

In the High Court of Judicature at Madras

Reserved on : 21.12.2016

Pronounced on : 05.01.2017

Coram:

The Honourable Mr.Justice T.RAVINDRAN

Second Appeal No.227 of 2011

and

M.P.No.1 of 2011

1. Pattammal (deceased) **
2. Lakshmanan
3. Kasi
4. Panchavarnam
5. Murugan
6. Mannammal
7. Abirami
8. Valli

(** 1st appellant died. Appellants 2 & 3 recorded vide order of Court dated 14.11.2016 made in Memo dated 14.11.2016)

... Appellants

Versus

1. Vimala
2. Thenmozhi
3. Kumaravel
4. Malarvizhi
5. Uma Sundari
6. Perianayagi

... Respondents

Second Appeal filed under Section 100 of Civil Procedure Code against the Judgment and Decree dated 18.08.2010 made in A.S.No.17 of 2009 on the file of the Subordinate Judge, Gingee, confirming the judgment and decree dated 08.04.2009 made in O.S.No.431 of 1990 on the file of the Principal District Munsif, Gingee.

For Appellants .. Mr.T.Dhanasekaran

For Respondents.. Mr.L.Damodaran

JUDGMENT

The defendants in this Second Appeal have impugned the judgment and decree dated 18.08.2010 made in A.S.No.17 of 2009 on the file of the Subordinate Judge, Gingee, confirming the judgment and decree dated 08.04.2009 made in O.S.No.431 of 1990

on the file of the Principal District Munsif Court, Gingee.

2. The suit has been laid by the plaintiffs for declaration and permanent injunction.

3. Vinayaga, father of the deceased first plaintiff and Murugesan, father of the deceased first defendant are brothers. Now according to the plaintiffs, the suit properties belonged to Vinayaga and after his death, the suit properties were inherited by the deceased first plaintiff and enjoyed by him and in evidence of his possession and enjoyment of the suit properties, according to the plaintiffs in the updating Registry Scheme, the deceased first plaintiff had been granted patta and also chitta and it is further stated that the claim of the deceased first defendant seeking joint patta in respect of the suit properties was negatived by the revenue authority. However, the deceased first defendant, subsequently without notice to the deceased first plaintiff, had stealthily obtained patta in respect of the suit properties and thereby, attempted to interfere with the possession and enjoyment of the plaintiffs in respect of the suit properties and hence, the suit for appropriate reliefs.

4. According to the defendants, the suit properties belonged to the deceased first defendant and considering his right possession and enjoyment of the suit properties, patta had been granted to him in respect of the suit properties and accordingly, by paying kist he had been enjoying the suit properties and therefore, it is stated that the plaintiffs are not entitled to seek the reliefs sought for.

5. As seen from the evidence adduced by DW.1 (4th defendant), it could be seen that Vinayaga and Murugesan had effected partition of the properties belonging to them and thereafter, living separately enjoying their respective properties allotted under the partition. That apart, as rightly found by the courts below, from the sale deeds marked as Exs.A35, A36 and A37, which had been executed by the defendants in favour of the plaintiffs, it could be seen that the properties had been already partitioned between the two families and accordingly, the divided properties are being enjoyed separately.

6. The plaintiffs, in order to establish their title to the suit properties, have produced the patta dated 26.08.1974 marked as Ex.A1 and the patta dated 30.03.1987 marked as Ex.A2. Per contra, the defendants, in order to establish their title to the suit properties, have produced the patta marked as Ex.B1. The Courts below affirmed that in respect of the same properties, the pattas marked as Ex.A1 and Ex.B1 had been given to the respective parties by the revenue authorities. The said patta is in respect of patta No.138. In respect of patta

No.193, the first plaintiff had been granted patta, which had been marked as Ex.A2. The courts below, accordingly, did not place reliance upon either Ex.A1 or Ex.B1 as it has been found that the same had been issued to the respective parties in respect of the same properties by the revenue authorities. However, it has been found that Ex.A1 bears the date seal whereas Ex.B1 does not bear any date seal. Further, as rightly found by the courts below, even prior to the issuance of Ex.A1 and Ex.A2 pattas, the suit properties had been in possession and enjoyment of the plaintiffs and the same could be seen from the Sagupadi Adangal, marked as Ex.A34 for the faslis 1391 to 1399. Therefore, based upon Ex.A34 Sagupadi Adangal, the courts below found that even prior to the issuance of Exs.A1 and A2 pattas, the suit properties had been enjoyed by the plaintiffs based upon the oral partition effected much earlier and accordingly, found that it is only the plaintiffs on the basis of their right in the suit properties had been enjoying the same as absolute owners thereof.

7. Further, for upholding the plaintiffs' case, it is also found that Vinayaga, father of the deceased first plaintiff had mortgaged the suit properties to one Bandarinathan under Ex.39 mortgage deed dated 17.01.1957. On a perusal of the said mortgage deed, it has been found that amongst the suit properties, items 2 to 4 and other properties had been mortgaged by Vinayaga to Bandarinathan and therefore, it could be seen that inasmuch as the above items of the suit properties had been allotted to Vinayaga in the partition, it could be seen that he had, as absolute owner thereof, mortgaged the same to Bandarinathan under Ex.A39. It has been admitted by DW.1 that Bandarinathan is not alive and it could therefore be seen that Ex.A39 had been executed only in respect of a real person and therefore, there is nothing wrong in the courts below for placing reliance on Ex.A39 for upholding the plaintiffs' case.

8. That apart, to establish that item No.6 of the suit properties was allotted to the share of Vinayaga, the plaintiffs have marked the sale deeds dated 20.06.1959 and 02.03.1961 as Ex.A40 and Ex.A41 respectively. Ex.A40 is executed in favour of Ponnusamy Gounder by Manickam Gounder and Ex.A41 has been executed in favour of Ponnusamy Gounder by Dhanakottiammal. A perusal of the above documents would go to show that in the boundary description of the properties comprised therein, the northern property is shown to be belonging to Vinayaga. Therefore, the Courts below have placed reliance upon Exs.A40 and Ex.A41 to hold that much prior to the controversies arising between the parties, one of the items in the suit properties has been shown to be belonging to Vinayaga in the above said sale transactions. The approach of the courts below in placing reliance upon the above said documents is not found to be erroneous. As regards the possession and enjoyment of item

Nos.1 and 5 of the suit properties, the courts below affirmed that Sagupadi Adangal marked as Ex.A34 go to show that it is only the plaintiffs, who had been enjoying the same and accordingly, their names have been recorded in the Sagupadi Adangal.

9. As far as the possession and enjoyment of the suit properties by the defendants are concerned, no doubt they have also marked certain kist receipts, which are exhibited as Exs.B2 to Ex.B15. However, as rightly found by the courts below, they have come to existence after the issuance of Ex.B1 patta. As adverted to earlier, throwing challenge to the issuance of patta Ex.A2 in favour of the deceased first plaintiff, it is admitted that the deceased first defendant made representation to the revenue authorities to issue a joint patta in respect of the properties comprised in Ex.A2 and it is found that after enquiry, the revenue authority had negatived the plea of the deceased first defendant and this could be seen by the proceedings of the revenue authority dated 12.08.1987 marked as Ex.A4. Therefore, the claim of the deceased first defendant for joint patta in respect of the suit properties had been rejected by the revenue authority. Despite the same, the deceased first defendant has not preferred any appeal or revision, as the case may be, for obtaining patta / joint patta in his favour. On the other hand, it is found that without notice to the plaintiffs and clandestinely he seems to have obtained Ex.B1 patta in his favour. Therefore, accordingly it is found that the courts below have not placed reliance upon Exs.B1 to B15 to uphold the defendants' case.

10. As found earlier, it has been admitted by the defendants that Vinayaga and Murugesan had already effected partition amongst themselves and living separately by enjoying the properties allotted to them under partition. Now according to the plaintiffs, they have derived title to the suit properties from Vinayaga. It is found that in recognition of the plaintiffs' title and possession of the suit property, they have been granted the patta. The challenge made by the first defendant for joint patta in respect of the suit properties had been rejected. The deceased first defendant has not preferred any appeal or revision against the same. On the other hand, it is found that he has secretly obtained Ex.B1 patta without notice to the plaintiffs. It could therefore be seen the courts below have rightly not considered Ex.B1 for accepting the defendants' case. On the other hand, from the documents marked on the side of the plaintiffs viz., Sagupadi Adangal and also the sale transactions adverted to earlier it has been found by the courts below that even prior to the issuance of Ex.A1 and Ex.A2 pattas, it is only the plaintiffs who had been in possession and enjoyment of the suit properties as full owners thereof. Accordingly, it could be seen that the courts below

have accepted the plea of the plaintiffs and rejected the case of the defendants. The findings of the courts below for upholding the plaintiffs' case and rejecting the defendants' case are found to be based upon the evidence on record and in accordance with law. No exception could be taken to the findings of the Courts below for accepting the plaintiffs' case and granting the reliefs sought for.

11. In conclusion, no substantial question of law is found to be involved in this Second Appeal. Accordingly, the Second Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-

Assistant Registrar

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Sub-Assistant Registrar

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To

1. The Subordinate Judge, Gingee.
2. The Principal District Munsif, Gingee.

+1 cc to Mr.L.Damodaran Advocate sr 1466

+1 cc to M/s.T.Dhanasekaran Advocate sr 1408

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