

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

S.A.No.412 of 1996

1.Puttama
2.Rathinammal
3.Narayana Reddy
4.Srinivasa Reddy
5.Chandra Reddy
6.Jayapal Reddy ... Appellants/Defendants 6 to 11

Vs.

1.Munusamy Reddy (deceased)
2.Chinnamma
3.Krishna Reddy
4.Puchamma
5.Ammaiyakka
6.M.Muni Reddy
7.Sujatha
8.M.Sasidhara Reddy

(RR5 to 8 brought on record as LRs of the deceased R1 vide order of Court dated 20.09.2011 made in C.M.P.960/2009 in S.A.No.412/1996)

... Respondents/Defendants 3 to 5
and LRS of the 1st Respondents/Plaintiff (decd)

PRAYER: The Second Appeal has been filed under Section 100 of C.P.C. against the decree and judgment of the learned Additional Special Judge, Krishnagiri, made in A.S.No.34/94 and dated 14.11.1995 reversing the decree and judgment of the District Munsif, Hosur dated 08.06.1992 made in O.S.No.507/1979.

For Appellants : Mr.S.Thangavel
for Mr.P.K.Rajagopal

For Respondents : R1 died
Mr.D.Shivakumaran for R4 to 7
R2 & R3 absent
R8 Sasidhara Reddy

J U D G M E N T

The defendants who have lost their case before the First Appellate Court in A.S.No.34/94 dated 14.11.1995 filed this second appeal before this Court.

2.The sum and substance of the plaint averments are as follows:

The plaintiff is the owner of the suit property and he inherited the property from his father and also by purchase in the year 1931. Under both these deeds, the plaintiff has prescribed title and possession. Thereafter, the plaintiff was paying kist and also got patta pass book for his land. Thus, the plaintiff had both legal title, physical and legal possession as well.

3.The defendants are the brothers. The defendants are the sons of one Chinna Abbiah alias Muni Reddy, who is the elder brother of the plaintiff's father. Both of them were separated long back even during their life time and the defendants and their father never had possession of the suit land after the sale in the year 1944.

4.The plaintiff's father Muni Abbiah alias Muni Reddy had purchased the suit land in Survey No.782 and other lands from one Gulla Reddy alias Muni Reddy and his brother's sons Muni Reddy, Venkat Ram Reddy and Pilla Reddy for a valuable consideration of Rs.500/- under a registered sale deed dated 10.07.1931. In a subsequent partition between the plaintiff's father Muni Abbiah alias Muni Reddy and his brother Chinna Abbiah alias Muni Reddy to the extent of 1.22 acres in the suit Survey No.782 and other lands were allotted to the share of the said Chinna Abbiah alias Muni Reddy and he was in possession of the same. The plaintiff's father was in possession of the rest of the land in the Survey No.782.

5.Subsequently, the defendant's father and his son Gulla Reddy alias Papi Reddy, the deceased first defendant in the suit has sold the said 1.23 acres in suit survey No.782 and other lands to the plaintiff's father for a valuable consideration of Rs.200/- under a registered sale deed dated 20.06.1944 and delivered possession of the same to him.

6.Since then, the plaintiff's father became the absolute owner and entitled to the entire land in Survey No.782 and was in possession and enjoyment of the same. After his death, the plaintiff who is the only legal heir became entitled to the suit land and other lands and also has been in absolute possession and enjoyment of the same. Patta for the suit lands and other lands also stood in the name of the plaintiff's father and during U.D.R. operation, patta for the suit land was issued in the name of the plaintiff and one Dhana Reddy. The said Dhana

Reddy mentioned in the U.D.R. Patta that he had nothing to do with the suit lands. Hence, the plaintiff is absolutely entitled to the suit lands and was in absolute possession and enjoyment of the property. The defendants 1 and 2 who are the sons of Chinna Abbiah and other defendants who are the legal heirs of defendants 1 and 2 have no manner of right, title or interest in the suit land nor are they in possession of the same.

7. Because of some personal misunderstanding, the defendants 1 and 2, have been laying false claims to the suit property and disturbing the plaintiff's peaceful possession and enjoyment. Then, they were making arrangements to plough up the ridges and annex the same to their possession. So far, the plaintiff had prevented their attempts and now had to file a suit for declaration and permanent injunction against the defendants.

8. The sum and substance of the written statement reads as follows:

The relationship between the parties to the suit as alleged in the plaint is true. The suit land described in the plaint schedule was not in exclusive possession of the plaintiff as averred. The defendants were also in the enjoyment of the same under a patta for over a period of 20 years and more immediately proceeding the date of suit. The plaintiff is not entitled to the suit land and the same was inherited from his father.

9. The plaintiff's father did not get any share in the family partition but the plaintiff's father was allotted other item of land and subsequently sold the same. The payment of kist, enjoyment and exercising acts of ownership with respect to suit land has also been with the defendants. The defendants have also been given a patta book for the suit land which is covered by patta No.174 and they have also been paying kist for the same even now. The suit is aimed at

grabbing the land over which the defendants have legitimate rights both by title and enjoyment and possession.

10. The first defendant had relinquished his rights in favour of the second defendant after enjoying the same for some time. It is the second defendant, who has been in actual enjoyment of the suit land.

11. After framing the issues, the Trial Court dismissed the suit but the First Appellate Court allowed the appeal by reversing the judgment passed by the Trial Court, as against which, the second appeal has been preferred by the defendants.

12. At the time of admitting the second appeal, this Court framed the following substantial questions of law as follows:

i) Whether the lower appellate Court erred in law in holding that the holder of the UDR patta is proof of title and possession of the suit schedule property?

ii) Whether the lower appellate Court erred in law in not considering the various admissions contained in the evidence of the plaintiff and his witnesses in order to decide the factor of possession of the suit properties?

iii) Whether the first appellate court erred in law in not accepting the pleading of adverse possession taken and substantiated by the appellants?

13.The learned counsel appearing for the appellants/defendants would submit that admittedly the entire property in Survey No.782 is a joint family property. Even in the year 1931, the large extent of land was purchased by the plaintiff's father from the funds of the Hindu Joint Family under Ex.A1.

14.On a perusal of Ex.A1, it is clear that the property was purchased out of the joint nucleus funds for the well being of the joint family. Admittedly, all the properties were enjoyed jointly and patta stands in the name of the plaintiff's father. A bare perusal of patta, will disclose the joint ownership of the property. Even the plaintiff (PW1) admitted the fact that the properties are joint family properties and the patta stands in the name of his father and defendants' father.

15.After analyzing the entire facts, the Trial Court dismissed the suit, but, the First Appellate Court allowed the first appeal, merely, because of one of the defendants i.e. DW1 / the eighth defendant, the son of the second defendant in his evidence deposed that the property was in favour of the plaintiff's father. Even presuming that there was a partition in between the brothers and thereafter the same was sold in favour of the plaintiff's father, such a conclusion is perverse without appreciating the factual position involved in the case.

16.Admittedly, the joint family property was purchased in the year 1931 and one part of the suit land was sold to the plaintiff's father in the year 1944, which is after thirteen years. The plaintiff did not establish that the property was in possession of the plaintiff either by way of oral partition or by way of written partition. In the absence of partition in between the brothers, the claim made by the plaintiff as against the co-owners is not sustainable in law.

17.Per contra, the learned counsel appearing for the respondent / plaintiff would submit that the property was purchased by the plaintiff's father under a registered sale deed dated 10.07.1931. There are four Survey numbers and more than ten (10) acres were purchased under Ex.A1. After the purchase, the portion of the land covered under Survey No.782 was allotted in favour of the defendants' father.

18.The learned counsel appearing for the respondent / plaintiff further submitted that 5.10 acres covered under Survey No.782 relates to the property of plaintiff's father which was purchased from his brother and the plaintiff's father became the absolute owner of the 5.10 acres and obtained patta in favour of him.

19.Thereafter, the plaintiff's father purchased the properties to the extent of 1.23 acres from the plaintiff's father's brother i.e. Chinna Abbiah alias Muni Reddy in the year 1944, which is evident that there was an oral partition in between the plaintiff's father and the defendants' father. Hence, the First Appellate Court arrived at a conclusion that there has been a partition in the suit land. After partition, the plaintiff's father purchased the property from the defendants' father. After analysing the factual aspects, the First Appellate Court decreed the appeal in favour of the plaintiff, which is well considered decision and need not be disturbed in the second appeal.

20.Heard the rival submissions made on either side.

21.On a perusal of the materials and records, the plaintiff examined three witnesses on his side. The deposition of PW1, the plaintiff, had admitted that the patta No.184 relates to Survey No.192, which stands in the name of his father and his paternal uncle (bghpag;gh). The revenue authorities had issued joint patta in the name of his father and the paternal uncle (bghpag;gh).

22.Accordingly, the patta stood in the name of the joint family members. Thereafter, P.W.3, the Village Administrative Officer was examined on behalf of the P.W.1. The Village Administrative Officer viz., P.W.3 categorically admitted that whomsoever pays the kist and kandayam in patta No.174 which contains five survey Nos.765, 775, 782, 666 and 782/2, that will be credited only in the account of patta No.174 and not in Survey No. 782. P.W.3 viz., The Village Administrative Officer had also admitted that the entire patta including the suit property was enjoyed by the plaintiff's father and the defendant's father. The P.W.3 has also stated that all the kist receipts were issued in favour of the plaintiff and defendants.

23.Admittedly, the plaintiff did not mark any documents with regard to the partition in between the family. The

plaintiff categorically admitted in his evidence that patta stands in the name of joint family, the kist and kadayam receipts were issued in favour of the plaintiff and the defendants. No documents were marked before the Courts below to show that there was partition in between the brothers. The entire property, which was purchased by the plaintiff's father was only on behalf of the joint family.

24. On a perusal of genealogy, it is clear that the plaintiff's father Muni Abbiah alias Muni Reddy and Chinna Abbiah alias Muni Reddy are the brothers. The plaintiff is the only legal heir of Muni Abbiah alias Muni Reddy and defendants are the sons of Chinna Abbiah alias Muni Reddy. Chinna Abbiah had two sons i.e. defendants 1 and 2 and defendants 3 to 5 are the legal heirs impleaded on record after the death of defendants 1 and 2.

25. Even on a perusal of Ex.A1, it discloses that there are five survey numbers to the properties purchased by the plaintiff's father. However, the plaintiff has filed the suit only for survey No.782 and did not claim for other survey numbers which was purchased by the plaintiff's father. While being so, without establishing the partition between the brothers, claiming properties in respect of only one survey number is not suffice to establish the title in respect of suit schedule property.

26. The respondents / plaintiffs purchased the property to the extent of 1.23 acres from the defendants' father in the year 1944. Accordingly, the First Appellate Court presumes that the plaintiffs' suit property must be partitioned prior to that. However, the said suit schedule property and other properties were purchased in the year 1931. The respondents/ plaintiffs did not establish how the suit schedule properties were allotted in favour of plaintiffs or plaintiffs' father. Without any documentary proof, claiming suit schedule property for exclusive property of the plaintiffs, the same which has purchased in the year 1931 in the present suit is not established.

27. The First Appellate Court arrived conclusion only based on the assumption, that one of the properties was purchased in the year 1944, and the suit property may be allotted in favour of the plaintiff in only a presumption and the same is not sustainable.

28. Accordingly, the judgment passed by the First Appellate Court is not sustainable. It is necessary to interfere with the judgment of the First Appellate Court and the same is set aside. Accordingly, the judgment and decree passed by the Trial Court is restored.

29. In view of the above, the substantial questions of law are answered in favour of the appellants / defendants.

30.In the result, the second appeal is allowed. The judgment and decree passed by the learned Additional Special Judge, Krishnagiri in A.S.No.34/94 dated 14.11.1995 is set aside and the decree and judgment of the District Munsif, Hosur in O.S.No.507/1979 dated 08.06.1992, is confirmed. No costs.

Sd/-

Assistant Registrar(CS IV)

//True copy//

Sub Assistant Registrar

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To.

1.The Additional Special Judge
Krishnagiri

2.The District Munsif
Hosur

3. The Section Officer,
VR Section, High Court,
Madras. (2 Copies)

+1cc to Mr.D.Shiva Kumaran, Advocate SR.No.10848

S.A.No.412 of 1996

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