

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.09.2019
PRONOUNCED ON : 27.09.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM
S.A.No.332 of 2001

1. Chidambaram
2. Mahalingam (deceased)
3. Panchanathan
4. Natarajan
5. Rukamani
6. Kalaiselvi
7. Rani
8. Selvakumar
9. Jayamohan

(Appellants 5 to 9 brought on record as LR's of the deceased 2nd appellant vide order of court dated 02/03/2018 made in CMP.No.20314 to 20316/2017 in SA.No.332 of 2001) ... Appellants/Respondents/Plaintiffs

Vs.

1. Thangaraju
 2. Sivakami
 3. Anjalai(minor)
 4. Ramayi (minor)
 5. Krishnamoorthy(minor)
- (Minors 3 to 5 represented by next friend, father 1st respondent)

... Respondents/Appellants/Defendants

PRAYER : Second Appeal filed under Section 100 of C.P.C., against the judgment and decree dated 27.09.2000 in A.S.No.14 of 2000 on the file of the Additional District Court, Perambalur, reversing the judgment and decree dated 21.02.1994 in O.S.No.804 of 1992, on the file of the Additional District Munsif Court, Ariyalur.

For Appellants : Ms.Mythili Suresh
for M/s.Sarvabhauman Associates

For Respondents : Mr.M.V.Krishnan for R1
R3 to R5 Minors rep by R1
R2 set exparte

JUDGMENT

This second appeal has been filed by the plaintiffs against the judgment and decree passed by the Additional District Judge, Perambalur in A.S.No.14 of 2000 dated 27.09.2000 reversing the judgment and decree passed by the Additional District Munsif, Ariyalur in O.S.No.804 of 1992 dated 21.02.1994.

2. The appellants herein had filed a suit in O.S.No.804 of 1992 on the file of the Additional District Munsif, Ariyalur, to declare the title of the suit properties in favour of the plaintiffs and consequently for a permanent injunction to restrain the defendant, her men, etc., from interfering with their peaceful possession and enjoyment of the suit properties. During pendency of the said suit, the defendant died and her legal representatives had been impleaded as defendants 2 to 6.

3. The learned District Munsif, Ariyalur by the judgment dated 21.02.1994 had decreed the suit as prayed for. However, he directed the parties to bear their respective costs. Aggrieved by the same, the defendants 2 to 6 had filed an appeal in A.S.No.14 of 2000 on the file of the Additional District Judge, Perambalur. The learned Additional District Judge, Perambalur by the judgment dated 27.09.2000 had allowed the said appeal and set aside the judgment and decree passed by the Trial Court and dismissed the suit with costs. Feeling aggrieved, the plaintiffs have 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 amended plaint are in brief as follows:

5(a) The plaintiffs are the absolute owners of the suit properties. The first plaintiff had purchased the suit "A" schedule property along with other properties from one Nallamuthu Padayachi under the sale deed dated 24.07.1980. The second plaintiff had purchased Item No.1 of the suit "B" schedule properties from the same Nallamuthu Padayachi under the sale deed dated 24.07.1980 along with other properties. The second plaintiff had also purchased Item No.2 in suit "B" schedule properties orally from one Chidambaram, Kathaperumal and Panchanathan. The third plaintiff had purchased the suit "C" schedule property orally from Nallathambi Padayachi. The fourth plaintiff had purchased the suit "D" schedule property from the same Nallamuthu Padayachi under a registered sale deed dated 24.07.1980. Hence, the plaintiffs are the absolute owners of the suit properties and they have been in possession and enjoyment

of the same from the date of purchase. They also perfected title by adverse possession.

5(b) Plaintiffs 1 to 3 and one Kathaperumal are the sons of Adaikkala Padayachi. The fourth plaintiff is the son of Kathaperumal. The defendant is the daughter of one Chinnathambi who is none other than the brother of Adaikkala Padayachi. The defendant recently claimed rights over the suit properties as if her mother had purchased some extent in the suit properties. The defendant is not having any right or title over the suit properties. Since the defendant is claiming right over the suit properties, the plaintiffs were constrained to file the above suit for declaration of their title and for permanent injunction.

6. The averments made in the written statement are in brief as follows:

6(a) The above suit has been filed based on the patta wrongly issued during survey. The said Nallamuthu Padayachi had no right to sell the suit properties in favour of the plaintiffs. One Ramasamy Padiachai had two sons namely 1) Chinnathambi and 2) Adaikkala Padayachi. Chinna Thambi and Adaikkala Padayachi got 20 cents in SF.No.139/11. In the oral partition took place between them, ten cents on the western side was allotted to Chinnathambi and ten cents on the eastern side was allotted to Adaikkala Padayachi. In SF.No.31/4, out of 44 cents, 22 cents on the western side was allotted to Adaikkala Padayachi and 22 cents on the eastern side was allotted to Chinnathambi. The said Chinnathambi Padayachi had sold his properties to one Nallamuthu Padayachi son of Adaikkala Padayachi in the year 1947. Subsequently, the said Nallamuthu Padayachi had sold the suit properties under the registered sale deed dated 25.06.1959 in favour of the defendant's mother Chinnapillai. The said Chinnapillai had executed a settlement deed in respect of 22 cents situated in SF.No.31/4 in favour of her daughters namely 1) Visalatchi and 2) Muthu Lakshmi (defendant). Subsequently, the said Visalatchi and Chinnapillai had sold 11 cents in SF.No.31/4 under a registered sale deed dated 30.07.1987 in favour of the defendant's husband Thangaraj.

6(b) In so far as the properties situated in SF.No.139/11 are concerned, after the death of the said Chinna Pillai, her daughters namely Visalatchi and the defendant Muthulakshmi (defendant) succeeded to the said properties and they have been in possession and enjoyment of the same. The plaintiffs are not having any title or right over the suit properties and therefore, the defendant 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, Plaintiffs 2 and 3 examined themselves as P.Ws. 1 and 2. They had marked Exs.A1 to A51 as exhibits. On the side of the defendants, the second defendant was examined as D.W.1 and one more witness was examined as D.W.2. The defendants had marked Exs.B1 to B7 as exhibits. The Advocate Commissioner's Report and Plans were marked as Exs.C1 to C4 as exhibits.

8. The learned Additional District Munsif, Ariyalur, after considering the materials placed before him, found that the plaintiffs acquired title over the suit properties by way of purchase and also by adverse possession. He also found that the plaintiffs are in possession and enjoyment of the suit properties. Accordingly, he decreed the suit as prayed for. Aggrieved by the same, the defendants 2 to 6 had filed an appeal in A.S.No.14 of 2000 on the file of the Additional District Judge, Perambalur. The learned Additional District Judge, Perambalur, had allowed the said appeal and set aside the judgment and decree passed by the trial Court and dismissed the suit. Feeling aggrieved, the plaintiffs have 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 right in law in discarding Exs.A4, A9, A18, A19 and A29 pattas and A5, A6, A10 to A16, A20 to A26, A28 to A36 and A38 to A51 Kist receipts which would clinchingly prove the long continuous possession of the appellants for over the statutory period adverse to the title and possession of the respondents ?"

(2) Whether the lower appellate court is right in law in not considering the issue of adverse possession which was considered by the trial court and upheld in favour of the appellants in respect of the part of the suit properties?"

10. Heard Mrs.Mythili Suresh for M/s.Sarvabhauman Associates, learned counsel for the appellants and Mr.M.V.Krishnan, learned counsel for the respondents 1 and 3 to 5.

11. Substantial Questions of Law 1 and 2:

The learned counsel for the appellants has submitted that the first appellate Court erred in reversing the well considered judgment of the trial Court. She further submitted

that the first appellate court ought to have seen that Exs.A4 to A7, A9 to A16, A18, A36, 38 to 51 clinchingly established that the plaintiffs and their predecessors in title were in continuous possession of the entire suit properties right from the year 1961. She further submitted that the first appellate court failed to consider that the defendants have not produced any documentary evidence to show that they are in possession of the suit properties. She further submitted that the sale deeds, pattas and the kist receipts produced by the plaintiffs would go to show that they got title over the suit properties and they are in possession and enjoyment of the same. She further submitted that even assuming that the findings of the first appellate court that the defendants are entitled to 24 cents as per Ex.A48, for the remaining properties decree ought to have been granted, but, the first appellate court had dismissed the suit in toto. The said approach of the first appellate Court is against the settled principles of law. She further submitted that the first appellate court over looking the pattas issued in favour of the plaintiffs, erroneously held that the plaintiffs are having only undivided share in the suit property and as such, the plaintiffs are not entitled to the relief of declaration and permanent injunction. She further submitted that in the pattas produced by the plaintiffs, it was clearly stated that the properties were sub-divided and sub-division survey numbers having assigned to the respective shares of the plaintiffs and that being so, the plaintiffs are entitled to the relief of declaration and permanent injunction as prayed for. She further submitted that the first appellate court failed to consider that the plaintiffs and the predecessors in title have been in possession of the suit properties for more than 33 years and as such they perfected title by adverse possession also. She further submitted that the Trial Court taking into consideration of the aforesaid facts had rightly decreed the suit as prayed for, but, the first appellate court without considering the facts and evidence in a proper perspective had reversed the findings of the Trial Court and dismissed the suit and therefore she prayed to allow the second appeal and set aside the judgment and decree passed by the First Appellate Court and restore the judgment and decree passed by the Trial Court.

12. On the contrary, the learned counsel for the respondents 1 and 3 to 5/defendants 2 and 4 to 6 has submitted that in the sale deeds (Exs.A8, 17 and 37) it is clearly stated that only undivided shares sold to the plaintiffs and that being so, they should have proved that when their properties were divided, but, they have not pleaded in the plaint and also adduced evidence as to when their shares were got separated. Under the said circumstances, merely because in the pattas sub-division numbers have been mentioned, it cannot be presumed that the properties were already divided. He further submitted that

if really, the properties were divided and the plaintiffs are in separate possession of their respective shares then what was the necessity for them to file a joint suit to declare them as owners to all the suit properties. He further submitted that since the plaintiffs have pleaded adverse possession, it has to be presumed that the defendants are the original owners and in such a case, plaintiffs ought to have pleaded and proved from which date their possession became adverse to the true owners (defendants), but in this case, the plaintiffs neither pleaded nor proved from which date their possession became adverse to the defendants and therefore, they cannot get a decree for declaration and permanent injunction on the plea of adverse possession. He further submitted that the plaintiffs claimed right over the suit property as they had purchased the same from one Nallamuthu Padayachi, but at the same time, they are taking a plea of adverse possession also and the said pleas are totally inconsistent and on that ground also, the plaintiffs' suit has to be dismissed. He further submitted that Ex.A48 clearly shows that the first defendant's mother Chinna Pillai had purchased 24 cents on 25.06.1959 from the said Nallamuthu Padayachi and thereafter, the same Nallamuthu Padayachi had sold certain properties to the plaintiffs under Exs.A8, A17 and A37. He further submitted that since already the said Nallamuthu Padayachi had sold 24 cents to the mother of the first defendant, he can sell only remaining extent, but he executed the sale deeds (Exs.A17, 18 and 37), in favour of the plaintiffs including the property which was already sold under Ex.A48 in favour of the first defendant's mother and as such the said sale deeds will not bind upon the defendants. He further submitted that the trial Court without taking into consideration of aforesaid facts had mechanically decreed the suit as prayed for and hence the first appellate court had rightly interfered in the findings of the Trial Court and set aside the judgment and decree passed by the Trial Court and dismissed the suit and in the said factual findings this Court cannot interfere and therefore, he prayed to dismiss the second appeal.

13. As per the plaint schedule, the suit properties are situated in SF.No.139/11 B, C, D and E measuring 39 ½ cents and in SF.No.31/4 measuring 45 cents. According to the plaintiffs, the suit "A" schedule property which is situated in SF.No.139/11-C measuring 10 cents was purchased by the first plaintiff from one Nallamuthu Padayachi under a registered sale deed dated 24.07.1980 (Ex.A.8), the second plaintiff had purchased Item-I of "B" schedule properties which is situated in SF.No.139/11 E measuring 11 cents under a registered sale deed dated 24.07.1980 from the same Nallamuthu Padayachi (Ex.A.17) and he also purchased Item-II of 'B' Schedule property which is situated in S.F.No.31/4 measuring 45 cents orally from Chidambaram, Kathaperumal and Panchanathan and the fourth

plaintiff had purchased suit "D" schedule property situated in SF.No.139/11-b measuring 11 cents under sale deed dated 24.07.1980 (Ex.A.37) from the same Nallamuthu Padayachi, but , in Ex.A8 it has been stated that in Item 11 SF No.39/11 out of 39 cents undivided $\frac{1}{4}$ share sold, in Item No.16, it has been stated that in SF.No.139/11 out of 24 cents undivided $\frac{1}{4}$ share was sold. Likewise, in Ex.A.37 also in one place it has been stated that in SF.No.31/4 out of 27 cents undivided $\frac{1}{4}$ share was sold and in another place it has been mentioned as in the same SF.No.31/4 out of 22 cents undivided $\frac{1}{4}$ share sold. In one place it is stated that SF.No.139/11 out of 39 cents undivided $\frac{1}{4}$ share was sold and in another place it is mentioned in the same SF No.139/4 out of 24 cents undivided $\frac{1}{4}$ share was sold, but, in the plaint, the plaintiffs have not stated that under Ex.A8 and A37, the plaintiffs 1 and 4 had purchased any property in SF No.31/4. Though, the second plaintiff has claimed in the plaint that he purchased orally 45 cents in SF No.31/4 in Ex.A17 it is stated in one place in SF No.31/4, out of 27 cents he purchased $\frac{1}{4}$ undivided share and in another place, it is stated that in the same SF 31/4 out of 22 cents, he purchased undivided $\frac{1}{4}$ share and that being so, he cannot claim he purchased 45 cents orally. It appears that the aforesaid description of the properties has been given based on the pattas (Exs.A9, 18, 19 and 29) which were issued under the UDR Scheme. Only in the aforesaid pattas, sub division numbers have been given for the SF Nos.139/11 as B, C, D and E. When the plaintiffs purchased the properties under Exs.A8, 17 and 37 undivided shares, they have to plea and prove when their shares were divided. With regard to the same, the plaintiffs have not produced any evidence. Therefore, merely because sub division numbers have been given, in the pattas, it cannot be presumed that the properties were already divided. Further, it is settled law that patta will not be treated as document of title. Therefore, the second plaintiff cannot claim right over entire 45 cents in SF No.31/4.

14. Though in the plaint it is stated that the third plaintiff had purchased the suit "C" schedule property orally from Nalla Thambi Padayachi, he has not stated when he purchased the same and what price he purchased. The third plaintiff has not examined the said Nallathambi Padayachi as witness before the Court. It appears that he also claimed right over the suit "C" schedule property only based on patta said to have been issued in his favour. As already pointed out that the patta will not confer any title and therefore, he cannot claim right over "C" schedule property based on the patta.

15.As observed by the first appellate court, the defendant's mother Chinnapillai had purchased 24 cents under Ex.A.48 Sale deed dated 25.06.1959 in Survey Nos.31/4 and 139/11. The plaintiffs 1, 2 and 4 claimed that they purchased

their properties only from the same Nallamuthu Padayachi on 24.07.1980. In such a case, the said Nallamuthu Padayachi could sell only the remaining property other than the property which was already sold under Ex.A48 to the first defendant's mother. It appears that he sold the entire properties. The first appellate Court has categorically held that since the plaintiffs failed to mention in their plaint that where the said 24 cents are situated, it would not be possible to grant decree for declaration and permanent injunction in respect of the remaining property.

16. If really, the suit properties were already divided and the plaintiffs have been enjoying the suit properties as pleaded by them in the plaint, they should have filed separate suits to declare them as owners with regard to respective items. But they have filed the above suit to declare all of them jointly as owners to the plaint schedule properties and for that, there is no explanation from the plaintiffs and therefore, it is to be presumed that the properties were not divided. As already pointed out that the first defendant's mother also purchased 24 cents under Ex.A.48 in the suit properties and as such the defendants are co-owners. In such a case, the injunction cannot be granted against the co-owners. The Trial Court without taking into consideration of the aforesaid facts had mechanically decreed the suit. The first appellate after dealing with the facts and evidence elaborately allowed the appeal filed by the defendants and set aside the judgment and decree passed by the trial Court and dismissed the suit. This Court does not find any infirmity in the findings of the first appellate court and therefore, the second appeal is liable to be dismissed. Accordingly, substantial questions of law are answered against the appellants.

18. In the result, the second appeal is dismissed. No costs.

s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

WEB COPY

To

1. The Additional District Court,
Perambalur.

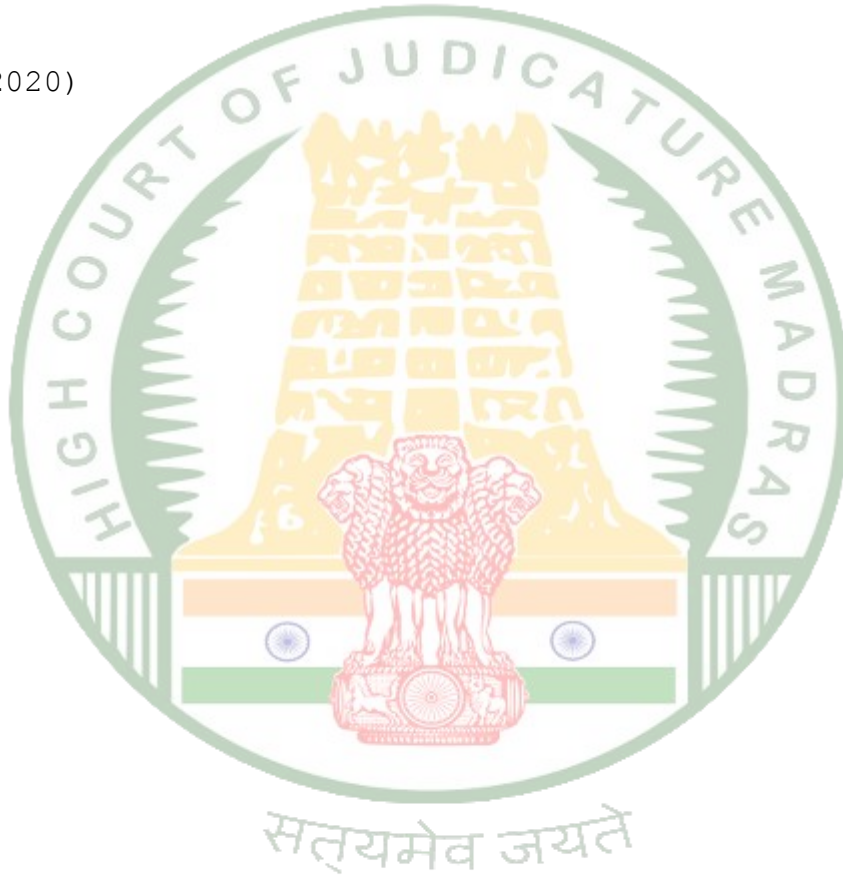
2. The Additional District Munsif Court,
Ariyalur.

3. The Section Officer, VR Section,
High Court, Madras.

+1 CC to M/s. Sarvabhauman Associates sr 83366.

S.A.No.332 of 2001

VBA (CO)
SP(03/11/2020)



WEB COPY