

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.01.2018
PRONOUNCED ON : 07.02.2018

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A. No.651 of 2003

Vanathu Chinnappan ... Appellant/Plaintiff/Appellant

Vs.

1. Sivakozhodu (Died)
2. Dhanalakshmi
3. Shiva (Minor)
4. Viji (Minor)
5. Sreedharan (Minor) ... Respondents/Defendant/Respondent

(R2 to R5 brought on record as
LRs of the deceased sole respondent
vide order of the Court dated 05.03.2010
made in CMP No.229 to 231/2010)

Prayer: Second Appeal filed under Section 100 of Civil
Procedure Code, against the judgment and decree dated 21.10.2002
in A.S.No.17 of 2002 on the file of Sub Court, Panruti,
dismissing the appeal confirming the judgment and decree dated
09.02.2002 in O.S. No.458 of 1995, on the file of District
Munsif Court Panruti.

For Appellant : Mr.R.Sunil Kumar
For Respondents: Mr.R.Muralidharan

JUDGMENT

Challenge in this second appeal is made to the judgment and
decree dated 21.10.2002 passed in A.S.No.17 of 2002, on the file
of the Sub Court, Panruti, confirming the judgment and decree
dated 09.02.2002 passed in O.S. No.458 of 1995, on the file of
District Munsif Court, Panruti.

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

3. Suit for permanent injunction.

4. The case of the plaintiff, in brief, is that the suit property situated in survey No.222/6 comprising an extent of 0.23.0 ares located at Panickkankuppam village, patta number 724, is the ancestral property of the plaintiff and the plaintiff has also been issued patta in respect of the suit property and accordingly, it is only the plaintiff who is in possession and enjoyment of the suit property by paying kist etc. While so, one Sawrimuthu laying a false claim in respect of the suit property attempted to alienate the same in favour of third parties and on coming to know the same, the plaintiff laid the suit against the said Sawrimuthu for the relief of declaration and permanent injunction, restraining him from alienating the suit property to third parties in O.S.No.501/94 and the said suit ended in favour of the plaintiff on 08.11.94 and while so, the plaintiff has learnt that the said Sawrimuthu had concocted a sale deed in favour of the defendant by setting up his brother D.Lasar Padayachi as also having right in the suit property, it is seen that the defendant has submitted the above said sale deed for registration and the sale deed has come to be registered on 22.12.1994 and the sale deed covers an extent of 0.45.5 ares including the suit property and on the basis of the above said sale deed, the defendant is attempting to interfere with the possession and enjoyment of the plaintiff and obtain forcible possession of the suit property to which he is not entitled to and hence, the suit for permanent injunction.

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 false to state that the suit property belongs to the plaintiff ancestrally and that the same is in his possession and enjoyment and that the plaintiff had obtained patta and paying kist etc., in respect of the suit property. The entire extent in old survey number 148/6 and new survey number 222/6 measuring 0.45.5 ares, old patta number 246 and new patta number 316, originally belonged to the ancestors of Dhaveetha padayachi and he was in possession and enjoyment of the same till his death and he died intestate leaving Sawrimuthu and Lasar Padayachi as his sons and accordingly, the patta was changed in the name of Sawrimuthu, he being the eldest son and Lasar Padayachi being a minor at that point of time and accordingly, Sawrimuthu and Lasar Padayachi succeeded to the above said property and in possession and enjoyment of the same and they had validly sold the said property for a consideration of Rs.54,000/- by way of a registered sale deed in favour of the defendant on 23.08.1994 and since the date of purchase, it is only the defendant who has been in possession and enjoyment of the above said extent of the property and all the above facts are known to the plaintiff and the adjacent old survey number 148/5 belonged to the plaintiff's father Periyamayagam and another property in survey number 148/4 situated nearby belonged to Nicoloss lorthu and the plaintiff and Nicoloss lorthu are

close relatives and based on the above proximity of the above said properties to the suit property to which the defendant is entitled to, the plaintiff has laid a false claim to the suit property and Sawrimuthu evaded to come for the registration of the sale deed dated 23.08.94 and the said sale deed had got registered with another executant namely Lasar Padayachi on 05.12.94 and the plaintiff in collusion with Sawrimuthu has laid the false suit in O.S.No. 501/94 and obtained a collusive decree in the said suit and the decree passed in the said suit is not binding on the defendant in any manner. It is only the defendant and his predecessor in interest who had been in possession and enjoyment of the extent purchased by him and it is only the defendant who has been in possession and enjoyment of the said property and it is only the plaintiff who is attempting to interfere with the possession and enjoyment of the defendant, in respect of the property purchased by him and hence, the suit laid by the plaintiff without any cause of action is liable to be dismissed.

6. In support of the plaintiff's case PWS 1 and 2 were examined, Exs.A1 to A16 were marked. On the side of the defendant DWs 1 to 3 were examined and Exs.B1 to B53 were 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 dismiss the suit laid by the plaintiff. Impugning the same, the present second appeal has come to be laid.

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

Whether the Courts below erred in law and misdirected in considering the scope of documents Exs.A13 to A16 and the earlier decree?

9. The plaintiff claims the suit property as his ancestral property. The suit property is said to be situated in survey number 222/6 with an extent of 0.23.0 ares within the specific boundaries and bearing patta number 724 located at Panickkankuppam village, Panruti taluk. However, as rightly found by the Courts below, the plaintiff has not placed any acceptable and reliable evidence to show that the suit property belong to him ancestrally. The plaintiff has not traced in the plaint, as to how the suit property belong to him ancestrally. As rightly found by the Courts below, the documents projected by the plaintiff in respect of his case are found to be of recent origin just prior to the institution of the suit. Now, according to the plaintiff, one Sawrimuthu laid a false claim to

the suit property and attempted to alienate the same in favour of third parties and accordingly, it is the case of the plaintiff that he had laid the suit against him in O.S.No. 501/94 for the reliefs of declaration and permanent injunction and obtained a decree in the said suit on 08.11.84. Admittedly, it is found that the defendant is not a party to the above said suit proceedings. It is thus seen that and as rightly argued by the defendants' counsel, the judgment and decree passed in the said suit would not be binding upon the defendant in any manner.

10. Be that as it may, it is the case of the defendant that the property situated in old survey number 148/6, new survey number 222/6 comprising an extent of 0.45.5 hectares bearing old patta number 246, new patta number 316, originally belong to Dhaveetha padayachi ancestrally and it was he who had been in possession and enjoyment of the said extent of the property and after his death, the same was inherited by his two sons, namely, Sawrimuthu and Lasar Padayachi and as Lasar Padayachi was minor at the time of his father's death, it was stated that the patta of the above said property was changed in the name of Sawrimuthu, he being the eldest son and further, according to the defendant, Sawrimuthu and Lasar Padayachi sold the above said extent of the property to him by way of sale deed dated 23.08.1994 and after the receipt of the consideration, as Sawrimuthu did not come forward to register the above said document, it is stated that the said document has come to be registered on 05.12.94, with the other executant namely, Lasar Padayachi and the plaintiff, being aware of all the above said transactions, with a view to grab the suit property one way or the other, has laid a false suit in collusion with Sawrimuthu in O.S. No.501/94 and obtained a collusive decree thereunder which is not at all binding upon the defendant in any manner. It is found that based upon the decree passed in O.S. No.501/94, it is seen that the plaintiff has manoeuvred to obtain patta for the suit property and also accordingly filed kist receipts in respect of the same, on the basis of the above said patta. The patta relied upon by the plaintiff marked as Ex.A3 is dated 23.02.95, which has come into existence after the passing of the decree in O.S. No.501/94 on 08.11.94 and accordingly, as rightly found by the Courts below, the kist receipts projected by the plaintiff based upon the above said patta Ex.A3 are found to be of new origin having come into existence just prior to the filing of the present litigation.

11. As rightly determined by the Courts below, from the copy of the settlement register marked as Ex.B46, it is found that an extent of 0.45.5 hectares of land in old survey number 148/6, new survey number 222/6, has come to be registered only in the name of Dhaveetha padayachi and as rightly putforth by the defendant, following the death of Dhaveetha padayachi, his two sons had inherited the above said property and accordingly, it

is found that the kist for the above said extent of the property has been paid in the name of Sawrimuthu, which could be evidenced from the Kaichathu book marked as Ex.B2 for several faslis and it is further found that accordingly, the patta also stood only in the name of Sawrimuthu, which could be seen from the patta book marked as Ex.B3. Likewise, the defendant has also produced kist receipts, patta, in the name of Sawrimuthu as well as in his name, as documents in support of his case and it is further found from the plaint averments that Sawrimuthu and Lasar Padayachi being the sons, the above said extent of the property of an extent of 0.45.5 hectares which includes the suit property also, had alienated the same in favour of the defendant on 23.8.94, which document has come to be marked as Ex.B1 and it is further seen that as Sawrimuthu for one reason or the other had not come forward for the registration of the above said sale deed, the same got registered with the help of the other executant namely, Lasar Padayachi and accordingly, it is found that the defendant has placed acceptable and reliable materials to evidence that the above said extent of property inclusive of the suit property is only in his possession and enjoyment right from the days of his predecessors in title. It is further found that as the defendant had requested for measuring the property which had come to be purchased by him by way of Ex.B1, accordingly, it is seen that requisitions had been made with reference to the same to the concerned authorities and the said documents had also come to be executed on the side of the defendant. In such view of the matter, when the defendant has filed acceptable and reliable documents to show that the larger extent of the property of an extent of 0.45.5 hectares belonged to Dhaveetha padayachi ancestrally and accordingly, right from the days of Dhaveetha padayachi, it is only the defendant's predecessor in title and subsequently, the defendant pursuant to Ex.B1 had been in possession and enjoyment of the suit property as such, in the absence of any document to evidence that the suit property belong to the plaintiff ancestrally, it is found that as rightly determined by the Courts below, no safe credence could be attached to the documents placed by the plaintiff which have all emanated after the passing of the decree obtained in O.S. No.501/94.

12. From the evidence adduced in the matter, both from the mouth of PWs 1 and 2 and through the mouth of DWs 1 and 2, it is found that the larger extent of the property is lying as one unit without any division as such and when the position is as above on ground, it does not stand to reason as to how come the plaintiff has been able to carve out an extent of 0.23.0 ares in the said survey number and obtain a separate patta. Particularly, when it has not been established by the plaintiff that his predecessor in title had a valid title to the suit property as such, as rightly found by the Courts below, only in the light of the decree obtained by the plaintiff in

O.S.No.501/94, the documents had come to be created in the name of the plaintiff.

13. As above seen, neither the defendant nor Lasar Padayachi examined as DW2, is a party in O.S.No.501/94. That apart, it is found that the decree obtained in the above suit is an ex-parte decree as Sawrimuthu had not contested the said suit. Accordingly, as rightly putforth by the defendant, Sawrimuthu with a view to avoid the sale transaction covered under Ex.B1, had joined hands with the plaintiff and accordingly, instructed the plaintiff to lay the suit falsely against him and resultantly, Sawrimuthu deliberately remained ex-parte in the said proceedings to ensure that the plaintiff obtain the decree as prayed for in the said suit. However, when it is seen that the defendant is not a party to the above said suit proceedings, admittedly, the decree obtained by the plaintiff in the said suit would not in any manner bind upon the defendant.

14. As regards the case of the plaintiff that the suit property belong to him ancestrally, only the documents marked as Exs.A13 to A16 are pressed into service and in this connection, it appears that PW2 has been examined by the plaintiff. As already seen even according to the defendant, the plaintiff's father Periyamayagam and Nicoloss lorthu were owning property adjacent to the suit property and accordingly, it is found that as per the case of the defendant also, the plaintiff taking advantage of the same is attempting to grab the suit property on the basis of the ex-parte decree obtained by in O.S. No.501/94. The plaintiff relies upon the boundary recitals found in the documents marked as Ex.A13 to A16 and on that footing, it is contended on his behalf that Periyamayagam had owned properties nearby or adjacent to the property covered in the above said sale transaction. The same had been reflected in the above said documents as boundary recitals and thus, according to the plaintiff, on the basis of the above said boundary recitals, it should be held that it is only the plaintiff, who owned the suit property ancestrally. However, as rightly found by the trial Court, when other than stating that Periyamayagam also owns adjacent property to the properties covered under Ex.A13 to A16, the survey number, extent etc of the property which is said to be belonging to Periyamayagam has not been spelt out clearly in the above said documents, particularly, when there is no reference contained in the above said documents that the property shown as Periyamayagam's property in the boundary recitals only refers to the suit property as such and when it is found that Periyamayagam is owning other properties adjacent to the suit property, as rightly determined, merely from the above said boundary recitals, ipso facto, we cannot safely conclude that the suit property belonged to the plaintiff's father ancestrally. If that be so, the plaintiff would have placed patta, kist receipts, adangal extract etc., standing in the name

of his father connected with the suit property as described in the plaint. However, when it is found that all the documents projected by the plaintiff have come into existence only based upon the decree obtained by him in O.S. No.501/94, it is found that the plaintiff cannot be held to be in valid possession and enjoyment of the suit property as the absolute owner thereof as put forth by him. On the other hand, as rightly determined by the Courts below, the documents projected by the defendant amply would go to show that the suit property ancestrally belonged to Dhaveetha Padaiyachi and the same had been inherited by his sons, namely, Sawrimuthu and Lasar padayachi and the defendant had acquired title to the suit property, in fact of a larger extent of the property i.e. 0.45.5 hectares by way of Ex.B1 and accordingly, the defendant has placed voluminous documents to show that he is in possession and enjoyment of the suit property lawfully.

15. In the light of the above discussions, it is found that the Courts below had rightly assessed the oral and documentary evidence placed in the matter in a proper perspective, both factual as well as legal aspects and accordingly, discountenanced the plaintiff's case. Resultantly, it is found that the plaintiff cannot be allowed to lay a valid claim to the suit property as such, based upon the misleading and incorrect boundary recitals found in Exs.A13 to A16 for laying a claim to the suit property. As above seen, the decree obtained by the plaintiff in O.S. No.501/94 would not in any manner serve his case, particularly, when it is found that the said decree is a collusive decree and not binding upon the defendant in any manner.

16. The substantial question of law formulated in this second appeal is accordingly answered against the plaintiff and in favour of the defendant.

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

s/d-

Assistant Registrar(CS VIII)

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2. The District Munsif Court, Panruti.

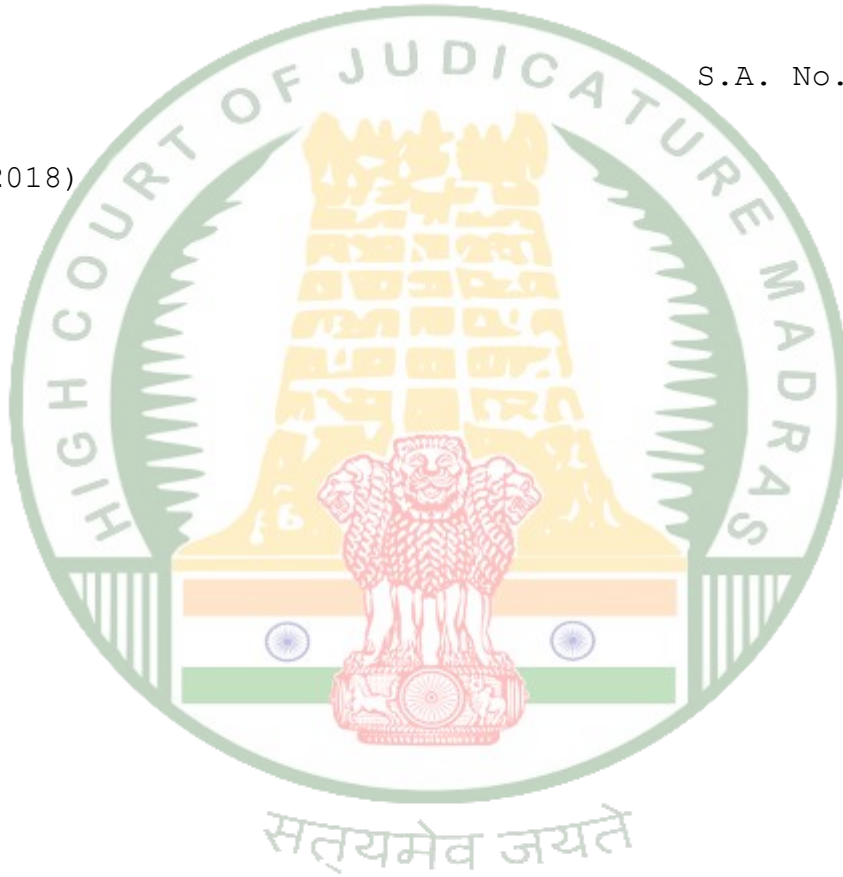
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S.A. No.651 of 2003

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