

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.10.2018

PRONOUNCED ON : 26.11.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.420 of 2015 and  
MP. NO. 3 OF 2015

P.Chellian ..... Appellant /Plaintiff

Vs.

1.Anandhan  
2.Krishnamoorthy  
Chellammal (deceased) ... Respondents/Defendants

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 25.11.2014 passed in A.S.No.8 of 2014 on the file of the Hon'ble Sub-Court, Madurantakam, Kancheepuram District, confirming the Judgment and Decree dated 23.09.2013 passed in O.S.No.189 of 2010 on the file of the Munsif Court, Madurantakam, Kancheepuram District.

For Appellant : Mr.V.Jayachandran  
for M/s.V.Jayachandran Associates

For Respondents : Mr.N.Nagusha

JUDGMENT

In this second appeal, challenge is made to the Judgement and Decree dated 25.11.2014 passed in A.S.No.8 of 2014 on the file of the Subordinate Court, Madurantakam, Kancheepuram District, confirming the Judgment and Decree dated 23.09.2013 passed in O.S.No.189 of 2010 on the file of the District Munsif Court, Madurantakam, Kancheepuram District.

2.Second appeal has been admitted on the following substantial questions of law:

"(a).Whether the suit properties are ancestral properties or personal property of third defendant in suit?

(b).Whether third defendant have

personal or absolute right of alienation of the suit properties as per section 6 of Hindu Succession Amendment Act 2005 (Act 39 of 2005)?

(c).Whether the character of joint family property, changes, unless it is partitioned equally as per the law among the co-owners as per AIR 1996 Madras 212."

3.Considering the scope of the issues involved between the parties as regards the subject matter lying in a narrow compass, it is unnecessary to dwell into the facts of the case in detail.

4.Suffice to state that the plaintiff has laid the suit against the defendants for the reliefs of declaration, possession and mesne profits.

5.The plaintiff and the first defendant are the sons of Perumal Gounder and the second defendant is the son of the first defendant, Pavadai Gounder and his wife Amirthammal are the grandparents of the plaintiff and the first defendant and it is seen that the third defendant is their only daughter. Now, according to the plaintiff, Pavadai Gounder was in the possession and enjoyment of the extent of 1 acre 45 cents in survey No.332/1D and an extent of 30 cents in survey No.332 / 2A of Annamangalam Village, totally measuring an extent of 1 acre 75 cents and it is further stated that Pavadai Gounder had orally settled the abovesaid properties in favour of his son-in-law Perumal Gounder i.e. the father of the plaintiff and the first defendant and their mother the third defendant and it is the further case of the plaintiff that pursuant to the abovesaid oral settlement, the abovesaid properties had been enjoyed by Perumal Gounder and the third defendant and it is further stated that Perumal Gounder was in the possession and enjoyment of an extent of 1 acre of Porambokku land lying on the eastern side of the abovesaid properties and accordingly, enjoying the same and it is further stated that the Well lying in survey No.332/1D was dug by Perumal Gounder and the plaintiff about 40 years ago and it is the further case of the plaintiff that during 1980 in the month of Chithirai, Perumal Gounder and the third defendant divided the abovesaid properties into two halves and allotted one share to the plaintiff and the other share to the first defendant, accordingly, it is stated that the share allotted to the plaintiff as regards the patta lands had been shown in the plaint A schedule and the share allotted to the plaintiff in respect of Poramboku lands had been shown in the plaint B schedule. Further, it is also the case of the plaintiff that both the plaintiff and the first defendant had obtained the service connection in the Well in the name of the third

defendant, accordingly, it is stated that the plaintiff has been in the possession and enjoyment of the suit properties by paying necessary penal tax etc., While so, taking advantage of the absence of the plaintiff, according to the plaintiff, the defendants 1 & 2 had encroached into the suit properties illegally during 2007 July month and enjoying the same and also threatened the plaintiff with dire consequences. When the plaintiff attempted to take possession of the suit properties, the plaintiff learnt that the third defendant had settled the suit properties and other properties in favour of the second defendant by way of a settlement deed dated 11.10.2004. However, the third defendant is not entitled to settle the suit properties as abovestated and the plaintiff, further learnt that taking advantage of the illiteracy of the third defendant, the defendants 1 & 2 had obtained the abovesaid settlement deed and the second defendant is not only the grandson of the third defendant. On the other hand, the plaintiff's son Chokkalingam as well as the daughter of the first defendant are also the grandchildren of the third defendant and therefore, the third defendant would not have settled the suit properties exclusively in favour of the second defendant and therefore, according to the plaintiff, inasmuch as the defendants have disputed the claim of title of the plaintiff to the suit properties and been enjoying the same illegally by unlawfully trespassing into the same as abovestated, according to the plaintiff, he has been necessitated to lay the suit for appropriate reliefs.

6.The defendants have totally denied the plaintiff's case as narrated in the plaint and it is stated that the patta lands lying in Survey Nos.332/1D and 332/2 belonged to Pavadai Gounder, the father of the third defendant as his self acquired properties and he had been enjoying the same and after his demise, the same had been inherited by his only daughter viz., the third defendant and accordingly, the third defendant had been enjoying the abovesaid properties independently by obtaining patta, paying kist etc., and also obtaining service connection in her name and the Well lying in the abovesaid survey number was dug even during the life time of Pavadai Gounder and Perumal Gounder, after marriage, had settled along with the third defendant in the father-in-law's house and other than that he has no entitlement to the abovesaid properties in any manner and the position being above, the third defendant being the absolute owner of the abovesaid properties, accordingly, taking into consideration that she had been looked after by the second defendant in all aspects, accordingly, allotted the said properties in favour of the second defendant by way of a settlement deed dated 11.10.2004 and the daughters of the third defendant had been given in marriage by providing good seer out of income derived by the second defendant and till date, it is only the second defendant, who has been looking

after the third defendant and that apart, it is also stated that the third defendant had settled the site belonging to her in favour of the plaintiff's son as well as the other son of the first defendant and accordingly, inasmuch as the suit properties absolutely belonged to the third defendant, she is entitled to dispose of the same as she desires and therefore, the settlement deed dated 11.10.2004 executed by the third defendant in favour of the second defendant in respect of the suit properties is valid and binding upon the plaintiff and accordingly, it is only the second defendant, who has been in the possession and enjoyment of the abovesaid properties in his own right by obtaining patta, paying kist etc., and the plaintiff has no right, title or interest whatsoever in respect of the suit properties and hence, the suit laid by the plaintiff is liable to be dismissed.

7. In support of the plaintiff's case, PWs 1 & 2 were examined and Exs.A1 to A11 were marked. On the side of the defendants DWs 1 to 4 were examined and Exs.B1 to B6 were marked.

8. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the Courts below were pleased to dismiss the plaintiff's suit. Impugning the same, the second appeal has been preferred by the plaintiff.

9. Materials placed on record go to show and also as admitted by the parties, the land comprised in survey No.332/1D of an extent of 1 acre 45 cents and in Survey No.332/2A of an extent of 30 cents belonged to Pavadai Gounder. It is seen that the third defendant is the only daughter of Pavadai Gounder. Accordingly, it is noted that after the demise of Pavadai Gounder, by way of inheritance, it is only the third defendant, who would acquire title, right and interest in respect of the abovesaid properties. Though the plaintiff would claim that Pavadai Gounder had orally settled the abovesaid properties in favour of his son-in-law Perumal Gounder and the third defendant jointly, however, as rightly found by the Courts below, the plaintiff has miserably failed to establish the abovesaid alleged oral settlement said to have been made by Pavadai gounder in favour of Perumal Gounder and Sellammal, the third defendant. The plaintiff has not averred as to when i.e. on what date, month and year Pavadai gounder had settled the abovesiad properties in favour of Perumal Gounder and the third defendant and furthermore, the plaintiff has also not averred as to in whose presence the abovesaid settlement deed had been effected and also not established that pursuant to the abovesaid alleged oral settlement both Perumal Gounder and the third defendant Sellammal had been in the joint possession and enjoyment of the abovesaid properties, in particular, the plaintiff has not placed any acceptable and reliable material to conclude safely

that the abovesaid properties had been enjoyed by his father Pavadai Gounder. On the other hand, the third defendant Sellammal examined as DW3 has clearly stated that no such settlement had been effected by her father in favour of her husband and herself as alleged in the plaint. Therefore, it is seen that the Courts below had rightly held that the alleged oral settlement said to have been made by Pavadai Gounder in respect of the abovesaid properties in favour of Perumal Gounder and Sellammal has not been established in any manner and that apart, it has not been explained by the plaintiff as to how an oral settlement could be legally made in respect of the abovesaid properties and with reference to the same, there is no acceptable proof or material placed on the part of the plaintiff. Thus, it is seen that the alleged oral settlement said to have been executed by Pavadai Gounder in respect of the abovesaid items of the properties in favour of Perumal Gounder and the third defendant is false and cannot be countenanced in any manner.

10. It is stated by the plaintiff that Perumal Gounder had been enjoying an extent of 1 acre porombokku land lying to the east of the abovesaid patta lands by paying penal tax etc., and with reference to the abovesaid case of the plaintiff, there is absolutely no material placed to evidence that Perumal Gounder had been in the possession of an extent of 1 acre of Porombokku land lying on the eastern side of the abovesaid patta lands and the plaintiff has not clearly established as to when from the abovesaid 1 acre of porombaokku land had been annexed by Perumal Gounder and being enjoying the same. In this connection as pointed out by the Courts below, if really, Perumal Gounder had been in the possession and enjoyment of 1 acre of poroambokku land, necessary penal tax receipts pointing to the same would have been projected by the plaintiff in the name of Perumal Gounder. Further, the plaintiff would have endeavoured to examine the concerned Government officials or produce some other necessary documents from the revenue department pointing to the same. On the other hand, when there is no material placed by the plaintiff that Perumal Gounder had been in the possession and enjoyment of an extent of 1 acre of land belonging to the Government on the eastern side, the abovesaid case of the plaintiff also falls to the ground.

11. It is the case of the plaintiff that Perumal Gounder and the third defendant had orally divided patta land and the porombokku land into 2 halves during 1980 Cithirai month and allotted one share each to the plaintiff and the first defendant. However, as rightly found by the Courts below, the plaintiff has not averred clearly as to in whose presence the alleged oral partition took place and which half share had been allotted to the plaintiff and first defendant and also not

endeavoured to examine any acceptable and reliable witnesses with reference to the same. That apart, there is no material placed on the part of the plaintiff worth acceptance to evidence that pursuant to the alleged oral partition, he had been in the possession and enjoyment of the plaint schedule properties by placing the kist receipts, patta, adangal etc., with reference to the same and in such view of the matter, the case of the plaintiff that he had been allotted the plaint schedule properties pursuant to the alleged oral partition is also found to be a false case. On the side of the plaintiff, 11 documents had been projected and of the same, as rightly found by the Courts below, Exs.A2, A4 & A5 all stand only in the name of the third defendant. Such being the position, it is seen that there is absolutely no material placed on the part of the plaintiff to evidence that he had been in the possession and enjoyment of the plaint schedule properties pursuant to the alleged oral partition. In addition to that, the third defendant, during the course of her evidence, has clearly deposed that the patta lands owned by her father had been derived by her as his sole heir and no partition had been effected in respect of the abovesaid patta lands belonging to her father and herself at any point of time as putforth in the plaint. Therefore, when there is no material at all placed on the part of the plaintiff that he had been allotted the suit properties pursuant to the oral partition as putforth, the Courts below had rightly rejected the plaintiff's case on that aspect, and as abovenoted, when the plaintiff has failed to establish that Perumal Gounder had been in the possession and enjoyment of Porombokku land measuring an extent of 1 acre, his case that the said 1 acre of porombokku land had also been divided in the alleged oral partition and that he had been allotted the share in respect of the same also cannot be believed and accepted.

12. When there is no material placed on the part of the plaintiff that at any point of time, he has been in the possession and enjoyment of the suit properties pursuant to the alleged oral partition and on the other hand, when from the documents projected on the part of the defendants, it is found that it is only the third defendant, who has been in the possession and enjoyment of the patta lands in her own right by obtaining patta, paying kist etc., and accordingly, the third defendant being the absolute owner of the patta lands, as rightly determined by the Courts below, is entitled to settle the same in favour of her grandson, the second defendant by way of the settlement deed dated 11.10.2004 marked as Ex.B1 and accordingly, it is seen that following the same, it is only the second defendant, who has been in the possession and enjoyment of the abovesaid patta lands and as the second defendant is found to be maintaining the third defendant, in all aspects, accordingly, out of love and affection towards him, it is seen

that the third defendant had settled the patta lands belonging to her in favour of the second defendant and accordingly, it is noted that the abovesaid patta lands are in the possession and enjoyment of the second defendant in his own right. The case of the plaintiff that the defendants 1 & 2 had obtained the settlement deed from the third defendant taking advantage of her illiteracy also falls to the ground, when it is seen that the third defendant in her evidence has clearly deposed that she had on her accord executed the settlement deed in favour of the second defendant as he had been maintaining her in all aspects, and therefore, the third defendant has settled the patta lands in favour of her grandson, the second defendant exclusively and that by itself would be sufficient to determine that the said settlement deed would not have been obtained stealthily by the defendants 1 & 2 from the third defendant.

13. In addition to that, as rightly found and also admitted by the plaintiff himself in respect of the site belonging to the third defendant, she had executed a settlement deed in respect of the same in favour of the plaintiff's son separately and it is also admitted that the plaintiff's son had alienated the said site settled on him in favour of Malliga and accordingly, it is seen that the third defendant had been asserting her right in respect of the properties belonging to her by enjoying them independently and also disposing of the same in her own right as she desires and in such view of the matter, it is seen that the disposition of the patta lands belonging to the third defendant in favour of the second defendant by way of the settlement deed dated 11.10.2004 is beyond challenge and when it is seen that the third defendant herself had deposed favourably in favour of the second defendant as regards the validity of the abovesaid settlement deed and also the materials had been placed on record to show that it is only the third defendant and thereafter, the second defendant, who have been in the possession and enjoyment of the plaint schedule properties, in all aspects, the Courts below are found to have assessed the materials placed on record in the right perspective, both factually as well as legally and accordingly, non suited the plaintiff and in such view of the matter, the judgment and decree of the Courts below dismissing the plaintiff's suit do not warrant any interference.

14. In the light of the above discussions, the patta lands as abovenoted absolutely belonging to the third defendant, accordingly, she is entitled to dispose of the same in favour of the second defendant by way of a settlement deed and therefore, the defendants having established the abovesaid case in all aspects by placing acceptable and reliable materials and the plaintiff having failed to establish the entitlement of the suit properties by way of the alleged oral partition and as well as the other pleas putforth by him in the plaint as above

discussed, the substantial questions of law formulated in the second appeal are accordingly answered against the plaintiff and in favour of the defendants.

15. In support of his contentions, the counsel for the plaintiff placed reliance upon the decisions reported in AIR 1993 SUPREME COURT 398 (Shri Bhagwan Sharma V. Smt. Bani Ghosh) and AIR 1996 MADRAS 212 (Gurusamy Naicker and others V. G. Jayaraman and others). The principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the case at hand.

In conclusion, the second appeal fails and is, accordingly, dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sms

To

1. The Sub-Court,  
Madurantakam,  
Kancheepuram District.

2. The District Munsif Court,  
Madurantakam,  
Kancheepuram District.

3. The Section Officer,  
V.R. Section, High Court,  
Madras.

+1cc to Mr. N. Nagusha, Advocate, S.R.No. 80344

S.A.No.420 of 2015

GP(CO)  
GN(29/01/2019)