

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 16.07.2015

Coram:

THE HONOURABLE Ms. JUSTICE K.B.K.VASUKI

S.A.Nos.571 and 572 of 2008
and MP.No.1 of 2008

1.Velammal
2.Natarajan
3.Ponnuswami
4.K.Vijayakumar
(4th appellant impleaded vide
order of the court dated 22.1.2014
made in MP.1 & 1/2013)

.. Appellants/Defendants
in both SAs

vs.

1.M.Palaniswamy
2.M.Ramasamy
3.M.Nagaraj
4.M.Rathinam

.. Respondents/Plaintiffs
in both SAs

Second Appeals are filed under section 100 of Civil Procedure Code against the judgment and decree dated 14.11.2007 made in AS Nos.97 and 98/2007 on the file of the Principal Sub Court, Coimbatore modifying the judgment and decree dated 23.7.2007 made in O.S.Nos.862 and 1032 of 2005 on the file of the Ist Additional District Munsif Court, Coimbatore.

For Appellants : Mr.S.Gunalan
For Respondents : Mr.S.Mukunth for
M/s.Sarvabhauman Associates

COMMON JUDGMENT

The defendants in O.S.862/2005 and the plaintiffs in O.S.1032/2005 are the appellants herein. While the suit in O.S.862/2005 is filed by the respondents herein against the appellants herein for the relief of permanent injunction in respect of four items, O.S.1032/2005 is filed by the appellants herein against the respondents herein for the similar relief of permanent injunction in respect of 6 items. However, the main dispute is only with regard to the landed property in S.F.No.471 measuring 1.50 acres and in S.F.No.433 measuring 0.50 acres morefully described as suit items 3 and 4 in O.S.862/2005. The above disputed suit item no.3 is described as item no.3 in O.S.No.1032/2005. The right, title, interest and possession and enjoyment of the parties in respect of other items in both the suits are not disputed.

3.The facts, which are relevant for consideration herein are as follows: The landed property covered in both the suits and other properties, which are the subject matter of Ex.A1 certified copy of partition deed dated 25.6.1955 (Ex.B6 notarised copy of partition deed), originally belonged to one Palani Gounder, who had 4 sons and Maruthey Gounder @ Marudhakutty Gounder and Arunachala Gounder are two among the four sons. While the plaintiffs 1 to 4 in O.S.862 of 2005 and the defendants 1 to 4 in OS.1032/2005 are the sons and daughter of Marudhakutty Gounder, the plaintiffs 1 to 3 in O.S.1032/2005 and the defendants in OS.862/2005 are the wife and sons of Arunachala Gounder. The sons of Palani Gounder, after the death of their father, entered into a partition under Ex.A1 (Ex.B6) during 1955 in respect of joint family properties and the properties were divided into A to D schedules and first two sons were allotted A and B schedules and Marudhakutty Gounder and Arunachala Gounder were allotted C and D schedule properties respectively in the partition deed. The schedule C properties allotted to Marudhakutty Gounder consist of 1.50 acres in SF No.471 and 1.20 ½ acres in SF No.116 of Thudialur, 0.50 acres in SF No.433 of Goundampalayam and 0.71acres in SF No.117/1 of Pannimadai Village. The schedule D properties allotted to Arunachala Gounder consist of 1.50 acres in SF No.471 and 1.58 ½ acres in SF No.116 of Thudialur and 0.50 acres in SF No.433 of Goundampalayam village.

4.According to Marudhakutty Gounder branch, Marudhakutty Gounder and Arunachala Gounder at the instance of Arunachala Gounder agreed to exchange their lands during 1968 and as per the arrangement so agreed between the parties, Marudhakutty Gounder parted with his share of 1.20 ½ acres in S.F.No.116 and 71 cents in SF No.117/1 to Arunachala Gounder and in exchange of that, Marudhakutty Gounder got 1.5 acres in SF No.471 and 50 cents in SF No.433 from Arunachala Gounder. That means, Marudhakutty Gounder, under partition deed and exchange arrangement, got the entire extent of 3acres in SF.No.471 and 1 acre in SF No.433 and Arunachala Gounder got 2.79 acres in SF.no.116 and 71 cents in SF.no.117/1. It is the further case of Marudhakutty Gounder branch that after such arrangement, Marudhakutty Gounder and Arunachala Gounder had been in possession and enjoyment of the properties exchanged between them and after their death, their legal heirs who are the parties herein, continue to be in possession and enjoyment as per the same arrangement.

5.It is the case of Marudhakutty Gounder branch that after the death of Marudhakutty Gounder, Arunachala Gounder branch started making wrong claims in respect of 1.50 acres in SF No.471 and 50 cents in SF.No.433 by reason of escalation of price of the property in the area concerned without any right to do so and have been attempting to interfere with their possession and enjoyment of the property. Marudhakutty Gounder Branch, by contending so, filed OS.862/2005 for permanent injunction restraining the defendants i.e., Arunachala Gounder Branch from interfering with their peaceful possession and enjoyment of the suit property and encumbering or alienating the

suit property. The relief sought for in O.S.862/2005 is in respect of 1.50 acres in S.F.No.471 and 50 cents in S.F.No.433 forming part of 'C' schedule properties allotted to Marudhakutty Gounder and 1.50 acres in S.F.No.471 and 50 cents in S.F.No.433 forming part of 'D' schedule properties allotted to Arunachala Gounder in the partition deed.

6. Thereafter, Arunachala Gounder branch, who are the defendants in O.S.862/2005 filed a suit OS.No.1032/2005 for the relief of permanent injunction against Marudhakutty Gounder Branch who are the plaintiffs in OS.No.862/2005 from interfering with the suit D schedule properties allotted to their father Arunachala Gounder in the partition deed. The defendants/Arunachala Gounder Branch both in their suit plaint in OS.1032/2005 as well as in their written statement filed in OS.862/2005 stoutly denied any exchange arrangement between their respective fathers. According to them, there was no exchange of lands allotted to them between their respective fathers and that the fathers and thereafter their legal heirs have been in possession and enjoyment of the properties allotted to their fathers as per the partition deed.

7. Both the suits were tried jointly. During trial, the first plaintiff and the second defendant in O.S.862/2005 were examined as PW1 and DW1 and Exs.A1 to A5 and Exs.B1 to B7 were marked as documents and the Advocate Commissioner's report and plan were received as Exs.C1 and C2 court documents.

8. The trial court though accepted the plaintiffs' case regarding exchange arrangement, found the same to be not legally valid, for want of any registered document, as contemplated under section 118 of the Transfer of Property Act and under Section 17 of the Registration Act and accordingly held the plaintiffs to be dis-entitled for the relief of permanent injunction and dismissed their suit O.S.862/2005. The trial court by ignoring Ex.A2 legal notice sent by Arunachala Gounder Branch to Marudhakutty Gounder Branch and by placing reliance on Ex.B2 original patta pass book and Ex.B3 chitta extract standing in the name of Arunachala Gounder and Ex.B1 copy of patta passbook standing in the name of the second defendant and Ex.B4 Adangal extract for fasli 1409 and Ex.B5 series of kist receipts, accepted the defendants' case to be in possession and enjoyment of the disputed extent in SF.no.471 and 433 and accordingly decreed their suit in OS.1032/2005. Aggrieved against the same, Marudhakutty Gounder Branch filed two appeals in AS.97 and 98 of 2007 against the dismissal of their suit OS.862/2005 and against the decree granted in the other suit OS.1032/2005 filed by Arunachala Gounder branch.

9. The lower appellate court by placing more reliance on Ex.A2 legal notice arrived at the conclusion that Palanisamy Vagaira representing Marudhakutty Gounder branch have been in possession and enjoyment of the suit property, which is the subject matter of other suit filed by Arunachala Gounder branch and Arunachala Gounder Branch were not in possession and enjoyment of the disputed extent in SF.No.471 and accordingly

allowed the appeals in part, by granting permanent injunction and dismissing the suit with regard to alienation and encumbrance in OS.862/2005 and further restricted the relief granted in O.S.1032/2005 in respect of other property excluding 1.50 acres in SF.No.471. Aggrieved against the same, Arunachala Gounder Branch are now before this court by way of the present two second appeals.

10.Both the second appeals are admitted on the following substantial questions of law:

(a)Whether the lower appellate court is right in reversing a well considered judgment without considering the material evidence of Exs.B1 to B6 and DW1.

(b)Whether the lower appellate court is right in decreeing the suit for permanent injunction, when the plaintiffs did not establish their title and possession of the suit property on the date of suit.

(c)Whether the judgment and decree of the lower appellate court, without considering the provisions of Section 118 of the Transfer of Property Act and Section 17 of the Registration Act and the Stamp Act is sustainable in law.

(d)When the respondents did not produce any documentary evidence to prove their alleged possession, can the lower appellate court decree their suit on the basis of Ex.A2.

11.Heard the rival submissions made on both sides and perused the records.

12.The facts that C and D schedule properties were allotted to Marudhakutty Gounder and Arunachala Gounder under Ex.A1 (B6) partition deed and the disputed land measuring 1.50 acres in SF No.471 and 0.50 acres in SF No.433 fell to the share of Arunachala Gounder are not denied. Marudhakutty Gounder Branch have claimed possession and enjoyment of the disputed land under oral exchange arrangement between Marudhakutty Gounder and Arunachala Gounder during 1968. Insofar as the theory of oral exchange is concerned, the same is negatived by the trial court by holding the same as null and void for want of any registered document and that no right was conveyed under such partition to each of the brothers. Whereas, the lower appellate court accepted the plea of oral exchange arrangement on the basis of admission made by Arunachala Gounder branch in Ex.A2 legal notice, but declined to go into the title issue for want of any declaratory relief sought for in the suit. In my considered view, the admission made by Arunachala Gounder branch in Ex.A2 legal notice regarding the exchange arrangement, will in no way render the same to be valid. The same as rightly found by the trial court, having not been effected under any registered document in accordance with law under section 118 of the Transfer of Property Act and section 17 of the Registration Act, confers no right on either Marudhakutty Gounder branch or Arunachala Gounder branch and Marudhakutty Gounder branch cannot

be permitted to make any legal claim on the basis of such oral exchange arrangement.

13. Further, Marudhakutty Gounder branch did not make any claim for prescriptive title by adverse possession. Even otherwise, there is a dispute regarding the period during which the property was exchanged i.e., whether it was during 1955 or 1968 and on the failure of Marudhakutty Gounder branch to adduce any evidence in this regard, no claim for adverse possession is legally permissible.

14. Be that as it may, both the suits are filed for the relief of permanent injunction restraining other party from interfering with the respective plaintiffs' peaceful possession and enjoyment of the suit property. As the dispute is only with regard to two items and as there is no dispute regarding the parties' claim for possession and enjoyment of the remaining property, the permanent injunction granted in favour of Marudhakutty Gounder branch in respect of items 1 and 2 forming part of C schedule need not be interfered with. The lower appellate court has also not interfered with the permanent injunction granted by the trial court in respect of other property forming part of D schedule.

15. Insofar as the disputed landed property measuring 1.50 acres in SF.No.471 and 50 cents in S.No.433, which are shown as suit items 3 and 4 is concerned, Marudhakutty Gounder branch did not produce any documentary evidence to prove their possession and enjoyment of the same. Though Marudhakutty Gounder Branch have claimed that the oral exchange arrangement between their respective fathers was only for the purpose of convenient enjoyment of the cultivable land and further claimed that the possession and enjoyment of the orally exchanged properties by their respective fathers commenced from 1968 onwards, they were unable to produce any document to prove the same. The disputed land being cultivable in nature, no document in the form of revenue records such as patta, chitta and adangal are produced and such failure remains unexplained on the side of Marudhakutty Gounder branch. It is true that Arunachala Gounder Branch in Ex.A2 legal notice dated 9.3.2005 stated that Marudhakutty Gounder branch have been in possession and enjoyment of the property and such arrangement is not helpful to and not for agricultural advantage, as such, Marudhakutty Gounder branch are bound to deliver possession to Arunachala Gounder branch. Whereas, the lower appellate court placed undue reliance on the statement made in Ex.A2, for arriving at the conclusion that the property under dispute has been in possession and enjoyment of Marudhakutty Gounder branch and the same cannot be interfered with. As rightly argued by the learned counsel for the appellants, such finding is rendered by the lower appellate court by ignoring the oral evidence of DW1 and Exs.B1 to B5 documentary evidence produced on the side of Arunachala Gounder branch. It is categorically stated by DW1 in his evidence that the property was again re-exchanged between the parties after

Ex.A2 legal notice, but no suggestion was put to DW1 denying the same, in the course of his cross examination on behalf of Marudhakutty Gounder branch.

16.As far as the documentary evidence is concerned, Exs.B3 and B4 are the chitta and Adangal issued in the name of Arunachala Gounder for the faslies 1409 and 1410. Ex.B2 is the original patta issued in favour of Arunachala Gounder in 1973. Ex.B5 is the series of kist receipts. The combined appreciation of the documents above referred to in the light of the statement of DW1 as above referred would probablise the case of Arunachala Gounder branch that they come to be in possession and enjoyment of the property much before the institution of the suit. That being so, Marudhakutty Gounder branch on their failure to prove their actual possession and enjoyment of the property in question, cannot be permitted to take advantage of the statement under Ex.A2 notice and the same will in no way advance their case, particularly in the light of the oral and documentary evidence adduced on the side of Arunachala Gounder branch, as such the judgment and decree of the lower appellate court to that extent warrants interference and modification and the substantial questions of law are accordingly answered in favour of the appellants.

17.Thus, for the discussion held above, the appellants/Arunachala Gounder branch are entitled to the relief of permanent injunction in respect of their entire suit property and the relief of permanent injunction granted in favour of Marudhakutty Gounder branch is restricted to suit items 1 and 2 forming part of C schedule properties.

18.In the result, SA.No.571 of 2008 is partly allowed by setting aside the judgment and decree of the lower appellate court in respect of suit items 3 and 4 in OS.862/2005 forming part of D schedule in Ex.A1 partition deed and is partly dismissed by confirming the judgment and decree of the lower appellate court in respect of suit items 1 and 2 of suit schedule forming part of C schedule allotted to Marudhakutty Gounder in Ex.A1 partition deed and the suit in OS.No.862/2005 is partly decreed in respect of suit items 1 and 2 and is partly dismissed in respect of suit items 3 and 4. No costs. Consequently, connected miscellaneous petition is closed.

SA.No.572 of 2008 is allowed by setting aside the judgment and decree of the lower appellate court in respect of suit item no.3 in SF.no.471 measuring 1.50 acres in OS.1032/2005 and by restoring the judgment and decree made in OS.1032/2005 passed by the trial court in its entirety. No costs.

Sd/-
Assistant Registrar(CO)

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Sub Assistant Registrar

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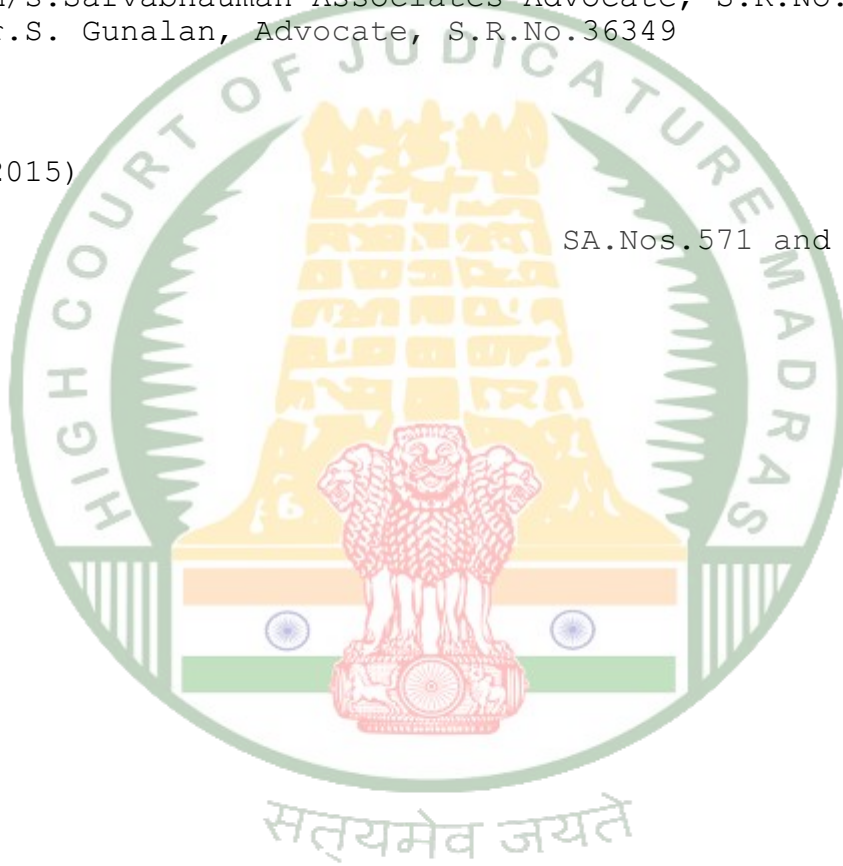
1.The Principal Sub Court, Coimbatore.

2.The Ist Additional District Munsif Court,
Coimbatore.

+2ccs to M/s.Sarvabhauman Associates Advocate, S.R.No.36481
+1cc to Mr.S. Gunalan, Advocate, S.R.No.36349

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SA.Nos.571 and 572 of 2008



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