

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.11.2019

PRONOUNCED ON : 22.11.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

S.A.No.511 of 2002

Kaliyaperumal

..Appellant/
2nd Respondent/ 2nd plaintiff

Vs.

1.Ramanujam (died)

2. Chinnappan

3. Rajangam

..1 to 3 Respondents/1&2
Appellants & 3rd Respondent/
Defendant

4. Annapattu(died)

(R4 died and remained exparte vide order of
court dt 12.09.2019 as per memo dt 12.09.2019)

.. 44 & 5 Respondents / 5 & 6
Respondents/ Lrs of the 1st plaintiff

5. Sornanayaki

6. Ramamirtham

7. R. Arivazhagan

8. Sangumathi

9. R. Azhagar

10.R. Malliga

...6 To 10 Respondents/
Lrs of the 1st Respondents

(R6 to R10 brought on record as LR's of the
deceased R1 vide order of court dt 22.04.2014
in CMP.Nos.345 to 347 of 2013)

PRAYER : Second Appeal filed under Section 100 of C.P.C.,
against the judgment and decree made in A.S.No.36 of 1984 on the
file of the Subordinate Judge's Court, Ariyalur dated 14.12.1999
has reversed the judgment and decree made in O.S.No.2682 of 1979
on the file of the Additional District Munsif Court, Ariyalur
dated 24.09.1982.

For Appellants : Mr.S. Parthasarathy,
Senior Counsel
for Mr.J. Ramakrishnan

For Respondents : Mr.M. Sriram
for R2, R6 to R10.
R3 & R4 - set exparte
R5 - Dispensed with.

JUDGMENT

This second appeal has been filed by the second plaintiff against the judgment and decree passed by the Sub-Judge, Ariyalur in A.S.No.36 of 1984 dated 14.12.1999 reversing the judgment and decree passed by the Additional District Munsif, Ariyalur in O.S.No.2682 of 1979 dated 24.09.1982.

2. The appellant herein and his father Sellamuthu Padayachi had filed a suit in O.S.No.2682 of 1979 on the file of the Additional District Munsif, Ariyalur, to declare their title over the suit 'A' schedule property and for permanent injunction to restrain the defendants from interfering with their peaceful possession and enjoyment of the said property alternatively for the relief of partition of the suit 'B' schedule property and separate possession of $\frac{3}{4}$ th share in the suit 'B' schedule property and for future mesne profits.

3. The learned Additional District Munsif, by the judgment dated 24.09.1982 had passed a preliminary decree to divide the suit 'B' schedule property into 4 equal shares and allotted 3 such shares to the plaintiffs and directed the defendants to pay costs of the suit. In respect of the future mesne profits, he directed separate enquiry. Aggrieved by the same, the defendants 2 and 3 had filed an appeal in A.S.No.36 of 1984 on the file of the Sub-Judge, Ariyalur. The learned Sub-Judge, Ariyalur, by the judgment dated 14.12.1999 had allowed the said appeal and set aside the judgment and decree passed by the trial court and dismissed the suit. However, he directed the parties to bear their respective costs. During pendency of the said appeal, the first plaintiff Sellamuthu Padayachi died and his LRs were impleaded as respondents 4 to 6. Feeling aggrieved, the second plaintiff has filed the present second appeal.

4. For the sake of convenience, the parties are referred to as described before the trial court.

5. The averments made in the plaint are in brief as follows:
a) The second plaintiff is the son of the first plaintiff.

The plot Nos.1 to 5 mentioned in the plaint rough plan belongs to the plaintiff and plot Nos.6 to 8 mentioned in the said plan belongs to the defendants. The entire land is shown as 'ABCD' in the plaint plan. There is a well in the middle of the land. All these plots and the well therein originally belonged to a common ancestor, Ramasamy who had two sons viz., Velayutham and Annamalai. Velayutham had two sons viz., Ponnusamy and Sellamuthu (Plaintiff No.1) Ponnusamy had three sons viz., Rajangam, Ramanujam and Chinnapan (defendants 1 to 3). In all the properties Annamalai had $\frac{1}{2}$ share which had now been purchased by the plaintiffs under two sale deeds dated 12.07.1948 and 07.02.1962 i.e., plot Nos. 3, 4 and 5 respectively. Out of the remaining plots, the plot Nos. 1 and 2 are shares of the plaintiffs 1 and 2 and the plot Nos. 6, 7 and 8 constituted the share of Ponnusamy, father of the defendants. In other words, plaintiffs owned the north-eastern and south-eastern corners in the suit locality, as well as the central blocks in and around the suit well. The defendants are entitled only to north-western and south-western corners and a small portion lying to the east of the later. Arithmetically, the plaintiffs are entitled to $\frac{3}{4}$ share in the suit properties. The suit village Paranam was formally a Zameen village which has now been taken over by the Government under Madras Estates Abolition Act and converted as a ryotwari land and granted patta. The properties have been surveyed as 148/4 measuring 73 cents on the western side and 148/5 measuring 1.17 acres on the eastern side. The well is in the middle, in the plaintiffs' land. Out of total extent of 1.90 acres, the plaintiffs are entitled to 1.50 acres and the defendants are entitled to the remaining 40 cents. After abolition of the Zameen, in the well, the plaintiffs are entitled to $\frac{3}{4}$ share and the defendants are entitled to $\frac{1}{4}$ share and the parties are enjoying accordingly.

b) In the year 1977, the dispute arose between the parties relating to the taking of water from the well. The defendants had filed a suit against the plaintiffs in O.S.No.3 of 1977 on the file of the District Munsif, Ariyalur, claiming that they are entitled to $\frac{2}{3}$ share in the well and the plaintiffs are entitled to only $\frac{1}{3}$ share. In the said suit, they have stated that they are entitled to 1.23 acres and the plaintiffs herein are entitled to 67 cents. In that suit, the court without declaring their respective rights, made a declaration that the parties are entitled to withdraw water to their rights and dismissed the suit for the relief of injunction on the ground that both the parties are co-owners of the well. Hence, it has become necessary to establish the right of the respective parties in the land as well as in the well. Therefore, the plaintiffs filed the present suit to declare their right over the suit properties and $\frac{3}{4}$ share in the suit well or alternatively for partition of the suit properties to divide into 4 equal shares and allot 3 such shares to the plaintiffs.

6. The averments made in the written statement filed by the third defendant and adopted by the second defendant are in brief as follows:

(a) The defendants are not admitting that the plaintiffs are entitled to $\frac{3}{4}$ share in the suit properties. The plan filed along with the plaint, has not reflected the correct facts. The defendants are admitting that originally the suit properties belong to one Ramasamy and he got two sons and also they are admitting the geneology stated in the plaint.

b. The plaintiffs filed the suit suppressing the family arrangements which took place in the family. The defendants' father Ponnusamy and the first defendant were living as a joint family. At that time, they enjoyed certain properties separately for their convenience, but actually no partition took place. Hence certain properties were purchased in the name of the first plaintiff and certain properties here purchased in the name of the defendants' father Ponnusamy. All the properties were treated as joint family properties.

c) The defendants' father Ponnusamy got two wives. The first wife Chinnappillai died when the first defendant was 7 days old. Thereafter the said Ponnusamy got married to the second wife and through her, the defendants 2 and 3 were born. Already Ramasamy Padayachi and Annamalai Padayachi had purchased lands in the name of one Periyasamy for the benefit of the defendants' grandmother. Subsequently, the grandmother of the defendants orally partitioned the properties and allotted the properties to her sons in the presence of the panchayatars. The defendants' father got three male children and the first plaintiff got one male child. The first plaintiff had certain debts. Hence the first defendant and the defendants' father had sold the property which is situated at Keelamanakarai for Rs.160/- and the said amount was taken by the first plaintiff. With regard to the said sale, no sale deed was executed. However, the purchasers viz., Kattaperumal and his son Saminathan are enjoying the said property.

d) The suit property is known as Keni land. Adjoining the suit land, one land admeasuring 95 cents known as Alamarathukollai is also there. In that land, Annamalai got $\frac{1}{2}$ share. The defendants' father had purchased Annamalai's share. As per the family arrangement, the entire extent of 95 cents in Alamarathukollai was allotted to the first plaintiff and for that, no sale deed was executed till today. The sale deed for the said land stands in the name of he defendants' father, but the possession is with the first plaintiff.

e) In view of the fact that already the property situated in

Keelamanakarai was sold, the entire sale consideration of Rs.160/- was taken away by the first plaintiff and also the entire extent of Alamarathukollai was allotted to the first plaintiff. The share which was purchased by the first plaintiff in the suit property was allotted to the defendants' father. Hence, in the suit property, the first plaintiff is entitled to only $\frac{1}{4}$ share. The defendants' father had been in possession and enjoyment of $\frac{3}{4}$ share in the suit property. In the previous suit i.e., in O.S.No.3 of 1977 indirectly, it was held that the defendants herein are entitled to $\frac{3}{4}$ share in the suit land and in the well. The defendants' father have been in exclusive possession and enjoyment of $\frac{3}{4}$ share of the suit property for more than 25 years with the knowledge of the first plaintiff. Hence, the first plaintiff had lost right if any in the said property. Therefore, the defendants 2 and 3 prayed to dismiss the suit.

7. Based on the aforesaid pleadings, the learned Additional District Munsif, Ariyalur, had framed necessary issues and tried the suit. During trial, on the side of the plaintiffs, the second plaintiff was examined as PW1 and they marked Ex.A1 to 14 as exhibits. On the side of the defendants, the third defendant was examined as DW1 and they marked Exs.B1 to B7 as exhibits.

8. The learned Additional District Munsif, Ariyalur, after considering the materials placed before him, found that the plaintiffs are entitled to $\frac{3}{4}$ share in the land and well. He further found that since the plaintiffs and the defendants are co-owners, injunction cannot be granted against the co-owners. Accordingly, he passed a preliminary decree directing to divide the suit properties into 4 equal shares and allot 3 such share to the plaintiffs. Aggrieved by the same, the defendants had filed an appeal in A.S.No.36 of 1984 on the file of the Sub Judge, Ariyalur. The learned Sub Judge had allowed the said appeal and set aside the judgment and decree of the trial court and dismissed the suit. Feeling aggrieved, the second plaintiff has filed the present second appeal.

9. This court at the time of admitting the second appeal has formulated the following substantial questions of law:

1. Whether the lower appellate court is correct in law in reversing the well considered judgment and decree of the trial court on the ground that the present suit is barred by resjudicata on the basis of Ex.A.4 Judgment, overlooking the fact that rights of parties in respect of the suit land was never decided in the earlier suit?

2. Whether the lower appellate court is correct in law in holding that family arrangement is pleaded by the respondents was established, overlooking the admission of DW1 and other material documents marked as Exs.A1 to A15 which would clearly

disprove their contention?

10. Heard Mr.S.Parthasarathy, Senior Counsel for Mr.J.Ramakrishnan, the learned counsel for the appellant and Mr.M.Sriram, the learned counsel for the respondents 2 and 6 to 10.

11. The plaintiffs in their plaint have pleaded that they are entitled to $\frac{3}{4}$ share in the well only, but so far as the land is concerned, they have specifically pleaded that they are entitled to the plot Nos.1 to 5 and the defendants are entitled to the plot Nos.6, 7 and 8 as shown in the plaint plan. In the prayer column, they have originally prayed to declare their title to the suit lands and $\frac{3}{4}$ share in the suit well. Subsequently, they amended the prayer column to declare their title to the suit 'A' schedule lands. The suit 'A' schedule lands are mentioned as plot Nos.1 to 5. But, the trial court misconstrued the pleadings and the prayer made in the plaint and jumped to the conclusion that the plaintiffs have pleaded $\frac{3}{4}$ share in the suit land also. As already pointed out that the plaintiffs have pleaded $\frac{3}{4}$ share only in the well. In so far as the land is concerned, they have specifically pleaded that they are entitled to the plot Nos.1 to 5 and they also specifically described the same in the plaint 'A' schedule, but the trial court overlooking the aforesaid facts did not give any finding with regard to the prayer asked by the plaintiffs for the relief of declaration of their title over the suit 'A' schedule property. Since the plaintiffs have asked the relief of declaration and permanent injunction as main reliefs, the court should have given findings with regard to the entitlement of the main reliefs. If the court comes to the conclusion that the plaintiffs are not entitled to the main reliefs, then only it can go into the alternative relief.

12. The first appellate court also being the court of facts and law has not decided the issue as to whether the plaintiffs are entitled to the relief of declaration and permanent injunction as prayed for. On the contrary, that court also had straightaway gone to the issue as to whether the plaintiffs are entitled to the relief of partition or not. Therefore, this court is of the view that the matter has to be remitted back to the trial court to decide the main reliefs as to whether the plaintiffs are entitled to the relief of declaration and permanent injunction. If, the trial court comes to the conclusion that the plaintiffs are in exclusive possession and enjoyment of the plot Nos.1 to 5 (suit 'A' schedule) and they are entitled to the relief of declaration, then it has to decide with regard to the relief of injunction also. If the court comes to the conclusion that the plaintiffs are not entitled to the main reliefs i.e., the relief of declaration and permanent injunction, then only it has to decide the alternative

relief, that is with regard to the relief of partition. Accordingly, the substantial questions of law are answered.

13 In the result, the second appeal is allowed. The judgments and decrees passed by the courts below are set aside. The matter is remitted back to the trial court and the trial court is directed to decide the issue as to whether the plaintiffs are entitled to the relief of declaration and permanent injunction as prayed for and if the court comes to the conclusion that the said relief cannot be granted, then it can decide the alternative relief i.e., whether the plaintiffs are entitled to the relief of partition and for deciding the aforesaid issue, the trial court can give an opportunity to both parties to adduce any additional oral and documentary evidence and decide the case in accordance with law. Considering the facts and circumstances of the case, the parties are directed to bear their respective costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gv

1.The Subordinate Judge, Ariyalur.

2.The Additional District Munsif, Ariyalur.

3.The Section Officer, V.R Section,
High Court, Madras-104.

+1 cc to M/s.J.Ramakrishnan, Advocate Sr.No. 97939

+1 cc to M/s.M.Sriram, Advocate Sr.No. 98357

S.A.No.511 OF 2002

SSD(CO)
RMP(19/01/2021)