

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2018

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

S.A.No.171 of 2015  
and C.M.P.No.3463 of 2016

Rengasamy .. Appellant/Defendant 1

Vs.

1. Selvam .. Respondent/Plaintiff

2. Malliga

3. Karuppaian .. Respondents 2 & 3/L.Rs. of  
deceased Defendant 2/Respondents

\* \* \*

Prayer : Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgement and decree dated 23.09.2014 passed in A.S.No.127 of 2012 on the file of the Principal District Judge, Ariyalur, confirming the judgement and decree dated 17.09.2010, in O.S.No.149 of 2007 on the file of the District Munsif, Ariyalur.

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For Appellant : Mr.M.V.Krishnan

For Respondents: Mr.R.Venkatesulu  
for Ms.Usharaman for R1

J U D G E M E N T

Aggrieved by the unanimous decisions of the Courts below, the first defendant has preferred the above second appeal.

2. The suit was filed by the plaintiff for declaration and permanent injunction. The case of the plaintiff is that his father one Annamalai had purchased the suit properties on 05.11.1997 for a valid consideration from one Kathaperumal. The said Annamalai had been in possession and enjoyment of the property till his death. The revenue records were also standing in the name of the said Annamalai. After the death of his father, the plaintiff, as his only son, had inherited the same and continued to do the cultivation of the sugar can crops. It is further stated that as the cultivation of sugar cane was in a smaller extent, the sugar cane crops would be sent to the sugar factory along with the sugar cane cultivated by the defendants. Hence, taking advantage of the demise of plaintiff's father, the defendants claimed right over the sugar field that had been

raised by the plaintiff. Hence, the suit has been filed.

3. The suit was resisted by the defendants contending that the plaintiff's father never enjoyed the suit property and never cultivated the sugar cane as alleged. According to the defendants, the vendor of the father of the plaintiff had created the suit sale deed without the knowledge of the defendants against the division effected between them. Hence, the plaintiff cannot have any right over the suit properties.

4. Before the Trial Court, while the plaintiff, who is the power agent, examined himself as P.W.1 and marked Exs.A.1 to A.6, the first defendant examined himself as D.W.1 and chosen not to mark any document. Exs.C.1 and C.2 - the Commissioner's report and plan were also marked.

5. On the above pleadings, both oral and documentary, the Courts below have concurrently held in favour of the plaintiff and granted the decree. Aggrieved by the same, the first defendant has filed the above second appeal.

6. At the time of admission, the following substantial questions of law were formulated for consideration by this Court :

"(1). Whether the Courts below were right in acting on the sale deed dated 05.11.1997, when there is no evidence that the vendor-Kathaperumal himself had not obtained title to convey the suit properties ? and

(2) Whether the Courts below were right in acting on the evidence of the Power of Attorney, when there is no evidence to show the allotment of the suit properties in the name of Kathaperumal and the further transactions ?"

7. Heard the learned counsel for the appellant and the learned counsel for the first respondent and perused the material available on record.

8. The suit properties are situated in two different survey numbers, namely in Survey No.358/6 - an extent of 0.4.5 cents and 0.5 cents and in Survey No.358/7 - an extent of 0.21 cents with 1/6<sup>th</sup> right of well and mother attached to it in Asthinapuram Village Ariyalur District. The plaintiff has produced Ex.A.2 dated 05.11.1997, which in the name of his father. A perusal of Ex.A.2 would go to show that the plaintiff's father had purchased 0.26 cents of land in two survey numbers within the specific boundaries along with 1/6<sup>th</sup> right in the well. The plaintiff's father died only in the year 2005, till that date, it is stated that the plaintiff's father has been doing cultivation and thereafter, the plaintiff has

been cultivating the land. The defendants have admitted that the vendors of the plaintiff's father Kathaperumal and the defendants 1 and 2 are the brothers.

9. In paragraph 4 of the written statement, it is stated that the lands were in one block and it was divided between three brothers. The second defendant was allotted the Western 0.58 cents in Survey Nos. 358/6 and 358/7 - an extent of 0.15 cents and 0.43 cents respectively. The first defendant was allotted an extent of 0.58 cents in the middle of Survey No. 358/7 and the plaintiff's father's vendor Kathaperumal was allotted an extent of 0.21 cents in Survey No. 358/7 and an extent of 0.38 cents in Survey No. 358/8 in Eastern side. After stating so, it is contended that when the division is as mentioned above, the said Kathaperumal could not have sold the property as per Ex.A.2. Though it is mentioned in the written statement the mode of division between the brothers, there was no proof filed to substantiate the said contention. D.W.1 has also admitted in his evidence that there was no written document for the partition and he also pleaded ignorance about the date and year of partition. The vendor of the plaintiff's father Kathaperumal also died. D.W.1 had categorically admitted in his cross-examination that Kathaperumal had  $\frac{1}{3}$ rd share in the properties, which is an extent of 0.58 cents. It is further deposed by D.W.1 that though there was no separate patta in favour of the defendants and his deceased brother, the properties have been enjoyed only as per their possession. There was also separate boundary for each of their share. From the above evidence of D.W.1, it is admitted that the properties belong to defendants 1 and 2 and the deceased Kathaperumal. It is also admitted that the defendants have been enjoying their share of the property. It is the further case of the defendants that the deceased Kathaperumal was entitled to  $\frac{1}{3}$ rd share in the property and was in enjoyment of 0.58 cents in the suit survey number. He had only sold 0.26 cents as per Ex.A.2. The plaintiff also had produced his patta passbook and adangal extract and also the computer patta as Exs.A.4 to A.6 to establish his possession. The defendants have not marked any documents to prove their possession of the suit property, though they specifically alleged that the suit property was never sold to the plaintiff's father and it continued to be in their possession.

10. As the defendants themselves have admitted the title of the vendor of the plaintiff's father, the sale of 0.26 cents out of 0.58 cents effected under Ex.A.2 is true and valid and the possession of the plaintiff's father and after his lifetime by the plaintiff is correct and is legal and should be protected. Hence, the Courts below rightly decreed the suit in favour of the plaintiff, which need not be interfered with in the second

appeal. Accordingly, the question No.1 is answered in favour of the plaintiff.

11. In so far as the second question of law is concerned, learned counsel for the appellant pointed out that the plaintiff had not entered into the witness box and his Power of Attorney deposed on his behalf. No doubt, it is settled principle that the Power of Attorney cannot depose in the place of the Principal. Order 3, Rule 1 and 2(a) empowers the holder of the Power of Attorney to act on behalf of the principal, though the said acts confined only to the acts done by the power of attorney holder in exercise of the powers granted to him by virtue of the deed. It is contended by the learned counsel for the appellant that the acts "would not include deposing on behalf of the plaintiff/the principal". It is specifically stated that the Power of Attorney deposed for the principal only in respect of such acts, which were done by the agent on behalf of the principal and the power to depose for the principal in respect of the matters regarding which the principal only can have personal knowledge. No doubt in this case the plaintiff has not entered into the box, but allowed his agent to depose on his behalf. P.W.1 has also spoken to about the purchase made by the plaintiff's father and his continued possession till his death and after him, the plaintiff's continuous possession. The plaintiff had sought for declaration of title and permanent injunction. Though the defendants have denied the title of the plaintiff in the written statement, it is specifically admitted by D.W.1 that the defendants and Kathaperumal are brothers and each of them had 1/3rd of share in the property and their possession and enjoyment was in pursuance of the oral partition etc. It is also stated that the defendants were in enjoyment of the properties with specific boundaries and there was a bund in between their respective shares. It is also not the case of the defendants that the plaintiff's father's vendor Kathaperumal had sold the lands to the plaintiff's father including their share. Therefore, when the title of the plaintiff's father's vendor is admitted and his enjoyment with specific boundaries is also admitted, the admitted facts need not be proved by the plaintiff.

12. Even eschewing the evidence of P.W.1, the case of the plaintiff is proved by virtue of the admission made by the defendants. Hence, the second question of law is also answered in favour of the plaintiff.

13. In view of the above discussion, the questions of law are answered in the negative and the appeal is dismissed confirming the judgement and decree of the Courts below.

14. In the result, in the second appeal is dismissed confirming the judgement and decree passed by the Courts below. There shall be no order as to costs. Consequently, connected miscellaneous petition shall stand closed.

Sd/-  
Assistant Registrar (CS-iv)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal District Court,  
Ariyalur.
2. The District Munsif, Ariyalur.
3. The Section Officer,  
V.R. Section, High Court, Madras. (2 copies)

+1cc to Mr.M.V.KRISHNAN, Advocate, S.R.No. 13949  
+1cc to Mr.USHA RAMMAN, Advocate, S.R.No. 13962

Judgement in  
S.A.No.171 of 2015

SR(CO)  
TR(28/03/2018)

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