

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.11.2017
PRONOUNCED ON : 22.12.2017

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.1217 of 2001 and
C.M.P. No 19310 of 2017.

Chellam ... Appellant/Respondent/Defendant

Vs.
Rajamanickam ... Respondent/Appellant/Plaintiff

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree of the Principal Subordinate Court at Virudhachalam made in A.S.No.11/98 dated 29.6.2000 reversing the judgment and decree of the District Munsif Cum Judicial Magistrate at Thittakudi made in O.S. No.38/96 dated 08.12.97.

For Appellant : Mrs. G.Thilakavathi, Senior Counsel,
for M/s. D.Kanaga Sundaram

For Respondent : Mr. S. Parthasarathy, Senior Counsel
for M/s. Sarvabhauman Associates.

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 29.6.2000 passed in A.S.No.11/98 on the file of the Principal Subordinate Court, Virudhachalam, reversing the judgment and decree dated 08.12.97 passed in O.S. No.38/96 on the file of the District Munsif Cum Judicial Magistrate, Thittakudi

2. Parties are referred to as per their rankings in the trial Court

3. Suit for declaration, permanent injunction or in the alternative for possession and mesne profits.

4. The case of the plaintiff, in brief, is that the suit properties originally belonged to Palaniammal and Palaniammal

was enjoying the suit properties by paying kist etc., as absolute owner thereof and the plaintiff is the sister's son of Palaniammal and on account of the plaintiff supporting Palaniammal and providing maintenance to her, on account of love and affection, Palaniammal had settled the suit properties in favour of the plaintiff, by way of a registered sale deed dated 16.10.1970 and entrusted the suit properties to the plaintiff and accordingly, the plaintiff was enjoying the suit properties as full owner thereof, by obtaining patta, paying kist etc., while so, the defendant without any authority interfered with the possession and enjoyment of the plaintiff, in respect of the suit properties and hence, the suit for appropriate reliefs.

5. The case of the defendant, in brief, is that the suit is not maintainable either in law or on facts. It is false to state that the plaintiff has title to the suit properties and been in possession and enjoyment of the same, following the settlement deed dated 16.10.1970. On the other hand, though the suit properties originally belonged to Palaniammal, the same were acquired from her by the plaintiff and his brother Kaliyaperumal, the husband of the defendant for a valid consideration by way of the document dated 16.10.1970, out of the means of the joint family and though the document has come to be styled as a settlement deed, on the other hand, the properties acquired under the said deed were enjoyed by the two brothers jointly and it is both the plaintiff as well as Kaliyaperumal who had been providing maintenance to Palaniammal and thereafter, by way of partition, the properties comprised in S.No 22/5B and 22/6B were allotted to Kaliyaperumal and accordingly, it is only Kaliyaperumal, who had been in possession and enjoyment of the above said two items of the suit properties by paying kist etc., and accordingly, his son was granted patta in respect of the above said two items of the suit properties under the UDR patta scheme and in respect of the above said two items, the plaintiff has no title and the claim of obtainment of patta of the suit properties as such by the plaintiff is not true and the plaintiff is not entitled to question the obtainment of patta by Murugavel s/o Kaliyaperumal and hence, the suit is liable to be dismissed in respect of the above said two items of the suit property.

6. In support of the plaintiff's case PWs 1 and 2 were examined and Exs. A1 to A7 were marked. On the side of the defendant, DWs 1 and 2 were examined, Exs. B1 to B6 were marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties, the trial Court was pleased to decree the suit in favour of the plaintiff, excepting the two items of the suit properties comprised in S.Nos. 22/5B and 22/6B and accordingly, disposed of the suit in favour of the plaintiff.

8. On appeal, the first appellate Court was pleased to modify the judgment and decree of the trial Court and resultantly, by way of allowing the appeal, decreed the suit in entirety in favour of the plaintiff as prayed for. Impugning the same, the second appeal has been preferred.

9. At the time of admission of the second appeal the following substantial questions of law were formulated for consideration:

1. Has the lower Appellate Court erred in reversing the judgment of the trial Court without proper appreciation of the evidence orally and documentary?
2. Has the lower Appellate Court erred in admitting and placing reliance upon a document, which was admittedly obtained after the decision of the trial Court?
3. Has the lower Appellate Court failed to weigh the credibility of Ex.A8 in its proper perspective?

C.M.P. No. 19310 of 2017

10. Petition filed under Order 41 Rule 27 read with Section 151 of CPC.

The petitioner is the appellant and it is stated that during the first appeal stage, the respondent/plaintiff filed Ex.B8 patta obtained behind her back after the judgment and decree of the trial Court and on the basis of the said document, the first appellate Court had allowed the appeal preferred by the respondent/plaintiff and the A register extract is in the name of the petitioner's son Murugavel and the patta had been restored in favour of the petitioner's son. In view of the same and as the appeal preferred by the respondent ended in vain and revision was also dismissed by the D.R.O. Cuddalore and accordingly, directed the respondent/plaintiff to approach the Court for further reliefs and inasmuch as only the name of the son is reflected in the settlement register as against the properties comprised in S.No.22/5B and 22/6B and accordingly, as only her son has been paying kist in respect of the above said two items of the suit properties, according to the appellant, the documents are essential and to be marked as evidence, in support of her case and hence the present petition.

11. The respondent/plaintiff contested the above said petition contending that the petition is not maintainable either in law or on facts. The patta granted in favour of the

petitioner's son was cancelled even prior to the filing of the suit and hence the case that the patta had been restored in favour of the petitioner's son in view of the settlement register extract is untenable and cannot be accepted and the petition has been laid for the reception of the additional documents issued by the revenue officials, which has come to be secured based upon the interim order granted in C.M.P.No.12773 of 2001. However, the above said interim order was subsequently vacated and the petition has come to be dismissed on 19.08.2001 and hence the order of the revenue authorities, flowing there from are not acceptable and the present petition has been laid only to drag on the proceedings. The documents sought to be marked, which cannot confer title, would be no use to determine the issues involved in the matter and the present petition is liable to be dismissed.

12. It is not in dispute that the suit properties originally belonged to Palaniammal. The plaintiff and the defendant's husband Kaliyaperumal are the sister's sons of Palaniammal. According to the plaintiff, inasmuch as he had been maintaining Palaniammal, on account of love and affection towards the plaintiff, she had settled the suit properties by way of a settlement deed dated 16.10.1970 and hence thence from, it is only the plaintiff who is in possession and enjoyment of the suit properties by obtaining patta and paying kists etc., and inasmuch as the defendant without any authority interfered with his possession and enjoyment, according to the plaintiff, he has been necessitated to lay the suit for appropriate reliefs.

13. Per contra, it is the case of the defendant that the suit properties were acquired jointly both by the plaintiff and her husband Kaliyaperumal out of the joint family means from Palaniammal and though the document dated 16.10.1970 is styled as a settlement deed, it is only a sale deed in favour of the above said parties and further, according to her in the partition effected subsequent thereto, the properties comprised in S.Nos. 22/5B and 22/6B were allotted to her husband and thus, it is only her husband, who is having title to the said properties and the patta in respect of the above said items were issued only in favour of her son Murugavel and hence the plaintiff cannot lay any claim in respect of the above said two items of the suit properties and hence the suit is liable to be dismissed.

14. When it is admitted that the suit properties originally belonged to Palaniammal, as rightly put forth by the plaintiff's counsel, if really the suit properties had been intended to be acquired by the plaintiff and the defendant's husband Kaliyaperumal, nothing prevented the parties, particularly, Kaliyaperumal from acquiring the sale deed in respect of the same from Palaniammal. On the other hand, it is found that by

way of the document dated 16.10.1970, the suit properties had come to be settled only in favour of the plaintiff and therefore, when there is no indication contained in the document that the same is only a sale deed, conveying the properties described therein in favour of the plaintiff and Kaliyaperumal, it is seen that the above defence projected by the defendant as if under the said document, the properties were intended to be conveyed to both of them as such cannot be accepted. That apart, no material has been placed to show that the suit properties were actually conveyed to both the plaintiff and Kaliyaperumal, by way of the above said document dated 16.10.1970, marked as Ex.A1 and therefore, it is seen that the plea put forth by the defendant that Ex.A1 document is intended to be a conveyance of the properties comprised thereunder both in favour of the plaintiff and Kaliyaperumal as such cannot be countenanced in any manner.

15. From Ex.A2 and the documents marked as Ex.A3 series, it is found that the patta had been changed in the name of the plaintiff and it is seen that the plaintiff had been paying kist in respect of the properties and enjoying the same. Even under the UDR scheme, patta had been granted in favour of the plaintiff, which has come to be marked as Ex.A6 and therefore, it is found that even prior to the institution of the suit, the Special Tahsildar had directed the change of patta in the name of the original owner Palaniammal under Ex.A5 and subsequent thereof, it is found that the patta has come to be change in the name of the plaintiff, finding that the suit properties had come to be settled by the original owner Palaniammal.

16. No doubt, the defendant claims to have acquired the patta in respect of the disputed two items of the properties in the name of her son Murugavel. However, it is found from Ex.A5, as rival claims were put to the above said two survey numbers, the Special Tahsildar had recommended for the change of the patta in the name of the original owner by way of the proceedings dated 27.12.85, marked as Ex.A5. Thereafter, it is found that the patta in respect of the disputed survey numbers has been changed in the name of the plaintiff by the proceedings of the Tahsildar dated 09.6.86, which has come to be marked as Ex.A2. Therefore, it is found that the claim of the defendant to have secured patta in the name of her son Murugavel under the UDR scheme, marked as Ex.B2, has been cancelled and accordingly, it is further found that the revenue authorities, following Exs.A5 and A2, have issued patta in respect of the above said two items of the properties and also in respect of the other suit properties only in the name of the plaintiff, marked as Ex.A8 and the kist receipts have also been filed by the plaintiff to evidence his possession and enjoyment of the suit properties, inclusive of the two items of the suit properties in dispute.

17. However, it is argued by the defendant's counsel that the plaintiff examined as PW1, during the course of evidence, has admitted that a partition had been effected between him and his brother Kaliyaperumal and when according to the plaintiff, the deed of partition is available and in his custody and if he had produced the said deed of partition, the truth would have been disclosed that the items in dispute had been allotted to Kaliyaperumal and inasmuch as the plaintiff had suppressed the said document, adverse inference should be drawn against the plaintiff. In this connection, it is contended that the case of the defendant is that, the two items in dispute had come to be allotted to Kaliyaperumal in the partition entered into between the plaintiff and Kaliyaperumal, 7 to 8 years prior to the institution of the suit and when according to the plaintiff, the deed of partition is available, the plaintiff should have placed the said document for the consideration of the Court and hence, on the basis of the above admission of the plaintiff as regards the case of partition, the defence version projected by the defendant should be accepted. However, as rightly argued, the above contention of the defendant's counsel cannot be accepted. It is found that the plaintiff examined as PW1 has only deposed that he and his brother Kaliyaperumal effected partition in 1968 and 1969 and the deed of partition with reference to the said partition is available. On the other hand, the plea of partition projected by the defendant is said to have been taken place 7 to 8 years prior to the institution of the suit and when it is found that the suit has come to be laid in the year 1980, as per the defendant's version, the partition projected by them should have taken place in and around 1978, whereas, the partition spoken to by the plaintiff, during the course of his evidence, is said to have been taken place in the year 1968 and 1969. Therefore, it is found that there is no connection or link what so ever between the partition spoken to by the plaintiff, during the course of his evidence and the partition pleaded by the defendant in the written statement. That apart, when the basis of the inclusion of the suit properties in the alleged partition pleaded by the defendant is Ex.A1 and when the said document is found to be only a settlement deed executed by Palaniammal, the original owner, in favour of only the plaintiff and it is not a conveyance alienating the suit properties to the plaintiff and Kaliyaperumal as pleaded by the defendant, it is seen that the basis of the claim of partition, projected by the defendant, of the suit properties as such cannot be accepted and believed. That apart, it is further seen as per the evidence of the defendant examined as DW1, she has admitted the contents of Ex.A1 settlement deed to be true. When the reading of Ex.A1 would go to show that it is a pucca settlement deed executed by Palaniammal in favour of the plaintiff, the defendant's version that the same is only a sale deed conveying the properties to both the plaintiff and Kaliyaperumal cannot be believed and

their further case that based on the same, the plaintiff and kaliyaperumal had partitioned the properties including the suit properties as such cannot be believed when the plaintiff had been conferred absolute right on the suit properties. It has not been therefore explained as to why the plaintiff should include the suit properties in the so called partition, said to have been done in the year 1978. However, as seen above the defendant's counsel stressed upon the fact that the plaintiff has accepted that partition had been effected between the plaintiff and his brother, however, the partition spoken to by him pertains to the year 1968 and 1969. Still it is found that the above evidence of the plaintiff would be of no use to buttress the defendant's version. According to the defendant examined as DW1, her husband and the plaintiff effected partition during 1978. Therefore, the deed of partition spoken to by the plaintiff of the year 1968 and 1969 would have no relevance at all to the plea of partition projected by the defendant, which took place in the year 1978. Further, the date and month of partition had not been disclosed by the defendant. That apart, according to DW1, her husband and the plaintiff did not effect partition in the year 1978 by way of a written instrument. According to the DW1, only oral partition had been effected between the plaintiff and her husband in 1978. The argument therefore projected that the plaintiff has the deed of partition, with reference to the same as such, cannot be accepted in any manner. Therefore, it is found that the even as per the case of DW1, the partition pleaded by her is only oral partition and such being the position, when the basis for the above said oral partition is Ex.A1 and when Ex.A1 does not confer title on the suit properties, both to the plaintiff and Kaliyaperumal, on the other hand, it confers sole title only to the plaintiff, the claim of the defendant that in the so called partition of the year 1978, the two items in dispute were allotted to her husband cannot be accepted in any manner. The only document projected by the defendant to uphold her case is the patta said to have been issued under the UDR scheme marked as Ex.B2. However, when it is found that even prior to the institution of the suit, the said patta had been cancelled by way of Ex.A5 proceedings and later, the patta had come to issued in respect of all the items of the suit properties, in favour of the plaintiff under Ex.A2 and thereupon, followed by the issuance of patta under Ex.A8 and when it has been established by the plaintiff that it is only he, who had been paying kists in respect of the suit properties, the first appellate Court, on a proper appreciation of the matter, both factually and legally, upheld the plaintiff's case by rightly setting-aside the judgment and decree of the trial Court as regards the disputed two items of the suit properties.

18. In this second appeal, additional documents have come to be projected by the defendant. They being the revenue records,

it is contended that the A register register in respect of the disputed two items stood in the name of her minor son Murugavel and following the same, patta had been changed in the name of her son and hence, it is stated that the above said documents should be taken as additional evidence for upholding the defendant's version. However, it is found that the documents projected by the defendant as additional evidence are only revenue records and revenue records by themselves do not confer any title to the disputed items as they cannot be equated to document of title as such. That apart, in so far as this case is concerned, on the basis of the interim order obtained in the second appeal proceedings in C.M.P.No.12773 of 2001, the defendant seems to have acquired change of patta in favour of her son. However, when the above said interim order has been vacated and the petition in C.M.P.No.12773 of 2001 has come to be dismissed on 19.08.2001 itself, it is seen that any order passed by the revenue authorities subsequent to the grant of interim order would be of no consequence and invalid as per law and that apart, when it has not been shown that as to how the revenue authorities during the pendency of the second appeal would be entitled to change the patta in favour of the defendant, it is found that the revenue records projected by the defendant by way of additional evidence do not have any legs to stand and accordingly, they cannot be received as additional evidence in support of the case of the defendant.

19. In this connection, it is found that the acquisition of title to the suit properties by the plaintiff by way of Ex.A1 cannot be set at naught by the defendant by the change of the mutation entries in the revenue records, as the mutation entries do not convey or extinguish any title and those entries are relevant only for the purpose of collection of land revenue and this could be gathered from the decision of the Apex Court reported in AIR 2015 SCC 2499 (H.Lakshmaiah Reddy and ors Vs. L.Venkatesh Reddy) and the decision reported in 2017-2-L.W.702 (Naina Mohammed & others Vs. Mohammed Labbai Gani). As rightly put forth by the plaintiff's counsel, when the plaintiff has acquired a valid title to the suit properties from the original owner Palaniammal, his title to the same cannot be disrupted in any manner by the defendant by putting forth a case that the said document is only a conveyance in respect of the suit properties, in favour of the both plaintiff and her husband and particularly, when it is found that even according to the defendant, the contents of the settlement deed are true, the defendant cannot be allowed to speak or adduce evidence or project a case against the contents of the settlement deed marked a Ex.A1 and further, when it has not been established by the defendant that after the so called oral partition effected under Ex.A8, her husband had been enjoying the disputed items of the properties as full owner thereof and on the other hand, when it is found that the patta wrongly issued in the name of her

minor son had been subsequently mutated in favour of the plaintiff by the revenue authorities, accordingly, the revenue authorities also having upheld the title of the plaintiff acquired under Ex.A1 settlement deed, it is seen that subsequent obtainment of the patta by the defendant behind the back of the plaintiff during the pendency of the second appeal, on the basis of the interim order obtained from this Court would be of no legal consequence and as such, it is seen that the defendant cannot be allowed to claim any title to the suit properties only by way of the alleged patta said to have been issued in favour of her son during the pendency of the civil proceedings as such. In the light of the above position, it is seen that the additional documents projected to be received as additional evidence in the matter are not useful in any manner to determine the issues involved in the matter and accordingly, it is found that the petition filed to receive the additional documents is liable to be dismissed as devoid of merits.

20. In the light of the above discussions, it is found that the first appellate Court has, on a proper appreciation of the evidence, both oral and documentary, in the right perspective and also by placing reliance upon the documents placed by the plaintiff, during the course of trial and finding that they had also been buttressed by the additional documents placed by the plaintiff, during the course of the first appeal proceedings, rightly placed reliance on the document marked as Ex.A8 as the same has come to be issued following the directions of the revenue authorities, prior to the institution of the suit. It is seen that the first appellate Court has not committed any error in placing reliance upon all the documents placed by the plaintiff cumulatively and thereby rightly set-aside the judgment and decree of the trial Court in respect of the two items of the properties in dispute. Accordingly, the substantial questions of law formulated in this second appeal are answered in favour of the plaintiff and against the defendant.

21. In conclusion, the second appeal fails and is accordingly dismissed with costs. C.M.P.No. 19310 of 2017 is also dismissed. Consequently, connected miscellaneous petition, if any is closed.

-s/d-

Assistant Registrar(CCC)

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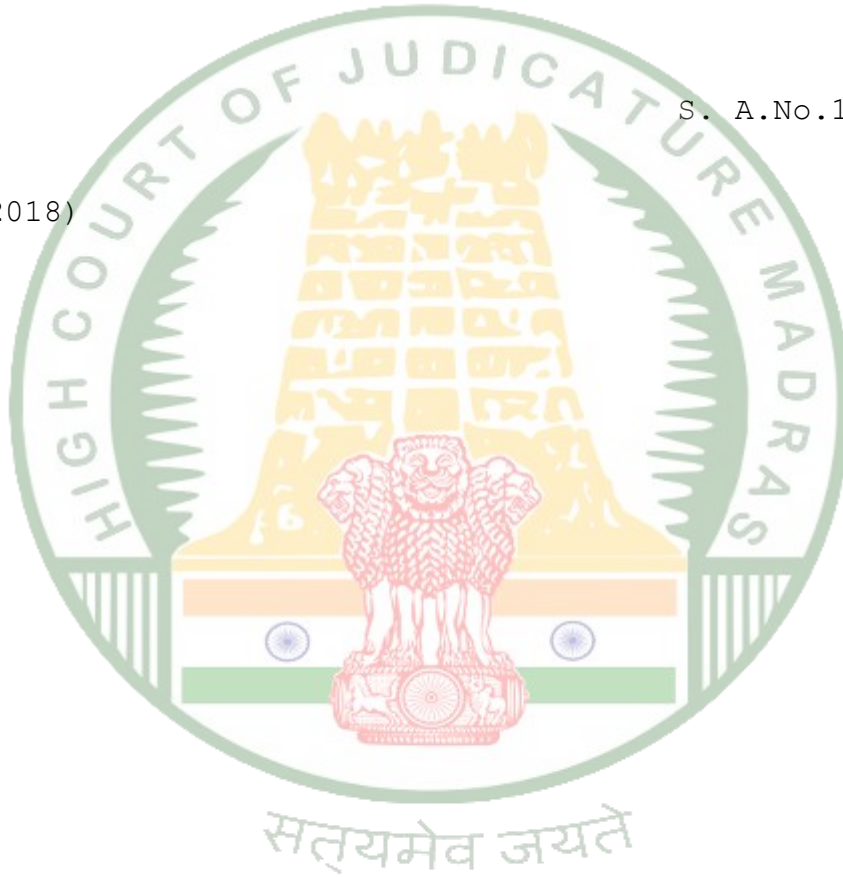
To

1. The Principal Subordinate Judge
Virudhachalam.
2. The District Munsif Cum Judicial Magistrate,
Thittakudi.

+1 CC to Mr.R. Gopinath, Advocate sr 91797.

S. A.No.1217 of 2001

SJ(CO)
SP(06/02/2018)



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