel further argued that it is admitted by the defendant that they have purchased the properties belonged to Pattaiya Gounder and the sale deed in Ex.A.4 clearly shows the boundary as the properties of the Pattaiya Gounder. As such, the defendant has purchased the property only lying adjacent to the plaintiff's properties. In fact, DW.1 has also admitted in his evidence that in two sides of the suit property, the properties of Pattaiya Gounder was situated and that the defendant has purchased that property.

18. The learned counsel further argued that the plaintiff need not prove the title beyond reasonable doubt and it is sufficient that if the plaintiff is able to prove on high degree of probability, to be entitled for relief of declaration.



WEB COPY

19. The learned counsel in support of his arguments relied on the judgment in **R.V.E.Venkatachala Gounder Vs. Arulmigu Viswesaraswami & VP Temple and Another** reported in **(2003) 8 SCC 752** wherein it is held that being a civil case, the plaintiff cannot be expected to prove his title beyond any reasonable doubt, a high degree of probability lending assurance of the availability of title with him would be enough to shift the onus on the defendant and if the defendant does not succeed in shifting back the onus, the plaintiff's burden of proof can safely be deemed to have been discharged.

20. The learned counsel further submitted that the suit filed by the plaintiff without including the other legal heirs is not bad as the rights of the other legal heirs will not be defeated and in support of his argument, the learned counsel for the respondent relied on the following decisions,

1.S.Nirmala vs. Kanniammal and others reported in **2017 (1) CTC 24.**

2.FGP Limited vs. Satesh Hooseini Doctor and another reported in **(2009) 10 SCC 223**



21. Heard the learned counsel on both sides and perused the materials available on record.

Analysis:

22. The plaintiff's father had purchased an extent of 2 ½ cents through sale deed dated 23.09.1937 in Ex.A.4. The perusal of the document reveals that on two sides of the property, the property of one Pattaiya Gounder is situated. Further, the other lands belonged to the plaintiff's father is situated on the northern side. From the sale deed in Ex.A.4, it could be seen that, apart from 2 ½ cents of land purchased by the plaintiff's father, admittedly he own other extent of lands. Even though the exact extent of balance land available is not known, it could be seen that the plaintiff has filed the suit for 10 cents of land. The document has been filed in Ex.A.4 is for 2 ½ cents of land and also from the deed it could be seen that the plaintiff's father was having further extent of land, which could only be the balance 7 ½ cents, in the suit



property.

WEB COPY

23. The learned counsel for the appellant submitted that when even according to the plaintiff, her father was having only around 5 cents, therefore she cannot sustain the suit for an extent of 10 cents when she has not filed any document to establish the same. The defendant on the other hand, has filed the documents in Ex.B.1 and B.2. Ex.B.1 is the sale certificate issued in favour of the defendant's vendor in the court auction sale. Perusal of Ex.B.1 and also the admission of DW.1 shows that no resurvey number or survey number has been given in the sale certificate. But however, when the sale deed in favour of the defendant was executed in Ex.B.2 on 10.02.2006, the resurvey number has been included.

24. At this juncture, the admissions of DW.1 and DW.2 becomes more relevant for deciding the present issue. DW.1 in his evidence has admitted that he has purchased the lands which belonged to Pattaiya

Gounder which are located on the western and southern side of the suit



property. He has also admitted that he has purchased only the property which belonged to Pattaiya Gounder and also that the house of the plaintiff's father has been mentioned in the sale deed in Ex.A.4. DW.1 has further admitted that the property covered under sale certificate and the suit property are noway connected and are separate.

25. DW.2, who is the vendor of the first defendant has admitted in her evidence that adjacent to their property, the plaintiff's father property was situated. She has not gone to the properties of the plaintiff and also had never objected. Further, she has no further objection to grant the decree in respect of the suit property in favour of the plaintiff.

26. From the categorical admissions of DW.1 and DW.2, it could be safely concluded that the properties purchased by the defendant is the property which originally belonged to Pattaiya Gounder, which was situated adjacent to the lands belonging to the plaintiff's father. Further it

is also evident that the property purchased by the defendant is available



with him and the same is in no way connected with the suit properties.

When from the evidence it is clearly established that the claim of the plaintiff in the suit property does not pertain to the extent of lands purchased by the defendant and both the properties are different, now it is to be seen whether the plaintiff is entitled for the relief of declaration.

27. As far as the issue as to whether, the plaintiff has proved her title is concerned, it could be seen that vide sale deed in Ex.A.4, even though only 2 ½ cents of property was purchased by the plaintiff's father, the boundaries clearly indicate that already the plaintiff's father was having other extent of land available with him. When through document in Ex.A.4, it could be seen that the plaintiff's father was having other properties apart from the one which is purchased in Ex.A.4 and particularly when the defendant and also DW.2 has categorically admitted that the property purchased by him is no way connected to the suit property and that he has purchased the properties of Pattaiya

Gounder which was lying adjacent to the suit properties, the plaintiff is



able to establish her case to a high degree of probability.

WEB COPY

28. At this juncture, it is useful to refer the decision relied on by the learned counsel for the respondent in **R.V.E.Venkatachala Gounder vs. Arulmigu Viswesaraswami & V.P. Temple and another** (cited **supra**). Para 29, 30 & 33 are usefully extracted hereunder:

“29. In a suit for recovery of possession based on title it is for the plaintiff to prove his title and satisfy the court that he, in law, is entitled to dispossess the defendant from his possession over the suit property and for the possession to be restored to him. However, as held in A. Raghavamma v. A. Chenchamma [AIR 1964 SC 136] there is an essential distinction between burden of proof and onus of proof: burden of proof lies upon a person who has to prove the fact and which never shifts. Onus of proof shifts. Such a shifting of onus is a continuous process in the evaluation of evidence. In our opinion, in a suit for possession based on title once the plaintiff has been able to create a high degree of probability so as to shift the onus on the defendant it is



for the defendant to discharge his onus and in the absence thereof the burden of proof lying on the plaintiff shall be held to have been discharged so as to amount to proof of the plaintiff's title.

30. In the present case, the trial court and the first appellate court have noted that the plaintiff has not been able to produce any deed of title directly lending support to his claim for title and at the same time the defendant too has no proof of his title much less even an insignia of title. Being a civil case, the plaintiff cannot be expected to prove his title beyond any reasonable doubt; a high degree of probability lending assurance of the availability of title with him would be enough to shift the onus on the defendant and if the defendant does not succeed in shifting back the onus, the plaintiff's burden of proof can safely be deemed to have been discharged. In the opinion of the two courts below, the plaintiff had succeeded in shifting the onus on the defendant and, therefore, the burden of proof which lay on the plaintiff had stood discharged. The High Court, in exercise of its limited jurisdiction under Section 100 CPC, ought not to have entered into the evaluation of



WEB COPY

S.A.No.1267 of 2012



evidence afresh. The High Court has interfered with a pure and simple finding of fact based on appreciation of oral and documentary evidence which the High Court ought not to have done.”

.....

“33. The offshoot of the above discussion is that no question of law much less a substantial question of law arose in the case worth being gone into by the High Court in exercise of its second appellate jurisdiction under Section 100 CPC. The High Court was bound by the findings of fact arrived at by the two courts below and should not have entered into the exercise of reappreciating and evaluating the evidence. The findings of facts arrived at by the courts below did not suffer from any perversity. There was no non-reading or misreading of the evidence. A high degree of preponderance of probability proving title to the suit property was raised in favour of the appellant and the courts below rightly concluded the burden of proof raised on the plaintiff having been discharged while the onus shifting on the defendant remaining undischarged.



WEB COPY

S.A.No.1267 of 2012



*The judgment of the High Court cannot be sustained
and has to be set aside.”*

29. From the above decision, it is clear that in the civil case it is sufficient if the plaintiff is able to prove his title with high degree of probability, to shift onus to the defendant. In the instant case, the plaintiff by filing sale deed in Ex.A.4 has established her ownership for 2 ½ cents and also from the same document, through the boundaries in the sale deed, it has been established that the plaintiff's father was the owner of other extent of property. The plaintiff has proved her title to a high degree of probability and onus shifted on the defendant and the admission of defendant makes it clear that the property purchased by him is different from the suit property, which is admittedly adjacent to the suit property. The evidence of the defendant's vendor further makes it clear that the suit property belongs to the plaintiff and they did not have any objection in granting the decree. When the property purchased by the defendant remains intact and it is not connected in any way with the suit



property and the plaintiff has proved her title in respect of the suit

property to a high degree of probability, the plaintiff is entitled to succeed in the suit.

30. As regards the arguments that the suit filed by the plaintiff without making the co-sharers as the parties to the suit is bad cannot be sustained, as even though the plaintiff has filed the suit and obtained the decree, it can enure only to the benefit of all the co sharers.

31. The judgment relied on by the learned counsel for the respondent in **S.Nirmala vs. Kanniammal and another (cited supra)**, para 42 and 43 are usefully extracted hereunder:



“42. Admittedly, the plaintiff is the wife of one Sathyanarayan, who is the only son of the original owner Chakrapani Reddiar. Though the said Sathyanarayan, died leaving behind the plaintiff, three daughters, his mother and two sisters, the plaintiff alone has filed a suit.

43. P.W. 1, in her cross examination, has also stated that the said Sathyanarayanan, died leaving behind the plaintiff, his mother, and three daughters and her husband also has two sisters. Though the plaintiff has not impleaded other co-owners of the suit property, in the plaint pleadings, it is categorically stated that she has filed the suit in the interest of other co-owners also. Merely because other co-owners were not arrayed as plaintiffs, the same cannot be a ground to non-suit the plaintiff. It is well settled that one of the co-owners can very well protect the property on behalf of other co-owners. There is no legal bar to file such a suit, on behalf of other co-owners also. Merely a suit has been filed by one of the co-owners against the third party, who is squatting on the properties without any semblance of



right over such suit property, such filing of suit itself will not confer absolute title to the plaintiff alone. The rights of other co-owners will not be defeated by mere filing of the suit by one of the co-owners against the third party, as the co-owners of the property have every right to protect the property from being snatched away by a third party. A co-owner, at the most, can be an agent of other co-owners and can act for the interest of the other co-owners also. Therefore, this Court does not find any irregularity in the suit filed by one of the co-owners, the plaintiff herein. Accordingly, the contention of the defendants that the suit is not maintainable for non-joinder of necessary parties has no legs to stand. Issue is No. 3 is answered accordingly and held against the defendants.”

32. As such it is clear that the suit filed by the plaintiff even in the absence of the co-sharers is maintainable.



33. Since it is held that the plaintiff has established the title based on the high degree of probability, the judgments relied on by the appellant are not relevant for the present facts of the case. The substantial questions of law are answered against the appellant and in favour of the respondent. The courts below have arrived at the finding of fact which are based on the material available on record and there is no illegality or perversity.



S.A.No.1267 of 2012



34. In view of the above, this second appeal stands dismissed.

However there is no order as to costs.

27.03.2024

drl

Index : Yes / No

Neutral Citation : Yes / No

To

1.The Subordinate Judge, Dharapuram.

2.The District Munsif Court, Kangayam.



WEB COPY

S.A.No.1267 of 2012



G.ARUL MURUGAN.,J.

drl

Pre-delivery judgment in

S.A.No.1267 of 2012



WEB COPY

S.A.No.1267 of 2012



27.03.2024