

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.07.2018

PRONOUNCED ON : 24.07.2018

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.2295 of 2004

M.Ramalinga Reddiar ... Appellant/Defendant

Vs.

M.Dhakshinamoorthy ... Respondent/Plaintiff

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 23.07.2003 made in A.S.No.34/2002 on the file of Principal Sub-Judge, Chengalpet, thereby reversing the judgment and decree dated 25.09.2001 made in O.S.No.1554/1993 on the file of District Munsif Court, Tambaram.

For Appellant : Mr.K.Surendaranath

For Respondent : Mr.V.Ramesh

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 23.07.2003, passed in A.S.No.34 of 2002, on the file of Principal Subordinate Court, Chengalpet, reversing the judgment and decree dated 25.09.2001, passed in O.S.No.1554 of 1993, on the file of District Munsif Court, Tambaram.

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

3. Suit for declaration and possession.

4. The case of the plaintiff, in brief, is that in the family partition effected on 29.09.75, the B schedule described in the partition deed was allotted to the defendant and the C schedule described in the partition deed was allotted to the plaintiff and thus, an extent of 50 cents in Nanja survey number 45 in the suit village was allotted to the defendant and towards northern side of the 50 cents allotted to the defendant, an extent of 50 cents in the same survey number was allotted to the plaintiff and accordingly, the plaintiff and the defendant used to cultivate their respective shares and about eight months

back, the defendant annexed the plaintiff's 0.09 cents of land at the southern end of the suit property and the plaintiff made several oral demands to the defendant to acknowledge his title to the abovesaid 0.09 cents and however, the defendant with ulterior motive annexed the abovesaid 0.09 cents with his share and the 0.09 cents annexed with the defendant has been given as the B schedule property in the plaint and in this connection, the plaintiff issued a lawyer's notice to the defendant on 22.11.1990, by directing the defendant to hand over the annexed portion abovestated and to the same, the defendant had sent a reply containing false allegations and hence, the present suit for necessary reliefs.

5. The case of the defendant, in brief, is that the suit laid by the plaintiff is not maintainable either in law or on facts. It is true that under the partition deed dated 29.09.75, the plaintiff and the defendant were each allotted 50 cents of land in survey number 45 and even though 50 cents of land was allotted to the defendant, in actual 44 cents of land alone was available on ground towards the share of the defendant and the defendant has been in peaceful enjoyment of the same ever since the date of the partition deed and the defendant purchased an extent of 40 cents of land on the northern side of his share from one P.Ramachandran by way of a registered sale deed dated 25.10.1975 and the land belonging to the defendant in survey number 45 and under his occupation was surveyed by the authorities concerned and he was issued the patta number in respect of the properties owned by him among other properties and the plaintiff's property was assigned with survey No.45/2 and the defendant's property was assigned with survey No.45/3. The plaintiff formed a layout of house sites in the portion allotted to him and sold away the entire extent to third parties on various dates and the sale deeds in respect of the plots sold by the plaintiff reveals that the southern boundary was shown as the vacant land in survey No.45/3 and the same would go to show that no extent of land much less 9 cents was available to the plaintiff on the southern side of the plots sold out by him and the plaintiff, after selling the plots to various parties, does not own any land in survey No.45/2 and therefore, the allegations that the defendant had annexed 0.09 cents of land belonging to the plaintiff is false and to the notice sent by the plaintiff, the defendant has sent a reply containing true facts denying the allegations of trespass and the plaintiff, at the instigation of his father in law, with an ulterior motive, to grab the portion of the defendant's property, has come forward with a false suit and hence, the suit is liable to be dismissed.

6. In support of the plaintiff's case, PW1 has been examined, Exs.A1 to A9 were marked. On the side of the

defendant, DWs 1 and 2 were examined, Exs.B1 to B6 were marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial Court was pleased to dismiss the plaintiff's suit. On appeal, the first appellate Court, on an appreciation of the materials placed on record, was pleased to set-aside the judgment and decree of the trial Court and by way of allowing the appeal preferred by the plaintiff, decreed the suit as prayed for. Aggrieved over the same, the present second appeal has been laid.

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

"i. Whether the lower appellate Court committed an error in relying upon the documents in Ex.A3 to A6 which are self serving documents issued in favour of the plaintiff/respondent by revenue authorities without holding a proper and due enquiry and after giving notice to the defendant, who is an adjacent owner where rights are likely to be affected? and

ii. Whether the lower appellate Court is correct in relying on Ex.A3 to A6 without the production of village account 6A and without any evidence to show that stones were planted as the boundaries of the sub division?"

9. It is not in dispute that the plaintiff and the defendant are brothers and it is also found that the parties are not in issue that the property belonging to them in survey No.45 had been divided by way of a partition deed dated 29.09.75 and it is seen that as per the partition deed, the northern 50 cents was allotted to the plaintiff and the southern 50 cents was allotted to the defendant and the partition deed dated 29.09.75 has been marked as Ex.A2. It is found that the father of the parties, namely, Manicka Reddiar, had purchased an extent of one acre in survey No.45 by way of a sale deed dated 11.05.68, which document has come to be marked as Ex.A1. As regards the abovesaid facts there is no dispute.

10. Alleging that the defendant had annexed an extent of 0.09 cents of land in the share allotted to him and contending that the defendant had refused to acknowledge the same and handover the possession of the annexed land to him despite the exchange of notices, according to the plaintiff, he has been necessitated to lay the suit for appropriate reliefs. On a

perusal of the plaint, it is found that the suit has come to be filed on 12.04.91. As per the cause of action projected in the plaint, it is stated that eight months prior to the institution of the suit, the defendant had annexed 0.09 cents of land shown as the B schedule property in the plaint and so calculated, it is found that as per the case of the plaintiff, the defendant had annexed the B schedule property in or around August/September 1990. In this connection, it is found that the plaintiff had sent a notice to the defendant on 22.11.90 marked as Ex.A7 and the same had been repudiated by the defendant by way of a reply notice dated 17.12.90 marked as Ex.A9.

11. Though it is pleaded by the plaintiff that he and the defendant were allotted 50 cents of land by way of Ex.A2 partition deed and that his father had purchased one acre of land in the suit survey number by way of Ex.A1 sale deed, it is found that at the time of Ex.A1 sale deed or at the time of the partition deed or subsequent thereto, the parties had not measured the property actually available on ground. In this connection, it is found that the plaintiff examined as PW1, during the course of cross examination, has admitted that his father, either at the time of purchase or thereafter did not measure the property purchased by him with the help of the surveyor. Further, he has also admitted that after the execution of the partition deed, the suit property had not been measured and also admitted by him even after the registration of the partition deed, he had not measured the suit property with the assistance of a surveyor. He has also clearly admitted that even after the partition effected, he had not measured the property allotted to him as to whether 50 cents of land was actually available on ground as recited in the partition deed. According to the defence version, though 50 cents of land had been allotted to him under Ex.A2 partition deed, it is the specific case of the defendant, on ground only 44 cents of land was available and accordingly, he has been in possession and enjoyment of the same. Though under Ex.A1 it is found that Manicka Reddiar had purchased an extent of one acre of land in the suit survey number and though under Ex.A2 partition deed, the plaintiff and the defendant are found to be allotted 50 cents of land in the suit survey number, it is seen that none of the parties had endeavoured to measure the extent actually available on ground either at the time of Ex.A1 or at the time of A2 partition deed or subsequent thereto. It is thus found that on record though the parties would claim that they had been allotted 50 cents of land in the suit survey number, there is no material to hold that the extent of 50 cents of land was available on ground in the share allotted to the parties concerned.

12. Be that as it may, now it is the case of the plaintiff

that the defendant had annexed 0.09 cents of land in the share allotted to him during August/September 1990. However, when it has not been established by the plaintiff that the share allotted to him actually measured 50 cents of land on ground, the case of the plaintiff that the defendant had annexed 0.09 cents of land out of 50 cents of land as such cannot be readily accepted. In any event, as seen from the evidence of the plaintiff adduced during the course of cross examination, it is found that the plaintiff had plotted the extent of 41 cents of land in the suit survey number. As per the case of the defendant, he had purchased the extent of 40 cents of land in the suit survey number from P.Ramachandran by way of a registered sale deed dated 25.10.1975 and the sale deed has been marked as Ex.B1 and the abovesaid case of the defendant has not been controverted by the plaintiff as such. Thus, as per the case of the defendant, it could be seen that he is owning only 84 cents of land in the suit survey number and further, according to the defendant, the property belonging to the parties in the suit survey number was surveyed by the authorities concerned and it is his case that as regards the property owned by him in the suit survey number and in his possession and enjoyment, he had been issued the patta no.1259 and the property belonging to him has been shown in survey No.45/3 and the plaintiff's property has been shown to be lying in survey No.45/2. In this connection, the abovesaid patta issued to the defendant has come to be marked as Ex.B2 and on a perusal of Ex.B2, considering the defence projected by the defendant, the same more or less probablise the case of the defendant as regards the extent of land claimed to be owned by him and in his possession and enjoyment in the suit survey number. Thus, it is found that the defendant had been granted the patta No.1259 for survey No.45/3 of an extent of 0.35.0 acres of land. According to the defendant, the properties in the possession of the plaintiff was assigned survey No.45/2 and accordingly, it is seen that as regards survey No.45/2 is concerned, the plaintiff had been granted the patta and it is seen that the plaintiff has been shown to be in possession of 0.17.5 acres in survey No.45/2. The dispute is now only with reference to 0.09 cents of land. Now, according to the plaintiff, the abovesaid 0.09 cents of land had been separately surveyed as located in survey No.45/3A and it is his case that accordingly, he had been granted the patta marked as Ex.A3 and it is found to be issued in favour of the plaintiff on 02.03.90. On a perusal of Ex.A3, we are unable to ascertain particularly as to how the 0.03.0 acres of land as shown lying in survey No.45/3A had been separately localized and the patta issued in favour of the plaintiff by way of Ex.A3. The said patta has not been shown to be issued after serving notice to the defendant and inviting his objections to the same. Though the plaintiff would claim that Ex.A3 patta had been issued in his favour prior

to the alleged annexation of 0.09 cents of land by the defendant during August/September 1990, however, the evidence adduced by the plaintiff would go to show that Ex.A3 patta had been obtained by him only after the trouble had erupted between the parties and thus, it has to be seen whether on the basis of Ex.A3 patta alone, the plaintiff would be entitled to seek the title to the disputed 0.09 cents of land shown as B schedule property as patta cannot be construed as a document of title.

13. In this connection, the plaintiff examined as PW1, during the course of cross examination has admitted that after the 1975 partition deed, he had come to know about the annexation of 0.09 cents of land by the defendant during 1989 and further, according to the plaintiff, as deposed by him, during 1989, he measured his property with the help of a surveyor and he has also paid the surveyor fees and according to him, the surveyor had measured his property by fixing stones and he had not given any report or plan and at the time when the surveyor measured the property, the land in his possession was found to be measuring 50 cents and according to him, thereafter, he had not measured his property with the help of the surveyor and further, according to him, at the time when the surveyor measured his property, the surveyor did not measure the defendant's property. Now, according to the plaintiff, he had measured his property with the assistance of the surveyor in 1989. He would also go to state that he had come to know about the annexation of 0.09 cents of land in his share by the defendant during 1989. However, as per the version of the plaintiff, when the surveyor measured his property during 1989, he found him to be in possession of 50 cents and in such view of the matter, it does not stand to reason as to how the plaintiff would claim that the defendant had annexed 0.09 cents of land in the share allotted to him. Admittedly, the surveyor had not measured the defendant's property and when as per the surveyor's measurement, the plaintiff is found to be having the land of an extent of 50 cents, the plea put forth by the plaintiff that the defendant had annexed 0.09 cents of land out of his share does not hold water. Further, as per the case of the defendant, the plaintiff had plotted his share of land and alienated to third parties and this aspect of the matter had been admitted by the plaintiff during the course of cross examination. In this connection, the plaintiff would admit that he had alienated a portion of 41 cents in survey No.45 to one Natarajan on 07.01.89 and however, when he had been confronted whether he had sold the remaining portion in the suit survey number to one Chellaiya, Shanthi and Vasanthi, the plaintiff had not denied the same, however, would only state that he does not remember whether he had sold the plots to the said persons. Further, the plaintiff had not chosen to produce the copy of the sale deeds executed by him to the third parties as regards the plots laid out by him in

his share so as to point out that he still retains the B schedule property with him and if really, after the alienations made to third parties, the plaintiff still retains the disputed 0.09 cents of land, as rightly contended by the defendant, the 0.09 cents of land would have been shown as the southern boundary in the sale deeds executed by the plaintiff to the third parties. However, the plaintiff to buttress his case has not endeavoured to produce the copies of the sale deeds executed by him as regards the plots sold out by him to the third parties. However, the fact remains that after the alienations, the plaintiff cannot still claim that he owns 50 cents of land in the suit survey number as projected by him.

14. In the plaint as well as in the pre-suit notice, the plaintiff would claim that the defendant had annexed 0.09 cents of land during August/September 1990. However, during the course of evidence, as above noted, he has deposed that the defendant had annexed the 0.09 cents of land during 1989. It is thus found that the plaintiff himself is not sure as to when the alleged annexation had been made by the defendant. Be that as it may, when according to the plaintiff, during the course of evidence that the defendant had annexed 0.09 cents of land during 1989, it is found that the parties had been vying with each other as regards the claim of title to the disputed 0.09 cents of land. Thus, it is seen that the case of the plaintiff as projected in the notice and in the plaint that the defendant had annexed the 0.09 cents of land during August/September 1990 cannot be accepted as such. When the trouble had erupted between the parties as regards the claim of title to 0.09 cents of land and the possession and enjoyment of the same, it is found that when as per the definite case of the defendant, the plaintiff had been assigned survey No.45/2 and the defendant had been assigned survey No.45/3, it is found that after the problem had cropped up between the parties, the plaintiff seems to have acquired the patta marked as Ex.A3 on 02.03.90. As above seen, there is no material placed by the plaintiff to show that Ex.A3 patta had come to be issued in his favour after sending notice to the defendant. When it is seen that the parties are at loggerheads as regards the disputed property during 1989 itself, the claim of the plaintiff that he had been issued the patta for the 0.09 cents of land separately by assigning survey No.45/3A as detailed in Ex.A3, as such, cannot be accepted. Thus, it is seen that as rightly put forth by the defendant's counsel, the plaintiff seems to have obtained Ex.A3 patta in collusion with the revenue officials. Thus, a serious challenge has been thrown to Ex.A3 by the defendant. Despite the same, the plaintiff has not chosen to examine the author of Ex.A3 to evidence that the said patta had come to be issued in his favour by recognising the extent of land in his possession and enjoyment as put forth by him. When it is found that during the

original survey by the authorities concerned, they had assigned the property belonging to the plaintiff as lying in survey No.45/2 and the property belonging to the defendant as lying in survey No.45/3, it does not stand to reason as to how after the problem had erupted between the parties, the author of Ex.A3 had chosen to allot the patta to the disputed property in favour of the plaintiff by separately assigning survey No.45/3A to the same. Thus, it is found that Ex.A3 is shrouded in mystery. The plaintiff for relying upon the same to show his title to the disputed property, should have examined the author to buttress the same. The chitta and adangal extract projected by the plaintiff are found to be issued following the issuance of Ex.A3. In such view of the matter, the said documents by themselves would not be useful to sustain the case of the plaintiff.

15. Further, it is found that the plaintiff's case of unlawful annexation of 0.09 cents of land by the defendant cannot be true in the light of the evidence adduced by him during the course of cross examination. The plaintiff, during the course of cross examination, has admitted that there is a ridge between his land and the defendant's land and according to him, neither he nor the defendant had removed the said ridge. It is thus found that there is a ridge between the plaintiff's property and the defendant's property and when it has been admitted by the plaintiff that none of them had removed the said ridge, the case of the plaintiff that the defendant had unlawfully annexed 0.09 cents of land from his share as such cannot be believed. Further, the plaintiff had also admitted candidly that he cannot say on what basis he says that the defendant had annexed 0.09 cents of land but later he would state that the defendant had removed the ridge and annexed 0.09 cents of land. However, when actually the said annexation had been done, there is no clear cut case on the part of the plaintiff. In the pre-suit notice and the plaint he would state that the same had occurred during August/September 1990 and during the course of evidence, he would aver that the same had occurred during 1989 and at the same time, he would state that he measured the property with the help of a surveyor during 1989 and he was found to be in possession of 50 cents of land. At the same time, he would also depose that he had alienated his property by forming plots to various parties, as above noted, however he would still claim to retain the land in the suit survey number after the above alienations. The plaintiff has not placed the copy of the said sale deeds in support of his case.

16. Further, the dispute is whether the defendant had annexed the 0.09 cents of land belonging to the plaintiff as put forth by the plaintiff. In this connection, though the

defendant had disputed the claim of trespass of 0.09 cents of land even by way of the reply notice, still to ascertain and localise as to where actually the 0.09 cents of land lie on ground, the plaintiff had not endeavoured to seek the appointment of a commission with the help of surveyor to measure the suit property so as to enable the Court to come to an understanding as to the genuineness of the plaintiff's case. However, it is found that the plaintiff has not taken steps with reference to the same as admitted by him, during the course of cross examination. This would only go to show that inasmuch as there is no trespass made by the defendant in the plaintiff's property, no endeavour had been made by the plaintiff to measure his property by taking out a commission with the help of the surveyor during the course of the suit. That apart, as rightly put forth by the defendant, if really the patta Ex.A3 had been lawfully issued to the plaintiff, records pertaining to the same available with the revenue department would have been summoned by the plaintiff to establish his case. As determined by the trial Court, the plaintiff had not taken steps to summon the revenue records from the Taluk office to establish that Ex.A3 patta had come to be issued in his favour lawfully after giving due notice to all the parties concerned.

17. In the light of the discussions, it is found that other than Ex.A3 patta followed by adangal and chitta extract issued in his favour marked as Exs.A5 and A6, the plaintiff has not placed any other document to establish his claim of title to the disputed property. As above noted, when the plaintiff has failed to establish that one acre of land was available on ground purchased under Ex.A1 and 50 cents of land was available on ground in the share allotted to him and the defendant by way of Ex.A2 and when the plaintiff has failed to establish his case of alleged unlawful trespass effected by the defendant of an extent of 0.09 cents of land in the property as above discussed and when the plaintiff solely relies on Ex.A3 patta followed by Ex.A5 and Ex.A6 adangal and chitta extract and when the abovesaid documents are not shown to be lawfully issued to the plaintiff, particularly, when the abovesaid documents have come to be emanated following the dispute between the parties as abovenoted and the revenue documents cannot be construed as the documents of title, in such view of the matter, it is found that as rightly put forth by the defendant, the plaintiff in collusion with the revenue officials had created the abovesaid documents and had come forward with the false case as if the defendant had annexed an extent of 0.09 cents of land belonging to him. In view of the same, it is found that the first appellate Court had erred in upholding the plaintiff's case by solely relying upon Ex.A3 to Ex.A6, they being only the revenue documents. When the plaintiff has miserably failed to establish that the same had come to be issued in his favour after giving

notice to the defendant in particular and after conducting due enquiry, particularly, when it is seen that the trouble had erupted between the parties prior to the issuance of the said patta, the first appellate Court had erred in relying upon Ex.A3 to A6 without the production of all the revenue records maintained in the office and also without any evidence adduced by the plaintiff through the revenue officials as to whether the factum of survey had been effected by fixing stones and demarcating the boundaries of the properties belonging to the parties. In such view of the matter, it is evident that the first appellate Court in toto had based its reasonings and conclusions for upholding the plaintiff's case by relying upon the self serving documents projected by the plaintiff without properly appreciating the materials placed on record and in such view of the matter, the reasonings and conclusions of the first appellate Court for upholding the plaintiff's case can only be termed as perverse and illogical. The substantial questions of law formulated in this second appeal are accordingly answered against the plaintiff and in favour of the defendant.

18. In conclusion, the judgment and decree dated 23.07.2003, passed in A.S.No.34 of 2002, on the file of Principal Subordinate Court, Chengalpet are set-aside and the judgment and decree dated 25.09.2001, passed in O.S.No.1554 of 1993, on the file of District Munsif Court, Tambaram are confirmed. Accordingly the second appeal is allowed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar(CS-IV)

//True copy//

Sub Assistant Registrar

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To

1. The Principal Subordinate Court, Chengalpet.
2. The District Munsif Court, Tambaram.

+1cc to Mr.T.Thiyagarajan, Advocate SR.No.49678

+1cc to Mr.D.V.Sivagnanam, Advocate SR.No.50153

S. A.No.2295 of 2004

GMV(19/09/2018)