

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.02.2017

PRONOUNCED ON : 22.02.2017

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.608 of 2011

1. Ramasamy		
2. Padakathu	...	Appellants

Vs.

1. Saraswathi		
2. Padmapriya		
3. Babu		
4. Balamurugan	...	Respondents

Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree of the learned Subordinate Judge, Perambalur in A.S.No.175 of 2008 dated 23.12.2010 partly confirming the judgment and decree of the learned District Munsif, Perambalur in O.S.No.28 of 2005 dated 20.08.2008.

For Appellants	: Mr.A.K.Kumarasamy Senior Counsel, M/s.Kaithamalai Kumaran
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For Respondents	: Mr.R.Nallaiyappan
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JUDGMENT

Challenge in this second appeal is made by the defendants against the judgment and decree dated 23.12.2010 passed in A.S.No.175 of 2008 on the file of the Sub Court, Perambalur, partly confirming/modifying the judgment and decree dated 20.08.2008 passed in O.S.No.28 of 2005 on the file of the District Munsif Court, Perambalur.

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

3. It is not in dispute that the property comprised in Survey No.398 / 1A2 originally belonged to Arumuga Udayar, who is the father of the plaintiff, the first defendant and one Subbaraya Udayar. It is also admitted that Arumuga Udayar also had a daughter. It is the case of the plaintiff that after the death of Arumuga Udayar, his sons divided the joint family properties into three equal shares and according to the plaintiff, he had been allotted 1/3 share in the said properties and further, according to the plaintiff, the suit property fell to his share and inasmuch as the plaintiff, on account of his avocation, is residing at Ariyalur and also, for children education, he used to enjoy the suit property through the defendants by paying kist

etc., and the defendants were also assisting him in the cultivation of the suit property and of late, inasmuch as the defendants, without any authority, had obtained patta for the suit property in their name behind the back of the plaintiff and without his consent, thereby, disputing the title of the plaintiff in respect of the suit property, according to the plaintiff, he has been necessitated to lay the suit for appropriate reliefs.

4. As regards the relationship between the parties, the defendants have not raised any issue. It is equally, admitted by the defendants that the property comprised in Survey No.398/1A2 and other properties, originally belonged to Arumuga Udayar. The partition of the properties left by Arumuga Udayar, amongst the sons, equally, is also not opposed by the defendants. Now, according to the defendants, the plaintiff was allotted only 1.82 acres, in the suit survey number, in the partition and thereafter, the plaintiff relinquished the same in favour of the defendants and accordingly, it is contended that the plaintiff has no right or title over the said extent of 1.82 acres and therefore, the plaintiff is not entitled to obtain the reliefs sought for in the suit.

5. The suit, as such, has been laid for an extent of 2.62 acres, in the survey number 398/1A2. The Courts below have, on the

appreciation of the evidence adduced by the respective parties, found that considering the total extent in the suit survey number, the plea of the plaintiff that he has been allotted 2.62 acres cannot be believed. Further, the Courts below have found that the plaintiff has not established that he had been allotted 2.62 acres in the suit survey number under the above said partition. Accordingly, the Courts below have found that considering the defence set out by the defendants and the admission made by them held that the plaintiff has been allotted only an extent of 1.82 acres in the suit survey number and accordingly, granted the relief of declaration as against the above extent in favour of the plaintiff.

6. As regards the defence raised by the defendants that the plaintiff had orally relinquished the above said share allotted to him in the partition, the Courts below have, rightly, based upon the evidence adduced by the respective parties, found that the relinquishment has not been established by the defendants by acceptable oral and documentary evidence and further, the Courts below have also found that the plea of relinquishment made by the defendants under the document marked as Ex.B1 not having been registered in accordance with law, on that score also, disbelieved the defence version and held that the plea of relinquishment projected by the defendants is false.

7. The trial Court has negated the relief of permanent injunction sought for by the plaintiff. However, the first appellate Court has based upon the evidence adduced in the matter held that the plaintiff is also entitled to the relief of permanent injunction sought for. In this connection, the first appellate Court has considered the patta, chitta, Adangal extract marked as Exs.A2 to 4 and also Patta and Kist receipts marked as Exs.B3 and 4, in the right perspective and found that the plaintiff has established his possession and enjoyment of 1.82 acres in the suit survey number through the aid and assistance of the defendants. As adverted to earlier, it is the specific case of the plaintiff that inasmuch as he is not settled in the suit village, on account of his avocation and other reasons, he had been enjoying the suit property by paying kist and engaging in cultivation through the defendants. Accordingly, it is found that the kist receipt marked by the defendants themselves would not *Ipsa facto* be construed that they had been paid by the defendants in their own right in respect of the extent in the suit survey number, to which, the plaintiff is entitled to. Further, it is also found by the first appellate Court that the defendants have failed to establish that the patta, which had been obtained by the defendants, had been secured only with the knowledge and consent of the plaintiff. When it has

been admitted by the defendants black and white that the plaintiff has been allotted 1.82 acres in the suit survey number under the oral partition and the plea of relinquishment projected by the defendants is found to be false and when the defendants have also not established that they are in exclusive possession and enjoyment of the said extent as rightful owner of the same, their plea that they are in possession and enjoyment of the said property, as such, cannot be accepted. Therefore, it could be seen that the first appellate Court has rightly accepted the case of the plaintiff that he had been enjoying the suit property through the defendants by paying kist and also doing the cultivation activities. Accordingly, the first appellate Court had granted the relief of permanent injunction in respect of 1.82 acres of land in the suit survey number, to which, admittedly, the plaintiff is entitled to. I do not find any infirmity in the reasonings and conclusions of the first appellate Court for granting the relief of permanent injunction with reference to the above said extent in favour of the plaintiff.

8. The only issue that has been projected in this second appeal is that the plaintiff has not described the suit property properly and therefore, he cannot be granted the reliefs sought for. In this connection, the defendants' counsel invoked Order 7 Rule 3 of the

Code of Civil Procedure to contend that the property should be described in the plaint with clear identifications as mandated therein and inasmuch as the plaintiff has not described the extent, to which, he is entitled to in the suit survey number properly. The plaintiff's case should not be accepted. However, as rightly put forth by the plaintiff's counsel, it is found that the plaintiff has described the suit property clearly giving the survey number and extent and also the boundaries and the only thing is, he has claimed that he has been allotted 2.62 acres in the suit survey number. However, on the evidence adduced, it is found that he is entitled to only 1.82 acres. It is not even raised by the defendants in the written statement or for that matter, during the course of evidence, that the said extent of 1.82 acres, to which, the plaintiff is entitled to, cannot be clearly demarcated or the said property is clubbed with the other extent in the suit survey number and therefore, it is indivisible or cannot be identified. On the other hand, it is the specific case of the defendants that the plaintiff had relinquished the said extent in their favour under Ex.B1. In such view of the matter, when the parties are not at issue, as to the identification of the above extent of 1.82 acres in the suit survey number, to which, the plaintiff is admittedly entitled to, the argument put forth by the defendants' counsel that the suit of the plaintiff should fail for want of clear description of the said extent, as

such, cannot be countenanced. Therefore, as rightly put forth by the plaintiff's counsel, it is found that there is no ambiguity or doubt as to the identity or the location of the suit property, as such, by the parties concerned and accordingly, the parties have also approached the lis and thus, it is found that the defendants have also taken a defence that the plaintiff is entitled to only the specific extent i.e. 1.82 acres in the suit survey number. The defendants have failed to establish that they are in possession and enjoyment of the said extent as rightful owners. Therefore, the argument of the defendants' counsel that the plaintiff's case deserves rejection for want of clear particulars of the property, to which, the plaintiff is entitled to, does not merit acceptance.

9. In view of the above position, the authorities relied upon by the defendants' counsel reported in **AIR 1999 KARNATAKA 421 (Ambanna V.Ghanteappa)** and **AIR 1993 ORISSA 153 (Lucy Narona V.Raghunath Jew Bije)**, as rightly contended by the plaintiff's counsel, do not have any application to the facts and circumstances of the case at hand.

10. In the light of the above, no interference is called for in the findings and conclusions of the first appellate Court for upholding the

plaintiff's case to an extent of 1.82 acres in the suit survey number.

At the end, no substantial question of law is found to be involved in this second appeal. Accordingly, the second appeal fails and the same is dismissed. No Costs. Consequently, connected miscellaneous petition is closed, if any.

Index : Yes/No
Internet: Yes/No
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22.02.2017

To

1. The Sub Court, Perambalur.
2. The District Munsif, Perambalur.

T.RAVINDRAN,J.

sms

Pre-delivery Judgment in
S. A.No.608 of 2011

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