

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Delivered On: 16.02.2018

Reserved On: 09.02.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

S.A.No.2024 of 1999

1.Marappa Gounder
2.M.Lognathan
3.Periasami Gounder
4.P.Viswanathan
5.Kolandayeeammal
6.Kannammal
7.Arukkani
8.Jayamani

...Appellants (Plaintiff)

Vs.

1.Chinna Ammani Ammal
2.K.Nachimuthu
3.Shanmugham
4.Arumugham

5.State of Tamil Nadu, Rep. by
The District Collector,
Erode District,
Erode.

6.The Tahsildar,
Erode.

...Respondents (Defendants)

Prayer:

Second Appeal filed under Section 100 of Code of Civil Procedure, against the judgment and decree made in A.S.No.8 of 1999 dated 02.08.1999 on the file of the II Additional District Judge, Erode, confirming the judgment and decree dated 18.11.1998 made in O.S.No.507 of 1995 on the file of the II Additional District Munsif, Erode.

Appellant	: Mr.V.P.Sengottuvel
Respondents	: Ms.V.C.Thaarini for R1 and R2 for M/s.V.Raghavachari M/s.S.Gunalan for R4 Mr.A.Devnarendran for R5 and R6 Government Advocate
R3	: No Appearance

J U D G M E N T

The un-successful plaintiffs have filed this second appeal as against the concurrent findings of the lower Court.

2.The sum and substance of the plaint averment is as follows: The second plaintiff is the son of the first plaintiff and the fourth plaintiff is the son of the third plaintiff. The plaintiffs formed themselves as un-divided Hindu joint family. The plaintiffs are pangalis among themselves and they are the absolute owners of the schedule property which they have inherited as ancestral properties. They have been possessing and enjoying the schedule properties separately having been divided in status even during the period of

their ancestors. They had been possessing and enjoying separate lands with an understanding that those portions belong separately and absolutely to the respective families.

3.The plaintiffs 1 and 2 are the absolute owners of the lands in their possession and enjoyment described in the 'A' schedule. The said properties were re-surveyed before twenty five years and given separate survey fields with separate sub divisions. The plaintiffs 3 and 4 are the absolute owners of the land described in the 'B' schedule. The fifth plaintiff is the absolute owner of the land described in 'C' schedule. All those lands were situated in Nasianur Village, Erode Taluk.

4.The second defendant is owning his lands separately and situated adjacent to the suit lands. The husband of the first defendant Marappa Gounder died about 33 years ago leaving behind his widow/ first defendant, as his only legal heir. The said Marappa Gounder had alienated whatever immovables he owned even during his life time. The first defendant widow therefore did not succeed to any property and she was earning her livelihood only by doing coolie work. The plaintiffs understand that there were certain errors in the re-survey records including the name of the first defendant in the chittas and adangals as against her deceased husband Marappa Gounder.

5.The first defendant had never paid any kist for any of her lands and she had never been in possession and enjoyment of the said land and taking advantage of the wrong entries in the re-survey revenue records, the first defendant created some false and fraudulent sale deed in the name of the second defendant purporting to convey some items of properties to him. Such documents are neither valid nor binding upon the plaintiff. Since the first defendant herself did not have any right or title or possession over the property, she could not convey any

right or title or possession to the second defendant in a lawful manner.

6. Though the defendants 1 to 4 made previous attempts to trespass into the suit properties in the middle of June, 1994, they were successfully prevented and driven out by the plaintiffs. Thereafter in the year 1995 they gathered more men and with malafide intention attempted to trespass into the suit schedule property. Thereby, the plaintiffs filed suit for declaration of their respective titles over the 'A', 'B' and 'C' schedule properties and for permanent injunction restraining their men, agents from trespassing into the suit properties. Thereafter, the plaintiffs filed I.A.Nos.154 of 1997 and 156 of 1998 and impleaded some of the parties as legal heirs in the place of the deceased fifth plaintiff and some respondents for effectuate disposal of the suit.

7. The sum and substance of the written statement filed by the first defendant is as follows: The first defendant deny that the plaintiffs are the absolute owners of the suit 'A', 'B' and 'C' schedule properties. The first defendant further denied the averment that she never had any right, title or interest over the suit properties. The first defendant denied the allegations made in the plaint with regard to the sale deed executed in favour of the second defendant. The allegations made with regard to trespassing into the suit schedule property are false and they are created for the purpose of filing the suit and there is no need or any chance for this defendant to trespass into the suit property which was subsequently sold to the other defendants.

8. The first defendant admitted that the plaintiffs are pangalis and they have some properties in the same village, but denied the averment of the plaintiffs that they are the absolute owners of the suit schedule properties. The first defendant further admitted that the second defendant is owning land separately situated in the same survey number and sub division. It is correct that Marappa Gounder is the husband of this defendant and died about 33 years ago leaving behind the first defendant as his only legal heir, however, denied the allegation that he has not left any property in favour of the first defendant and the said Marappa Gounder had alienated the immovables owned by him during his lifetime.

9. The first defendant further contended that her husband Marappa Gounder never alienated any property during his lifetime. According to the first defendant, her husband died in the year 1963 and after his death, she inherited the entire property owned by her husband and enjoyed the same as her absolute property. The first defendant regularly paid the kist

and other revenue taxes to the Government till the first defendant sold the properties in favour of the second defendant. Since the properties were inherited by the first defendant from her husband and upon paying taxes to the Government, the Government mutated the revenue records in favour of the first defendant. Accordingly, the sale made by the first defendant in favour of the second defendant is valid one and binding on the plaintiffs.

10. According to the first defendant, the well in R.S.No.357/3 absolutely belonged to the second defendant's family. The plaintiff's 3 and 4 are enjoying a portion of R.S.No.350/2 only. Originally the old S.F.No. for the suit properties are 102/1B and 94-1/A of Nasiyanur village. The first defendant produced a geneological tree in I.A.No.691/95 to show the relationship in between the plaintiffs, the first defendant and others.

11. One Palani Gounder brother of the father-in-law of the first defendant filed a suit before the Sub-Judge, Erode, in O.S.No.90/62 against the defendant's husband and his two brothers namely Sengoda Gounder and Nallasamy Gounder and against the fifth plaintiff, father of the first plaintiff, father of the third plaintiff, grand father of the second defendant in the suit and some of the other co-sharers and co-owners. In the said suit the said Palani Gounder filed a rough plan to show the position of the parties and the portionship are noted in the rough plan. In that plan, the present portions are clearly demarcated and indicated that who were in possession of the particular portions.

12. As per the rough plan the old S.F.No.102/1B is divided into 1 to 8 portions. The portions which were marked in red colour were enjoyed by the first defendant's husband and his two brothers jointly. However, the said suit ended in favour of Palani Gounder and preliminary decree was passed in his favour. Subsequent to the passing of preliminary decree in the said suit, the first defendant's husband and his brothers amicably settled the dispute in the presence of panchayatdhars and the first defendant was allotted 33 cents in three portions which were in S.No.350/7, 350/13, 350/14 and 350/16 and subsequently by an oral relinquishment, the first defendant became entitled to the entire family property.

13. The sum and substance of the written statement filed by the second defendant is as follows: The second defendant purchased the properties of the first defendant. Since the properties of the first defendant were situated adjacent to the properties of the second defendant and since the second defendant knows about the properties allotted in favour of the first defendant, some of the properties were purchased by the

second defendant. After purchase, the second defendant's name has been included in the revenue records and he has been paying kist for the said properties. After the purchase, the second defendant is the absolute owner of the lands in S.Nos.350/7, 350/13, 350/14 and 350/16 and 357/3 and he was in possession and enjoyment of the same.

14.After the purchase of the said lands, the second defendant had dug a well in S.No.357/3. The plaintiffs have no right over the property in S.No.357/3. The description of the properties as stated by the plaintiffs in S.No.357/3 is wrong including the extent and boundaries. The plaintiffs ought to have proved the total extent over the property as well as the well situated in S.No.357/3. The other sharers have not been implicated as parties. The second defendant is the bonafide purchaser for proper value and consideration. The sale of the second defendant is valid and binding on others.

15.The sum and substance of the written statement filed by the defendants 3 and 6 is as follows: The third defendant contends that there is no cause of action for filing the suit against them. The sixth defendant contended that there is no specific relief against the sixth defendant and the sixth defendant is an un-necessary party. As per the revenue chitta the holdings of Nasianur Village are as follows: Patta No.577 relates to S.F.Nos.350/2, 350/7, 350/13 and 350/14; Patta No.578 relates to S.F.Nos.350/8, 350/15 and 350/14 and Patta No.661 relates to S.F.No.357/3.

16.After elaborate trial, the lower Court dismissed the suit. As against the same, the plaintiffs filed appeal before the lower Appellate Court and the lower Appellate Court dismissed the appeal and confirmed the order of the lower Court. As against the same, the present second appeal is filed.

17.At the time of admission, the following substantial questions of law were framed for consideration:

"(a)Whether the Courts below are right in basing reliance upon the recitals, in Ex.B33 relating to the description of the schedule when none of the parties to the said document is examined?"

18.The learned counsel appearing for the appellants / plaintiffs submitted that admittedly the plaintiffs are pangalies. The suit properties are adjacent to the properties of the defendants 1 and 2 and the first defendant is also a pangali of the plaintiffs. The first defendant's husband owned some properties in the respective survey numbers. However, during his lifetime, he alienated the entire property and he never left any property in favour of the first defendant.

19.The learned counsel appearing for the appellants / plaintiffs further submitted that the problem which led to the filing of the suit is that the name of the first defendant is Chinna Ammani Ammal. The revenue records and other documents in respect of the property stood in the name of Chinnammal, Chinna Ammani Ammal and Ammani Ammal. Whatever names are mentioned as referred to above, the first defendant taking advantage of the names appearing in the revenue records sold the properties in favour of the second defendant and other defendants and it is not binding on the plaintiffs. It is true that the plaintiffs have not produced any title deed before the Court. Since the properties are inherited through oral partition the properties were enjoyed by the plaintiffs for a long time for several decades. Hence, there is no need to produce any proof of title by way of document for proving the title.

20.The learned counsel appearing for the appellants / plaintiffs further submitted that the plaintiffs filed exhibits Ex.A2, Ex.A15 and Ex.A35 and the above said pattas were granted by the revenue authorities in respect of the respective survey numbers and other documents are kist receipts paid by the plaintiffs in order to establish their title and possession of the suit schedule properties, however, no documents were filed by the first defendant. He further submitted that Ex.A2 is the Patta granted in favour of Arumugha Gounder who is none other than the first plaintiff; Ex.A15 is the patta granted to Periasamy Gounder, who is the third plaintiff herein and Ex.A35 is the patta granted in favour of the fifth plaintiff namely Sengoda Gounder. All the above said documents were marked by the plaintiffs in order to prove their title over the property. Without considering the above said aspects, the lower Court as well as the lower Appellate Court concurrently held against the plaintiffs and dismissed the suit is un-sustainable. In view of the above, the appellants/ plaintiffs are entitled to succeed the second appeal. Accordingly, he prayed for allowing the second appeal.

21.The learned counsel appearing for the respondents submitted that based on the revenue recitals and based on Ex.B33 - Will executed by Sengoda Gounder, the suit was dismissed against the plaintiffs and decreed in favour of the defendants.

22.The learned counsel appearing for the respondents further submitted that admittedly, the first defendant's husband and his brothers are pangalis of the plaintiffs and the first defendant acquired the properties in S.No.350/7, 350/13, 350/14 and 350/16 from her husband and after acquiring the properties, the first defendant applied for mutation of revenue records. Accordingly, patta and other records were transferred in favour of the first defendant. After acquiring the properties, the first defendant

is entitled to alienate the properties. Accordingly, some of the properties were sold in favour of the second defendant and other defendants. Hence, it is valid in law and it is binding on the parties. He further submitted that already there was a partition suit in O.S.No.90 of 1962 inbetween one Palani Gounder/ the brother of the father - in - law of the first defendant and the first defendant's husband and her brother - in - laws, fifth plaintiff, father of the first plaintiff, father of the third plaintiff and grand father of the second defendant and some other co-sharers and co-owners and the suit ended in compromise by way of panchayat. In the presence of panchayatdhrs, the first defendant and her husband were allotted some of the properties.

23.The learned counsel appearing for the respondents 1 and 2 submitted that Section 100 of C.P.C. require only a question of law and the interpretation of revenue records which are not being a document of title does not involve any question of law and accordingly, he relied upon the decision of the Hon'ble Supreme Court reported in (1989) 3 SCC 612 (Corporation of the City of Bangalore Vs. M.Papaiah and another), the relevant portion of which reads as follows:

"So far the revenue records are concerned, the appellate court considered the same and held that they did not support the plaint. The High Court has reversed the finding saying that the interpretation of the first appellate court was erroneous. It is firmly established that the revenue records are not documents of title, and the question of interpretation of a document not being a document of title is not a question of law. These errors have seriously vitiated the impugned judgment of the High Court which must be set aside."

24.The learned counsel for the appearing for the respondents 1 and 2 further relied upon the decision of the Hon'ble Supreme Court reported in (2014) 2 SCC 269 (Union of India and others Vs. Vasavi Cooperative Housing Society Limited and Others), the relevant portion of which reads as follows:

"15.It is trite law that, in a suit for declaration of title, the burden always lies on the plaintiff to make out and establish a clear case for granting such a declaration and the weakness, if any, of the case set up by the defendants would not be a ground to grant relief to the plaintiff.

17.At the outset, let us examine the legal position with regard to whom the

burden of proof lies in a suit for declaration of title and possession. This Court in *Moran Mar Basselios Catholicos v. Thukalan Paulo Avira* observed that: (AIR p.37, para 20)

"20..... in a suit [for declaration] if the plaintiffs are to succeed they must do so on the strength of their own title."

18. In *Nagar Palika, Jind v. Jagat Singh* this Court held as under: (SCC p.427c)

"The onus to prove title to the property in question was on the plaintiff-respondent.... In a suit for ejectment based on title it was incumbent on the part of the court of appeal first to record a finding on the claim of title to the suit land made on behalf of the plaintiff. The court is bound to enquire or investigate that question first before going into any other question that may arise in a suit."

19. The legal position, therefore, is clear that the plaintiff in a suit for declaration of title and possession could succeed only on the strength of its own title and that could be done only by adducing sufficient evidence to discharge the onus on it, irrespective of the question whether the defendants have proved their case or not. We are of the view that even if the title set up by the defendants is found against (sic them), in the absence of establishment of the plaintiff's own title, the plaintiff must be non-suited.

21. This Court in several judgments has held that the revenue records do not confer title. In *Corpn. Of the City of Bangalore v. M. Papaiah* this Court held that:

"5..... It is firmly established that the revenue records are not documents of title, and the question of interpretation of a document not being a documents of title is not a question of law."

In *Guru Amarjit Singh v. Rattan Chand* this Court has held that: (SCC p.352, para 2)

"2..... that entries in the Jamabandi

are not proof of title."

In State of H.P.v.Keshav Ram this Court held that (SCC p.259, para 5)

"5.... an entry in the revenue papers by no stretch of imagination can form the basis for declaration of title in favour of the plaintiffs."

22.The plaintiff has also maintained the stand that their predecessor-in-interest was the pattedar of the suit land. In a given case, the conferment of patta as such does not confer title. Reference may be made to the judgments of this Court in Syndicate Bank v. APIIC Ltd. and Vatticherukuru Village Panchayat v. Nori Venkatarama Deekshithulu.

24.We are of the view that even if the entries in the record-of-rights carry evidentiary value, that itself would not confer any title on the plaintiff of the suit land in question. Ex.Z-1 is Classer Register of 1347 Fasli which according to the trial court, speaks of the ownership of the plaintiff's vendor's property. We are of the view that these entries, as such, would not confer any title. The plaintiffs have to show, independent of those entries, that the plaintiff's predecessors had title over the property in question and it is that property which they have purchased. The only documents that has been produced before the court was the registered family settlement and partition deed dated 11.12.1939 of their predecessor-in-interest, wherein, admittedly, the suit land in question has not been mentioned."

25.The learned counsel appearing for the respondents further submitted that perusal of Ex.B1, Ex.B2 and Ex.B33 will establish the title in favour of the first defendant. On perusal of the entire documents, the lower Court as well as the lower Appellate Court has concurrently held in favour of the defendants. Hence the well considered judgments of the Courts below does not warrant any interference and prayed for dismissal of the second appeal.

26.Heard the arguments advanced on either side and perused the materials available on record.

27.A perusal of the material records shows that admittedly the plaintiffs and the first defendant are pangalis and the suit schedule properties were sub divided. No documents were produced by the plaintiffs before the lower Court to establish their title. However, they produced patta and other revenue recitals before the lower Court. On the other hand, the first defendant filed documents namely, Ex.B1 - copy of sale deed executed by Chinna Ammani Ammal and Ex.B33 - copy of the Will executed by Sengoda Gounder. Though the suit was initially filed by five plaintiffs and the plaintiffs 1 and 2 claim 'A' schedule property, plaintiffs 3 and 4 claim 'B' schedule property and fifth plaintiff claim 'C' schedule property, except the third plaintiff, no-one has been examined as witnesses.

28.Only the third plaintiff has been examined as P.W.1. Even the third plaintiff in his cross examination has deposed that he did not depose for other plaintiffs and he deposed only on his behalf. Though the plaintiffs marked 65 documents as exhibits, all those documents relates to only plan, kist receipt, patta, chitta, and enquiry documents and no documents were filed to prove their title. On the other hand, in order to establish their case, the defendants 1 to 3 examined themselves as witnesses and also examined one Sengoda Gounder as D.W.2 and deposed their case individually. On perusal of Ex.B1 it is revealed that the first defendant examined herself as D.W.1 and her brother - in - law Sengoda Gounder was examined as the D.W.2. The second defendant examined himself as D.W.3. The first defendant's brother - in - law D.W.2 admitted that the first defendant was called Chinna Ammani Ammal and Ammani Ammal.

29.The first defendant inorder to show that she had some right in the suit property marked Ex.B33 - Will executed by the fifth plaintiff on 13.07.1993. On a perusal of Ex.B33 it is known that the second defendant is the attesor and he can prove the document. Accordingly, he was examined as witness and he assured that the fifth plaintiff has executed the Will. In the Will the fifth plaintiff admitted that Ammani Ammal's property is situated in S.F.No.357/3 and the same was extracted in the boundaries mentioned in the above said documents. The first defendant's name is referred in the boundaries in the above said Will. In order to disprove the above said document, no witnesses were examined and no contrary documents were filed on the side of the plaintiffs.

30.Apart from the above, in Ex.B2 which relates to the suit filed by one Palani Gounder, his wife and son against the first defendant's husband and her brother in laws and others, the relationship between all the parties is mentioned in detail and genealogy is also annexed with the plaint and the properties owned by the respective parties is also mentioned in the schedule annexed in the plaint. On perusal of the above plaint

averments, the first defendant's husband owned several properties in the said survey numbers and no documents were filed by the plaintiffs to disprove the same. The said properties were acquired by the first defendant from her husband.

31.The third plaintiff while deposing as P.W.1 in his chief examination though denied the suit in O.S.No.90 of 1962, however, on further examination, he admitted that the suit was not decreed and it ended in compromise. The first defendant's case is that, after filing of the suit in O.S.No.90 of 1962 it ended with a compromise before the panchayatdhars. In the panchayat, some of the properties were allotted in favour of the husband of the first defendant. Ex.B1, Ex.B2, Ex.B33 and other revenue records would show that the first defendant acquired the property from her husband and the same was sold to the second defendant and other defendants.

32.In view of the above, I do not find any error in the findings of the lower Court as well as the lower Appellate Court. Accordingly, the substantial question of law is answered against the appellants.

33.In the result, the second appeal is dismissed. The judgment and decree made in A.S.No.8 of 1999 dated 02.08.1999 on the file of the II Additional District Judge, Erode, confirming the judgment and decree dated 18.11.1998 made in O.S.No.507 of 1995 on the file of the II Additional District Munsif, Erode, is confirmed. No costs.

Sd/-

Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

To

1.The II Additional District Judge, Erode.

2.The II Additional District Munsif, Erode.

+ 2 cc to Mr.V.P.Sengottuvel Advocate,SR.12690,10664
+ 1 cc to M/s.S.Gunalan Advocate,SR.12137
+ 1 cc to M/s.V.Raghavachari Advocate,SR.11976,10457
+ 1 cc to The Special Govt.Pleader(CS), SR.12397

S.A.No.2024 of 1999

SV(CO)

NR 09/04/2018