

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 11.09.2018

DELIVERED ON: 14.09.2018

CORAM:

THE HON'BLE MRS.JUSTICE R. HEMALATHA

S.A.No.1386 of 1996

1. R.Subbaraya Gounder (deceased)
2. Palanisamy Gounder
3. Pappal (deceased)
4. Sellathal
(4th appellant is already recorded as legal representative of
of the deceased 1st appellant vide order dated 17.08.2017
made in CMP No.1371 of 2008 in SA No.1386 of 1996 by Dr.GJJ)
5. Rukmani
6. Thirumathal (deceased)
7. P.M.Venkatachalam
(7th appellant brought on records as legal representative of
the
deceased 3rd appellant and recorded the appellants 2, 4 and 5
as legal representatives of the deceased 6th appellant vide
order dated 1.3.2006 made in CMP No.2904 to 2906 and
CMP No.2909 of 2006)
8. Rathinasamy
9. Rajalakshmi
- 10.Valliyathal
(Appellants 8 to 10 brought on record as legal
representatives of the
deceased 1st appellant vide order dated 17.08.2017 made in
CMP No.1372 of 2008 in S.A.No.1386 of 1996)
... Appellants/Petitioners
Vs.

1. Subbaiah Gounder (deceased)
2. Dhandapani
3. Thangamuthu
4. Sellathal
5. Muthammal
6. Tahsildar (Settlement), Salem.
(R6 is exparte in the courts below and hence
given up)
7. Balasubramaniam

8. Palaniyathal
9. Venkatathal
10. Angathal @ Pappathi

(R7 to R10 brought on record as legal representative of the deceased R1 vide order of court dated 13.02.2018 made in CMP NO.2907 and 2908 in S.A.No.1386 of 1999

... Respondents/Defendants

PRAYER : Second Appeal filed under Section 100 of C.P.C., against the decree and judgment dated 27.10.1995 made in A.S.No.58 of 1994 by the Principal District Judge, Periyar District at Erode and against the decree and judgment dated 01.03.1994 made in O.S.No.142 of 1988 by the Subordinate Judge, Dharapuram.

For Appellants :Ms.J.Prithivi
for Mr. S.Kaithamalai Kumaran

For Respondents 7 to 10:Mr. K.Surendranath
for Ms. P.T.Ramadevi

First respondent :Died

Respondents 3 to 5 :No appearance

6th Respondent :Given up.

JUDGMENT

The plaintiffs in O.S.No.142 of 1988 on the file of the Subordinate Judge, Dharapuram are the appellants herein. They filed a suit for declaration of their title to the suit properties and for a permanent injunction restraining the respondents/defendants from interfering with their peaceful possession and enjoyment of the suit properties.

2. During the pendency of this appeal, the appellants 1, 3 5 and first respondent died and their legal heirs were impleaded in the appeal.

3. The suit properties are described as 'A' and 'B' schedule properties in the plaint. The 'A' schedule property is 2/3 share of 7.23 acres in G.S 955 of Mudalipalayam Village, Kangayam Taluk. The 'B' schedule property is the 1/3 share in the same survey number. Both the properties originally belonged to one Periyanna Gounder. Periyanna Gounder had 4 sons by name Kumarasamy Gounder, Pacha Gounder, Chennimalai Gounder and Palani Kangeya Gounder. The plaintiffs' vendor is Muthusamy Gounder, who is the son of Palani Kangeya Gounder. The

respondent is the son of Kumarasamy Gounder and Kumarasamy Gounder is the brother of Palani Kangeya Gounder. Pacha Gounder had two sons by name Thirumalaisamy Gounder and Periyasami Gounder (2nd defendant). The wife of Thirumalaisamy is the 6th defendant. The defendants 3 to 5 are their sons and daughters. There is no dispute with regard to the relationship between the parties. Subbaraya Gounder (2nd plaintiff) is the father-in-law of the first plaintiff. The plaintiffs 3 to 6 are the legal heirs of Subbaraya Gounder. To be more precise, the first plaintiff's name is R.Subbaraya Gounder and his father-in-law (2nd plaintiff) is C.Subbaraya Gounder. The 6th plaintiff is C.Subbaraya Gounder's wife, while plaintiffs 3 to 4 are his daughter. Chennimalai Gounder sold his 1/4th share in favour of Nallasamy Gounder on 12.10.1906. The said Nallasamy Gounder in turn sold the said property in favour of Kumarasamy Gounder and his other two brothers. Therefore, the three brothers are each entitled to 1/3rd share in the entire extent of the land measuring 7 acres 23 cents in the suit survey number. The first defendant's father Kumarasamy Gounder sold his 1/3rd share in favour of Chinnamuthu and Periyamuthu Gounder through a sale deed dated 4.2.1920 (Ex.A13). Chinnamuthu Gounder in turn sold the said property to the first plaintiff and his father-in-law C.Subbaraya Gounder (2nd plaintiff) through a registered sale deed dated 22.06.1956 (Ex.A1).

4. The learned Subordinate Judge, Dharapuram, decreed the suit in respect of 'A' schedule property alone. However, the dispute is in respect of the remaining extent in the said survey number. The first defendant in his written statement had contended that after the death of Pacha Gounder, his legal heirs left the village and that Muthusamy Gounder son of Palani Kangeya Gounder executed a lease deed dated 10.12.1951 (Ex.B8) in his favour and that he was in enjoyment of 4 acres 82 cents including his share of 2 acres 41 cents.

5. The case of the plaintiffs is that Muthusamy Gounder executed a sale deed dated 01.11.1974 (Ex.A2) in respect of his 1/3rd share measuring 2.41 acres. This property is shown as suit 'A' schedule property. The property of Pacha Gounder is shown as 'B' schedule property. The first defendant claims leasehold right in respect of this property. The defendants have not disputed the title of the plaintiffs over 'A' schedule property. The Subordinate Judge, Dharapuram therefore, decreed the suit in respect of the property mentioned in the sale deed Ex.A1 and granted a decree for permanent injunction. As far as the property covered under the sale deed Ex.A2, the learned Sub Judge, Dharapuram dismissed the suit in respect of the prayer sought for by the plaintiffs for a permanent injunction.

6. The plaintiffs filed appeal in A.S.No.58 of 1994 and the defendants filed cross appeal. The first appellate court held that

(i) the plaintiffs are entitled for a declaration of his title over the suit 'A' schedule properties.

(ii) However, the suit was dismissed with regard to the prayer for a permanent injunction restraining the defendants from interfering with the plaintiffs' peaceful possession and enjoyment over the 'A' schedule properties.

(iii) The suit in O.S.No.142 of 1988 on the file of the Subordinate Judge, Dharapuram is dismissed as regards the 'B' schedule property.

7. Both the courts below have concurrently held that the plaintiffs are entitled for a declaration of their title to the suit 'A' schedule property and dismissed the suit as regards 'B' schedule property. The trial court granted a decree of permanent injunction in favour of the plaintiff in respect of suit 'A' schedule property. However, the first appellate court held that since the plaintiff did not specify 4 boundaries of the 'A' schedule property, the prayer for permanent injunction cannot be granted.

8. The plaintiffs aggrieved over the said decree and judgment passed by the learned Principal District Judge, Erode in A.S.No.58 of 1994 dated 27.10.1995, have filed the present appeal.

9. In this appeal, the following substantial question of law is raised.

Whether the lower appellate court being the final court of fact, is justified in not adverting to Ex.A3 to Ex.A9, kist receipts and Ex.A10 to Ex.A12 adangal extracts produced by the plaintiffs to prove their possession of the suit properties on the date of suit?

10. The case of the plaintiffs and defendants in nutshell are as follows. The plaintiffs 1 and 2 purchased 'A' schedule property through registered sale deeds dated 22.06.1956 (Ex.A1) and 1.11.1974 (Ex.A2). The 'B' schedule property belongs to the defendants 2 to 6 and the first plaintiff is in possession of 'B' schedule property as a lessee. The suit properties were Inam lands and they originally belonged to Periyanna Gounder, who had four sons. One of his sons Chennimalai Gounder died issueless and the first defendant's father sold his share on 05.02.1920 in favour of Periyamuthu Gounder and Chinnamuthu Gounder. Therefore, he does not have any right over 'A' and 'B'

'schedule properties. Since the defendants are denying title and possession of the plaintiffs over the suit property, they have filed the suit for declaration and injunction.

11. The defendants resisted the suit by contending that Muthusamy Gounder had no right to execute the sale deed dated 1.11.1974 (Ex.A2). They have also denied that the first plaintiff is in possession of 'B' schedule property as a lessee. Their specific contention is that Periyasamy Gounder and Thirumalaisamy Gounder (vendors of the plaintiffs) had no right in the suit properties and that the plaintiffs 1 and 2 are entitled to only 2.41 acres. According to them, the remaining extent is in possession of the first defendant, as Pacha Gounder and Palani Kangeya Gounder had left the village and patta was also issued in his name. They have denied all the allegations of the plaintiffs. The first defendant in his additional written statement had contended that he is a lessee in respect of the share of Palani Kangeya Gounder, since Palani Kangeya Gounder's son Muthusamy Gounder executed a lease deed dated 10.12.1951 in his favour. It is further contended by him that the settlement Tahsildar also conducted an enquiry and only on completion thereof, patta was issued to him.

12. It is admitted by both the parties that Muthusamy Gounder had 1/3rd share in the suit survey number. The first defendant relied on the registered lease deed dated 10.12.1951 (Ex.B8) and contended that as per the lease deed, he is in possession of the property mentioned in Ex.B8, as a lessee. This property is also covered under the sale deed Ex.A2. It is pertinent to point out that the first defendant in his written statement filed on 18.04.1989, did not contend that he is a lessee in the property conveyed under the sale deed Ex.A2. This plea was raised subsequently by filing an additional written statement and that too after the examination of the first plaintiff as Pw1. The first appellate court has observed that the plaintiffs and the first defendant did not take consistent stand during the proceedings of the Settlement Tahsildar in respect of this Inam lands (the suit properties). The first appellate court, infact, had discussed in detail the proceedings initiated by Inam settlement Tahsildar and the appeal filed thereon by the parties under the Tamil Nadu Minor Inams (abolition and conversion into Ryotwari) Act 1963. All the observations made by the first appellate court are well founded in this regard and the first appellate court has rightly held that civil court has jurisdiction to entertain the suit even if a joint patta is issued through the proceedings of the Special Tahsildar under the Tamil Nadu Minor Inams (abolition and conversion into Ryotwari) Act 1963. I hold, there is no necessity to once again go into this aspect, since Law on this point is well settled.

13. As already observed, the defendants did not dispute that the plaintiffs have 1/3rd share in the suit 'A' schedule properties. At this juncture, it is also relevant to point out that since the first defendant claimed that he is a lessee under Muthusamy Gounder, he has admitted title of Muthusamy Gounder. It is also clear from the records that the said property (1/3 share of Muthusamy Gounder) was mortgaged by Muthusamy Gounder under Ex.A14 to one Sivanmalai Gounder. The Dw1 is one of the attestors of Ex.A14. Though initially the first defendant denied that the mortgage money was discharged by the first plaintiff, subsequently he admitted that the first plaintiff alone discharged the mortgage loan. Therefore, the findings of both the courts below that Muthusamy Gounder had title to 1/3rd share in the suit survey number cannot be faulted with.

14. In fact, the mortgage deed (Ex.A14) and the lease deed (Ex.B8) are executed and registered on the same date. When the first defendant himself admitted that the first plaintiff discharged the mortgage loan there is no necessity for the first plaintiff to adduce any documentary evidence in this regard. The first defendant, who claimed himself as a lessee of the property covered under the sale deed Ex.A2, should prove his possession over the said property. This has also been observed by the first appellate court. The first defendant is also not clear about his stand. In fact, during the course of cross examination, the defendant has deposed that he is claiming an exclusive right over the property covered under Ex.A2. The first defendant also did not file Ex.B8 before the Inam Settlement Tahsildar. In his reply notice (Ex.B2) also, he did not mention anything about this lease deed Ex.B8. The first appellate court had dealt with the issue between both the parties in extenso and all the observations are well founded.

15. The defendants have not filed any appeal/cross appeal before this court. Therefore, the crux of the issue which has to be decided by this court is whether the appellants/plaintiffs are entitled for a permanent injunction as prayed for by them. Since the plaintiffs have purchased only 2/3rd share in G.S.955 of Mudalipalayam Village described as 'A' schedule property, they cannot claim any permanent injunction. More over, the boundary descriptions are also not found in the 'A' schedule property. In both the mortgage deed and lease deed, 1/3rd share of the entire property in G.S.No.955 is mentioned. An attempt was made by the first defendant to show that the properties were divided into three halves as western portion, middle portion and eastern portion and that he was in enjoyment of eastern portion. This was stoutly denied by the plaintiffs.

16. The plaintiffs, who pray for a permanent injunction should specify the suit property with four boundaries. Since the property covered under Ex.A1 is 2/3rd share (A schedule property), he cannot be granted an order of permanent injunction. The first appellate court is right in holding that the plaintiff is entitled for a declaration in respect of his property covered under Ex.A1 and dismissed the suit as regards the prayer for permanent injunction.

17. As regards the 'B' schedule property, the claim of the first plaintiff is that Pacha Gounder, leased out his share orally in his favour as there was a severe drought during the relevant period and that he has been in possession and enjoyment of 'B' schedule property for more than 40 years. This has not been proved by the 2nd plaintiff by adducing acceptable evidence. The first plaintiff did not deny the title of defendants 2 to 6 over the suit B schedule properties. The first plaintiff did not say anything about his leasehold right over 'B' schedule property before the settlement Tahsildar. A perusal of the appeal Ex.B23 also shows that the first plaintiff did not claim that he is in possession of the 'B' schedule property as a lessee. The plaintiffs mainly rely on Ex.A28 and Ex.A30, which are adangal extracts for the fasli 1400, 1401 and 1402. These are subsequent to the filing of the suit. None of the documents adduced on the side of the plaintiffs show that the plaintiffs are in possession of suit 'B' schedule property. On the other hand, the documents, especially Ex.B16 to Ex.B21 (kist receipts), Adangal extract (Ex.B11) and patta (Ex.B14) clearly show that the first defendant is in possession of a portion of the entire extent of the suit properties. Therefore, the plaintiffs are not entitled to any relief in suit 'B' schedule properties and the substantial question of law raised in the appeal is answered against the appellant.

18. In the result, सत्यमेव जयते

- (i) The second appeal is dismissed. No costs.
- (ii) The decree and judgment made in A.S.No.58 of 1994 dated 27.10.1995 by the Principal District Judge, Erode is upheld.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

mst

To

1. The Principal District Judge,
Periyar District at Erode.
2. The Subordinate Judge,
Dharapuram.

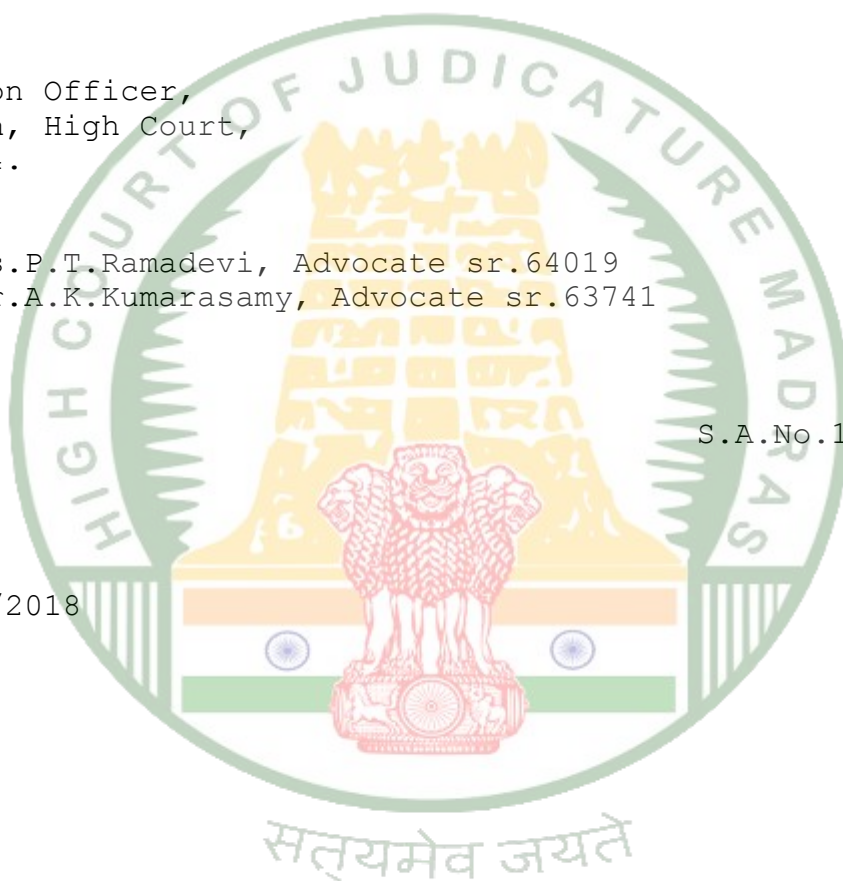
Copy to

The Section Officer,
VR Section, High Court,
Madras-104.

+1cc to Ms.P.T.Ramadevi, Advocate sr.64019
+1cc to Mr.A.K.Kumarasamy, Advocate sr.63741

S.A.No.1386 of 1996

rj[col]
srg 15/11/2018



WEB COPY