

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.01.2015

CORAM:

THE HONOURABLE MS.JUSTICE K.B.K.VASUKI

S.A.No.193 OF 1999

1. Chinnathambi (Deceased)
2. Rajavel
3. Kolanchi
4. C.Paramasivam
5. Panchamirtham
6. Ilavarasi

(Appellants 2 to 6 are LR's of the deceased Sole appellant Chinnathambi vide order of Court dated 07.03.2013 made in CMP No.200/2013 in S.A.No.193 of 1999) Appellants/2nd Defendant

Vs.

1. Rajalingam (Died)
2. Kulandaivel
3. Kandasamy (Died)
4. Velayee (Died)
5. Ayyammal
6. Meenakshi
7. Ezhumalai
8. Poorani
9. Valli
10. Arumugham
11. Venkatesan
12. Harikrishnan

(Respondents 8 to 12 brought on record as Legal heirs of the deceased 1st respondent vide order of Court dated 23.03.2005 made in CMP No.3546 of 2005 to 3551/2005)

13. Kuppayee

(R13 brought on record as LR of the deceased fourth respondent vide order of Court dated 23.03.2005 made in CMP Nos.3546 to 3551/2005)

14. Dhanam
15. Kulanchi
16. Amudha
17. Murugan

(R14 to 17 brought on record as Lrs of the deceased R3 vide order of Court dated 20.07.2011 made in CMP No.9674 of 2005 in S.A. No.193 of 1999)

... Respondents/ Plaintiff /
Defendants 3 to 5

PRYER : This second appeal filed under Section 100 C.P.C. against the decree and judgment dated 23.09.1998 made in A.S.No.11 of 1997 on the file of the Principal District Judge, Villupuram, confirming the judgment and decree made in O.S.No.229 of 1995 dated 31.12.1996 on the file of the Additional District Munsif Court No.I, Ulundurpet, Villupuram District.

For Appellant : Mr.G.Devadoss
For Respondent : M/s.Deivaneethi

J U D G M E N T

The second defendant Chinnathambi since deceased filed the present second appeal against the concurrent judgments made in A.S.No.11 of 1997 and O.S.No.229 of 1995 in respect of the land measuring an extent of 0.12 cent in S.No.1/8 in Nachiarpettai village, Mangalampettai Taluk, Kallakurichi Sub Division, Ulundurpettai circle, more fully described in the suit schedule.

2.The suit was filed by the respondents 1 to 4 herein for declaring their title, in respect of the suit property and for recovery of possession of the same from one Singaravel and the second defendant Chinnathambi. During the pendency of the suit, the first defendant Singaravel died and his legal heirs were impleaded as the defendants 3 to 5. According to the plaintiffs, the total extent of 0.66 cent in S.No.1/8 originally belonged to one Periyapaiyan, Muniyan and Raman and they obtained joint patta in their name in respect of entire 0.66 cent and they partitioned the same among themselves into three shares each measuring 0.22 cent and one share measuring 0.22 cent forming part of the suit property, was allotted to Muniyan, who is the ancestor of the plaintiffs herein. After the partition, all the sharers have been in possession and enjoyment of the same by obtaining patta, chitta and adangal and by paying property tax and the plaintiffs having succeeded to the same, have been in possession and enjoyment of the same. During the first week of August 1989, the defendants trespassed into the portion of the suit property measuring 0.12 cent and put up construction and inspite of panchayat convened in the village, they refused to hand over the encroached portion and they did not even respond to the legal notice issued by the plaintiffs, which compelled the plaintiffs to come forward with the suit.

3.The claim of the plaintiffs was seriously resisted by the defendants by denying the title, right and interest of the plaintiffs' predecessor-in-title and thereafter the plaintiffs. According to the defendants, the suit property belonged to their grand father by name Lakshmanan, who died leaving behind his two sons by names Muniyan and Raman and after the death of Muniyan as issue less, Raman became the absolute owner and had been in continuous

possession and enjoyment of the same for more than 15 years and on his death, the property was succeeded by the defendants 1 and 2 and the defendants 1 and 2 have thereafter put up construction and have been residing in the same.

4.Both the parties have, in support of their respective claims, examined themselves and their witnesses as PW1 to PW4 and DW1 to DW3 and produced Exs.A1 to A24 and Exs.B1 to B23 documents. The Advocate Commissioner appointed by the trial court submitted his report and plan along with surveyor plan and the same were marked as Exs.C1 to C3 court documents.

5.The trial court, on the basis of Exs.A1 and A2 joint pattas and Exs.A3 to A10 and Exs.A19 to A24 kist receipts and Ex.A13 chitta and Exs.A14 and A15 adangal extracts and Ex.A16 proceedings of the Tahsildar for transfer of patta and Exs.A17 and A18 documents referring to the suit property belonging to the plaintiffs as one of the boundaries, upheld the claim of the plaintiffs for title in respect of the suit property and their possession and enjoyment of the same till 1989. Regarding the documentary evidence adduced on the side of the defendants numbering 23 consisting of Exs.B1 to B16 property tax receipts Exs.B17 to B19 kist receipts and Ex.B21 chitta Ex.P22 mortgage deed and Ex.B23 Resurvey settlement extract, the trial court rejected the same either as not relating to the suit property or relating to the period after institution of the suit. The trial court was not inclined to accept the defendants' claim solely on the basis of Ex.B22 deed of mortgage. The trial court based on the findings as above stated, decreed the suit in favour of the plaintiffs. The lower appellate court, on appeal filed by the contesting second defendant, after having duly appreciated and analysed the entire oral and documentary evidence adduced on both sides and the findings of the trial court based on the same with supporting reasoning, confirmed the judgment and decree of the trial court and dismissed the appeal. Hence, this second appeal by the second defendant before this court.

6.The appellant/second defendant in this second appeal has challenged the correctness of the findings of the courts below by raising the following substantial questions of law:

- (1) Is the trial/Appellate Court correct and justified in allowing the suit on the ground that the appellant had no title to the suit property?
- (2) Whether the courts below are justified in ignoring the earlier transaction in Ex.B22?
- (3) Whether the evidence of record are not justified to uphold the case of the appellant that he is otherwise entitled to adverse possession of the suit property?
- (4) Whether the plaintiff is not estopped from claiming recovery of suit property when the appellant alone is entitled to proceed with the construction in the suit property?

(5) Even when the title of the suit property is not vested with the appellant, is not he entitled to resist the recovery on the ground that the title holder is only entitled to the value of the land?

7. Heard the rival submissions made on both sides and perused the records at the notice of motion stage.

8. As explained in the foregoing paragraphs, both the courts below have, on the basis of the oral and documentary evidence, arrived at the categorical finding that the property forming part of which is the suit property originally belonged to Periyapaiyan, Muniyan and Raman and the same was divided among the original owners and each original owner was allotted to each 0.22 cent and thereafter the owners had been in possession and enjoyment of the same by obtaining patta, chitta, adangal etc. As far as the plaintiffs' claim is concerned, the same is based not only on original patta, separate patta, adangal, chitta and kist receipts, which were produced as Exs.A1 to A16, A19 to A24 documents, but also Exs.A17 and A18 settlements in respect of the adjacent land, particularly Ex.A18, which was executed in favour of the 5th defendant Selvaraj, wherein the suit property as belonging to the plaintiff is shown as one of the boundaries.

9. As far as the documents produced on the side of the defendants are concerned, the same, according to both the courts below, are not proved to be relating to the suit property. While Ex.B22 mortgage deed is the sole document seriously relied on by the defendants, in support of their claim that the suit property belonged to their ancestor and thereafter to the contesting defendants. Both the Courts below, considering the nature of the documents adduced on the side of the plaintiffs, were not inclined to reject the plaintiffs' case solely on the basis of Ex.B22, that too, in the absence of any other supporting documents adduced on the side of the defendants. As rightly argued by the learned counsel for the respondents/plaintiffs, the findings of the courts below both on title and possession, are based on sufficient materials and supported by proper reasoning. The contesting defendant, who is the appellant herein, is unable to make out any ground much less legal ground to reject such findings of the courts below as perverse.

10. In my considered view, considering the nature of the claim of the parties and the nature of the evidence adduced and the findings rendered by the courts below and the evidence based on which such findings are arrived at, the present second appeal involves no substantial question of law for determination of this court, as such, the findings of the courts below warrants no interference by this Court.

11.In the result, the Second Appeal is dismissed. No costs.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

1.The Principal District Judge,
Villupuram.

2.The Additional District Munsif Court No.I,
Ulundurpet, Villupuram District.

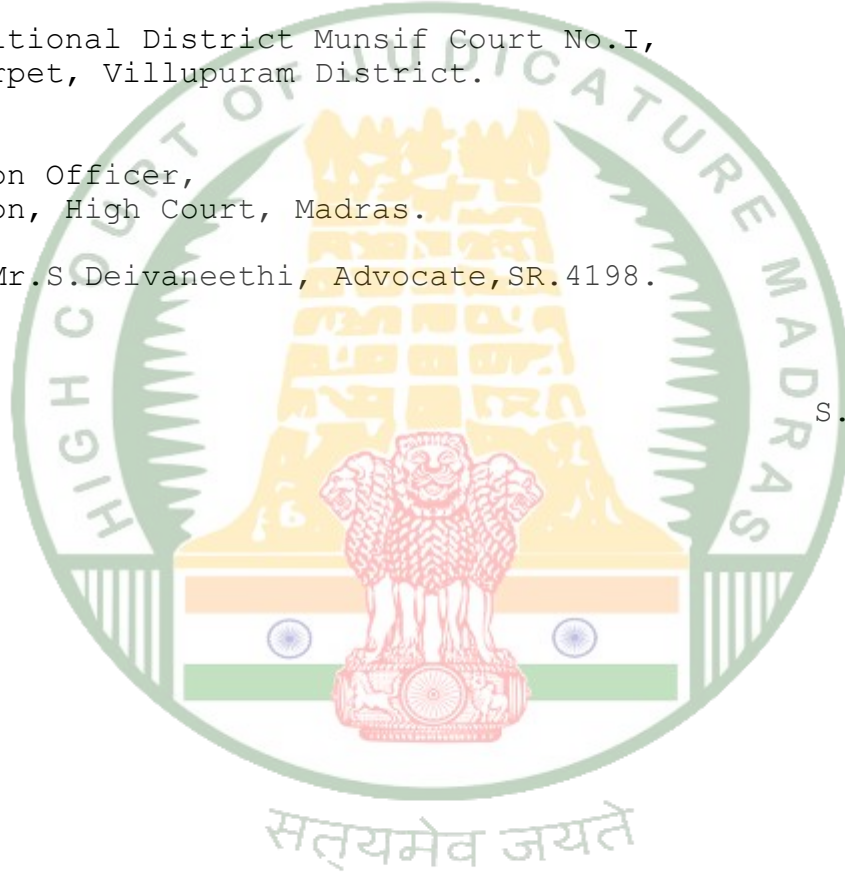
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The Section Officer,
V.R.Section, High Court, Madras.

+1 cc to Mr.S.Deivaneethi, Advocate,SR.4198.

Rj(co)
krd 24/6

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