

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.11.2017  
PRONOUNCED ON : 20.11.2017

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN  
S. A.No.1439 of 2001

1. Ramayammal
2. Kulandayee
3. Minia Gounder
4. Thangavelu
5. Marimuthu
6. Pachiammal

.... Appellants/Plaintiffs

Vs.

1. Arumugham (Deceased)
2. Latchmiammal
3. Kolandasamy
4. Palanisamy

.... Respondents/Defendants

(R2 to 4 recorded as LRs of the deceased R1 vide order of Court dated 03.11.17 made in memo dated 03.11.17)

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 23.08.2000 made in A.S. No.103/99 on the file of the Sub Court, Bhavani reversing the judgment and decree dated 30.06.1999 made in OS No.364/95 on the file of the Additional District Munsif Court, Bhavani.

For Appellants : M/s.Zeenath Begum

For Respondents : Mr.S.Kaithamalai kumaran

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 23.08.2000 passed in A.S. No.103/99 on the file of the Sub Court, Bhavani reversing the judgment and decree dated 30.06.1999 passed in O.S. No.364/95 on the file of the Additional District Munsif Court, Bhavani.

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

3. Suit for declaration and permanent injunction.

4. The case of the plaintiffs, in brief, is that the first plaintiff's husband and the father of the plaintiffs 2 to 6 namely Sengodagounder had a brother by name Palaniappagounder. Sengodagounder, Palaniappagounder and their mother Irusayammal partitioned the properties belonging to them, by way of a registered partitioned deed dated 16.12.1966, under which 3.60 acres were allotted to Sengodagounder on the northern side and 3.80 acres were allotted to Palaniappagounder on the southern side in the respective survey fields and 1/2 share in the well, thulai, vari attached to the well were allotted to Sengodagounder and Palaniappagounder. The properties allotted to Sengodagounder are the suit properties and Sengodagounder had been in possession and enjoyment of the suit properties till his death and on his death, they were succeeded to by the plaintiffs, his legal heirs and accordingly, the plaintiffs had been in possession and enjoyment of the suit properties and on 05.04.1973, Palaniappagounder had sold his properties allotted in the partition above referred, to the first defendant and the first defendant had been in possession and enjoyment of the same and the second defendant is the wife of the first defendant and the other defendants are his sons. At the time of re-survey, both properties belonging to the brothers above referred to have been re-surveyed as a single survey field as R.S.No.581 without any sub division and a joint patta was issued in their names and subsequently, the above properties of the brothers have been sub divided and the fourth defendant being a surveyor exercised his influence and accordingly, got the properties sub divided as R.S.No.581/1,2 and 3 in the year 1989 and Sengodagoundagounder was assigned R.S.No.581/1 with lesser extent and at the time of sub division Sengodagounder was no more and the first defendant was assigned R.S.NO.581/3 with more extent than what he is really entitled to and enjoying and accordingly, as per the sub division which is not binding upon the plaintiffs an extent of 0.53 acres of the plaintiffs have been included in R.S.No.581/3 and despite of the said sub division, the plaintiffs continued to enjoy the extent of 0.53 acres absolutely and the defendants taking advantage of the above said sub division effected wrongly and without notice to the plaintiffs, are attempting to encroach into the properties belonging to the plaintiffs to which they are entitled to and hence, the suit for appropriate reliefs.

5. The case of the defendants, in brief, is that the suit is not maintainable either in law or on facts. The plaint plan is not correct. The plaintiffs are not entitled to the suit properties as described in the plaint and not in possession and

enjoyment of the same. The plaintiffs had never enjoyed any portion sub divided as R.S.No.581/3 and the said extent covered under the above said survey number had been all along enjoyed by the defendants and the defendants have also prescribed right to the above said extent on account of the long enjoyment by adverse possession and also there is a permanent stone ridge between the properties situated in R.S.No.581/1 and 581/3 and hence, the properties covered under R.S.No.581/3 in the plaint plan belong to the defendants and the plaintiffs are not entitled to the same and it is false to state that the defendants attempted to encroach into the suit properties belonging to the plaintiffs, the properties allotted to Sengodagounder had been shown in red and rose colour in the plan attached along with the written statement and the disputed property is shown in green colour and the parties have placed a permanent stone ridge between the properties belonging to them and the Commissioner in his plan and report has demarcated the properties of the parties by showing the stone ridge permanently fixed in between the two properties. The parties are enjoying the properties as available on ground within the boundaries allotted during the time of partition and it is only the defendants who are in possession and enjoyment of the disputed properties and hence, the plaintiffs are not entitled to obtain the relief sought for and the suit is liable to be dismissed.

6. In support of the plaintiffs' case PWs 1 to 4 were examined and Exs. A1 to A9 were marked and on the side of the defendants DW1 was examined and Exs.B1 to B5 were marked. Exs. C1 to C2 were also marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial Court was pleased to decree the suit as prayed for. On appeal, the first appellate Court set-aside the judgment and decree of the trial Court and by way of allowing the appeal, dismissed the suit laid by the plaintiffs. Aggrieved over the same, the present second appeal has been preferred.

8. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration in this second appeal.

(i) Whether an adverse inference ought to have been drawn against a person who claims title to a property by way of purchase and fails to produce the document of title?

(ii) Whether a person who purchases a specific extent of property, can claim more extent than what is specified in the sale deed in his favour?

9. It is not in dispute that Sengodagounder, the husband of the first plaintiff and the father of the plaintiffs 2 to 6 and Palaniappagounder are brothers. It is also not in dispute that Sengodagounder, Palaniappalgounder and their mother Irusayammal divided their properties by way of a partition deed dated 16.12.1966 and the copy of the same has been marked as Ex.A1. It is also not in dispute that the Palaniappagounder had alienated his properties allotted under the partition deed to the first defendant, by way of a sale deed dated 05.04.73, which has come to be marked as Ex.A2. It is found that and also not in dispute as such originally the properties of the parties above referred to, were situated in three survey numbers and during 1973-74 re-survey the properties had been surveyed as situated in R.S.No.581 and accordingly, it is found that the brothers had been granted joint patta as regards the properties owned by them in patta no.814. Now according to the plaintiffs, subsequently, when the properties of the parties were sub divided during the 1989, without notice to them, as according to the plaintiff, Sengodagounder was dead during that point of time, the fourth defendant being a surveyor by exercising his influence got the sub division of the properties concerned into R.S.No.581/1, 2 and 3 and thus, according to the plaintiffs in the above said sub division, the plaintiffs were granted lesser extent under R.S. No.581/1, where as, the defendants had been granted the larger extent under R.S.No. 581/3 and thereby, it is the case of the plaintiffs that under the sub division, the defendants had been granted the excess extent of 0.53 acres of the properties of the plaintiffs, to which the defendants are not entitled to even as per Ex.A2 and hence, it is further case of the plaintiffs that taking advantage of the above said sub division, the defendants are attempting to interfere and encroach into the disputed suit properties namely 0.53 acres, to which they are not entitled to, hence, the suit for necessary reliefs.

10. The case of the plaintiffs that the fourth defendant had by exercising his influence got the sub division of the properties is disputed by the defendants and further according to the defendants, the sub division was effected taking into account, the enjoyment of the properties by the parties concerned, as per the title deeds, and the authorities concerned sub divided the properties and accordingly, the properties had come to be sub divided as R.S.No.581/1, 2 and 3 and as the properties of the plaintiffs and in their enjoyment were under R.S.No. 581/1, the above said sub division was assigned in their favour and to the properties to which the defendants are entitled to and in their enjoyment, they were assigned R.S.No.581/3 and accordingly, the parties are enjoying the respective properties and it is also admitted that the common

share in the well etc had been assigned under R.S.No. 581/2 and such being the position, the case of the plaintiffs that the defendants are interfering with the possession and enjoyment of the properties of the plaintiffs is not true and hence, according to the defendants, the disputed extent of 0.53 acres has always been in their possession and enjoyment right from the days of their predecessors in interest and hence, the plaintiffs have no cause of action to lay the suit and the suit is liable to be dismissed.

11. In this matter, it is found that the Commissioner had been appointed to note the physical features of the properties concerned and accordingly, he had inspected the properties and filed a report marked as Ex.C1 and on a perusal of the Exs.C1 and C2 would go to show that the Commissioner has noted the permanent stone ridge between the properties of the plaintiffs and the defendants and accordingly, showed the stone ridge construction as ABC in his plan, which has been marked as Ex.C2 and it is thus found that there is a permanent ridge dividing the properties of the plaintiffs and the defendants and the properties situated on the northern side of the ridge belonged to the plaintiffs and the properties allotted on the southern side of the ridge belonged to the defendants. It is therefore found that the stone ridge found in between the properties of the parties concerned is not of a new origin, but a permanent feature for a long period of time and accordingly, it is found that the trees have been grown on the ridge, so as to show clearly the demarcation of the properties of the parties concerned. Accordingly, it is found that even under the partition deed marked as Ex.A1, as seen from the recitals contained therein, the northern share had been allotted to Sengodagounder and the southern share had been allotted to Palaniappagounder. Further, on a perusal of Ex.A1 the partition deed would go to show under the same, the B schedule properties described therein were allotted to Sengodagounder and the C schedule properties described there in were allotted to Palaniappagounder and further, it is seen that the B schedule properties are described in two parts, one consisting of 2.60 acres with specific boundaries and another consisting of 1 acre with specific boundaries and had been allotted to Sengodagounder, which in all measures 3 acres and 60 cents. Further it is seen, Palaniappagounder had been allotted the properties in three parts namely 30 cents, 50 cents and 3 acres described in specific boundaries in the "C" schedule measuring an extent of 3.80 acres under the partition deed. It is found that as regards the share allotted to Sengodagounder, it is found that one part consisting of 2.60 acres is situated to the east of the well, north of common ridge (uddhi), west of forest and south of Ramasamy Chettiyar and also to the east of the C schedule shares and the second part of 1 acre allotted is stated

to be situated to the east of the north-south iteri, to the north of east west ridge/pathway, south of Ramasamy Chettiyar land and to the west of the above said 2.60 acres described in the first part and thus it is seen that a cumulative reading of the recitals of the boundaries found in Ex.A1 would go to show that the properties situated to the north of the common ridge/pathway had only been allotted to Sengodagounder and therefore, it is seen that the stone ridge constructed had been in existence even at the time of the partition and accordingly, been described as common ridge/pathway. It is seen that the disputed extent of 0.50 cents allotted to Palaniappa gounder is located to the west of the common well and common ridge/pathway and B schedule properties, to the south of the east west stone ridge/construction, to the east of the south north iteri and east west iteri and therefore, it is seen that the disputed portion measuring about 50 cents is located only to the south of the stone ridge and when it is found that under Ex.A1, the properties situated on the northern side of the stone ridge had only been allotted to Sengodagounder, it is seen that Sengodagounder or the plaintiffs cannot lay any claim over the extent of properties situated to the southern side of the stone ridge and in such view of the matter, it is seen that even in Ex.A1 Sengodagounder had been granted 3.60 acres, which is situated to the north of the stone ridge and therefore, the claim of the plaintiffs that the defendants during the re-survey conducted in the year 1989, got more extent allotted to their share under R.S.No. 581/3 as such cannot be accepted.

12. At the foremost, the case of the plaintiffs that the fourth defendant had exercised his influence, misused his position as a surveyor to allot more extent in R.S.No. 581/3 is not substantiated by the plaintiffs with acceptable and reliable evidence despite the denial of the same by the defendants. To buttress the same, the plaintiffs have not examined any competent authority. That apart, it is found that, as rightly determined by the first appellate court, there is no material placed on the part of the plaintiffs that at any point of time either Sengodagounder or the plaintiffs had been in possession and enjoyment of the disputed 53 cents of land described in the plaint, said to have been allotted under the partition deed Ex.A1. It is found that parties had been enjoying the properties as allotted in the partition deed with specific boundaries and accordingly, it is found that the parties without effecting any measurements as such based on the boundaries recitals given in the document Ex.A1 had all along been enjoying the properties allotted to them. However, only during the sub division this fact has come to the light that the parties, particularly, the plaintiffs have been enjoying the lesser extent than what had been described in Ex.A1 and on the other hand, the defendants had been enjoying more extent.

Without measuring the properties of the parties concerned at the time of partition, based on the boundaries recitals given in the documents, the parties had proceeded to hold that Sengodagounder had been allotted 3.60 acres and Palaniappagounder had been allotted 3.80 acres by way of the partition deed. On the other hand, in reality it is found that the Palaniappagounder had been allotted an excess extent of 0.53 cents under the partition deed than the extent mentioned in the document Ex.A1 and accordingly, during sub division, the same had come to light and the concerned authorities, at the time of effecting sub division based on the enjoyment of the respective parties and their title deeds had assigned the sub division and in such view of the matter, the present contention of the plaintiffs that the fourth defendant had got more extent in R.S.No. 581/3 by exercising his influence as such cannot be accepted without any material pointing to the same. That apart, as found by the first appellate court no material as such has been placed by the plaintiffs to hold that the Sengodagounder or the plaintiffs had been in possession and enjoyment of the disputed 53 cents in the concerned survey number. On the other hand, it is found from the documents marked on the side of the defendants namely chitta adangal Ex.A2, land tax register extract Ex.A3 and the cultivation adangal Ex.A4 that the disputed extent of 53 cents was in their possession and enjoyment for a long period of time. Accordingly, it is found that based on the respective title deeds of the parties concerned, the sub division has come to be effected and thus it is seen that within the boundaries effected under the partition deed, Sengodagounder had been enjoying only the allotted lesser extent where as Palaniappagounder had been allotted larger extent and enjoying the same and accordingly, it is seen that the Palaniappagounder conveyed the properties to the first defendant and resultantly, the defendants are in possession and enjoyment of the larger extent including the disputed properties namely the 53 cents and accordingly, had been granted the sub division assigned in respect of the same in R.S.No. 581/3.

13. When it is not established by the plaintiffs that the disputed extent of 53 cents has been in their possession and enjoyment at any point of time and when it is found that the said extent has been in possession and enjoyment of the defendants right from the beginning and the same is also buttressed by other documents placed by the defendants and when the Commissioner's report and the boundary recitals in Ex.A1 also would go to show that there is a permanent stone ridge between the properties of the parties concerned even while dividing the properties and when it is further seen that the disputed extent of 53 cents is situated only to the southern side of the permanent stone ridge, when Sengodagounder admittedly been allotted the northern portion and

Palaniappagounder had been allotted the southern portion, it is seen that the disputed extent of 53 cents had been actually allotted to Palaniappagounder and not to Sengodagounder. Accordingly, it is seen that the plaintiffs have not placed any material to hold that either Sengodagounder or they had been in possession and enjoyment of the dispute 53 cents at any point of time.

14. It is contended by the counsel for the plaintiffs that the plaintiffs had not been issued any notice during the said sub division effected in 1989 and at that point of time Sengodagounder was not alive and therefore notice sent to him would not have been served on him and therefore, the sub division effected during 1989 is not binding upon them and therefore, the Courts should not place reliance on the sub division effected for accepting their case. In so far as this case is concerned, the plaintiffs have not claimed any relief that the sub division effected in the properties concerned during 1989 is null and void and not binding upon them. On the other hand, they would only state that no notice had been issued to them before effecting sub division by the concerned authorities. When a question has been put to the plaintiffs' counsel as to what further steps had been taken by the plaintiffs as regards the same, the plaintiffs' counsel would only reply that the plaintiffs had laid the suit for declaring their title to the disputed extent. Further, it is seen that the Tamil Nadu Survey and Boundaries Act 1923, empowers the authorities concerned to determine regarding the boundaries in dispute between the holders of the lands concerned and accordingly, it is found that the authorities concerned have sub divided the properties, taking into account, the enjoyment of the properties by the persons concerned on the basis of their title deeds. It is further found that the above said Act provides for appeal remedy to the aggrieved parties, of the sub division made by the concerned authority. Further It is also seen that the second appeal remedy is also provided to the aggrieved party under the Act and that apart, revision power is also granted to be made to the Director of Survey and settlement, if any party is aggrieved over the survey done and the orders passed under the Act.

15. To cap it all, it is further seen that under Section 14 of the Act, any person aggrieved by the determination of the boundaries under the act is also entitled to institute a suit within a particular period of time from the date of notification for setting aside the same. Thus, it found that when suitable and adequate remedies are available to the plaintiffs as regards the orders passed by the authorities concerned while effecting the said division, the plaintiffs cannot simply contend that the same is not binding on them without resorting to the further

options provided under the Act by way of appeals, revision and institution of suit etc. It is found that the plaintiffs have not sought for any reliefs that the sub division effected by the concerned authorities under the Act is null and void and not binding upon them. In such view of the matter, when the authorities have effected and demarcated the properties of the parties concerned, it is seen that under Section 13 of the Act unless the survey notified by the authorities concerned under Act had been set-aside or modified by a decree of a Civil Court, the record of the survey shall be conclusive proof that the boundaries determined and recorded therein have been correctly determined and recorded. Therefore, when it is the admitted case of the parties concerned that the properties had been subdivided in 1989 and pursuant to thereby, the authorities had passed the order for effecting the sub division, if at all the plaintiffs are aggrieved over the same, it is for the plaintiffs to approach the further authorities provided under the Act to ventilate their grievances by way of an appeal, revision etc. That apart, it is also found that the plaintiffs are entitled to lay a Civil case against the orders passed during the proceedings. The plaintiffs failing to invoke the above said remedies, instead have come forward with the present suit seeking for declaration of their title, contending that the disputed property is in their possession and enjoyment. However, as seen from the above discussions, the plaintiffs have failed to establish that the disputed property had been allotted to Sengodagounder and that the same had been in his possession or in their possession from 1966 onwards. Whereas, it is found that the defendants have established that the Palaniappagounder had been allotted the disputed extent. Accordingly, the defendants had been in possession and enjoyment of the disputed extent. Therefore, when it is found that Sengodagounder had not been allotted the disputed property and only Palaniappagounder had been allotted the disputed property and when the same is buttressed by the subdivision effected during 1989, which has become final and also conclusive proof of the matter, it is seen that the first appellate court has rightly declined the reliefs sought for by the plaintiffs and therefore, I hold that the findings and conclusions of the first appellate court are not shown to be perverse or against the provisions of law warranting any interference.

16. In the light of the above discussions, the contention that the defendants have failed to establish their title to the disputed property merits no acceptance considering the facts that the defendants have clearly established that it is only their predecessor in title who had been allotted the disputed property under the partition deed Ex.A1.

17. Accordingly, when it is found that Palaniappagounder admittedly had sold the portions allotted to him under the partition deed, it is seen that the defendant had purchased the same under Ex.A2, including the disputed portion and accordingly, it is found that it is only the defendants who are in possession and enjoyment of the disputed extent of 53 cents. In such view of the matter, the substantial questions of law formulated in this second appeal are answered against the plaintiffs and in favour of the defendants.

18. In conclusion, the second appeal fails and accordingly dismissed with costs. Consequently, connected miscellaneous petition, if any is closed.

Sd/-  
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Sub Judge, Bhavani.
2. The Additional District Munsif, Bhavani.
3. The Section Officer, VR Section, High Court, Madras

+1cc to M/s.Zeenath Begum, Advocate, S.R.No.82215

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