



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 08.11.2017

Pronounced on : 22.12.2017

CORAM

THE HONOURABLE **MR. JUSTICE S. BASKARAN**

S.A. (md) .No.568 of 2015

and

C.M.P. (MD) .No.271 of 2016

1. Rengan,
rep. By Power Agent Baskar @Veeran
S/o. Rengan

Chinnaiah (died)

2. Rengan
3. Selvarasu
4. Koothayee
5. Muthulakshmi

... Appellants/Plaintiffs

Vs.

1. Karuppaiah
2. Mani
3. Raman

... Respondents/Defendants

Prayer: This Second Appeal is filed under section 100 of Civil Procedure Code, against the Judgment and Decree dated 22.04.2014 passed in A.S.No.21 of 2013 by the learned Principal District Judge, Pudukkottai, confirming the judgment and decree dated 02.06.2011, passed in O.S.No.103 of 2003 on the file of the District Munsif cum Judicial Magistrate Court, Keeranur.

For Appellant : Mr.M.S.Sureshkumar

For Respondents : Mr.G.Sridaran

JUDGMENT

Challenging the judgment and decree dated 22.04.2014 passed in A.S.No.21 of 2013 by the learned Principal District Judge, Pudukkottai, confirming the judgment and decree dated 02.06.2011, passed in O.S.No.103 of 2003 by the learned District Munsif cum Judicial Magistrate Court, Keeranur.



2.The plaintiffs, who lost before the courts below are the appellants herein.

2.For the sake of convenience, the parties will hereinafter be referred to as they were arrayed in the trial court.

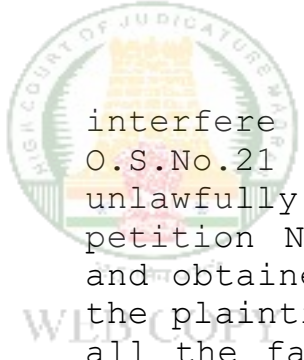
3.The case of the plaintiffs is that the suit property belongs to them and they are in continuous possession and enjoyment of the suit property. The property measuring 32 cents, comprised in old S.F.No.518/1, which includes the suit property was owned and enjoyed by one P.Mariyayee for several decades. She had four sons and after the death of her husband, Palaniyandi as well as Mariyayee herself, their two sons Kuppan and Veeran succeeded to the entire property of 32 cents comprised in old S.F.No.518/1. Since the other two sons of Mariyayee namely Chinnathambi and Marimuthu died unmarried, in the settlement operation, the said property was registered in the name of Mariyayee and her surviving two sons became the absolute owners of the entire property of 32 cents including the suit property. After the death of the above said two sons of Mariyayee, Veeran and Kuppan, the plaintiffs 1 & 2, who are the sons of said Kuppan and the third plaintiff, who is the son of Veeran succeeded the suit property as legal heirs. Subsequently, during Natham settlement operation, subdivision of the property in old S.F.No.518/1 took place and ryot house patta was wrongly granted in respect of the suit property in favour of the father of the defendants one Sannasi. Aggrieved over the same, the first plaintiff herein filed W.P.No.38844/2002 to rectify the mistake and to issue patta to correct person. After proper enquiry, the Sub-Collector passed patta transfer order and the plaintiffs became absolute owners of the suit property. They are in possession and enjoyment of the suit property. The plaintiffs produced the certified copy of the order passed in W.P.No.38844 of 2002 as EX.A.4 and the certified copy of the order of the District Collector, Pudukkottai as Ex.A.5. The plaintiffs also produced patta passbook in the name of Rengan, who is son of Kuppan as Ex.A.1 for patta Nos.365 and 608. Ex.A.2 is A Register copy for patta No.556 in the name of P.Mariyaye. The certified copy of FMB sketch for Sy.No.518 is produced as Ex.A.6. Thus, the plaintiffs contend that the entire suit property belongs to them and the defendants, who have no right or interest over the suit property are absolute strangers, made several attempts to grab the suit property from the plaintiffs. On 15.09.2003, the defendants openly threatened, to trespass into the suit property. The plaintiffs also lodged a complaint with Keeranur Police and as the possession of the property will plaintiffs is sought to be interfered with by the defendants, they have come forward with the service of process in the relief of permanent injunction for restraining the defendants from interfering with the peaceful possession and enjoyment of the suit property by them. Hence, the suit.



4.(i) On the other hand, the defendants, opposing the suit filed written statement, contending that the genealogy filed by the plaintiffs is false and seeks to treat the genealogy filed by them as part and parcel of their statement. According to the defendants, the total extent of 32 cents in Sy.No.518/1, originally belonged to Appavu @ Karuppan, his two brothers Rengu pillai, Muthukaruppan and their parents. After the demise of their parents, as the eldest member of the family, patta for the extent of 32 cents was given in the name of Appavu. One of the above said three persons namely Rengu pillai died unmarried, leaving behind no legal heirs. Thus, the entire property belongs to Ayyavu @ Karuppan and Muthukaruppan. Thereafter, the said Ayyavu @ Karuppan died, leaving behind his sons Kaladi Malaiyan and Peraman @ Palaniyandi and two daughters Sellayee and Sevunthayee. The above said Muthu Karuppan also died 60 years ago leaving behind his only son Aaran as his only legal heir. Since Kaladimalaiyan was the eldest member among his family members, patta was issued in his name. The entire extent of 32 cents was enjoyed by the said Kaladimalaiyan, his brother Palaniyandi, cousin brother Aaran and thereafter divided the property among themselves. The said Kaladimalaiyan went away to Srilanka. The said Palaniyandi @ Peraman married one Mariyayee. They gave birth to a girl child viz., Chinnathal and male child Kalimuthu. Sevunthayee, the sister of Kaladimalaiyan and Palaniyandi was given in marriage to Kuppan, the father of the plaintiffs 1 & 2 herein. For want of property, those persons came over to suit property village and as they were in need of place, 10 kuzhi of land in the middle of eastern side 16 cents was sold to Veeran, Kuppan's brother on 14.02.1944. That property measuring 10 kuzhi was enjoyed by the father of the first plaintiff, Kuppan. Apart from the 10 kuzhi of property, the plaintiffs have no right, title or interest in the remaining extent of property in Sy.No.518/1. The husband of Mariyayee, one Palaniyandi @ Peraman died 50 years ago, leaving behind him Kalimuthu and Chinnathal as his legal heirs. The said Kalimuthu and his uncle Malaiyan sold 7 cents of property in old Sy.No.518/1 to one Ponnaiah and he is in possession and enjoyment of the same. A suit in O.S.No.389/1962 was filed by the father of the plaintiffs against the defendants' father Sannasi and the said suit was ended in favour of Sannasi. The certified copy of written statement filed in O.S.No.389/62 is produced as Ex.B.10. The certified copy of judgment and decree passed in O.S.No.389/62 are marked as Ex.B.11 and 12 and the suit register copy of O.S.No.389/62 is Ex.B.13. The said suit was decreed in favour of the defendant's father Sannasi. He took possession through court and 5½ cents in the southern portion of the suit property was sold to the second defendant herein, who is his own son.

<https://hcservices.ecourts.gov.in/hcservices/>

(ii) The suit property was subdivided into S.F.No.518/1. As the plaintiffs and the son of the first plaintiff tried to



interfere with the second defendant's possession, he filed O.S.No.21 of 2003 and the same is pending. As the plaintiffs unlawfully obtained patta, the defendants filed a revision petition No.9 of 2003 before the District Collector, Pudukkottai and obtained stay order against the issuance of patta in favour of the plaintiffs. As the plaintiffs have come to court, suppressing all the facts, the defendants seek dismissal of the suit. It is further stated that defendants' father Sannasi executed a sale deed in favour of one Alagan on 25.10.68 and repurchased the same property on 20.01.1978 from the said Alagan. As the plaintiffs are not having any title and possession of the suit property, the defendants filed counter claim seeking declaration and injunction in respect of the suit property.

5.Disputing the same, the plaintiffs filed a reply statement stating that the extent of 32 cents in old S.F.No.518/1 originally belong to Mariyayee, w/o.Palaniyandi, the paternal grandmother of the plaintiffs. During natham settlement, the above said extent of 32 cents was divided into 518/1, 518/1B, 518/1C, 518/1D and 518/1E, which stand in the names of defendants' legal heirs. Subsequently, as per direction of this Court in W.P.No.38844 of 2002, patta was transferred in favour of the plaintiffs. Thus, the plaintiffs, who was denying the counter claim of the defendants, seeks to decree the suit as prayed for.

6.The trial court, on perusal of the pleadings, framed the following issues:

"1.Whether this suit is bad for non-joinder of necessary parties?

2.Whether the cause of action as set-out in the plaint is true?

3.Whether the plaintiff is entitled for the relief of permanent injunction as prayed for?

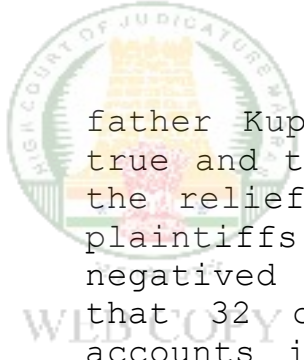
4.Whether the defendants have got absolute title interest and possession with respect to the suit property at the time of filing this suit till date?

5.Whether the defendants are entitled for the relief of declaration of consequential relief of permanent injunction as prayed for?

6.To what other reliefs, the parties are entitled to?"

7.During the course of trial, the plaintiffs examined two witnesses and produced Exs.A.1 to A.13. While the defendants examined D.W.1 and produced Ex.B.1 to B.13.

8.On the basis of oral and documentary evidence placed before it, the trial court, found that total extent of 32 cents in ~~service source: https://hcservices.ecourts.gov.in/hcservices/~~ was subdivided into five subdivisions and the suit dispute relates to S.F.No.518/1B. It is also stated by the trial court that already in O.S.No.389/62, the present plaintiffs'



father Kuppan admitted the genealogy filed by the defendants as true and the said suit was decreed in favour of Sannasi, granting the relief of declaration and possession. The claim of present plaintiffs' father Kuppan, on the basis of adverse possession is negatived in the said O.S.No.389/62. The trial court also found that 32 cents in Sy.No.518/1 was entered in the samasthanam accounts in the name of Kaladimalaiyan and the same belongs to Peraman and Kaladimalaiyan only. Thus, the trial court held that the defendants have got absolute title over the property and the plaintiffs have not proved their right over 10 kuzhi of land and also possession of the suit property. As the plaintiffs have not established the fact of possession of suit property, the suit was dismissed.

9. Aggrieved over the same, the plaintiffs filed A.S.No.21 of 2013 on the file of the Principal District Court, Pudukkottai, contending that the trial court has failed to appreciate the evidence in proper manner.

10. The lower appellate court, after considering the materials available on record, framed the following points for determination:

"1. Whether the plaintiffs are legal heirs of Mariyayee?

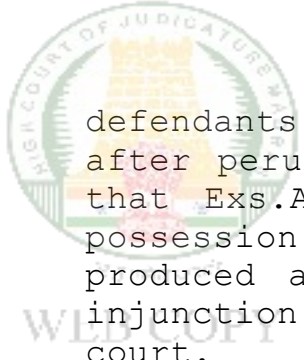
2. Whether the plaintiffs are in possession of the suit schedule property?

3. Whether the plaintiffs are entitled to get permanent injunction?

4. Whether the defendants are entitled for declaration that the suit schedule properties are belong to them?

5. Whether the defendants are in possession of the suit schedule property?"

11. The lower appellate court held that the old survey number of the property is 518/11 and new survey number is 518/1 and the total extent of the property is 32 cents. The first appellate court pointed out that the suit is filed for bare injunction and the defendants have raised a counter claim, seeking declaration and injunction in respect of the suit property, claiming themselves to be in possession. The first appellate court found that neither party has produced any sale deed in their favour and in such circumstances, it is to be seen whether possession of the property has been established by either party by producing the evidential record like chitta, adangal and house tax receipt. According to the first appellate court, except Ex.A.12-Adangal register, the plaintiffs have not produced any document to prove their possession. As per Ex.A.12-adangal register, 518/11 stands in the name of Sannasi and Rengan and patta for the same is in sy.No.608 and on the basis of the same, the first appellate court held that it appears that the father of the



defendants one Sannasi was also in possession of the property and after perusing the documents, the first appellate court concluded that Exs.A.1 to 13 do not reveal that the plaintiffs were in possession of the suit property. As the plaintiffs have not produced any document to prove their possession, the relief of injunction sought for by them was denied by the first appellate court.

12.Further it held that as per Exs.B.3 and B.4, Sannasi was having more than 12 cents in the suit property and the defendants are the sons of said Sannasi. The first appellate court also held that it is evident from Exs.B.3 and B.4, the defendants are the legal heirs of Sannasi and they are the owners of the suit property and as the suit property is a vacant land, the possession is to follow title. It is also stated that the defendants are found to be in possession of the suit property and they are entitled for the relief of declaration. Even though the trial court failed to grant injunction, as there are no appeals preferred by the defendants, the first appellate court confirmed the finding of the trial court, whereby the suit filed by the plaintiffs was dismissed and the counter claim of the defendants was decreed as confirmed.

13.Aggrieved over the same, the present second appeal is preferred by the unsuccessful plaintiffs.

14. In the memorandum of grounds of appeal, the following substantial questions of law are raised by the appellants/plaintiffs:

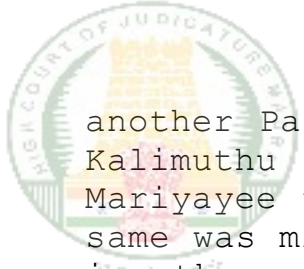
"1.Whether the lower appellate courts have jurisdiction to entertain the appeal when it has to be taken on file by the SubCourt, Pudukkottai?

2.Whether the courts below had seen the deposition that there are two Mariyayes which is taken advantage by the defendant. Plaintiffs side Mariyayee is wife of Palaniyandi and Defendants side Mariyayee is wife of Peruman?

3.The genealogy of the appellants/plaintiffs was disbelieved by the courts below?

4.Whether the appellate court is correct to pass judgment and decree in A.S.No.21/2013, pending A.S.No.163/2013 and A.S.No.86/2012 with regard to the same parties in same issue and same suit properties instead of passing a common judgment?"

15.The learned counsel for the appellants/plaintiffs contended that there were two persons by same name Mariyayee and taking advantage of the same, the defendants have manipulated the service records and also created encumbrance over the suit property to their advantage. It is pointed out by the plaintiffs that the Palaniyandi is the husband of Mariyayee and there was



another Palaniyandi @ Peraman and he has got two children by name Kalimuthu and Chinnathal. As the said Peraman married one Mariyayee who is different from Palaniyandi's wife Mariyayee, the same was misused by Kalimuthu to contend that the patta was issued in the name of Mariyayee W/o Peraman. According to the plaintiffs, the property originally belonged to the grant parents of the plaintiffs and the entire extent of 32 cents in S.No.518/11 was owned by Mariyayee W/o Palaniyandi and Kalimuthu, S/o Peraman is not the legal heir of Mariyayee and Palaniyandi. Thus, it is contended that the sale under Ex.A7 by Sannasi, S/o.Muthukaruppan to Kalimuthu S/o Peraman is not proper. It is further contended that on 20.01.1978, Sannasi sold the property to Alagan S/o Veeran and the same was re-conveyed back to Sannasi by Alagan. Subsequently, the property measuring 14 cents out of 32 cents in S.No.518/1B was sold. The said Alagan is stated to be the brother-in-law of the said Sannasi. According to the plaintiffs, the S.No.518 which consists of 32 cents in toto was sub divided into 518/1A, 518/1B, 518/1C, 518/1D and 518/1E and the subject matter in A.S.No.21/2003 before the first Appellate Court was in S.No.518/1B. It is also pointed out that there are two appeals in A.S.No.163/2013 and A.S.No.86/2012, wherein the subject matter was the property in Sy.Nos.518/1C and 518/1E. It is contended by the plaintiffs that the said two appeals are still pending and the same should have been clubbed along with the other appeal A.S.No.21/2013 and disposed of, but the same has not been done. It is also pointed out that the property covered under the sale deed, dated 17.04.1944, is a different property and it is not the suit property. According to the plaintiffs, Mariyayee is the grand mother of first plaintiff, but the first Appellate Court misconceived her as the mother of the first plaintiff. It is also pointed out that Ex A13 patta stands in the name of Alagan, S/o.Veeran and Mariyayee, W/o.Palaniyandi and that itself would establish the joint ownership of the property. However the Courts below failed to appreciate that. On these grounds, the learned counsel for the appellants/plaintiffs contends that the Courts below have not properly appreciated the oral and documentary evidence produced before them and thus, prays for interference of the decision of the Courts below.

16.Per contra, the learned counsel for the respondents/defendants would contend that the points urged by the learned counsel for the appellants/plaintiffs was elaborately considered by the Courts below and both the Courts below, on proper appreciation of the facts, reached the conclusion to negative the claim of the plaintiffs and as the findings are concurrent in nature, interference may not be warranted at the hands of this Court, while exercising jurisdiction under section 100 CPC. Thus, the defendants seeks dismissal of the Second

17.This Court bestowed its best attention on the rival

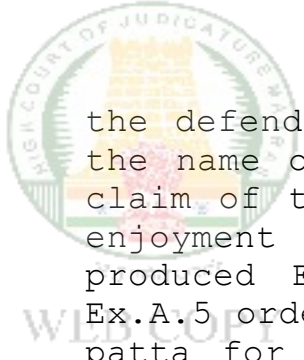


submissions and also perused the records available and the impugned judgments passed by the Courts below.

18. The plaintiffs herein have sought for permanent injunction in respect of the suit property measuring 0.05.5 hectares in S.F.No.518/1B situated at Kulathur village, Pudukkottai District. The suit property is said to be a vacant house site property. According to the plaintiffs, the suit property was part of Sy.No.518/1 which consists of 32 cents and entire extent belong to Mariyayee w/o.Palaniyandi. She had four sons and two of them Chinnathambi and Marimuthu died unmarried and after the demise of Mariyayee and her husband Palaniyandi, the property was possessed by her other two surviving sons Kuppan and Veeran, who are the fathers of the plaintiffs herein. According to the plaintiffs, they are in possession and enjoyment of the property as descendants of the said Mariyayee.

19. On the other hand, the same has been disputed by the defendants, who claim that the property originally belong to the parents of Appavu @ Karuppan, Rengupillai and Muthukaruppan. The defendants further stated that Appavu was the elder family member and his name was entered in all revenue records and his legal heirs are Kaladimalaiyan, Chellayee, Sevunthayee and Peraman @ Palaniyandi. Sevunthayee was married to Kuppan, father of 1st and 2nd plaintiffs, whereas, Muthukaruppan died leaving behind his only legal heir Aaran and Appavu died issueless. The defendants stated that Appavu and Muthukaruppan divided the entire 32 cents into east and western sides and the eastern side portion of 16 cents were given to Appavu @ Karuppan, while western side portion was given to Muthukaruppan. It was further stated by the defendants that Kaladimalaiyan and Peraman @ Palaniyandi enjoyed the eastern 16 cents. Subsequently, Kaladimalaiyan went to Srilanka and stayed there. Their son Peraman @ Palaniyandi married Mariyayee and they gave birth to Kalimuthu and Chinnathal. It is contended by the defendants that the father of the first and second plaintiffs is Kuppan and his wife's name is Sevunthayee, who is the sister of Peraman @ Palaniyandi and Malaiyan. It is further stated that after marriage, Kuppan has no place to reside. Hence, he shifted to the village of defendants and 10 kuzhi of land was sold to Veeran, brother of the said Kuppan on 14.02.1944 in the suit survey number and apart that, he has got no other interest in the property. Thus, the defendants contend that the plaintiffs have no right or interest in the suit property, as claimed by them.

20. The suit is filed for bare injunction by the plaintiffs. The plaintiffs are relying upon Ex.A.12 document to substantiate their claim. They have not produced any title documents to establish their title. Ex.A.12 is a natham adangal register for Sy.No.518/1C, 518/1D, 518/1E. In the said document, the names of first plaintiff Rengan as well as Sannsi, father of



the defendants is included. The courts below have held that as the name of both the plaintiffs and defendants are included, the claim of the plaintiffs that they are in absolute possession and enjoyment of the property cannot be accepted. The plaintiffs produced Ex.A.1/Patta passbook, which was granted, as per the Ex.A.5 order of the Sub-Collector. Admittedly, the order granting patta for the plaintiffs under Ex.A.5 has been subsequently set aside by the order of the Revenue Divisional Officer, dated 18.02.2005, which is produced as Ex.B.1. It is admitted by both that total extent of 32 cents in S.F.No.518/1 has been sub-divided into 5 subdivisions. Even though Ex.B.1 order, whereby the plaintiffs' name was removed in the patta book, has been challenged before the Land Revenue Commissioner, the same is still pending. However, Ex.B.1 order is not set aside so far as per the materials available before the court. Thus, the patta granted to the plaintiffs under Ex.A.5 has been set aside and now, it stands in the name of Sannasi, father of the defendants. Further, the defendants also stated that earlier, the father of the plaintiffs herein one Kuppan filed O.S.No.389/62 against the father of defendants herein in respect of portion the property in the present suit survey number and in that case, the plaintiffs' father Kuppan filed a statement, admitting that Peraman @ Palaniyandi and Kaladimalaiyan and Sevunthayee are their brother and sister. The certified copy of the said statement is Ex.B.5. Further O.S.No.389 of 62 the suit filed by the father of the defendants against the father of the plaintiffs was decreed as prayed for. In proof of the same, certified copy of the said judgment and decree are produced as Exs.B.11 and B.12. Further, certified copy of suit register extract in respect of O.S.No.368 of 1992 was also filed as Ex.B.13. Pointing it out, the learned counsel for the defendants contended that in the earlier suit itself, the claim of father of the plaintiffs herein of title over portion of the property in present suit Survey Number has been negatived and in the contrary, declaration of title has been made in favour of Sannasi, father of the defendants herein. In such circumstances, the learned counsel for the defendants contended that as title has already been decided in the earlier suit O.S.No.389/62 between the forefathers of plaintiffs and defendants herein, it is not open to the plaintiffs to come forward with the present suit and the same cannot be entertained.

21. In support of this contention, he relied upon the ruling reported in **AIR 1971 Supreme Court 2070, (A.J.Pinto and another vs. Smt Sahebbi Kom Muktum Saheb (dead) by her legal representatives and others)**, wherein, it is held as follows:

"6. As already observed, the appeal from the order
 so far as the other appeal is concerned the main argument



addressed by Shri Bishan Narain is that under the Mohammeden law there could be a partial partition and that, therefore, in the partition suit all joint properties need not have been taken into account. The counsel added that the plaintiff had a decree only in respect of three properties against the appellant and in execution of that decree the appellant could not be dispossessed of the other properties in respect of which there may have been a decree against the other defendants on the basis of compromise in 1949. This argument presupposes that the Bombay High Court had completely set aside the compromise even in regard to the properties other than the three properties which alone were the subject matter of that appeal. We have not been persuaded to so hold and indeed the subsequent history of the litigation does not support this contention. That being the position the decree in respect of the properties other than the three properties which were the subject matter of the decree dtd February 11, 1955 must be held to be final and binding on the appellant notwithstanding the fact that the decree in respect of those properties was again incorporated in the decree of February 11, 1955 so that the consolidated decree may reflect the combined effect of the final decision of the controversy in the suit. Shri Bishan Narain indeed conceded that one we hold that the order of the Bombay High Court remanding the case to the trial court did not set aside the entire compromise decree and that the decree of 1949 in respect of the other properties became final though its terms were repeated in the decree of February, 1955 then he has no case. The question whether under Mohammaden law there can be partial partition does not arise for determination on the view taken by us regarding the scope of the present controversy between the parties. We, therefore, express no opinion on this point."

Similarly, he relied upon the ruling reported in **AIR 1930 Madras 471, (Pichai Konar Vs Narasimha Rama Iyer)**, wherein, it is held as follows:

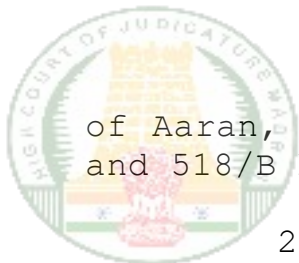
"If a portion of a decree has become res judicata, then the rest of the decree based on same reasoning would also become res judicata even with reference to the other portion of the decree which alone is brought for review before the appellate court, where, therefore, it is decided that a plaintiff is entitled to subrogation and there is no appeal to the lower appellate court from that portion of the decree of the trial court, it is not open to the defendant appellant to appeal against some portion only of the decree in so far as subrogation is allowed and question the decision of the trial court."

<https://hcservices.telangana.gov.in/hcservices/>

22.The fact that O.S.No.389/62 was decided between the

accepted.

<https://hcsaivcse.com/1.6/hcseivcse>



of Aaran, western 16 cents in suit sy.No.518, I.e in Sy.No.518/1A and 518/B belong to them.

25.The plaintiffs claim that there were two Mariyayees. One is wife of Palaniyandi and other is wife of Peraman. Admittedly, the first plaintiff's mother is Sevunthayee and her father's name is Kuppan. The other Mariyaye's husband name is Palaniyandi @ Peruman. It is therefore clear that the conclusion of the Court below that genealogy filed by the defendants is correct, on the other hand, the genealogy filed by the plaintiffs is not a true one is to be accepted. Thus, the defendants, who claim title over the property as the descendants of Sannasi, have categorically established that their father as well as themselves are having title over the property. It is also pointed out that as per Ex.B.3-sale deed out of the total extent of 32 cents, in the above said Survey Number Sannasi had 12 cents on the western side and the schedule of property in Ex.B.3 will clearly establish the said fact. Likewise, the sale deed Ex.B.4, executed in favour of Sannasi also will clearly establish the fact of Sannasi having title over 12 cents of property. It is also pointed out by the learned counsel for the defendants that in Ex.B.8, sale deed dated 17.04.1944, executed by Malaiyan in favour of Veeran, it is clearly stated that the vendor therein was having land on the eastern side of Sannasi's house. It is evident from the same that the defendants' father Sannasi owned land on the western side of Sy.No.518/1. Thus, the courts below have rightly appreciated the oral and documentary evidence and concluded that as per Ex.B.4, the defendants have proved their title. As the plaintiffs who have come to the court seeking bare injunction has not established their claim of being in possession of the property and as the defendants have categorically established their title and possession of the property, the courts below have rejected the claim of plaintiffs, while accepting the plea of the defendants in their counter claim. Further, admittedly, the suit property is a vacant site and possession is to follow title in such properties. As stated above, since the defendants have categorically established their title with the property they are entitled for declaration of title, as sought for in their counter claim. On the other hand, since the plaintiffs have failed to establish their title and possession over the suit property, they are not entitled for the relief sought for by them. In such circumstances, the claim of the plaintiffs cannot be entertained and the same has to fail.

26.In the considered opinion of this Court, the findings reached by the courts below are concurrent nature, based upon proper appreciation of factual aspects and correct application of well-settled legal position. In such circumstances, after considering the entire material available on record, this Court is of the view that there is no error or infirmity attached to the finding and conclusion arrived at by the courts below in



negating the prayer sought for by the appellants/plaintiffs. I find no merits in the second appeal. The substantial questions of law raised by the appellants/plaintiffs are answered against them.

27. In the result, the second appeal is dismissed, confirming the judgment and decree, dated 22.04.2014 passed in A.S.No.21 of 2013 by the learned Principal District Judge, Pudukkottai, confirming the judgment and decree dated 02.06.2011, passed in O.S.No.103 of 2003 by the District Munsif cum Judicial Magistrate Court, Keeranur. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

1. The Principal District Judge,
Pudukkottai.
2. The District Munsif cum Judicial Magistrate Court,
Keeranur.
3. The Section Officer,
V.R Section, Madurai Bench of Madras High Court,
Madurai.

+ 1 cc TO Mr.G.Sridaran , Advocate in SR No. 94479

+ 1 cc TO Mr.M.S.Sureshkumar , Advocate in SR No. 94604

VS

AE/KKR/SAR1/19.01.2018/13P/7C

Judgment made in

S.A.No. (MD) .No.568 of 2015

22.12.2017