

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :17.09.2018
PRONOUNCED ON:23.10.2018

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.Nos.233 and 234 of 2015
and
M.P.No.1 of 2015

S.A.No.233 of 2015

Pitchamuthu

...Appellant/Respondent/Plaintiff

Vs.

1.Panneerselvam

2.Arumugam

3.Santhi

4.Parvathi

...R1 to R4/Appellants 1,2, 4&5,/D2,D3,D5&D6

5.Uma

6.Minor Vignesh

7.Minor Vijay

[Both Minors represented by
Mother next friend Uma]

... 5to7 Respondents/Appellants 6to8

S.A.No.234 of 2015

1.Pitchamuthu Padayachi

2.Pugazhenth

3.Pari

4.Kumar

5.Elamparuthi

... Appellants/Respondent/Defendents 1,2,4to6

Vs.

1.Panneerselvam

2.Arumugam

3.Santhi

4.Parvathi ...R1 to R4/ Appellants 1,2, 4&5/D2,D3,D5&D6

5.Uma

6.Minor Vignesh

7.Minor Vijay

[Both Minors represented by
Mother next friend Uma]

...Respondents 5 to 7/Appellants 6to8

Prayer S.A.No.233 of 2015: Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree dated 07.04.2014 passed in A.S.No.26 of 2011 on the file of the Sub Court, Chidambaram reversing the judgment and decree dated 30.07.2010 passed in O.S.No.124 of 2001 before the District Munsif cum Judicial Magistrate, Kattumannarkoil.

Prayer S.A.No.234 of 2015:

Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree dated 07.04.2014 passed in A.S.No.27 of 2011 on the file of the Sub Court, Chidambaram confirming the judgment and decree dated 30.07.2010 passed in O.S.No.78 of 2001 before the District Munsif cum Judicial Magistrate, Kattumannarkoil.

For Appellants

in both Appeals: Mrs.Hema Sampath, SC
for M/s.R.Meenal

For Respondents

in both Appeals : Mr.A.Muthukumar

C O M M O N J U D G M E N T

O.S.No.78 of 2001 has been laid by the respondents for declaration and permanent injunction or in the alternative for possession. O.S.No.124 of 2001 has been laid by the appellants for declaration, possession and damages and also for other reliefs.

2. The Second Appeals have been admitted on the following substantial questions of law.

a. Whether in law, the judgment of the Lower Appellate Court is liable to be set aside as it has not complied with the mandates of Order 41 Rule 31 of the Civil Procedure Code?

b. Whether in law, the Lower Appellate Court was right in failing to ignore the admissions of P.W.1 and P.W.3 with respect to the matter in issue and giving a contrary finding?

3. Materials placed on record go to show that the abovesaid civil suits were jointly tried by the trial court and accordingly common evidence was adduced by both the parties in the abovesaid civil suits and on the basis of the materials placed by the respective parties, the trial court is found to have dismissed the suit laid by the respondents in O.S.No.78 of 2001 and decreed the suit filed by the appellants in O.S.No.124 of 2001 by way of a common judgment dated 30.07.2010. Impugning the same, the respondents had preferred A.S.No.26 of 2011 against the judgment and decree passed in O.S.No.124 of 2001 and A.S.No.27 of 2011 against the judgment and decree passed in O.S.No.78 of 2001. The first appellate court by way of a common judgment dated 07.04.2014, had allowed the first appeal preferred by the respondents in A.S.No.26 of 2011 and thereby dismissed the suit laid by the appellants in O.S.No.124 of 2001 and dismissed the first appeal laid by the respondents in A.S.No.27 of 2011 and thereby confirmed the dismissal of O.S.No.78 of 2001 filed by the respondents.

4. Challenging the same, the appellants had preferred the second appeals and it is stated by the appellants that they have filed the two second appeals by way of abundant caution. It is noted that the respondents have not preferred any second appeal in particular, challenging the judgment and decree of the first appellate court passed in A.S.No.27 of 2011.

5. Materials placed on record go to show that the parties are at dispute only as regards the extent of 9 ½ cents

located on the southern side in survey No.39/10A measuring a total extent of 1 acre and 89 cents. As regards the 'B' schedule property and the 'C' schedule property involved in O.S.No.124 of 2001 they are found to be Promboke property and channel respectively. It is not in dispute that the total extent of 1 acre and 89 cents in Survey No.39/10A originally belonged to one Kesava Padayachi and that he had died leaving behind his three sons namely Govindha Rasu, Ramachandran and Illaiya Perumal and daughter namely Dhanapal @ Dhanalakshmi. The respondents claim to have purchased the total of extent of 1 acre 89 cents in survey No.39/10A from the abovesaid three sons of Kesava Padayachi, by way of a sale deed dated 11.08.1969 and enjoying the same without any interruption and accordingly, putting forth the case that the appellants had interfered with their possession and enjoyment of the abovesaid property, had laid the suit against the appellants in O.S.No.78 of 2001. Per contra, the appellants had put forth the case that they had purchased an extent of 9 ½ cents out of 1 acre and 89 cents in Survey No.39/10A from the daughter of Kesava Padayachi namely Dhanapal @ Dhanalakshmi and it is stated by the appellants that in the oral partition effected in the year 1968, 9 ½ cents in the abovesaid survey number was allotted to Dhanapal @ Dhanalakshmi and accordingly it is stated that she being the absolute owner of the abovesaid extent in the abovesaid survey number, accordingly, claimed that they had purchased the abovesaid extent from Dhanapal @ Dhanalakshmi by way of a sale deed dated 21.02.1969 and since then, it is only the appellants, who had been in possession and enjoyment of the same and inasmuch as the respondents had attempted to interfere with their possession and enjoyment, according to them, they had been necessitated to lay the suit against the respondents in O.S.No.124 of 2001. As abovenoted, the trial court had accepted the case of the appellants and rejected the case of the respondents. However, the first appellate court had rejected the case of the appellants and also rejected the case of the respondents. Impugning the same, the abovesaid second appeals had been preferred.

6. As rightly put forth by the learned Senior Counsel appearing for the appellants, considering the materials placed on record by the respondents, it is found that they had failed to place any document worth acceptance evidencing that they are in the possession and enjoyment of the disputed extent of 9 ½ cents in survey No.39/10A and accordingly, it is found that the trial court had rightly analysed the documents projected by the respondents and finding that the same do not relate to the disputed extent in the abovesaid survey number, is found to have rightly rejected the respondents' case. The rejection of the respondents' case by the trial court had been confirmed by the first appellate court also as abovenoted.

7. Insofar as the appellants' case, they claimed title to the disputed extent of 9 ½ cents by way of a sale deed dated 21.02.1969 said to have been executed by Dhanapal @ Dhanalakshmi. Even the first appellate court had determined that Dhanapal @ Dhanalakshmi is entitled to a share in the total extent of one acre and 89 cents in survey No.39/10A, however, did not accept the appellants' case on the footing that the oral partition said to have been effected between the sons and daughter of Kesava Padayachi has not been established by the appellants. As abovenoted, it is the case of the appellants that the oral partition had been effected in respect of the said property between the sons and daughter of Kesava Padayachi in the year 1968. The factum of oral partition, as rightly put forth, is also found to have been admitted by Illaiya Perumal P.W.3, one of the sons of Kesava Padayachi examined on behalf of the respondents and according to P.W.3, the oral partition took place during 1969 and furthermore, he has also admitted that prior to their sale of the entire extent of one acre and 89 cents in survey No.39/10A to the respondents by way of a sale deed dated 11.08.1969, the appellants had purchased the disputed extent of 9 ½ cents from Dhanapal @ Dhanalakshmi by way of a sale deed dated 21.02.1969 and they are well aware of the same and it is stated by him that the appellants had obtained the abovesaid sale deed by committing fraud, coercion etc., and he has also admitted that he is very well aware of the sale transaction dated 21.02.1969 made by Dhanapal @ Dhanalakshmi in favour of the appellants. In such view of the matter, P.W.3 having knowledge of the sale transaction dated 21.02.1969 and if really Dhanapal @ Dhanalakshmi had no entitlement to the disputed extent of 9 ½ cents in survey No.39/10A, he and his brothers would have taken appropriate steps with reference to the same by challenging the abovesaid sale transaction in the manner known to law. If as per his version, the appellants had obtained the abovesaid sale deed by deceit and fraud, necessary legal action would have been initiated by P.W.3 and his brothers as per law. On the other hand, despite having knowledge about the sale deed dated 21.02.1969, the endeavor of P.W.3 and his brothers in alienating the entire extent of 1 acre and 89 cents in favour of the respondents, by way of a sale deed dated 11.08.1969, thereby would only go to show that the claim of P.W.3 that the appellants had obtained the sale transaction dated 21.02.1969 by way of committing deceit and fraud as such cannot be countenanced. As abovestated, there is no proof worth acceptance placed by the respondents that they or their vendors had been in the possession and enjoyment of the disputed 9 ½ cents after 1968 partition. On the other hand, as rightly argued, considering the various revenue documents projected by the appellants by way of Kist receipts, Chitta extracts, Adangal extracts, patta etc., it is seen that, it is only the appellants, who had been in the possession and enjoyment of the

disputed extent of 9 ½ cents on the basis of the sale transaction dated 21.02.1969 and accordingly recognizing their possession and enjoyment, they had been rightly granted the patta by the revenue authorities and on the other hand, the respondents fully aware about the factum of the oral partition between the legal heirs of Kesava Padayachi, suppressing the same and also unmindful of the sale transaction dated 21.12.1969, chosen to purchase the entire extent from the sons alone and accordingly unable to place any proof to establish that their vendors or they are in possession and enjoyment of the disputed 9 ½ cents in the survey No.39/10A. The first appellate court without considering any evidence placed by the respective parties in the right perspective, particularly the evidence of P.W.3 as well as the documents projected by the appellants and also the factum of the sale transaction in favour of the appellants being anterior in time and the knowledge of the same on the part of the respondents and their vendors with reference to the same much earlier to their sale transaction dated 11.08.1969 and without going in to the abovesaid aspects of the matter in the right perspective, erroneously seems to have rejected the case of the appellants on the footing that they had failed to establish the plea of partition projected by them. On the other hand, when the factum of partition had been admitted by P.W.3, Illaiya Perumal, one of the vendors of the respondents and also his knowledge about the sale transaction effected by Dhanapal @ Dhanalakshi in favour of the appellants and furthermore, when the vendors of the respondents had not challenged the same in the manner known to law, it is seen that, as rightly argued, blatantly when they had sold the entire extent in favour of the respondents by intentionally including the disputed extent of 9 ½ cents also, the same cannot be legally countenanced. In such view of the matter, the first appellate court without considering the abovesaid aspects as per law is found to have dismissed the appellants' suit and in such view of the matter, the reasonings and conclusions of the first appellate court in the rejection of the appellants' case are found to be not based on the proper appreciation of the materials placed on record and accordingly they being perverse and illogical, cannot stand scrutiny in the eyes of law. Therefore, it is seen that the rejection of the appellants' case by the first appellate court is found to be not legally justified. Accordingly, it is seen that the first appellate court has not endeavored to discuss anything about the materials placed on record in any manner and also the admissions of P.Ws.1 and 3 with reference to the version of the appellants. It has to be therefore held that the first appellate court had erred in dismissing the suit laid by the appellants. Though, it is contended that the first appellate court, it had not formulated the point for determination, considering the judgment and decree of the first appellate court, it had proceeded to endeavor and

discuss the issues between the parties based upon the main point for determination formulated by it. However, despite the same, had failed to consider the oral and documentary evidence adduced by the respective parties in the right perceptive and in such view of the matter, is found to have erred in rejecting the appellants' suit. The substantial questions of law formulated in the Second Appeal are accordingly answered.

8. During the course of arguments, the learned Senior Counsel appearing for the appellants contended that the respondents have not preferred any appeal challenging the judgment and decree passed by the first appellate court in A.S.No.27 of 2011 confirming the dismissal of their suit in O.S.No.78 of 2011 by the trial court, therefore, according to her, by operation of Section 11 of the Code of Civil Procedure, the respondents are barred by resjudicata in challenging the claim of the appellants to the disputed extent of 9 ½ cents in survey No.39/10A. In this connection, she placed reliance upon the decisions reported in

1. 2015 (3) SCC 624 [Sri Gangai Vinayagar Temple and another Vs. Meenakshi ammal and others]

2.AIR 1976 SC 1645 [Lonan Kutty Vs. Thomman and another]

Considering the principles of law formulated in the abovesaid decisions, when it is noted that, as above discussed, both the suits laid by the appellants as well as the respondents had been jointly tried and the parties had adduced common evidence in both the suits and the trial court had disposed of both the suits by way of one common judgment, but by separate decrees and when the issues involved in one suit are directly and substantially raised in the other suit and being similar in nature and in such view of the matter, the failure of the respondents in challenging the judgment and decree of the first appellate court passed in A.S.No.27 of 2011, assuming the character of former suit and hence the dismissal of the respondents' suit having attained finality, the same would constitute as resjudicata on the part of the respondents in challenging the claim of title to the disputed extent of 9 ½ cents by the appellants in their suit and accordingly, it is seen that the respondents would be restrained from disputing the claim of title of the appellants to the disputed extent of 9 ½ cents in survey No.39/10A by the operation of section 11 of the Civil Procedure Code. The abovesaid point being purely a question of law is also taken into consideration and though it is put forth by the respondents' counsel that the respondents' failure in challenging the judgment and decree of the first appellate court rendered in A.S.No.27 of 2009 would not operate as resjudicata, however, when with reference to the abovesaid

contention, no contra authority has been projected by him to the abovesaid authorities placed by the learned Senior Counsel appearing for the appellants, accordingly, the abovesaid point also would dis-entitle the respondents from questioning the claim of title and other reliefs sought for by the appellants in respect of the disputed 9 ½ cents of land as put forth in O.S.No.124 of 2001.

9. Though the respondents' counsel would contend that without partition and separation of her definite share in the survey No.39/10A, Dhanapal @ Dhanalakshmi would not be entitled to convey her share in favour of the appellants and in this connection, he would place reliance upon the decision reported in 2010 (2) LW 712 (SC) [Gajara Vishnu Gosavi Vs. Prakash Nanasahed Kamble and others] As above discussed, when the factum of the partition had been admitted by P.W.3, one of the vendors of the respondents and also the vendors of the respondents had knowledge about the sale transaction effected by Dhanapal @ Dhanalakshmi and the abovesaid sale transaction is much anterior in time to the sale transaction dated 11.08.1969 and when the entitlement of Dhanapal @ Dhanalakshmi in effecting the sale transaction dated 21.02.1969 is not challenged by them in any manner known to law and also they and the respondents having failed to establish that they had been in the possession and enjoyment of the disputed extent of 9 ½ cents after 1968 oral partition and on the other hand, when the appellants had placed convincing materials evidencing their possession and enjoyment of the abovesaid extent of 9 ½ cents as above pointed out, it is seen that the contention put forth that the appellants had not established the factum of oral partition as such cannot be countenanced. In such view of the matter, the abovesaid decision relied upon by the respondents' counsel would have no application to the case at hand.

सत्यमेव जयते

10. For the reasons aforesaid, the judgment and Decree dated 07.04.2014 passed in A.S.No.26 of 2011 on the file of the Sub Court, Chidambaram are set aside and the judgment and decree dated 30.07.2010 passed in O.S.No.124 of 2001 before the District Munsif cum Judicial Magistrate, Kattumannarkoil are confirmed. Accordingly, the second appeal No.233 of 2015 is allowed with costs. Inasmuch as the Second Appeal No.234 of 2015 had been preferred by the appellants out of abundant caution, in the light of the above discussions, when the judgment and decrees of the Courts below dismissing the respondents' suit in O.S.No.78 of 2001 do not warrant any interference, accordingly, the formal Second Appeal preferred by

the appellants in S.A.No.234 of 2015 is dismissed without costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

1. The Subordinate Judge,
Sub Court,
Chidambaram.

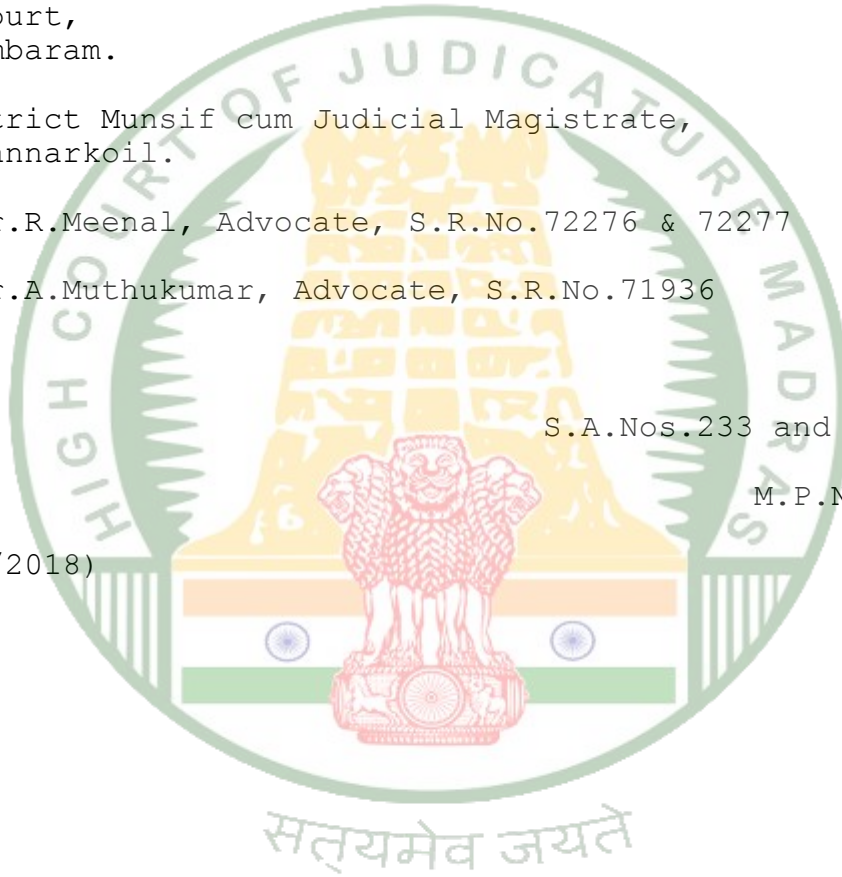
2.The District Munsif cum Judicial Magistrate,
Kattumannarkoil.

+2cc to Mr.R.Meenal, Advocate, S.R.No.72276 & 72277

+1cc to Mr.A.Muthukumar, Advocate, S.R.No.71936

S.A.Nos.233 and 234 of 2015
and
M.P.No.1 of 2015

(GJIICO)
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