

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.09.2018  
PRONOUNCED ON : 12.10.2018

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.550 of 2015

1. Rangammal
2. Sellappa Nadar
3. Sundaram

...Appellants/Defendants  
Vs.

Nallappa Reddiar ...Respondants/Plaintiff

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 02.03.2015 passed in A.S.No.23 of 2012 on the file of the Additional Subordinate Judge (Trainee District Judge), Namakkal, confirming the judgment and decree dated 22.03.2012 passed in O.S. No.131 of 2007 on the file of the Principal District Munsif Court, Namakkal.

For Appellants : Mr.T.Dhanyakumar

For Respondent : Mr.C. Kulanthaivel

JUDGMENT

In this second appeal, challenge is made to the judgment and decree dated 02.03.2015 passed in A.S.No.23 of 2012 on the file of the Additional Subordinate Court (Trainee District Judge), Namakkal, confirming the judgment and decree dated 22.03.2012 passed in O.S. No.131 of 2007 on the file of the Principal District Munsif Court, Namakkal.

2. Parties are referred to as per their rankings in the trial Court.

3. Suit for declaration, permanent injunction and mandatory injunction.

4. The case of the plaintiff, in brief, is that he has filed the rough plan along with the plaint, and given the ancestral properties belonging to him at Rettaiyampatti village in survey number 777/16 as P1, P2,P3,P4 and P5 and described the property belonging to the defendants as D and the P5 portion as described in the plaint is a lane and the plaintiff is residing

in P2 portion in a hut put up therein and paying taxes to the panchayat and the plaintiff is producing the patta issued in his favour in patta number 213 as well his brother Marama Reddiyar and Marama Reddiyar, being a bachelor, delivered the possession of the suit property in favour of the plaintiff and accordingly it is only the plaintiff who has been in the possession and enjoyment of the same for 15 years. The plaintiff has put up a dumping yard in the southern corner of the P4 portion and also constructed a tiled house on the northern side of the same and other portions are remaining as vacant site and the defendants have no right in the property shown as "P" series in the rough plan and the defendants have constructed a house only on the 'D' portion, however, by exceeding their boundary, encroached into P5 portion despite the objection put forth by the plaintiff and accordingly the defendants are liable to remove the encroachment made by them in P5 portion and hence it is stated that the plaintiff has been necessitated to lay the suit for appropriate reliefs.

5. The defendants have resisted the plaintiff's suit by contending that the description of the plaint schedule property in dispute is incorrect and the rough plan is also incorrect, the plaintiff has failed to implead all the legal heirs of Bolamareddiyar and cannot seek the relief independently and hence the suit is bad for non joinder of necessary parties. The father of the first defendant Rajamma Reddiyar and the plaintiff's father Bolamareddiyar are brothers and the suit property was enjoyed in common as one lot by them and accordingly both are equally entitled to equal share and Rajamareddiyars' properties devolved upon his wife Sellammal, daughter Rangammal. Mother Sellammal executed a will dated 18.01.1983 bequeathing the suit properties to Rangammal and thereafter, Rangammal had executed a gift deed to the third defendant on 09.02.2007 and hence by way of the abovestated will and gift deed, the third defendant is entitled to an extent of 805 sq.ft. and the plaintiff having not put forth any objection to the construction put up by the defendants in their property and on the other hand, in the guise of certain documents created with the help of the revenue officials, cannot put forth any objection to the alleged encroachment of the defendants in respect of the property in their possession and enjoyment and the alleged encroachment is false. The plaintiff has no cause of action to lay the suit and hence the suit is liable to be dismissed.

6. In support of the Plaintiff's case, PW1 to PW3 were examined and Exs.A1 to A4 were marked. On the side of the defendants Dw1 and DW2 were examined and EXs.B1 and B2 were marked. Exs.C1 and C2 as well as Exs.X1 to X3 were also marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the courts below were pleased to accept the plaintiff's case and impugning the same, the present second appeal has been laid by the defendants.

8. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration.

- a) Whether the non joinder of necessary party namely the sister of the plaintiff who is also one of the legal heirs will disentitle the plaintiff to get the relief of declaration and consequential relief over the suit properties?
- b) Whether the Ex.B1 will and Ex.B2 settlement deed are proved by the defendants in accordance with law?
- c) Whether the plaintiff is entitled to more extent than what was given under Ex.A4 partition deed on the basis of the revenue records?

9. The plaintiff has laid the suit for declaration, permanent injunction and mandatory injunction. Now, according to the plaintiff, he has shown the properties belonging to him as P1 to P5 in the rough plan filed along with the plaint and according to the plaintiff, the abovesaid suit property is located in Survey No.777/16 within the specific boundaries as described in the plaint schedule and the suit property belongs to him ancestrally. The suit property is stated to be located in village natham. The plaintiff claims exclusive title to the suit property as described in the plaint schedule on the footing that the same belongs to him ancestrally. However, other than the bare averments that the suit property belongs to him ancestrally, the plaintiff has not given further particulars in the plaint as to from which ancestor or predecessor in interest, he traces his title to the suit property as ancestral in nature. Very vaguely, the plaintiff has laid the suit claiming that the suit property belongs to him ancestrally and on that footing, it is seen that the plaintiff has laid the suit for the reliefs prayed for and for sustaining the abovesaid claim, it is found that the plaintiff has mainly relied upon the patta issued in his favour under the Updating Registry Scheme marked as Ex.A1. The other document projected by the plaintiff is the house tax receipt and by way of the same, it is seen that the plaintiff's title to the suit property cannot be upheld. The third document projected by the plaintiff for sustaining the reliefs prayed for

is the partition deed dated 12.09.2003, said to have been effected amongst him and his brother Marama Reddiyar in respect of the properties belonging to them ancestrally. However, it is nowhere pleaded in the plaint by the plaintiff that he and his brother Marama Reddiyar had effected the partition of the ancestral properties belonging to them by way of the partition deed dated 12.09.2003 and thereunder the suit property and other properties had come to be allotted to the share of the plaintiff and on the other hand, the plaintiff has only pleaded that as his brother Marama Reddiyar had remained as a bachelor, he had left the suit property in his possession and on that basis, the plaintiff claims exclusive possession and enjoyment of the suit property and the plaintiff has nowhere pleaded in the plaint that the suit property had come to be allotted to him towards his share by way of the partition deed dated 12.09.2003. It is seen that the evidence adduced by the plaintiff with reference to Ex.A4 partition deed sans pleading to that effect, cannot be relied upon and therefore the plaintiff's claim of title to the suit property based on Ex.A4 partition deed, as such, cannot be countenanced in any manner. No amount of evidence adduced by the parties sans pleadings to that effect either in the plaint or in the written statement could be given credence to and therefore it is seen that the courts below had erred in accepting the plaintiff's case based on Ex.A4 partition deed.

10. Even in Ex.A4 partition deed, the claim is made that the suit property and the other properties belong to the plaintiff ancestrally. In the said document also, the plaintiff has not traced as to how the suit property and the other properties belong to him and his brother ancestrally. Therefore, Ex.A4 partition deed also, by itself, would not be useful to sustain the plaintiff's case as if the suit property belongs to him ancestrally without the plaintiff explaining as to how or through whom he traces the ancestral character of the suit property as described in the plaint. Even during the course of evidence, the plaintiff has not brought home as to how he traces title to the suit property as ancestral in nature.

11. No doubt, the defendants would set forth the plea that the suit property and other properties belonged to the first defendant's father Rajamma Reddiyar and the plaintiff's father Bolamareddiyar, however, as rightly pointed out by the courts below, the abovesaid claim of the defendants has also not been established as such and on the other hand, even with reference to their case that Rajamma Reddiyar and Bolamareddiyar being brothers, the defendants are not consistent in their case and it is found that different versions had been given by the defendants during the course of evidence in tracing of the ancestral character of the suit property and the other properties of their ancestors and the plaintiff's ancestors.

12. Be that as it may, the plaintiff, having laid the suit seeking the relief of declaration and the other reliefs claiming that the suit property in particular, belongs to him ancestrally, it is for the plaintiff to establish his claim of title to the suit property by tracing his title from his ancestors, spelling out the details with reference to the same clearly in the plaint as well as during the course of evidence. As regards the enjoyment of the suit property by his ancestors, there is no material placed by the plaintiff pointing to the same. On the other hand, as above pointed out, the plaintiff solely relied upon Ex.A1 patta issued under the Updating Registry Scheme in his favour. Accordingly, it is found that the argument has been placed by the plaintiff that inasmuch as the suit property is the village natham property, the plaintiff cannot be expected to produce the document of title and according to the plaintiff's counsel, inasmuch as the suit property has been in the possession and enjoyment of the plaintiff ancestrally right from the beginning, recognising his position, the patta had been issued and though it is stated that the Government is not the competent authority to issue the patta in respect of the Grama natham land, however, insofar as this case is concerned, the plaintiff mainly focused his claim of title to the suit property based on the patta marked as Ex.A1. Therefore, it has to be seen that whether on the basis of Ex.A1 patta, the plaintiff's claim of title to the suit property could be acceded to.

13. On a perusal of Ex.A1 patta, it is seen that it is only a thoraya patta. On a perusal of the contents of Ex.A1 patta, it is further seen that it is only a notice to one and all inviting the objections with reference to the grant of patta in favour of the plaintiff in respect of the suit property. In such view of the matter, when Ex.A1 is found to be a thoraya patta and is in the nature of a notice to one and all inviting their objections with reference to the issuance of the patta in favour of the plaintiff and his brother in respect of the suit property and when the materials placed on record go to show that, as could be seen from the admission made by the plaintiff and his witness during the course of evidence that the properties had been own in common by the plaintiff's ancestors and the defendants' ancestors and when there is no material placed on record to evidence that due notice had been issued to the defendants with reference to Ex.A1 proceeding and furthermore when there is no material placed on record by the plaintiff that following Ex.A1, he and his brother or the plaintiff solely had been issued the regular patta in respect of the suit property, it is found that Ex.A1 thoraya patta cannot be the basis for upholding the plaintiff's claim of title to the suit property. This position of law had also been dealt with in the decision reported in 2017 SCC online Madras 3010 (Ramuthayee @Mookammal and others v. Lakshmanaperumal @ Lakshmanan) and the

decision of this court passed in Second Appeal No.220 of 2015 dated 17.09.2018 (Panneer v. Anjalai & others). In the light of the above position, when there is no other material placed by the plaintiff evidencing his claim of title to the suit property and when the patta document cannot be construed as a document of title as such and even assuming for the sake of arguments that the suit property being the village natham, the Government may also not have the authority to issue the patta and on the other hand, when there is no other material evidencing the possession and enjoyment of the suit property by the plaintiff or his ancestors and as above discussed, the other documents projected by the plaintiff do not serve the case of the plaintiff and the only document relied upon by the plaintiff, being the thoraya patta marked as Ex.A1, and when the thoraya patta cannot be the basis for upholding the plaintiff's claim of title to the suit property and when the plaintiff has failed to establish as to whether he had been granted the regular patta following Ex.A1 thoraya patta, in such view of the matter, the plaintiff's claim of title to the suit property falls to the ground. Equally, the documents Exs.X1 to X3 also would not, in any manner, serve the case of the plaintiff. Exs.X1 to X3 would only go to depict the issuance of thoraya patta in favour of the plaintiff as marked under Ex.A1. When there is no material placed that a regular patta had been issued in favour of the plaintiff upholding his claim of title to the suit property as described in the plaint, the courts below are found to have erred in upholding the plaintiff's claim of title to the suit property based on the thoraya patta.

14. That apart, the courts below also seem to have picked the holes in the defence version in their failure to establish the documents projected by them, namely, Exs.B1 will and B2 settlement deed and on that footing proceeded to uphold the plaintiff's claim of title to the suit property. As rightly put forth above, assuming for the sake of arguments that the defendants have failed to establish Exs.B1 and B2 instruments, that by itself, would not entitle the plaintiff to seek the claim of title to the suit property sans any acceptable and valid material pointing to the same.

15. That apart, the record placed by the plaintiff as Ex.A4 partition deed, during the course of evidence, could also not be legally sustained sans pleadings to that effect. Moreover, considering the difference in the extent of the suit property comprised in Ex.A4 partition deed and the plaint schedule, it is found that the claim of title to the suit property put forth by the plaintiff based on Ex.A4 partition deed, during the course of evidence also, by itself, would not entitle the plaintiff to claim the title to the suit property as prayed for.

16. When the materials placed on record go to show that the plaintiff has a brother Marama Rediyar and also a sister and even assuming for the sake of arguments that the suit property belongs to the plaintiff ancestrally, it does not stand to reason as to how the plaintiff seeks exclusive claim of title to the suit property. On that footing, as rightly put forth, the plaintiff for seeking the relief of declaration of title to the suit property exclusively, should have made necessary pleas with reference to the same stating that the other legal heirs of his ancestors had given up or relinquished their share in the suit property in favour of the plaintiff in the manner known to law. Such being the position, when the plaintiff has not even pleaded anything about Ex.A4 partition deed in the plaint and furthermore when the plaintiff has also not explained as to how his sister would be disentitled to claim the title to the suit property, she also being one of the legal heirs of the ancestors and furthermore the plaintiff having failed to implead the other legal heirs, accordingly, as rightly put forth, the suit laid by the plaintiff without impleading the proper and necessary parties, is found to be fatal and on that score also, the plaintiff's suit should fail.

17. Though it is found that the courts below had gone in extenso about the claim of title to the suit property, mainly focusing on the weakness of the defence version and ipso facto accepting the plaintiff's case based upon Ex.A1 thoraya patta, however, when Ex.A1 thoraya patta cannot be the basis for sustaining the plaintiff's claim of exclusive title to the suit property as such, as above discussed, it is seen that the judgment and decree of the courts below upholding the plaintiff's case have to be set aside. The substantial questions of law formulated in this second appeal are accordingly answered.

18. For the reasons aforesaid, the judgement and decree dated 02.03.2015 passed in A.S.No.23 of 2012 on the file of the Additional Subordinate Court (Trainee District Judge), Namakkal, confirming the judgment and decree dated 22.03.2012 passed in O.S. No.131 of 2007 on the file of the Principal District Munsif Court, Namakkal, are set aside and resultantly the suit laid by the plaintiff in O.S. No.131 of 2007 is dismissed with costs. Accordingly, the second appeal is allowed with costs. Consequently, connected miscellaneous petition, if any, is closed.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

bga

To

1.Additional Subordinate Judge(Trainee District Judge), Namakkal

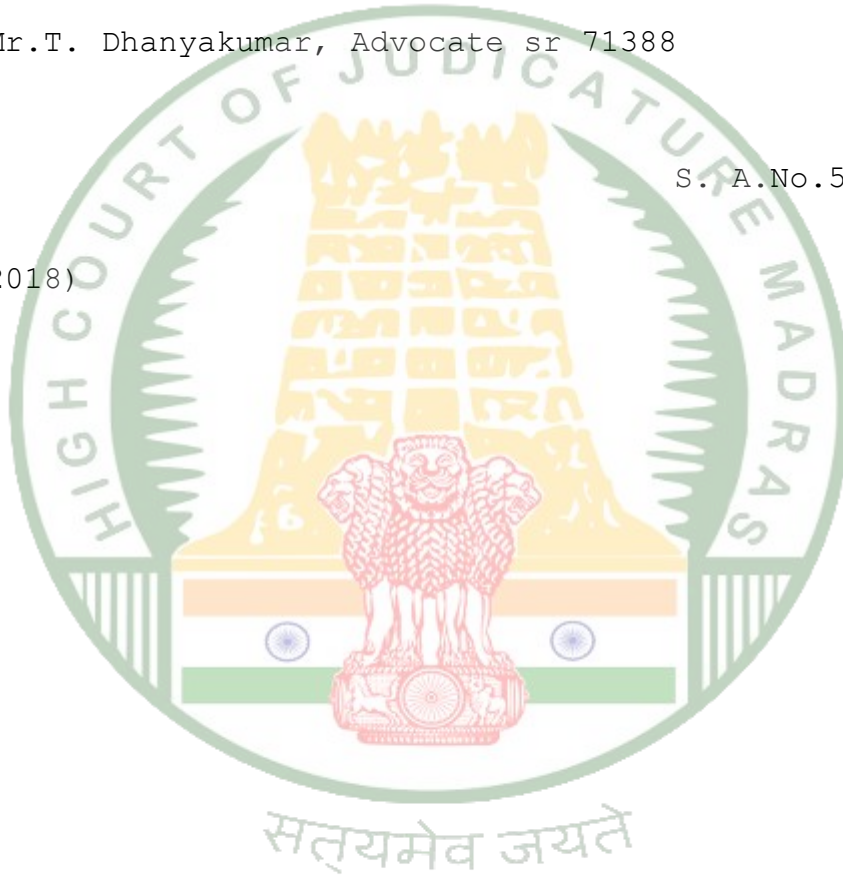
2.Principal District Munsif, Namakkal,

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

+1 CC to Mr.T. Dhanyakumar, Advocate sr 71388

S.A.No.550 of 2015

NRI (CO)  
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