

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.12.2017

PRONOUNCED ON : 12.12.2017

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.Nos.924 and 925 of 2001

1. Sevathan
2. Madhu
3. Minor Kariaraman
(Minor third Appellant by
guardian Sevathan (1st Appellant) ... Appellants

Vs.

1. Subramani
2. Poochiammal
3. Saroja
4. Gandhamani ... Respondents

Common Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree of the Principle Sub Judge, Salem, dated 26.06.1996 passed in A.S.Nos.49 & 30 of 1996 confirming the decree of the Principle District Munsif, Salem, dated 14.11.1995 in O.S.No.875 of 1994.

For Appellants : Mr.P.Jagadeesan

For Respondents : Mr.S.Sivakumar for R1 to R3

Respondent No.4 : Died (Time Expired)

COMMON JUDGMENT

The second appeals 924 & 925 of 2001 are directed against the judgment and decree dated 26.06.1996, passed in A.S.Nos.49 & 30 of 1996 on the file of the Principle Sub Court, Salem, preferred against judgment and decree dated 14.11.1995 passed in O.S.No.875 of 1994, on the file of the Principle District Munsif Court, Salem.

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 suit property was originally owned and possessed by Manian as per the patta issued to him on 06.4.64 by R.D.O, Salem and he was in possession and enjoyment of the same, till his death and the plaintiffs are his legal heirs. The defendants' request to the plaintiffs to sell the suit property to them was not acceded to, by the plaintiffs and hence, the defendants started to give troubles to the plaintiffs and resultantly, the plaintiffs issued a notice dated 13.7.93, in connection with the same and to the same, the defendants sent a reply dated 19.8.93, claiming the title to the suit property as per the sale deed said to have been executed by Sevathan and contended that the patta had been given to Manian only in his capacity as the Manager of the joint family comprising of himself and his two brothers and the plea of the defendants that an oral partition had been effected amongst the brothers and in the said partition survey nos.81/1 and 81/3 were divided into two shares and one share was allotted to Sevathan and Sevathan had sold the property allotted to him in the Survey numbers to the defendants. The patta was issued only in favour of Manian in his individual capacity and not as the Manager of the joint family and there is no partition as alleged by the defendants among the brothers. The sale deed dated 13.5.87 is void 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. It is false to state that the suit property originally belonged to Manian. On the other hand, the said Manian and his two brothers namely Sevatha Manian and Sevathan constituted the Hindu joint family and accordingly, Manian being the manager of the family, the assignment of the suit property was given in his name and in his capacity as the manager. Accordingly, the suit property was in the possession and enjoyment of the joint family above stated and in the partition held amongst the members of the joint family, the suit property was divided and Sevathan was allotted 86 cents in S.No.81/1 and 56 cents in S.No.81/3 and Sevathan was in possession and enjoyment of the allotted property by paying kist etc., and he sold the allotted property to the defendants by way of the registered sale deed dated 13.5.87 and pursuant to the same, it is only the defendants who are in the possession and enjoyment of the suit property by paying Kist, obtaining patta etc., and therefore, the plaintiffs cannot claim that they are the owners of the suit property as putforth by them and hence, the suit is liable to be dismissed.

6. In support of the plaintiffs' case PWs 1 to 3 were examined, Exs.A1 to A7 were marked. On the side of the defendants, DW1 to 3 were examined and EXs. B1 to B9 were 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 decline the relief of declaration sought for by the plaintiffs. However, granted the relief of permanent injunction as prayed for. Aggrieved over the same, separate first appeals had been preferred by the plaintiffs and the defendants.

8. The first appellate Court, on an appreciation of the materials placed on record, was pleased to allow the first appeal preferred by the plaintiffs and thereby, decreed the suit in its entirety and granted the reliefs as prayed for and dismissed the first appeal laid by the defendants. Aggrieved over the same, the present second appeals have come to be laid.

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

1. Whether the suit for declaration of title and permanent injunction is maintainable without challenging the sale deed (Ex.A6) under which the defendants have purchased the suit property even as early as in the year 1987?
2. Whether the Lower Court is right in holding that the Plaintiffs are in possession and enjoyment of the suit property especially when the patta in respect of the suit property was issued in the names of the defendants under Ex.A7?
3. In view of the well considered finding of the trial Court that the description of the suit property is erroneous, whether the Lower Appellate Court is right in granting a decree for declaration of title to the suit property in favour of the plaintiffs?
4. Whether the suit for declaration of title to the suit property and permanent injunction is maintainable especially when the description of the suit property is found to be incorrect?

10. The plaintiffs claiming title to the suit property on the footing that the suit property was originally assigned in favour of Manian by R.D.O. Salem on 06.4.64 and accordingly, it was Manian who was in possession and enjoyment of the suit property till his death and after his death, the plaintiffs being his legal representatives, continued to be in possession and enjoyment of the suit property. The defendants in their written plea have not disputed the assignment/patta granted to Manian, in respect of the suit property. However, they would contend that Manian had two brothers namely Sevatha Manian and Sevathan and they constituted a Hindu joint family and thus, according to them, the patta/assignment was made in favour of Manian only in his capacity as the Manager of the joint family and not in his individual capacity and therefore, it is stated that the suit property was assigned in favour of the joint family consisting of the above said three persons. Further, according to the defendants, in the partition effected amongst the members of the joint family, the suit properties have come to be allotted to the share of Sevathan and Sevathan after enjoying the same, subsequently on 13.5.87, alienated the suit property in favour of the defendants and thus, it is contended that the defendants have acquired titled to the suit property and enjoying the same and hence the plaintiffs' are not entitled to obtain the reliefs sought for.

11. From the documents produced on the side of the plaintiffs, it is found that the patta for the suit property had been granted only in favour of Manian, which could be evidenced from Ex.A1. As already adverted to, the defendants have not disputed the patta/assignment in respect of the suit property granted in the name of Manian. A perusal of Ex.A1 would go to show that there is no reference contained to show that the same had been issued in favour of Manian in his capacity as the Manager of the joint family. The Chitta extract marked as Ex.A3 and the adangal extract coupled with the kist receipts marked as Ex.A3 and Ex.A7series for the patta no.51, all would go to show cumulatively that the suit property had been assigned or granted only in favour of Manian in his individual capacity and accordingly, he has exercised absolute ownership over the same by obtaining patta and paying kist and his lawful title, possession and enjoyment had also been fortified by Chitta and adangal marked in this case.

12. However, the trial Court had negatived the relief of declaration sought for by the plaintiffs, on the footing that the suit property had not been properly described. A perusal of the plaint would go to show that the suit property had been described to be situated under patta no.51 measuring 0.69.5 hectares in S.No.81/1 (86 cents) and 0.45.4 hectares in

S.No.81/3 (56 cents) in all 1.15.0 hectares (142 cents) situated in Nallur village, Yercaud Taluk, Salem district within specific boundaries. It is thus found that the extent of the lands available in the said survey numbers in hectares had been correctly given in the plaint. It is further found that from the materials placed on behalf of the plaintiffs, the plaintiffs claim title only in respect of the 1.15.0 hectares in S.Nos.81/1 and 81/3 and as described in the plaint. However, the trial Court finding that within the boundaries specified, while describing the suit property as S.No.81/2 is also found to be located within the same, the trial Court held that the suit property had not been properly described and accordingly, refused the relief of declaration in favour of the plaintiffs. However, when the plaintiffs had filed the suit only in respect of the property as above stated and particularly, with reference to the extent found in the said survey numbers which have also been correctly described in the plaint and the total extent comes to 1.15.0 hectares, the mere existence of another survey number within the boundaries specified in the plaint by itself would not lead to the conclusion that the suit property had been wrongly described by the plaint. As rightly determined by the first appellate Court, it is not the case of the defendants that they lay a claim in respect of S.No.81/2. The defendants also claim title to the property only situated in S.No.81/1 and 81/3 measuring 0.69.5 hectares and 0.45.4 hectares in all measuring 1.15.0 hectares. Such being the position, the non mentioning of another survey number located within the boundaries by itself would not lead to the conclusion that the plaintiff had wrongly described the suit property particularly, when the parties in the lis are not raising any dispute over the survey no.81/2. As rightly determined by the trial Court, the omission on the part of the plaintiffs in mentioning S.No.81/2 by itself would not amount to improper description of the suit property and hence, the first appellate Court has rightly set-aside the judgment and decree of the trial Court as regards the refusal of the relief of declaration in favour of the plaintiffs.

13. As earlier seen, the defendants have only raised the plea that the patta/assignment had been granted in favour of Manian only in his capacity as the Manager of the joint family. Inasmuch as they had admitted the grant of patta in favour of Manian, as rightly put forth by the plaintiffs' counsel, the non marking of the D-card issued to Manian by itself would not be fatal to the plaintiffs case. It is not the case of the defendants that Manian had not been granted patta in respect of the suit property. Now coming to the question whether patta had been granted in the individual capacity of Manian or only in his capacity as the Manager of the joint family, according to the defendants, in the partition effected amongst the joint family members, it is their case that Sevathan had been allotted the suit property. However, the alleged claim of the partition made

by the defendants, is disputed by the plaintiffs. Despite the same, no proper proof has been placed on the part of the defendants to establish their plea of partition. The defendants in their written statement have not stated as to on what date, month and year the alleged partition took place between the joint family members. Further, they have also not stated as to what are the properties which were the subject matter of the alleged partition. Further, they have also not whispered as to in whose presence or through which panchayatdars, the joint family had chosen to effect the partition in respect of the properties. Further, it has also not been stated as to whether the partition had been effected by a written instrument or orally. All these facts are not at all given or detailed in the written statement other than mentioning in a vague manner that in the partition effected amongst the joint family members, the suit property had been allotted to Sevathan. Further, the defendants have also not pleaded and established as to what are the properties allotted to the other joint family members etc. Further, to show that if really such a partition had been effected and as putforth by them, Sevathan had been allotted the suit property, there is no material placed by the defendants to prove that subsequent to the alleged partition, Sevathan had been in possession and enjoyment of the allotted property i.e. the suit property by obtaining patta and paying kist etc., No patta, no kist receipts no chitta and no adangal extracts in the name of Sevathan had been placed by the defendants to establish that Sevathan had exercised absolute ownership in respect of the property i.e. the suit property said to have been allotted to him in the alleged partition.

14. All these facts would cumulatively only lead to the conclusion that inasmuch as the plea of partition projected by the defendants is false and not true and as Sevathan had not been allotted the suit property as putforth by them, the defendants are unable to place any materials as such to hold that Sevathan had been allotted to the suit property and been enjoying the same as absolute owner thereof, pursuant to the alleged partition. Further, in the sale deed dated 13.5.87 marked as Ex.A6, it has not been mentioned by Sevathan that the suit property had been allotted to him in the partition effected amongst his brothers as putforth by the defendants. All that has been recited in Ex.A6 is that Sevathan has claimed to have acquired title to the suit property ancestrally. Therefore, the plea of partition projected by the defendants cannot be believed and accepted in any manner. Further, as rightly determined by the first appellate Court, the documents produced by the defendant as Exs.B1 to B9 are found to have emanated pursuant to the sale deed dated 13.5.87, in the name of the defendants and therefore, when the defendants have failed to establish the title of Sevathan, based on Exs.B1 to B9, the defendants cannot be held to be the lawful title holders of the suit property. In

addition to that, as rightly determined by the first appellate Court, the claim of conversion of patta in the name of the defendants under Ex.B7 also cannot be relied upon to uphold the case of the defendants, when it is found that the said mutation had not been effected in favour of the defendants after giving due notice to all the Pattadars/stake holders of the property concerned and the Courts below have rightly not placed reliance upon Exs.B7. Exs. B8 and B9 are found to be related to different pattas and not pertaining to patta no.51. Therefore, the above said documents are also of no use to sustain the defendants' version. Thus, it is found that the defendants have resultantly failed to establish that their vendor had a valid title to the suit property. Such being the position, the defendants' cannot be held to have a valid title and lawful possession and enjoyment of the suit property as claimed by them.

15. In the light of the above discussions, when the defendant have not established their title of the vendor and when the plaintiff are not parties to the sale transaction dated 13.5.87, it is found that there is no need on the part of the plaintiffs to challenge the sale deed dated 13.5.87 marked as Ex.A6. When the patta conversion made under Ex.B7 is found to be not in accordance with law and without giving notice to the necessary parties, the Courts below were right in discarding the same and no exception could be taken with reference to the rejection of Ex.B7. The first appellate Court had rightly approached the issue in the correct perspective as regards the description of the suit property by the plaintiffs and found that there is no mis-description of the suit property as held by the trial Court, particularly, when there is no dispute as regards the S.No.81/2 and no inference is called for in the above said findings of the first appellate Court. Resultantly, it is found that the suit property has been properly described and hence, the first appellate Court is right in upholding the plaintiffs' case and granting the reliefs as prayed for in entirety in the plaint. Accordingly, the substantial questions of law formulated in the second appeal are answered in favour of the plaintiffs and against the defendants.

16. In conclusion the second appeals fail and are accordingly dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Asst.Registrar (CO)

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Sub Asst. Registrar

To

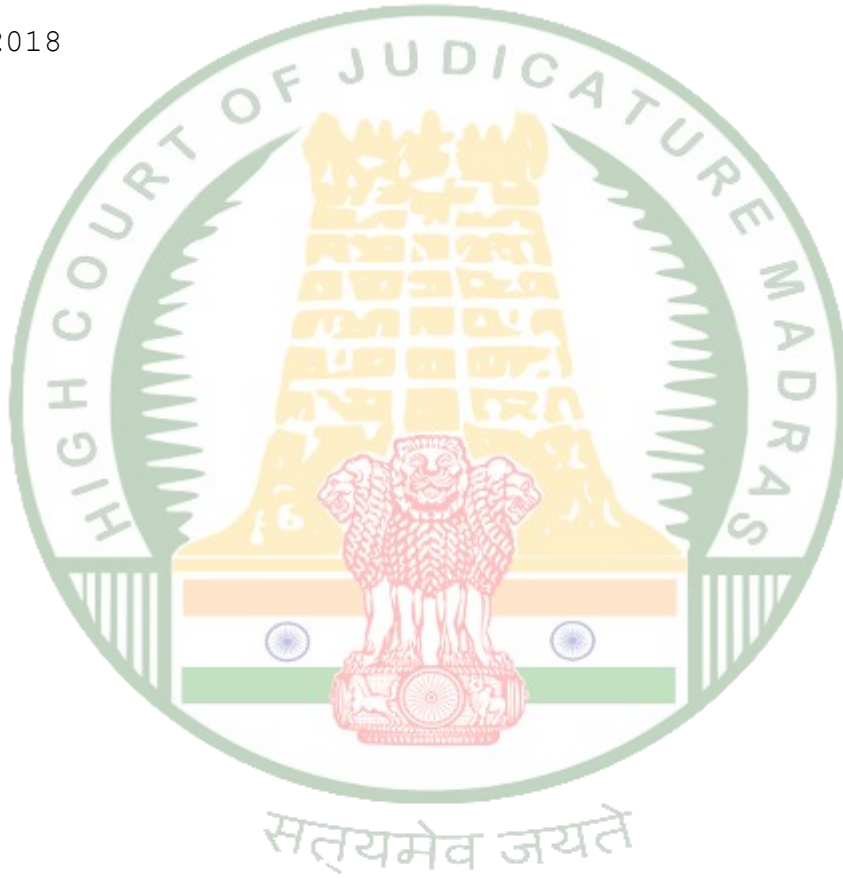
1. The Principle Subordinate Judge, Salem.

2. The Principle District Munsif, Salem.

+1cc to Mr.S.Sivakumar, Advocate sr.no.89194

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