

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 20.12.2018

Pronounced on : 03.01.2019

CORAM

THE HONOURABLE MR. JUSTICE **C.V.KARTHIKEYAN**

S.A.No.1241 of 1999

- 1.Muthusamy
- 2.Vaithipillai
- 3.Vinaiyathapillai
- 4.Poondi (Deceased)
- 5.Murugapillai
- 6.Annadurai
- 7.Samidurai
- 8.Pandiyam

Appellants 5 – 8 brought on record as
Lrs of the deceased 4th appellant vide
court order dated 21/02/2018 made in
CMP.No.3075 to 3077/2018 in
S.A.No.1241 of 1999 (MDIJ)

... Appellants

Vs

- 1.Sanyasi(Deceased)
- 2.Thangam
- 3.Mariyammal
- 4.Thailammal
- 5.Ilamathi

RR 2 to 5 brought on record as Legal
Representatives of the deceased sole
respondent vide order of court dated
15.03.2018 made in CMP.No.3078 to
3080/2018 in S.A.No.1241/1999 (MDIJ)

... Respondents

PRAYER: The Second Appeal filed under Section 100 of CPC, against the judgment and decree of the Civil Court, Senior Division, Kallakurichi in A.S.No.190 of 1996 dated 27.01.1997 reversing the judgment and decree of the Additional District Munsif, Kallakurichi, in O.S.No.789 of 1982 dated 18.04.1994.

For Appellant : Mr.A.G.Rajan
For RR 2,3 & 5 : Mrs.Mythili Suresh
For R4 : Not ready in notice

JUDGEMENT

The defendants in O.S.No.789 of 1982 on the file of the Additional District Munsif Court, Kallakurichi, are the appellants herein. O.S.No.789 of 1982 had been filed seeking a judgment and decree for declaration of title and for permanent injunction with respect to the suit property. This suit was dismissed, by judgment and decree dated 18.04.1994. Challenging that judgment, the plaintiff filed A.S.No.190 of 1996 before the Civil Judge, Senior Division, Kallakurichi. By judgment and decree dated 27.01.1997, the first appeal was allowed.

2.Challenging that judgment, the defendants have filed the present Second Appeal. The second appeal had been admitted on the following substantial question of law:

“1.Whether the First Appellate Court was right in holding that the appellants have no share in the suit property and that the conclusion arrived at

by the Lower Appellate Court is sustained in law?"

Pending the appeal, the 4th appellant/4th defendant died and his legal representatives were brought on record as appellants 5 to 8. The respondent/plaintiff also died and his legal representatives were brought on record as respondents 2 to 5.

O.S.No.789 of 1982(The Additional District Munsif Court, Kallakurichi):-

3.The plaintiff, Sanyasi, had filed the suit against four defendants namely, Muthusamy, Vaithipillai, Vinaiyathapillai and Poondi, seeking a judgment and decree for declaration of title and permanent injunction with respect to the suit property. The suit property was described as land measuring 39 cents in S.No.516/1 in Pootai Village, Sankarapuram Taluk, Villupuram District. In the plaint, it was claimed that entire land belonged to the plaintiff. It was ancestral property. The patta was in the name of Kulan, the father of the plaintiff in Patta No.253. The plaintiff was the only son of Kulan. It was also stated that the plaintiff and his father had been in possession for more than the statutory period and had perfected title by prescription. It was further stated that the defendants have no right or title over the property. However, they interfered with his possession from 01.10.1982. It is under these circumstances that the plaintiff had filed the said suit for declaration of title and permanent injunction.

4.In the written statement of the defendants, it was stated that the lands in S.No.516/1 measuring 39 cents originally belonged to three brothers namely, Muthu, Azhagan and Narayanan. They were each entitled to 13 cents. Muthu had two sons, Kullan and Vinaiyathan. Both of them again partitioned the 13 cents of land and were both entitled to 6 ½ cents each. The plaintiff Sanyasi was the son of Kullan. The plaintiff was therefore entitled to only 6 ½ cents. It was stated that the 4th defendant was the son of Vinaiyathan. He also had a brother Neelamegam. The samaathi of Neelamegam was actually situated in the land itself. The 13 cents allotted to the other brother Azhagan was specifically enjoyed by his son Karuppan and after that by his son Gopal and after the death of Gopal by his two sons, Muthusamy and Ayasamy. The first defendant is Muthusamy. The third brother Narayanan was entitled to 13 cents. This was inherited by his son Sevathan. After his death his two sons Vaithipillai and Vinaiyathapillai, the second and third defendants became entitled to the 13 cents. It was therefore stated that the plaintiff was entitled to only to 6 ½ cents of land.

5.On the basis of the above pleadings, the following issues were framed:

1. Whether the claim of the plaintiff that he was in enjoyment of the entire 39 cents as legal representative of Kullan is correct?
2. Whether the plaintiff is entitled to the relief of

permanent injunction?

3.To what other relief is the plaintiff entitled to?

6.During trial, the plaintiff examined himself as PW-1 and examined another witness Muthu as PW-2. The first defendant examined himself as DW-1 and examined another witness Karuppan as DW-2. The plaintiff marked Exs.A1-A3. Ex.A1 is the Patta. Ex.A2 and A3 are the Chitta and Adangal. On the side of the defendants, Exs.B1-B5 were marked. Ex.B1 is a document in favour of the first defendant dated 06.11.1976. Exs.B2 and B3 are tax receipts. Ex.B4 is electricity card. Ex.B5 is the sale deed in favour of Ayakannu dated 23.04.1954. During the course of trial, an Advocate Commissioner was also appointed and his report was marked as Ex.C1 and sketch was marked as Ex.C2.

7.On the basis of oral and documentary evidence, the learned Additional District Munsif, Kallakurichi, primarily relied on the report of the Advocate Commissioner, wherein he had given an extensive report along with sketch. It was observed in the judgment the entire land in S.No.516/1 measuring 39 cents was originally owned by three brothers Muthu, Azhagan and Narayanan. They were each entitled to 13 cents. The plaintiff traced his title to Muthu. Muthu had two sons Kullan and Vinaiyathan. They were each entitled to 6 ½ cents. The plaintiff was the son of Kullan. It was held that he was therefore entitled to 6 ½ and not the entire 39 cents. The patta was in the name of Kullan, since he was

the senior most person. However, that would not be a document of title. The learned Additional District Munsif Court, held that the plaintiff was entitled to only to 6 ½ cents. It was also found that the cemetery of Neelamegam, son of Vinaiyathan was in the other 6 ½ cents which was under the enjoyment of the 4th defendant Poondi. Consequently, the suit was partially decreed with declaration being granted for 6 ½ cents of land and permanent injunction also with respect to the 6 ½ cents of land. Challenging that judgment, the plaintiff had filed A.S.No.242 of 1994. This appeal came up for consideration before the learned Civil Judge Senior Division, Kallakurichi.

A.S.No.242 of 1994 (Civil Judge, Senior Division, Kallakurichi):-

8.By judgment and decree dated 21.11.1997, the learned Civil Judge, Senior Division, re-examined the evidence and framed points for consideration. The learned Judge found that patta was in the name of Kullan and therefore held the plaintiff enjoyed the entire lands. The learned Judge did not accept the contention of the defendants that the lands originally measured 39 cents and belonged to three brothers and that Kullan, the son of one of the brother Muthu, was entitled only to 6 ½ cents and the brother of Kullan, Vinaiyathan was entitled to other 6 ½ cents. It was further held that merely because the cemetery of the son of Vinaiyathan was in the property, it cannot be held that the plaintiff was not the owner. Finally, the learned Civil Judge, Senior Division, allowed the appeal and decreed the suit as sought for to the entire extent of 39 cents.

S.A.No.1241 of 1999:

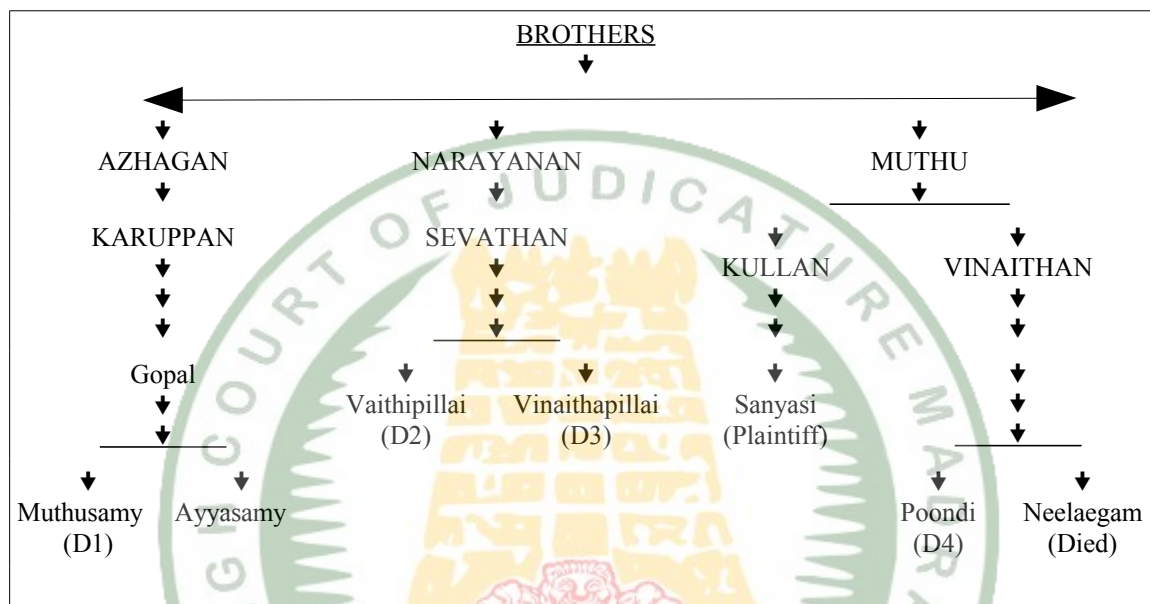
9.Challenging that judgment, the defendants have filed the present Second Appeal. Pending the appeal, the 4th appellant/4th defendant died and his legal representatives have been brought on record as appellants 5 to 8. The respondent/plaintiff also died and his legal representatives have been brought on record as respondents 2 to 5. The Second Appeal had been admitted on the following substantial question of law:-

“1.Whether the First Appellate Court was right in holding that the appellants have no share in the suit property and that the conclusion arrived at by the Lower Appellate Court is sustained in law?”

As seen from the substantial question of law, the only aspect to be decided is whether the Lower Appellate Court has erred in holding that the appellants have no share in the suit property and whether the finding of the Lower Appellate Court is sustainable in law.

10.Heard arguments advanced by Mr.A.G.Rajan, learned counsel for the appellants and Mrs.Mythili Suresh, for M/s.Sarvabhauman Associates, learned counsel for the respondents.

11.The following geneology table would be helpful in understanding the relationship among the parties:



12.The suit property in Pootai Village, Sangarapuram Taluk, Villupuram District, in S.No.516/1 measured 39 cents. It originally belonged to three brothers namely, Azhagan, Narayanan and Muthu. They were each entitled to 13 cents. Muthu had two sons, Kullan and Vinaiyathan. The two sons were each entitled to 6 ½ cents. The respondent/plaintiff was the son of Kullan. He was entitled to 6 ½ cents. However, he filed the suit seeking declaration of title for entire 39 cents. The basis of filing such a suit for the entire 39 cents was that the patta in S.No.516/1, stood in the name of his father, Kullan. It is in this connection that the evidence and the pleadings of the appellants/defendants will have to be considered.

13.As stated above, the entire land of 39 cents originally belonged to three brothers namely, Azhagan, Narayanan and Muthu. Azhagan had one son Kurupan who died and his share of 13 cents devolved to his son Gopal, who also died and his share devolved to his two sons Muthusamy and Ayasamy. Muthusamy is the first defendant. Similarly, Narayanan had one son Sevathan. He died and his share devolved to his sons, the second and third defendants, Vaithipillai and Vinaiyathanpillai. At that point of time, the father of the plaintiff Kullan was senior most member in the family. The patta was issued in his name. It is not a document of title. He was responsible to pay taxes on behalf of the family. He had a brother Vinaiyathan. Consequently, Kullan was entitled only to 6 ½ cents. The respondent/plaintiff was the son of Kullan. He was entitled to only 6 ½ cents.

14.The learned counsel for the respondents however, urged the Court to consider the fact that since Exs.A2 and A3, the chitta and adangal were also in the name of respondent/plaintiff, he was entitled to claim title to the entire 39 cents. In this connection the learned counsel relied to **AIR 2003 Mad 404, T.M.Manicka Naicker Vs. N.J.Chandrasekar and another**, in the said judgement, it had been observed in a second appeal wherein title was challenged and possession was also questioned:

“Even regarding the Ex.A series of documents, most of

them being kist receipts they cannot go to show the possession on the land by a party since anybody could pay the kist as it has occurred in the instant case that the authorities concerned have issued the kist receipts both in favour of the plaintiff and the defendants for one and the same period. The vital document to prove possession is the cultivation adangal extract which the plaintiff has failed to produce for the statutory period of 12 years in a continuous and uninterrupted manner and in the absence of such evidence coupled with the shaky oral evidence cannot go to prove the plea of adverse possession and, therefore, the trial court so far as this issue is concerned has arrived at the valid decision which requires the first appellate Court following the procedures established by law"

15.It is seen from the extracted portion that an observation had been made that production of adangal would have proved possession and not producing the same was commented upon. The learned counsel for the respondent/plaintiff pointed out in the present case, chitta and adangal had been produced and consequently, the judgment of the First Appellate Court has to be

upheld. Ex.A2 is the chitta for Fasli 1390-1392, namely June 1980 – July 1982, it was in the name of Kullan. It is not in the name of the respondent/plaintiff. Ex.A3, is the adangal again in the name of Kullan for Fasli 1390-1392, namely June 1980 – July 1982. Ex.A2, had been issued by the Zonal Deputy Tashildar on 25.01.1994. Ex.A3, had also been issued by the Zonal Deputy Tashildar on 25.01.1994. They have been marked by PW-1, the respondent/plaintiff. The documents have not been proved in manner known to law by summoning a witness from the Tashildar office. The revenue records after the death of Kullan have not been produced by the respondent/plaintiff. The respondent/plaintiff had a duty to produce such records to establish title for the entire 39 cents. He claimed title, he had to prove it. The claim of the appellants/defendants that the land in S.No.516/1 originally measured 39 cents and belonged to three brothers who were each entitled to 13 cents is also fortified by the facts, that there is a house of one of the defendants in one of the portion and the samaathi of brother of the brother of the the 4th defendant in another portion.

16.I hold that the respondent/plaintiff cannot take advantage of Exs.A1-A3. They are in the name of Kullan, his father. He had not produced any document to show that the revenue records have been mutated to his name. Ex.B2, being tax receipts and Ex.B4, electricity card also evidence possession of the appellants/defendants. Exs.A1 – A3 cannot be declared as documents of title in the name of the respondent/plaintiff.

17.Consequently, I hold the First Appellate Court had erred in holding that the plaintiff had exclusive title to the entire portion of the 39 cents and that he was in possession of the entire land. The judgement and decree of the First Appellate Court is not based on evidence or on documents. The First Appellate Court was wrong in holding that the appellants have no share in the suit property. Consequently, the judgment and decree of the Lower Appellate Court is interfered with and the Second Appeal is allowed. The judgment and decree in A.S.No.190 of 1996 dated 27.01.1997 by the learned Civil Judge Senior Division, Kallakurichi, is set aside. I further hold that the learned Additional District Munsif, Kallakurichi, had delivered a well balanced judgment in O.S.No.789 of 1982 dated 18.04.1994 and that judgment which granted declaration of title and permanent injunction with respect to 6 ½ cents of land in favour of the respondent/plaintiff is correct and is confirmed.

18.Consequently, the Second Appeal is allowed, with costs. The judgment and decree in A.S.No.190 of 1996 on the file of the Civil Judge, Senior Division, Kallakurichi dated 27.01.1997 is set aside. The judgment and decree in O.S.No.789 of 1982 on the file of the Additional District Munsif, Kallakurichi, dated 18.04.1994 is confirmed.

03.01.2019

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Index: Yes/No
Internet: Yes/No

C.V.KARTHIKEYAN, J.

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To

- 1.The Civil Court Senior Division, Kallakurichi
- 2.The Additional District Munsif, Kallakurichi
- 3.The Section Officer, VR Section,
Madras High Court.



Pre-delivery Judgment made in
S.A.No.1241 of 1999

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