

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.10.2018

PRONOUNCED ON : 25.10.2018

CORAM

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

S.A.No.602 of 2000

1. Munusamy (deceased)

2. Muthukrishnan

3. Ponnai

4. Ramachandran

5. M.Selvaraj

6. M.Nadamani (deceased)

(Appellants 5 and 6 are brought
on record as LR's of the deceased
1st appellant vide Order of Court dated
27.07.2009 made in CMP.No.814/2009
in S.A.No.602/2000)

7. Arulmozhi

(7th Appellant brought
on record as LR's of the deceased
6th appellant vide Order of Court dated
07.03.2018 made in CMP.No.4784
to 4786/2018 in S.A.No.602/2000)

... Appellants/Defendants

Vs.

Annamalai

... Respondent/Plaintiff

PRAYER: Second Appeal filed under Section 100 of C.P.C., against the Judgment and decree dated 11.08.1999 in A.S.No.6 of 1992 on the file of the Additional District Judge, Villupuram dismissing the appeal preferred against the Judgment and decree dated 18.12.1991 in O.S.687 of 1990 on the file of the Additional District Munsif's Court, Villupuram.

For Appellants

For Respondent

: Mr. N.Suresh

: Ms.V.Srimathi

for M/s.V.Ragavachari

JUDGMENT

This second appeal has been filed by the defendants against the Judgment and decree passed by the Additional District Judge, Villupuram in A.S.No.6 of 1992 dated 11.08.1999 confirming the Judgment and decree passed by the Additional District Munsif, Villupuram in O.S.No.687 of 1990 dated 18.12.1991.

2. The respondent herein has filed a suit in O.S.No.687 of 1990 on the file of the Additional District Munsif, Villupuram to declare his title over the suit properties and for permanent injunction to restrain the defendants from interfering with his peaceful possession and enjoyment of the suit properties. The learned Additional District Munsif by the Judgment dated 18.12.1991 has decreed the suit as prayed for with costs.

3. Aggrieved by the same, the defendants have preferred an appeal in A.S.No.6 of 1992 on the file of the Additional District Judge, Villupuram. They also filed applications in I.A.Nos.76, 77 and 79 of 1998 under Order 41 Rule 27 of CPC to receive additional documentary evidence. The respondent/plaintiff also filed applications in I.A.Nos.78 of 1998 and 44 of 1999 under Order 41 Rule 27 of CPC to receive additional documentary evidence.

4. The learned Additional District Judge, Villupuram, has allowed the I.A.Nos.77 of 1998 and 44 of 1999 and marked Exs.B.21 and B.22 on the side of the appellants/defendants and also marked Exs.A.23 to A.25 on the side of the respondent/plaintiff. However, she dismissed I.A.Nos.76, 78 and 79 of 1998. After marking those documents as additional exhibits, finally, dismissed the said appeal, confirming the Judgment and Decree passed by the Trial Court. Feeling aggrieved, the defendants have filed the present second appeal.

5. During pendency of the second appeal, the first appellant/first defendant died and hence his legal representatives have been impleaded as appellant Nos. 5 and 6. For the sake of convenience, the parties are referred to, as described before the Trial Court.

6. The averments made in the plaint are in brief as follows:

(a) The suit properties originally belonged to Sengeni and his sons. They were dealing with the properties by executing a bogiyam (usufructuary mortgage) in favour of Manickam and Kuppusamy Gounder. Subsequently, Sengeni and his sons sold the

suit properties and other properties to Kuppusamy Gounder under a registered Sale deed dated 03.02.1949. Since the date of the said purchase, Kuppusamy Gounder was in possession and enjoyment of the suit properties. After his death, his three sons inherited the properties and later orally divided the properties and in that partition, the suit properties and some other properties fell to the share of Periyathambi Gounder, one of the sons of Kuppusamy Gounder. The said Periyathambi Gounder was in possession and enjoyment of the suit properties in his own right. He was dealing with the said properties by executing an usufructuary mortgage deed in favour of one Munusamy Gounder. The said Munusamy Gounder was in possession and enjoyment of the properties as usufructuary mortgagee. Later, the said Periyathambi Gounder and his sons sold the suit properties and other properties to one Parasurama Gounder, the elder brother of the plaintiff under a Sale deed dated 13.06.1996. The said Parasurama Gounder had discharged usufructuary mortgage due to Munusamy Gounder and took possession of the suit properties and other properties.

(b) The said Parasurama Gounder, Deivanayaga Gounder and the plaintiff namely Annamalai Gounder and one Rama Chandiran are brothers. The said Parasurama Gounder purchased the properties from Periyathambi Gounder as Family Manager with the family funds for the Joint Family benefit. Ramachandiran, the youngest brother sold away his share in favour of his other brothers. Thereafter, the said Deivanayagam Gounder and the plaintiff orally divided their family properties, In the said partition, the suit properties and some other properties fell to the share of the plaintiff. Since then, the plaintiff has been in possession and enjoyment of the suit properties and other properties exclusively as absolute owner. The plaintiff has perfected title to the suit properties by adverse possession also.

(C). The first defendant is the father of the second defendant. The defendants 3 and 4 are the sons of one Elumalai who is the elder brother of the first defendant. The said Elumalai was entitled to 16 cents, out of 32 cents on eastern side in R.S.No.271/4 and the western 16 cents is described in the plaint as Item No.1 and the said property belongs to the plaintiff. Over the second item, the defendants and their predecessors in title have no right, title or interest. Infact, the said Elumalai had executed a deed of usufructuary mortgage in favour of one Kuppusamy Gounder on 23.07.1943 in respect of eastern 16 cents admitting the title of plaintiff's predecessor in title namely Sengeni. While so, the defendants tried to trespass into the suit properties on 10.08.1990. Hence, the plaintiff was forced to file the suit for declaration and permanent injunction.

7. The averments made in the written statement filed by the first defendant and adopted by other defendants are in brief as follows:

(a) It is false to state that the first item of the suit properties, originally belonged to one Sengeni and his sons. It is also false to allege that the suit properties were subjected to bogiyam in favour of Manickam and Kuppusamy Gounder. It is also false to state that the said Sengeni sold the properties to one Kuppusamy and after his death his three sons inherited to the suit properties and in the oral partition, suit properties were allotted to one of his sons viz., Periyathambi Gounder and he was dealing with the same by executing bogiyam etc., and later he sold the same to one Parasurama Gounder. Neither Parasurama Gounder nor any of his brothers have got any right over the same. It is also false to state that in the oral partition, the suit property fell to the share of the plaintiff.

(b) The entire 32 cents along with other items originally belonged to one Deivanayagam, S/o. Kendervall of Melpathi Village. He sold those properties to Elumalai, the father of the defendants 3 and 4 and brother of the first defendant on 29.01.1942 and since then the defendants' family alone are the owners of the entire 32 cents. The said Elumalai and the first defendant continued to be in possession and enjoyment of the said 32 cents and partitioned the same by means of a registered deed dated 07.10.1983. In the said partition, the western half namely, the suit property measuring 16 cents fell to the share of the first defendant and the eastern half share measuring 16 cents fell to the share of Elumalai. After the death of Elumalai, his sons viz, the defendants 3 and 4 are enjoying the said eastern half. In fact, patta for the entire 32 cents stands in the name of Elumalai. Only at the time of U.D.R.Scheme without the knowledge of the defendants, the plaintiff obtained patta for the suit properties in his name. The defendants are poor Harijans and the plaintiff coming from the majority community with a view to grab the suit properties filed the above vexatious suit. Therefore, the defendants prayed to dismiss the above suit.

8. Based on the aforesaid pleadings, the learned District Munsif, has framed necessary issues and tried the suit. During Trial, on the side of the plaintiff, the plaintiff examined himself as P.W.1 and also examined three more witnesses as P.W.2 to P.W.4. He has marked Exs.A.1 to Ex.A.22 as exhibits. On the side of the defendants, the fourth defendant was examined as D.W.4. Exs.B.1 to B.20 were marked on the side of the defendants.

9. The learned District Munsif, after considering the materials placed before him, found that the plaintiff has proved title over the suit properties and he is in possession of the same. Accordingly, he decreed the suit as prayed for with costs.

10. Aggrieved by the same, the defendants have preferred an appeal in A.S.No.6 of 1992 on the file of the Additional District Judge, Villupuram. They also filed applications in I.A.Nos.76, 77 and 79 of 1998 under Order 41 and Rule 27 of C.P.C., seeking permission to adduce additional documentary evidence. The respondent/plaintiff also filed two I.As' i.e., I.A.Nos.78 of 1998 and 44 of 1999 to receive additional documentary evidence. The learned Additional District Judge by the Judgment and decree and order dated 11.08.1999 has allowed I.A.Nos.77 of 1998 and 44 of 1999 and marked Exs.B.21 and B.22, on the side of the appellants/defendants and also marked Exs.A.23 to A.25, on the side of the respondent/plaintiff. After marking those documents as additional exhibits, dismissed the said appeal, confirming the Judgment and Decree passed by the Trial Court and also dismissed the applications in I.A.Nos.76, 78 and 79 of 1998. Feeling aggrieved, the defendants have preferred the present second appeal.

11. This Court at the time of admitting the second appeal has formulated the following substantial questions of law:-

"1. Whether the Courts below did not err in finding title in favour of the plaintiff inspite of the specific contentions of the defendants with reference to documentary proof setting out a different source of title without reconciling the same with reference to his documents?

2. Whether the Courts below did not err in applying the principle that possession would follow title in case of agricultural lands, the proof of possession of which ought to be established with reference to documentary and oral evidence and not by mere presumptions?

3. Whether the Courts below did not err in rejecting the evidentiary value of the revenue entries referring to the defendants and the predecessor as owners of the suit property for inadequate and untenable reasons?

4. Whether the plaintiff had not in any event established title by adverse possession, in which event the plaintiffs action for declaration and

injunction should have been dismissed?"

12. Heard Mr.N.Suresh, the learned counsel for the appellants/defendants and Ms.V.Srimathi for M/s.V.Ragavachari, learned counsel for the respondent/plaintiff.

13. The learned counsel for the appellants has submitted that the Courts below failed to consider that the plaintiff has not established his title in-respect of Item No.1 of the suit properties. He further submitted that the Courts below ought to have found that Deivanayagam was the Original owner of the entire extent of Survey No.271/4 i.e., 32 cents. He further submitted that the Chitta, Patta, Adangal Extract and Kist receipts produced by the defendants would clearly show that the defendants are in possession of the entire extent of 32 cents. He further submitted that the learned Additional District Judge has erred in applying the dictum that possession follows title in-respect of agricultural land. He further submitted that the possession should be established by documentary evidence and oral evidence and not by mere presumptions. The First Appellate Court ought to have rejected the applications filed by the respondent/plaintiff for receipt of additional evidence. He further submitted that the documents produced by the defendants would show that they are in possession of the Item No.1 of the suit properties and that being so, the plea of the plaintiff that he has perfected title by adverse portion also is totally false. He further submitted that the Trial Court without considering the evidence in a proper perspective, decreed the suit and the First Appellate Court has also mechanically confirmed the same. Therefore, he prayed to allow the second appeal and set aside the judgments and decrees passed by the Courts below and dismiss the suit.

14. Per Contra, the learned counsel for the respondent/plaintiff has submitted that the plaintiff has proved his title in respect of Item No.1 of the suit properties by tracing from the year 1922 vide Ex.A.12. She further submitted that in Ex.A.14 dated 23.07.1943, the brother of the first defendant and father of the defendants 3 and 4 namely Elumalai had categorically admitted the title of the original owner Sengeni in respect of Item No.1 of the suit properties. She further submitted that the defendants failed to prove that how their vendor namely Deivanayagam had got right over the entire extent of 32 cents in survey No.271/4. She further submitted that as per the partition deed dated 07.10.1983 (Ex.B.4), the Item No.1 of the suit properties was allotted to the first defendant, but he has not come forward to give evidence and hence the Trial Court has drawn adverse inference against the defendants 1 and 2. She further submitted that the Trial Court, after taking into consideration, the materials produced by the

both parties came to the conclusion that the plaintiff is entitled for the relief of declaration and injunction in respect of both the items of the suit properties and the same has been confirmed by the First Appellate Court and in the said factual concurrent findings, this Court cannot interfere and therefore, she prayed to dismiss the second appeal.

15. The above suit has been filed for declaration and permanent injunction in respect of two items of the suit properties. The first item is situated in Survey No.271/4 of Melapathi Village, Villupuram Taluk and in the said Survey Number, out of 32 cents, western 16 cents with the following boundaries:-

South of the channel, west of the Elumalai's land, north of Amirtha Ammal's land and east of the second item of the suit properties. The second item is situated in Survey No.271/3 measuring about 7 cents. There is no dispute with regard to the second item of the suit properties. The dispute is only with regard to the first item of the suit properties.

16. According to the plaintiff, out of total extent of 32 cents in Survey No.271/4, western half of 16 cents belongs to him. He is tracing out his title to the said property through Ex.A.12 dated 20.11.1922. Under, this document, one Veerappan, S/o.Pavadai had purchased several properties in various survey numbers including 14 cents in Survey No.271 from one Rasa Gounder, S/o. Desa Gounder and one Parvathi Ammal, W/o.Iyya Kannu Gounder. Subsequently, the said Veerappan, S/o.Pavadai had sold 16 cents in Survey No.271/4 (Patta No.232) with specific boundaries to one Sengeni Samban, S/o.Suppan Samban under a registered sale deed dated 10.03.1943 (Ex.A.13). In the said document, it is stated that the aforesaid 16 cents situated on the south of channel, west of Deivanayagam's land, north of Amirtha Ammal's land and east of Sengani's land. Though in Ex.A.12, only 14 cents was mentioned, subsequently in Ex.A.13, 16 cents has been mentioned. The First Appellate Court has considered this discrepancy and observed that in between the execution of Exs.A.12 and A.13, based on the enjoyment, properties were sub-divided and that is why, the sub-division number was given as 271/4 for the entire 32 cents and out of 32 cents, the western portion measuring 16 cents alone sold to Sengeni vide Ex.A.13.

17. The most vital document which has been relied by the plaintiff is Ex.A.14. Ex.A.14 is the usufructuary mortgage deed and through the said document, Elumalai, S/o Veerappan had created usufructuary mortgage in favour of one Kuppusamy Gounder, S/o.Rama Samy Gounder in respect of so many properties, including the properties situated in Survey No.271/4. He gave a description for the properties situated in 271/4 as 32 cents and

out of 32 cents, he mortgaged only 16 cents with the following specific boundaries:- On the south of channel, on the east and west of Sengalani's land, on the north of Amirtha Ammal's land and within the said boundaries, 16 cents alone mortgaged. A combined reading of Exs.A.13 and A.14 would lead to an inference that the person who is mentioned as Sengeni in Ex.A.13 and the person who is mentioned as Sengalani in Ex.A.14 are one and the same. From the aforesaid description of the property in Ex.A.14, it is clear that the said Elumalai had categorically admitted that in the Survey No.271/4, out of 32 cents, he had only 16 cents on the eastern side and on the western side, the property belonging to Sengeni (Sengalani) is situated. The said Elumalai is the elder brother of the first defendant and father of the defendants 3 and 4. So, it is clear that on the date of execution of Ex.A.14, the said Elumalai's family had only 16 cents in survey No.271/4.

18. The defendants claimed entire 32 cents in Survey No.271/4. According to them, one Deivanayagam had executed Ex.B1 usufructuary mortgage dated 27.10.1939 in respect of the entire extent of 32 cents situated in survey No.271/4, in favour of Elumalai, S/o. Veerappan and subsequently, the said Deivanayagam had sold entire 32 cents in Survey No.271 /4 vide Ex.B.2 dated 29.01.1942 in favour of the said Elumalai. But, the defendants have not produced any documentary evidence to show that the said Deivanayagam had title over entire extent of 32 cents in Survey No.271/4.

19. As already pointed out that in Ex.A.14 dated 23.07.1943, the said Elumalai had created usufructuary mortgage only in respect of 16 cents which is situated on the eastern side in Survey No.271/4 and for the said 16 cents, he had mentioned specific boundaries and the said boundaries would show that on the east and west of the aforesaid 16 cents properties belonging to Sengeni were situated.

20. Ex.B.4 is the Partition Deed dated 07.10.1983 executed between the said Elumalai and his brother namely Munusamy (first defendant). In the said document, out of 32 cents situated in survey No.271/4 on the eastern side 16 cents were allotted to said Elumalai and 16 cents on the western side were allotted to the first defendant i.e., the Item No.1 of the suit properties. But, neither the first defendant nor his son namely, the second defendant herein examined themselves as witnesses. On the contrary, the third defendant examined himself as D.W.1. Since the defendants 1 and 2 are claiming that they are the owners of Item No.1 of the suit properties, they should have entered into witness box and subjected themselves for cross-examination. But, they have not examined themselves as witnesses and therefore, the Trial Court has rightly drawn adverse interference against the defendants 1 and 2.

21. The First Appellate Court taking into consideration, the patta for the Item No.1 of the suit properties stands in the name of Elumalai even from the fasli 1345, which relates to the period of the year 1935 in the year 1935, the said Elumalai was not at all purchased the said properties. The First Appellate Court has also pointed out that in Exs.A.16, 18, 20 and 22 name of both the parties also found. Considering the aforesaid facts, the First Appellate Court came to the conclusion that no reliance can be placed upon those revenue records for deciding the question as to who is in possession of the suit property. In the said factual findings, this Court cannot interfere. It is true that the First Appellate Court has held that the plaintiff has proved his title over the said properties and the principle of possession follows title will apply. The said principle will apply only in respect of vacant sites, but in so far as agricultural lands are concerned, the aforesaid principle may not apply strictly. However, when both the parties are claiming possession based on the revenue records, the title is also to be taken into consideration.

22. In this case, the plaintiff has proved his title by producing documentary evidence. Further, the brother of the first defendant and father of the defendants 3 and 4 namely Elumalai had categorically admitted in Ex.A.14 that he had only 16 cents in Survey No.271/4 and on the eastern side and western side of the said 16 cents, the properties belonging to Sengani were situated. Only through the said Sengani, the plaintiff is claiming title for Item No.1 of the suit properties and therefore, the plaintiff has proved title over the Item No.1 of suit properties. As already pointed out that in respect of Item No.2, there is no dispute between the parties and therefore, the plaintiff is entitled for the relief of declaration and permanent injunction in respect of both the items of suit properties. The Courts below concurrently found that the plaintiff is the owner of the suit properties and he is in possession of the suit properties. In the said concurrent factual findings, this Court cannot interfere. Accordingly, the substantial questions of law are answered.

23. In the result, this Second Appeal is dismissed confirming the Judgments and Decrees of the Courts below. No costs.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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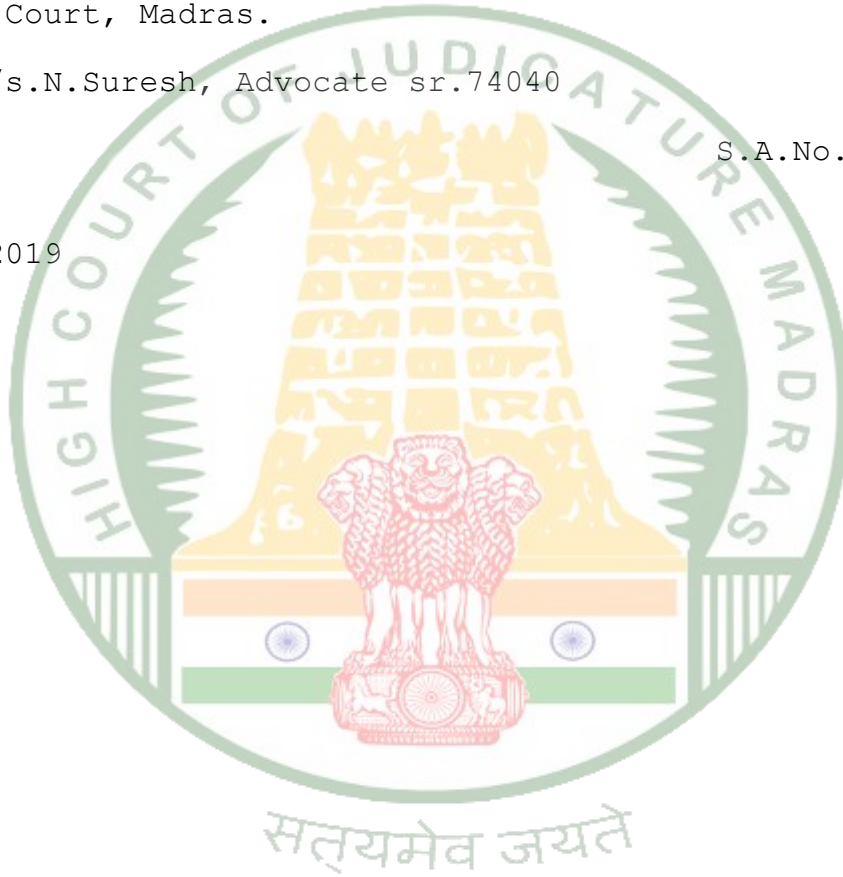
To

- 1.The Additional District Judge,
Villupuram
2. The Additional District Munsif's Court,
Villupuram.
3. The Section Officer, VR Section,
High Court, Madras.

+1cc to M/s.N.Suresh, Advocate sr.74040

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