

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.01.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

S.A.No.1785 of 1999

Deviammal

W/o.B.Ranga Gowder

... Appellant/(Plaintiff) in  
OS.No.234 of 1996

Vs.

1. Dharman

2. Bheeman

3. Deviammal

...Respondents/(Defendants) in  
OS No.234/1996

PRAYER: The Second Appeal has been filed under Section 100 of C.P.C. to set aside the Judgment and Decree dated 09.09.1997 passed in A.S.No.28 of 1997 on the file of the District Judge, Uthagamandalam, The Nilgiris, confirming the judgement and decree dated 24.03.1997 passed in O.S.No.234 of 1996 on the file of the District Munsif, Uthagamandalam, the Nilgiris.

For Appellant : M/s.T.R.Sathiya Mohan  
For Respondents : M/s.M.Krishnakumar  
for N.S.Nandakumar

J U D G M E N T

The unsuccessful appellant / plaintiff who has lost the case before the Lower Appellate Court, has filed this second appeal.

2. The case of the plaintiff is as follows:

The plaintiff's husband B.Ranga Gowder purchased an extent of 0.35 acres from late Dhundan in R.S.No.144/1 of Nanjanadu Revenue Village by sale deed dated 14.12.1966 and Registered as document No.1523/66 in the office of the Sub-Registrar, Ootacamund and on 04.01.1967 the plaintiff's husband purchased a further extent of 0.35 acres of land from late K.Hala Gowder in document No.20/67 and the plaintiff's husband altogether entitled to 0.70 acres of land situated in R.S.No.144/1 of Nanjanadu Revenue Village and ever since the plaintiff's husband was in continuous possession and enjoyment of the property.

3. The plaintiff / appellant states that one Kulla Gowder of Kurthukuli hamlet, Nanjanadu Village entitled to 1.40 acres of land situated in R.S.No.144/1 in Nanjanadu Village by virtue of

oral partition between his other brothers late Bella Maistry. The said Kulla Gowder died intestate leaving behind his sons 1.Dhundani, 2.B.K.Ranga Gowder, 3.Hala Gowder and 4.K.Nanjan, all of them were died, on whom the property in question 1.40 acres devolved. The oral partition between them took place and as a result, each one of them entitled to 0.35 acres in R.S.No.144/1.

4.The plaintiff's husband gifted the above 0.70 acres in R.S.No.144/1 of Nanjanadu Village to the plaintiff on 25.08.1987 by a gift settlement deed registered as document No.658/87 in the office of the Joint Sub-Registrar II, Ootacamund and after the gift deed, the plaintiff was in continuous possession and enjoyment of the same with specific boundaries and cultivating cash crops without any interference.

5.The plaintiff stated that the defendants 1 to 3, were the sons and daughter of late B.K.Ranga Gowder (one of the sons of late Kulla Gowder). The defendants had nothing to do with the said property since the father of the defendants 1 & 2 entitled to his share of 0.35 acres and after his death, the share of late B.K.Ranga Gowder devolved on the defendants 1 & 2 and they were in possession and enjoyment of their respective shares.

6.When that being so, the defendants who had no right, claim, title, interest over the property, on 20.04.1996 and 26.04.1996, with a malafide intention to dispossess the plaintiff, tried to trespass the property, which was foiled by the plaintiff. In order to prevent the frequent trespass and in view of the illness of the plaintiff's husband, who was bed ridden, the plaintiff had no other option except to prevent the illegal activities of the defendants, the plaintiff had filed suit for declaration and permanent injunction.

7. The defendants in their written statement had summed up as follows:

The defendants had admitted that an oral partition took place amongst the sons of Late Kulla Gowder and an extent of one acre and fifty cents of agricultural land in Survey field No.144/1 of Kuruthukulli Village, Nanjanad Revenue Village, Udhagamandalam, the Nilgiris had been allotted to the father of the defendants amongst the other joint family properties and ever since the oral partition, the father of the defendants, one B.K.Ranga Gowder was in actual possession and enjoyment of the same. In the year 1964, the said B.K.Ranga Gowder, the father of the defendants herein had gifted the said extent of one acre and fifty cents of agricultural land in R.S.No.144/1 of Kuruthukulli Village and an extent of fifty cents of agricultural land in R.S.No.145/1 of Kuruthukuli Village, Nanjanad Revenue Village, Udhagamandalam Taluk, the Nilgiris to the third defendant herein under a gift deed dated 31.10.1964, registered a document No.1373/94 on the file of the Sub-

Registrar of Udhagamandalam, the Nilgiris, the third defendant then onwards had been in actual, physical and exclusive possession and continuous enjoyment of the said gifted lands ever since the date of the gift till date, which the plaintiff and her alleged predecessors on title were well aware.

8.It was absolutely false to state that the sons of Late Kulla Gowder were entitled to 0.35 cents each in R.S.No.144/1 of Kuruthukulli Village, Nanjanad Revenue Village, the Nilgiris as alleged. The first and the second defendants who being the sons of Late B.K.Ranga Gowder and the brothers of the third defendant, were helping the third defendant in all the agricultural operation in the said survey filed R.S.No.144/1 of Kuruthukulli Village, and the other joint family properties. The third defendant had been in actual, physical and continuous possession of agricultural land in R.S.No.144/1 of Kuruthukulli Village, Nanjanad revenue village, Udhagamandalam, which includes the suit schedule property ever since the date of gift in her own right.

9.The defendants were not at all aware of any such transfer under which the plaintiff filed the suit and the same would not bind on them at any stretch of imagination and the same is legally barred. The

alleged sales and subsequent alleged gift in favour of the plaintiff is void abinito.

10.Further more, the third defendant had caused a legal notice dated 03.02.1986 to the plaintiff's husband B.Ranga Gowder, who alleged to have gifted the suit schedule property to the plaintiff, which the said B.Ranga Gowder (plaintiff's husband) received and acknowledged the said legal notice without demur on 07.02.1986 neither replied thereto nor made any claim over the property till date knowing fully well about his defective title under the sham and nominal sale deeds and he, who had alleged to have gifted the suit property, was fully aware of the actual, physical and continuous possession of the third defendant and to camouflage the same, had executed the gifted deed in favour of the plaintiff which has not been acted upon till date. This appeal is to overcome and to give legal colour to the plaintiff's defective title and with a view to get into the possession of the suit property which the plaintiff has lost due to efflux of statutory period. The third defendant acquired the title to the property by adverse possession as against the plaintiff and her alleged predecessor in title even if they have any as alleged. The actual, physical and continuous possession and exclusive enjoyment of the property of the third defendant is open, hostile to the knowledge of the plaintiff and to her predecessor.

11.The plaintiff had given erroneous boundaries to the suit schedule property, with a view to cover the same on the face of records officially. The plaintiff who being the wife of B.Ranga Gowder, had cunningly delete to mention her initial before her name in the short cause title and in the long cause title for the reasons best known to her. The plaintiff had deliberately and wantonly suppressed the suit documents which were totally misleading, fabricated and manipulated which were crystal clear on the fact of the official records and on records placed before this Court. The plaintiff had filed the alleged chitta extract dated 28.12.1988 alleged to have issued in her favour and mislead this Court. The plaintiff's name has not been included in the chitta extract or in any other revenue records till date. The subsequent acts of the plaintiff in applying to the Tahsildar of Udhagamandalam Taluk, the Nilgiris to include her name in the chitta extract in respect of the suit property and the order of rejection of her claim which has been passed by the Tahsildar of Udhagamandalam, the Nilgiris in his proceedings No.O.Mu.PaMa.No.2/998/95-96 dated 30.05.1996 after a full fledged enquiry would certainly vouch safe the fraudulent acts of the plaintiff in misleading the Court by manipulating and fabricating the official records by misusing the third defendant's name which being the same that of the plaintiff but for the initial.

12.Accordingly, after the elaborate trial, the Lower Court as well as the Lower Appellate Court dismissed the suit and confirmed the adverse possession and title claimed by the defendants. Aggrieved by the same. As against the concurrent findings, the second appeal has been filed has been preferred before this Court.

13.While entertaining this second appeal, this Court has framed the following substantial questions of law as follows:

1.Whether the Trial Court was right in altogether ignoring the revenue records and the oral evidence of PW6 which are very material for deciding the issues?

2.Whether the question of adverse possession will arise when the plaintiff's ancestors are only co-pattadars?

3.Whether the Trial Court was right in answering the issues on non-joinder of parties and description of property in direct contract to the issue on adverse possession?

4.Whether the Lower Appellate Court was right in holding the issue on injunction against the Appellate particularly, after reversing the finding of the Lower Court on adverse possession and non-joinder of parties?

14.The learned counsel appearing for the appellant/plaintiff, would contend that Kulla Gowder and Bella Maistry are brothers. They have partitioned the family property of 2.8 acres, giving 50% i.e. 1.4 acres and retained 1.4 acres. The retained 1.4 acres of Kulla Gowder, was partitioned among his four sons i.e. 0.35 cents each.

15.Thereafter, in the year 1966 and 1967, the plaintiff's husband purchased the property of 0.35 cents from Dhundan and 0.35 cents from Hala Gowder, who are the two sons of Kulla Gowder and the same have been marked as Ex.A1 & A2. Immediately, after the purchase of 0.70 cents from the sons of the Kulla Gowder, the plaintiff's husband was in continuous possession and enjoyment of the suit property.

16.In the year 1987, the plaintiff's husband executed a gift deed in favour of the plaintiff, which has been marked as Ex.A3. By the virtue of a gift deed executed by the plaintiff's husband, the plaintiff is ever since in physical and continuous possession and enjoyment of the property and is growing cash crops. When such being the position, the defendants who are none other than the legal heirs of B.K.Ranga Gowder, are trying to trespass into the physical possession and enjoyment of the plaintiff's property, for which the plaintiff had filed a suit for declaration and permanent injunction before the Lower Court.

17.The learned counsel for the appellant / plaintiff would further submit that in order to substantiate the claim of the plaintiff, the gift deeds executed by the plaintiff's husband in the year 1987 were marked as Ex.A1, A2 & A3. The learned counsel for the appellant/plaintiff, vehemently relied on Ex.A10, which was issued by the Village Administrative Officer in order to obtain loan from the Agricultural Department and other chitta extract. They have been marked as Ex.A7, A15 and A17, which stands in the name of the plaintiff as well as her husband. The revenue records and the certificate issued by the Village Administrative Officer show and confirm the plaintiff's possession and enjoyment of the property.

18.Per contra, the learned counsel for the defendants would contend that in fact the brothers of Kulla Gowder and Bella Maistry partitioned the huge extent of properties orally without any documents. The suit schedule property was acquired by the defendants' father through oral partition amongst his brothers. The defendants' father had executed the settlement deed for 1.50 acres in R.S.No.144/1 and 50 cents of agricultural land in R.S.No.145/1 of Kuruthukuli Village, Nanjanad Revenue Village, Udhagamandalam Taluk, the Nilgiris, acquired in the year 1964, which has been marked as Ex.B1.

19. Thereafter, the second defendant had applied for mutation of revenue records before the revenue officials and also grant of joint patta by including the third defendant and other beneficiaries who have interest in the respective R.S.No.144/1. In Ex.B1, in order to mention the boundaries, the defendants' father had clearly mentioned that since the patta is the joint patta, there is no necessity to mention the boundaries separately. The joint patta itself speaks the boundaries, which confirms the possession of the defendants from the year 1964.

20. Interestingly, though the plaintiff's husband purchased the property in the year 1966-67, which has been marked as Ex.A1 & A2, no boundaries were mentioned in the schedule described in the sale deed. Further, they have not taken any steps for mutation of revenue records. The appellant / plaintiff filed the application before the revenue officials for mutation of revenue records. Immediately after filing of the application, before the revenue authorities, the defendants have made objections and hence the claim of the plaintiff was rejected, the revenue records confirmed that the property stands in the name of the third defendant.

21. Even assuming, Ex.A5 issued by the Village Administrative Officer, however, in his deposition, has stated that the said certificate was issued only for the purpose of obtaining loan from the Agricultural Department and the said certificate was not issued after the verification of revenue records. The Village Administrative Officer himself had confirmed the application filed by the plaintiff, which was subsequently rejected by the Tahsildar and the Tahsildar was also examined as P.W.6, who also confirmed the rejection of mutation of revenue records against the plaintiff.

22. The witnesses which were examined on behalf of the plaintiff, did not support or prove the physical possession of the suit property. After the elaborate consideration of the witnesses and documents filed by the defendants, the Lower Court dismissed the suit and the same was confirmed by the Lower Appellate Court.

23. On a perusal of the document, which was marked as Ex.B1, admittedly, Ex.B1 is the settlement deed, executed by the defendants' father in favour of the third defendant, in the year 1964. However, the plaintiff's husband purchased the property in the year 1966-67, which were marked as Ex.A1 & A2, comprising of the above said documents. Ex.B1 clearly stated that the acquisition of lands of 1.50 acres by the defendants' father through oral partition and he has clearly stated the said property has the joint patta and the defendants' father acquired the same through oral partition from the brothers of the Kulla

Gowder and the boundaries described therein, which stands in the name of the parties. It clearly shows that the plaintiff in order to reject the rights of the defendants, had created a sale deed in order to grab the property from the defendants.

24. Even on a perusal of the evidence of Tahsildar as well as Village Administrative Officer, it is evident that the plaintiff had filed application before the revenue officials for mutation in the year 1996. The Tahsildar, after verifying of the records, rejected the claim of the plaintiff and confirmed the possession of the defendants.

25. In view of the above, this Court does not find any error in the order of the Lower Court as well as the Lower Appellate Court and substantial question of law answered against the appellant.

26. In view of the above discussions, this second appeal stands dismissed. The Judgment and Decree dated 09.09.1997 passed in A.S.No.28 of 1997 on the file of the District Judge, Uthagamandalam, The Nilgiris, confirming the Judgment and decree dated 24.03.1997 passed in O.S.No.234 of 1996 on the file of the District Munsif, Uthagamandalam, the Nilgiris, is confirmed. No costs.

Sd/-  
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The District Judge, Uthagamandalam, Nilgiris
2. The District Munsiff, Uthagamandalam, Nilgiris
3. The Section Officer  
VR Section, High Court Madras

+1 cc to Mr.T.R.Sathya Mohan Advocate sr 3964  
+1 cc to Mr.N.S.Nandakumar Advocate sr 4432

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