



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on: 20.12.2016
Delivered on: 05.01.2017

WEB COPY

CORAM :

THE HONOURABLE MR. JUSTICE S.S.SUNDAR

Second Appeal (MD) No.325 of 2016

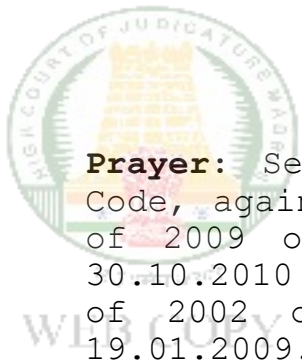
G.Samikalai : Appellant/Appellant/3rd Defendant

-Vs- .

1. Sengamalanachiarapuram Kammavar Sangam,
Represented by its President Ayyappan.
2. Sengamalanachiarapuram Kammavar Sangam,
Represented by its Secretary Rengasamy.
: Respondents 1 & 2/Respondents
1 & 2/Plaintiffs

- 3.A.Mariappan
- 4.M.Perumal, S/o.Mahalinga Pagadai
- 5.M.Perumal, S/o.Muthu Pagadai
- 6.S.Chinniyan
- G.Chinnaperumal (Died)
- P.Gurusamy (Died)
- 7.V.Azhagiri
- 8.N.Chinnaiyan
- 9.I.Muniasamy
- 10.M.Elango
- 11.S.Mariyappan
- 12.M.Irulappan
- 13.T.Muthulakshmi
- 14.M.Karuppusamy
- 15.I.Karuppusamy
- 16.A.Samudrakani
- 17.K.Karuppaiah
- 18.P.Karuppusamy
- 19.P.Kalirajan
- 20.Saroja
- 21.Thavidu @ Venkatesh : Respondents / Respondents/
Defendants 3 to 12 & 14 to 23

(Relief given up as against respondents 3 to 19)



Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the concurrent judgment and decree passed in A.S.No.6 of 2009 on the file of the Subordinate Judge, Sivakasi, dated 30.10.2010 confirming the judgment and decree passed in O.S.No.223 of 2002 on the file of the District Munsif, Sivakasi, dated 19.01.2009.

For Appellant : Mr.Veera Kathiravan,
Senior Counsel for Mr.C.Jeganathan
For Respondents : Mr.M.Vallinayagam
1 and 2 Senior Counsel for Mr.N.Damodaran

JUDGMENT

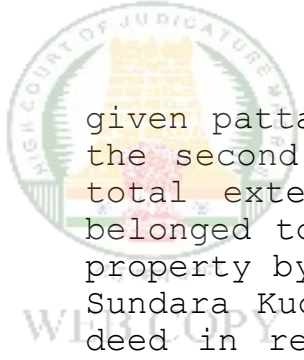
The 13th defendant in the suit in O.S.No.223 of 2002 on the file of the District Munsif Court, Sivakasi, is the appellant in the above Second Appeal.

2.The respondents 1 and 2 herein, as plaintiffs, filed the suit in O.S.No.223 of 2002 for declaration of title and recovery of possession from defendants 1 to 8 and 13 in respect of the suit first schedule property and for declaration of title and recovery of possession from defendants 9 to 13 in respect of suit second schedule property. The suit is also for a consequential permanent injunction restraining the defendant from alienating the suit property or from putting up any construction in the suit property. The suit first schedule is the northern half of 1 acre 8 cents out of two acres 16 cents in Survey No.658/1 in Thiruthangal Village, Virudhunagar District. The suit second schedule is the southern half measuring 1 acre 8 cents in Survey No.658/1 out of the total extent of 2 acres 16 cents in the same village.

3.The case of the plaintiffs in brief are as follows:

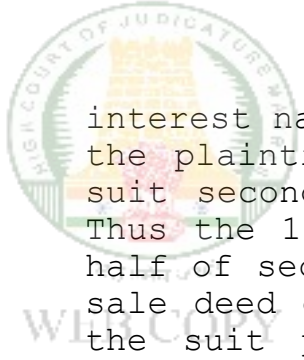
3.1.The plaintiff is a society by name Sengamalanachiarapuram Kammavar Sangam represented by the present President and Secretary. The suit is also filed in a representative capacity by seeking permission from the Court.

3.2.The first schedule originally belonged to one Irulappa Kudumban and Minninttan Kudumban, the sons of one Perumal Kudumban. They sold the property by a registered sale deed dated 21.08.1929 in favour of one Sundaran Pakadai and seven others for a valid consideration. The purchasers under the document dated 21.08.1929 sold the first schedule property in favour of the plaintiffs by another registered sale deed dated 11.10.1946. Though the sale deeds were obtained in the name of the representatives of plaintiffs namely Rangasamy Naicker, Ayyasamy Naicker and Alagiri Naicker, it was purchased only for the plaintiffs. The first schedule was in the possession and enjoyment of the plaintiffs. The plaintiffs were



given patta and kists were paid only by the plaintiffs. Similarly, the second schedule namely the southern 1 acre 8 cents out of the total extent of 2 acres 16 cents in Survey No.658/1 originally belonged to one Aryamuthu Asari. The said Aryamuthu Asari sold the property by a registered sale deed dated 12.02.1945 in favour of one Sundara Kudumban. Again the said Sundara Kudumban executed a sale deed in respect of the second schedule property in favour of the plaintiffs under a registered sale deed dated 28.10.1946. Though the sale deed was in the name of three individuals belong to the plaintiffs community, it was purchased only on behalf of the plaintiffs. As in the case of first schedule property, patta also was given in respect of the second schedule in favour of the plaintiffs and both first and second schedule properties were brought under single patta and plaintiffs were paying kists. Though at the time of updating registry, patta was not given to the plaintiffs by mistake, the mistake was corrected in the year 1992 and order was passed to grant patta in favour of the plaintiffs and patta was also issued.

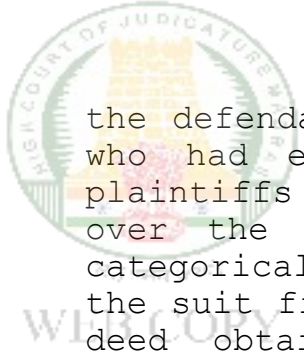
3.3.However, in the year 1994, 11th defendant and his brother one Irulappan applied for patta, suppressing the fact that the father of 11th defendant had already sold the property in favour of the plaintiffs in respect of the suit second schedule by a sale deed dated 28.10.1946. However, the Tahsildar, after considering the sale deed, refused to grant patta by order dated 12.04.1995. However, in the order liberty was given to the 11th defendant to approach the Civil Court to establish his right. Though the 11th defendant preferred an appeal before the Sub Collector, the appeal was also dismissed by order dated 13.11.1995. Without filing any suit, to establish his right, the 11th defendant suppressing the order of the appellate authority, filed another application for change of patta in his name after Sivakasi Taluk was bifurcated from Sattur Taluk. Though an order was passed in favour of 11th defendant, the subsequent order, contrary to the earlier order of the appellate authority, is only illegal and cannot have any legal implication especially when the order of the appellate authority dated 13.11.1995 has become final. After the suit second schedule has been sold in the year 1946 by the father of 11th defendant, either the 11th defendant or any other sons of Sundara Kudumban can have any right over the suit second schedule. The defendants 1 to 8 are the legal heirs of the vendors who had executed the sale deed on 11.10.1946 in favour of the plaintiffs. Though the predecessor-in-interest of defendants 1 to 8 had already sold the property in favour of the plaintiffs and the defendants 1 to 8 had no right in respect of the suit first schedule, taking advantage of some mistakes in the mutation of revenue records, they executed a sale deed in favour of the 13th defendant on 01.04.2002. The 9th defendant is the grand son of Sundara Kudumban through his son Irulappan. The son of 11th defendant is 12th defendant. The 10th defendant is the son of 9th defendant. The defendants 9 to 12 who are only claiming under Sundara Kudumban and who had no right in respect of the suit second schedule after their predecessor-in-



interest namely Sundara Kudumban executed the sale deed in favour of the plaintiffs in the year 1946 created records in respect of the suit second schedule just to defeat the rights of the plaintiffs. Thus the 13th defendant also claimed to have purchased the northern half of second schedule property from defendants 9 to 11 by another sale deed dated 12.07.2002. The defendants who have no right over the suit property, taking advantage of the invalid and illegal documents, encroached into the suit property. It is in these circumstances, the plaintiffs were constrained to file the suit for declaration of title and recovery of possession.

4.The suit was contested by the defendants 9, 10 and 14 and the 13th defendant by filing independent written statements. The defendants disputed the title deeds of the plaintiffs by describing the documents dated 11.10.1946 and 28.10.1946 as fabricated documents. The defendants also contended that the father of Sundara Kudumban did not execute the sale deed in favour of the plaintiffs in respect of the second schedule. Similarly, the other defendants also contested the suit on the ground that the predecessor-in-interest of defendants 1 to 8 did not convey their title in the year 1946. The 13th defendant / appellant in the above Second Appeal also filed independent written statement raising an issue that the plaintiffs have no *locus standi* to file the present suit as the suit properties were not purchased by the plaintiffs. Since the sale deeds which are relied upon by the plaintiffs show that the properties were purchased for community in the village, the plaintiffs which represent a particular community cannot claim title over the suit property. Since the sale deeds were not obtained in the name of plaintiffs and the subsequent revenue records also would show that one Kammavar Valipar Sangam had paid kists for the suit property, the plaintiffs are not entitled to declaration of title over the suit property.

5.The trial Court found that the documents Ex.A2 dated 11.10.1946 and Ex.A10 dated 28.10.1946 are true relying upon Section 90 of the Evidence Act whereby the Court can presume the due execution of any document which were brought from proper custody. The trial Court also relied upon the judgment of this Court reiterating the same principle in a similar situation. After considering the evidence of both sides in detail, the trial Court found that the earlier order of Tahsildar under Ex.A8 which was confirmed by the Sub Collector, Sivakasi, in the appeal have become final and the subsequent order passed by the Tahsildar under Ex.B2 without disclosing the earlier order of Tahsildar and Sub Collector is invalid and illegal. Having regard to the conduct of the defendants in trying to establish their right by approaching the revenue authorities and inducing them to pass illegal orders, the trial Court found that the subsequent order passed by the revenue officials directing issuance of patta in favour of the defendants are illegal. The trial Court found, as a matter of fact, that the defendants 1 to 8 are bound by the sale deed executed by their predecessor-in-interest. Similarly, the trial Court also found that



the defendants 9 to 12 who are the legal heirs of Sundara Kudumban who had executed the sale deed in favour of the founders of plaintiffs in the year 1946, are not entitled to claim any right over the suit property. Hence, the trial Court has given a categorical finding that the plaintiffs have proved their right to the suit first and second schedule properties by virtue of the sale deed obtained under Exs.A2 and A10. As regards the other contention, regarding the *locus standi* of plaintiffs to file the suit on the ground that the suit property was not purchased by the Sangam, the trial Court rejected the said contention by stating that the dispute between the plaintiffs and defendants started several years before filing of the suit and that the individuals who are shown as purchasers under Ex.A2 and Ex.A10 being the members of the Kammavar community, they have purchased the property only on behalf of the community.

6. Aggrieved by the judgment and decree of the trial Court in O.S.No.223 of 2002, the 13th defendant alone has preferred the appeal in A.S.No.6 of 2009 before the Sub Court, Sivakasi. The appellate Court also discussed all the issues raised by the appellant and confirmed the findings of the trial Court on the question of title and the *locus standi* of the plaintiffs who filed the suit as owner of the suit property. The appellate Court considering the facts that the suit has been filed in a representative capacity, and that there was no objection by any one in the village regarding the claim of title by the plaintiffs and other facts and circumstances, categorically found that the plaintiffs' predecessor-in-interest was called as Sengamalanachiarapuram Grama Samuthaya Abiviruthi Sangam and that they are now called as Kammavar Sangam, as contended by the plaintiffs. Aggrieved by the concurrent findings of the Courts below, the present Second Appeal has been filed by the 13th defendant who claimed to have purchased the first schedule property from defendants 1 to 8 and the southern portion of the second schedule property from the defendants 9 to 12.

7. The appellant has raised the following substantial questions of law in the memorandum of grounds:-

(a) *Whether the Courts below are right in rendering a judgment and decree in favour of the plaintiff Sangam which has no semblance of right over the properties in question by drawing a presumption under Section 90 of the Indian Evidence Act when those documents are not in favour of the plaintiff Sangam?*

(b) *Whether the judgment and decree of the Courts below could be sustained when the plaintiff Sangam has no legal character or legal right over the properties in question in the light of Section 34 of the Specific Relief Act?*

(c) *Whether the Courts below are right in*

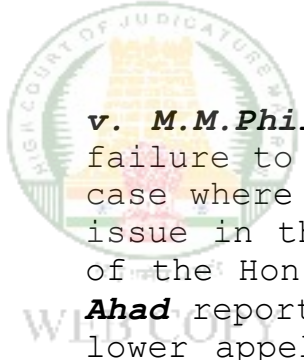


passing a decree in favour of respondents 1 and 2 herein when the plaintiff Sangam miserably failed to establish its legal right over the properties in question on the basis of the documents relied upon by the Sangam?

8.Mr.Veera Kathiravan, learned Senior Counsel appearing for the appellant confined his argument only on the *locus standi* of the plaintiffs to maintain the suit for declaration of title. The learned Senior Counsel submitted that the documents Ex.A2 and Ex.A10 are the sale deeds obtained in favour of Sengamalanachiarapuram Grama Samuthaya Abiviruthi Sangam and not the plaintiffs which is a different Sangam belonged to a particular community namely Kammavar. According to the learned Senior Counsel, since the word "Kammavar" is not found in the document Ex.A2 or Ex.A10, the Courts below are not right in declaring the title in favour of the plaintiffs. The learned Senior Counsel further submitted that the issue was specifically raised by the appellant in his written statement and that the Courts below have not properly considered the specific issue that was raised by the appellant. It was further argued that the plaintiffs have not established by convincing evidence, as to how the Kammavar Sangam which had not purchased the property under Ex.A2 and Ex.A10 could claim title to the suit properties. The learned Senior Counsel relied upon the recitals in the documents Ex.A2 dated 11.10.1946 and Ex.A10 dated 28.10.1946 purchased by the plaintiffs.

9.Mr.M.Vallinayagam, learned Senior Counsel appearing for the respondents 1 and 2 referring to the findings of the Courts below submitted that the findings are supported by evidence both documentary and oral and that there is no legal infirmity in the findings of the Courts below. The learned Senior Counsel further submitted that the defendants have taken a specific stand that the documents Exs.A2 and A10 are forged. According to him, the defendants who do not claim any right as member of Sengamalanachiarapuram Grama Samuthaya Abiviruthi Sangam namely the purchaser under Ex.A2 and A10 cannot raise an issue as to the identity of the purchaser. It was contended that the findings of the Courts below on the *locus standi* of plaintiffs to maintain the suit are unassailable. The learned Senior Counsel appearing for the plaintiffs pointed out that there was no claim by any other person either in the name of the purchaser under Ex.A2 and Ex.A10 or as a representative of the Sangam referred to in Exs.A2 and A10. Since subsequent documents namely patta and kist receipts were only obtained in the name of the plaintiff Sangam it was contended by him that the Courts below are right in accepting the case of the plaintiffs regarding the fact that the plaintiff Sangam alone was known in 1946 as Sengamalanachiarapuram Grama Samuthaya Abiviruthi Sangam. The learned Senior Counsel also relied upon documents in support of his contentions.

10.Further, the learned Senior Counsel relied upon the judgment of the Hon'ble Supreme Court in the case of **Kunju Kesavan**

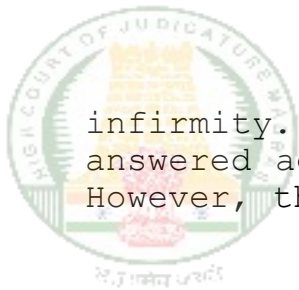


v. M.M.Philip reported in **AIR 1964 SC 164** for the proposition that failure to frame an issue will not lead to vitiate the decision in a case where both parties faced the trial with an understanding of the issue in the case. He further relied upon the subsequent judgment of the Hon'ble Supreme Court in the case of **Sayed Akhtar v. Abdul Ahad** reported in **AIR 2003 SC 2985** wherein the view expressed by the lower appellate Court which is extracted below was approved by the Apex Court:

"On the point of nuisance, though, no issue was framed by the lower Court yet it is clear on the basis of relevant pleadings and evidence produced that the parties were well familiar with the existence of the said issues. Under the circumstances in face of the want of framing of issues, the prejudice was not caused nor the proceedings were vitiated, it is not proper to remand the case back in view of the decision of the Supreme Court reported as AIR 1963 SC 884".

11. Though the documents produced in the typed set are not fully legible, this Court find that the purchaser name in the document is Sengamalanachiarapuram Grama Samuthaya Abiviruthi Sangam through its Secretary and representatives. Both the documents referred to the names of the three individuals, who belonged to the Kammavar community. The documents Ex.A2 and Ex.A10 are original sale deeds. The defendants have not seriously disputed the existence of the plaintiff Sangam which is an association of Kammavar community living in Sengamalanachiarapuram. The individuals who are shown as representing the Sangam belong to Kammavar community. It is only the plaintiffs who are fighting for the property from the year 1990 as seen from the documents. It was nobody's case before the revenue authorities earlier that the suit property belonged to the people living in Sengamalanachiarapuram Village. It is to be noted that the defendants do not claim any right as a member living in Sengamalanachiarapuram Village. After their predecessor-in-interest had sold the property under Ex.A2 and A10, the defendants claimed title in the present suit only as legal heirs of the vendors. In such circumstances, the conduct of the defendants in trying to establish their right in utter disregard to the deed of transfer / conveyance executed by their predecessor-in-interest cannot be appreciated and in that context the Court below are right in negating the case of the defendants and accepting the case of the plaintiffs that the plaintiff Sangam was earlier known as Sengamalanachiarapuram Grama Samuthaya Abiviruthi Sangam. The revenue documents relied upon by the plaintiffs also would support their case. Since this issue has been specifically dealt with by the trial Court and the lower appellate Court, the views of the Courts below cannot be found fault with by this Court while exercising jurisdiction under Section 100 C.P.C.

12. Having regard to the concurrent findings of the Courts below which are supported by material documents and evidence, this Court find that the judgments are not vitiated by any perversity or



infirmity. The substantial questions of law are, therefore, answered against the appellant and this Second Appeal is dismissed. However, there is no order as to costs.

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Sd/-
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

To

1. The Subordinate Judge, Sivakasi.
2. The District Munsif, Sivakasi.

Copy To:-

The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

- + 1 CC TO M/S.VEERA ASSOCIATES, IN SR No. 1079
- + 1 CC TO Mr.N.DAMODARAN, ADVOCATE IN SR No. 729

SRM

TE/SKN-CR : 06/02/2017 : 8P/6C

Judgment made in
Second Appeal (MD) No.325 of 2016
05.01.2017