

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED :28.11.2017

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

S.A. (MD) .No.337 of 2017

and

C.M.P. (MD) .No.7241 of 2017

1.M.Rajendran

2.Rajkumar

...Appellants/Appellants/Plaintiffs

Vs.

K.N.Kaliyappan

...Respondent/Respondent/Defendant

Prayer: This Second Appeal is filed under Section 100 of Civil Procedure Code, against the Judgment and Decree dated 24.01.2014 passed by the Sub Court, Sivagangai in A.S.No.124 of 2011, confirming the judgment and decree passed in O.S.No.112 of 2008 on the file of the District Munsif, Sivagangai, dated 16.11.2010.

For Appellants : Mr.R.Balakrishnan

For Respondent : Mr.V.S.Kumaraguru

**JUDGMENT**

Challenging the judgment and decree passed by the Sub Court, Sivagangai in A.S.No.124 of 2011, dated 24.01.2014 confirming the judgment and decree passed in O.S.No.112 of 2008 by the District Munsif, Sivagangai, dated 16.11.2010, the present second appeal has been filed. The plaintiffs, who lost before the courts below are the appellants herein.

2.At the stage of admission itself, this second appeal is taken up for final hearing, by consent of both sides.

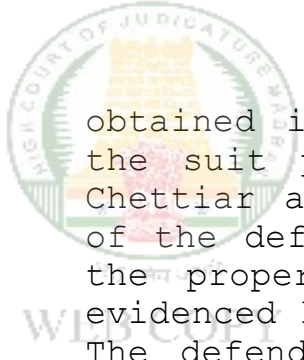
3.The parties are hereinafter referred to as they were arrayed in the trial court.

<https://hcservices.ecourts.gov.in/hcservices/> 4.The appellants/plaintiffs filed a suit in O.S.No.112 of 2008 on the file of the District Munsif, Sivaganga, against the



respondent/defendant herein praying for declaration that the suit property belongs to them and to grant consequential permanent injunction restraining the respondent/defendant from interfering with peaceful possession and enjoyment of the suit property. The case of the plaintiffs is that the suit property is the ancestral property on Gnanamuthu Ambalam/the paternal grandfather of the plaintiffs herein. Subsequently, the three sons of said Gnanamuthu Ambalam including the plaintiffs' father Manickam divided the property on 06.09.1960 orally and the suit property was allotted to the plaintiffs' father Manickam. Further, a document was executed, as per oral partition, on 06.09.1960 in respect of the ancestral property, enjoyed by Gnanamuthu Ambalam. Ever since the oral partition on 06.09.1960, the father of the plaintiffs was in possession and enjoyment of the suit property. In December 1992, the plaintiff's father divided the property into two equal shares and gave it to his male legal heirs/the plaintiffs herein. From such division of property, the plaintiffs are continuously in possession and enjoyment. Originally, the suit property in Sy.No.243/2 measuring 1 acre 32 cents was undivided and 66 cents of the property was enjoyed by forefathers of one Valliyammai Achi and the remaining 66 cents was enjoyed by the plaintiffs' grandfather Gnanamuthu Ambalam and subsequently, the plaintiffs' father and then, the plaintiffs herein. Thereafter, patta No.1244 was given in the name of the plaintiffs herein and the same is marked as Exhibit A.1 and the kist paid in respect of the land covered under patta No.1244 is produced under Exs.A.2 and A.3. The UDR patta given to the plaintiffs is Ex.A.6. The plaintiffs are in continuous enjoyment of the suit property. When the defendant asked to sell the property to himself, the plaintiffs did not oblige and hence, the defendant is trying to interfere with the possession and enjoyment of the plaintiffs from 01.06.2008 onwards. Hence, the plaintiffs have come forward with the suit.

5.The respondent/defendant filed a written statement, denying the averments made in the plaint, contending that the suit property originally belong to Raman Chettiyar, grandfather of the defendant herein and his two sons Meiyappa Chettiyar and Kaliappan Chettiyar and they were in enjoyment and possession of the property. The suit property in Sy.No.243/2 measures 1 acre 32 cents and Ex.B.1 is the rough patta given to the forefathers of the defendant in 1957. The grandfather of the defendant Kaliappa Chettiar died on 09.05.1979 and the suit property was allotted to the father of the defendant and after his demise, the defendant inherited the property. Since the defendant was living in Chennai, the revenue officials, without properly verifying the records, sub-divided the property into sy.No.243/2A and 243/2B and issued patta in the name of plaintiffs. Patta No.877 issued to the grandfather of the defendant is produced as Ex.B.1 and kist receipt in the name of the forefathers of the defendant is produced as Ex.B.2. The true copy of Survey Land Register



obtained in respect of Sy.No.243/2, marked as Ex.B.3 shows that the suit property is in the name of Raman Chettiyar, Meiyappa Chettiar and Kaliappa Chettiyar. Subsequently, after the demise of the defendant's grandfather Kaliappa Chettiyar, on 09.05.1979, the property was with the defendant's father. The same was evidenced by true copy of Survey Land Register, marked as Ex.B.3. The defendant also produced Ex.B.4-copy of survey land register extract, dated 08.08.2005 in respect of Sy.No.243/2, to an extent of 1.32 acres of land. The said document stands in the name of Valliyammal, Kannathal and Kannammai. The defendant also produced Ex.B.5, showing transfer of patta given to Thenappa Chettiyar, Kaaliyappa Chettiyar and Vaillyammal, in respect of the above 1.32 acres of land. Likewise, the defendant also produced Ex.B.6, patta passbook, issued to Kaliyappa Chettiyar, S/o.Raman Chettiyar towards Patta No.877, 221 and 926 part for 38 survey numbers, which includes various lands, including the Sy.No.243/2, an extent of 1.32 acres. The defendant states that after the demise of his father, when he was staying in Chennai, the Revenue Authorities, without conducting proper enquiry, sub-divided the property in Sy.No.243/2 into Sy.Nos.243/2A and 243/2B and issued patta transfer in favour of the plaintiffs. On coming to know of the same, the defendant preferred a revision before the Revenue Divisional Officer. As per order dated 06.10.2006, produced as Ex.B.8, patta was ordered to be retransferred in the name of the defendant's predecessor in interest. Accordingly, the revenue record was corrected on 10.07.2008, on the basis of Ex.B.8 and the Patta Transfer Order was communicated to Revenue Inspector and Village Administrative Officer by Tahsildar as per Ex.B.9 and patta No.1267 in respect of suit property to an extent of 1.32 acres in Sy.No.243/2 was issued in the name of the defendant's forefathers. Thus, it is contended by the defendant the he has got every right over the property and the plaintiffs have not produced any piece of paper to prove their title and therefore, prays for dismissal of the suit.

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

"1.Whether the plaintiffs are the absolute owners of the suit property?

2.Whether the plaintiffs are in lawful possession and enjoyment of the suit property?

3.Whether the plaintiffs are entitled to the relief of declaration and consequential injunction as prayed for?

4.To what other reliefs?"

7.During the course of trial, the appellant/first plaintiff examined himself as P.W.1 and two other witnesses as P.Ws.2 and 3 and marked Ex.A.1 to A.7. On the other side, the defendant examined himself as D.W.1 and another witness as D.W.2

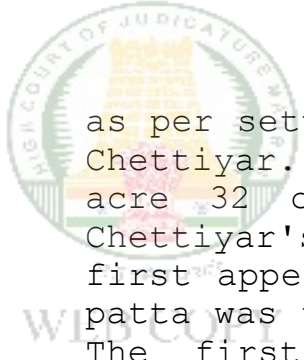
and produced Exs.B.1 to 12.

8.The trial court, on consideration of oral and documentary evidence, found that Exs.A.4 and A.5 documents relied upon by the plaintiffs to prove their title before allotment of patta under UDR scheme does not bear any nomenclature. The trial court also found that no documentary evidence is let in by the plaintiff to prove the fact that his grandfather Gnanamuthu Ambalam was in possession and enjoyment of the property (66 cents in Sy.No.243/2 before the UDR scheme). The trial court also found that in Ex.A.4, it is stated that 32.5 cents in the northern portion of suit Sy.No.243/2B is stated to have been allotted to the first plaintiff, but the said document is silent about the remaining portion allotted to the second plaintiff. The trial court also found that Ex.A.4 and A.5 are self-serving documents executed among the family members of the plaintiffs by themselves. It is further held that Exs.A.4 and A.5 are liable to be rejected, since no stamp duty or penalty was paid in respect of the said unregistered document. The trial court also found that Exs.A.2 and A.3/ kist receipts were obtained only after UDR scheme. The trial court also found that the plaintiffs have not produced any documentary evidence to establish the fact of their predecessor's having title over the suit property and consequently, the plaintiffs having title and possession of the suit property. On the other hand, the trial court found that the defendant produced Exs.B.1 to B.4 to prove their title, even before the resettlement survey and held that the plaintiffs have not established their title over the suit property and also about they being in possession of the same. The trial court found that under Ex.B.1, patta, entire extent of 1.32 acres in S.No.243/2 stood in the name of defendant's grandfather and 2 other persons. On arriving at such a conclusion, the trial court dismissed the suit. Aggrieved over the dismissal of the suit, the plaintiff preferred an appeal in A.S.No.124 of 2011 on the file of the Sub-Court, Sivagangai.

9.The lower appellate court, on perusal of the materials placed before it, formulated the following points for consideration:

“இம்மேல் முறையிடு அனுமதிக்கத்தக்கதா ? கீழமை நீதிமன்றத்தின் கீழ்ப் ப, மற்றும் தீர்ப்பாணை ரத்து செய்யத்தக்கதா?”

10.The lower appellate court found that the total extent of suit property 1 acre 32 cents and it survey number 243/2 are admitted, but the plaintiffs have not produced any documentary proof to prove the fact that his predecessor Gnanamuthu Ambalam or any of his legal heirs had title over the property. The first appellate court also found that patta No.877 was issued in the name of Valliammai Achi, Kannathal Achi and Kannammai Achi. Similarly in Ex.B.3-Survey Land Register also, it is stated that



as per settlement deed, the property stood in the name of Meiyappa Chettiyar. Further, as per re-settlement deed, the extent of 1 acre 32 cents in patta No.877 stood in the name of Raman Chettiyar's sons, Meiyappa Chettiyar and Kaliappa Chettiyar. The first appellate court also found that subsequently as per Ex.B.1, patta was transferred in the names of three women as stated above. The first appellate court also found that patta was issued in the name of persons mentioned in Ex.B.1 only. Further, as per Ex.B.5, the patta was retransferred to the name of the persons mentioned in Ex.B.1 on 06.02.1973. Likewise, in Ex.B.3 UDR Register also, the suit property is included in patta No.877 and as per those documents, the suit property originally belonged to Raman Chettiyar and thereafter to his sons Meiyappa Chettiyar and Kaliappa Chettiyar and thereafter, stood in the name of their wives, who are the ancestors of the defendant herein. The first appellate court also found that the plaintiffs have not produced any document to show that their grandfather Gnanamuthu had title over the property. The first appellate court also found that nothing is placed on record to show that patta No.877 stood in the name of Gnanamuthu or his legal heirs. The first appellate court also found that kist receipts were issued in the name of Kannammai vagiyara and others and as such, the plaintiffs have not proved the fact that they are having title over the property and thereby confirmed the judgment and decree passed by the trial court, by dismissing the first appeal.

11.The plaintiffs, who had lost before the courts below, aggrieved by the concurrent findings rendered by the trial court as well as the first appellate court, preferred the present second appeal.

12.In the memorandum of grounds of second appeal, the following substantial questions of law have been raised by the appellants/plaintiffs:

"1.Whether the courts below are right in law in not advertng that the appellant as plaintiffs discharged their initial burden of proving their title and possession over the suit schedule properties and as such the burden shifts on the respondent/defendant to prove better title and the same has not been done as contemplated under Section 101 of the Indian Evidence Act?

2.Whether the courts below are right in lw in not advertng to the very evidence of the appellants/plaintiffs as P.W.1 to P.W.3 corroborated by the documentary evidence under Exs.A.1 to A.7 specifically proving the title and possession of the appellants over the suit property?

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

3.Whether the courts below are right in law in not



considering the oral and documentary evidence in a proper perspective after framing proper points for consideration as contemplated under Order 41 Rule 33 of the Civil Procedure Code?"

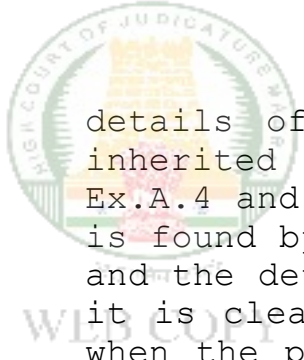
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13. The learned counsel for the appellants/plaintiffs contended that the courts below failed to appreciate the oral evidence of P.Ws.1 to 3 in corroboration with the documentary evidence produced as Exs.A.1 to A.7. The learned counsel also contended that Ex.B.8- order passed by District Revenue Officer was considered by the trial court, as the basis to reject the plaintiffs' claim and the same is inappropriate. According to him, the courts below also failed to consider Ex.A.5, which came into existence 30 years ago in proper manner and the lower appellate court also erred to consider the evidence in proper manner and necessary points for consideration. Hence, learned counsel for the appellants pleads to set aside the judgment of the courts below and to decree the suit as prayed for.

14. Per contra, the learned counsel appearing for the respondent/defendant would submit that the courts below have recorded the finding regarding the title of the suit property in favour of the defendant's father, by appreciating the oral and documentary evidence and also after considering various decisions relied upon by the defendant and the conclusion reached by the courts below is perfectly correct and as such, the defendant being the absolute owner of the property is entitled to be in possession and enjoyment of the suit property and also to deal with the property as he likes and therefore, prays for dismissal of the appeal.

15. This court perused the records and the impugned judgments on an independent application of mind.

16. The fact that extent of the property in Sy.No.243/2 is 1.32 acres and it was originally undivided is admitted. The plaintiffs claim that the property was allotted to their father Manickam as evidenced by Ex.A.5 document dated 06.09.1960. However, the plaintiffs have not produced any prior document to show that the plaintiffs' grandfather Gnanamuthu and his son Kalimuthu had title over the property. The plaintiffs also produced Ex.A.6-UDR patta issued in their name in respect of the property in the survey number mentioned in Ex.A.1-computerised chitta including the suit property. The suit property is in Kollangudi village in Sy.No.243/2B measuring 66 cents. According to the plaintiffs, the suit property belongs to their father, as per the oral partition. Ex.A.5 is the document relied upon by the plaintiffs to claim title over the property. It is evidenced from Ex.A.4 that the father of the plaintiffs Manickam has been given the property, as per the partition agreed upon on 15.12.1992. The first appellate court as well as the trial court found that the



details of property, as to whether it is ancestral property or inherited property or purchased property, is not mentioned in Ex.A.4 and the plaintiffs have not signed in Ex.A.4. Likewise, it is found by the courts below that Ex.A.5 is written in white paper and the details of Survey Number is not mentioned in it. Further, it is clear from the documents itself that the same was created, when the partition actually took place and being the unregistered documents, the same is inadmissible. Ex.A.6 is UDR patta. On perusal of record, it is seen that prior to UDR patta, no document vesting title on the plaintiffs' predecessor is produced before the court. In such circumstances, the claim of the plaintiffs of having title over the suit property has to fail.

17. On the other hand, the defendants have produced Exs.B.1 to B.6, B.9 and B.10 documents to show that the property originally stood in the name of his forefathers and now, they are in enjoyment of the property by paying kist and other taxes. He has produced kist receipts as mentioned above. The defendant has categorically and clearly established by oral and documentary evidence that the property belongs to his forefathers and they were in possession and enjoyment and subsequently, he as legal heir is in possession and enjoyment of the property. Thus, it is clear that the plaintiffs have come to Court with unclean hands and they failed to establish their title and possession of the suit property.

18. In the considered opinion of this Court, the findings reached by the courts below are concurrent in nature, based upon proper appreciation of factual aspects and correct application of well-settled legal position. This Court, after going through the oral and documentary evidence and on independent application of mind of the entire material available on record, is of the view that the courts below have arrived at just and proper conclusion and there is no error or infirmity in the findings rendered by the courts below in negating the plea of the appellants/plaintiffs. Thus, in the light of the above said discussions, this court finds no merit and no substantial questions of law involved in the second appeal.

19. In the result, the second appeal is dismissed at the admission stage itself, by confirming the judgments and decrees of the courts below. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

Sd/-  
Assistant Registrar (CS-II)

/True Copy/



To

1. The Subordinate Judge, Sivagangai.

2. The District Munsif, Sivagangai.

+ 1 cc TO Mr.V.S.Kumaraguru , Advocate in SR No. 89859

VS

AE/KK/SAR3/30.01.2018/8P/4C

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