

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.02.2019

PRONOUNCED ON: 21.02.2019

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.2128 of 2004

1.Narasan

2.Thangammal

3.Suryagopal

..Appellants/Appellants/Plaintiffs

Vs.

1.Perumal

2.Murugesan

3.The Tahsildar
Omalur Taluk,
Omalur,
Salem District.

4.The District Collector,
Collectorate,
Salem -1.

..Respondents/Respondents
/Respondents

Prayer:- Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree dated 12.09.2001 passed in A.S.No.11 of 2000 on the file of the Subordinate Court, Mettur in confirming the judgment and decree dated 31.03.2000 passed in O.S.No.301 of 1996 on the file of the District Munsif cum Judicial Magistrate Court, Omalur.

For Appellants : Mr.P.Mani

For RR2 : Mrs.Mythili Suresh,
for M/s.Sarvabhauman Associates

For R1, R3 & R4 : No appearance,
Set exparte vide order
dated 08.02.2019

J U D G M E N T

Challenge in this Second Appeal is made to the judgment and decree dated 12.09.2001 passed in A.S.No.11 of 2000 on the file of the Subordinate Court, Mettur, confirming the judgment and decree dated 31.03.2000 passed in O.S.No.301 of 1996 on the file of the District Munsif cum Judicial Magistrate Court, Omalur

2. The parties are referred to as per the rankings in the trial court.

3. Suit for declaration and permanent injunction.

4. The case of the plaintiffs in brief is that the property described in the plaint schedule originally belonged to one Kozhanthai Kounder, S/o, Mariappa Kounder ancestrally, by virtue of an oral partition that took place between him and the other co-sharers in or about 1950 and after the oral partition, the co-sharers constructed a stone revetment wall to a height of 2 ½ ft from the level of the suit property and also raised a row of palmyra trees between the shares of the co-sharers and the defendants are in the possession of the eastern half share and the suit property is lower in level than the eastern half share belonging to the defendants. Krishna Chettiyar, the junior paternal uncle of the third plaintiff, purchased the suit property namely the western half share of old survey No.264 for a valid consideration, by way of a registered sale deed dated 21.10.1953 from Kozhanthai Kounder and others and in the partition between the plaintiffs and the other members of the joint family under the registered partition dated 02.05.1968, Krishna Chettiyar threw the suit property also into the common hotchpot and in the abovesaid partition, the suit property was allotted to the share of the plaintiffs 2 and 3 described as 'C' schedule in the partition deed. In the sale deed dated 21.10.1953 and in the partition deed dated 02.05.1968, the extent of the suit property with dimensions of all the four sides was not mentioned and therefore the extent of the suit property was wrongly mentioned as 3.10 acres in both the abovesaid documents. The defendants 1 and 2 had been pressing the plaintiffs 2 and 3 to sell the suit property to them for a low price to which the plaintiffs 2 and 3 were not amenable, on the other hand, the plaintiffs 2 and 3 sold the suit property to the first plaintiff by way of a sale deed dated 30.11.1992 and since then the defendants without any authority or entitlement, proclaiming that the suit property belongs to them, are attempting to cut the Palmyra trees and encroach into the suit property and taking advantage of the description of the suit property in the abovesaid documents and inasmuch the boundaries would prevail and in the resurvey, the suit property had been subdivided and separate patta had been issued to the respective

sharers and inasmuch the defendants 1 and 2 are attempting to create records and also interfere with the plaintiffs' possession and enjoyment of the suit property, the plaintiffs had been necessitated to levy the suit for appropriate reliefs.

5.The case of the second defendant in brief is that the plaintiffs 2 and 3 are the owners of the property of an extent of only 3.10 acres in survey No.264 by way of the partition deed dated 02.05.1968 and the second defendant is the owner of the property along with his brother of the remaining half share in survey No.264 and the total extant of survey No.264 only is 6.20 acres and the plaintiffs 2 and 3 are not entitled to sell the property to the first plaintiff of an extent of 3.38 acres in survey No.264/1 and the plaintiffs' properties are lower in level than the defendants' property. All the previous records would go to show that the plaintiffs 2 and 3 are entitled to only an extent of 3.10 acres in survey No.264. The defendants' father had purchased the property in the suit survey number by way of a sale deed dated 05.05.1949 and enjoying the same by obtaining patta and the plaintiffs 2 and 3 in collusion with the first plaintiff have obtained patta under the UDR scheme to an extent of 3.38 acres suppressing the real facts and on coming to know of the same, the second defendant has given a petition to the Tahsildar to enquire the matter and pass appropriate orders and there is no cause of action for the suit and therefore the suit is liable to be dismissed.

6. The case of the defendants 3 and 4 in brief is that the suit laid by the plaintiffs is not maintainable. The defendants 3 and 4 are not in any manner connected with the disputes between the plaintiffs and the defendants 1 and 2. The plaintiffs are not entitled to seek any relief against the defendants 3 and 4 as regards the official acts done by them and the defendants 3 and 4 are not necessary parties to the lis and there is no cause of action for the suit and therefore the suit is liable to be dismissed.

7.Based on the above pleadings, the parties went for trial and in support of the plaintiffs' case P.Ws.1 to 3 were examined. Exs.A1 to A5 were marked. On the side of the defendants, D.Ws.1 to 3 were examined. Exs.B1 to B14 were marked.

8.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 plaintiffs' suit. Aggrieved over the same, the plaintiffs have come forward with the present Second Appeal.

9.The Second Appeal has been admitted on the following substantial questions of law.

1. Whether in law the plaintiffs are entitled to the suit property measuring 3.38 acres, more than the extent mentioned in Ex.A1/sale deed when they and their predecessors in title have and had been in possession and enjoyment of the suit property within the four boundaries mentioned in Ex.A1/ sale deed even though lesser extent of 3 - 10 acres has been mentioned in the said sale deed when boundaries prevail over the extent where the extent is not in conformity with boundaries.

2. Whether defendants 1 and 2 can question the patta issued to plaintiffs 2 and 3 in respect of the suit property with specific boundaries under the U.D.R Scheme, in the suit instituted by the plaintiffs, when the boundaries determined under the U.D.R. Scheme became final and when the defendants failed to challenge the same by way of appeal or revision or instituting suit within the prescribed time as contemplated under Secs.11, 12A, 12B and 14 of the Tamil Nadu Survey and Boundaries Act, 1923?

10. The suit property is stated to be comprised in Survey No.264/1 of an extent of 1.37.0 hectares ie., an extent of 3 acres and 38 cents and for claiming title to the abovesaid property, the plaintiffs mainly rely upon the two documents namely the sale deed dated 21.10.1953 and the partition deed dated 02.05.1968. It is the case of the plaintiffs that the junior paternal uncle of the third plaintiff namely Krishna Chettiyar had purchased the western half share in old survey No.264 by way of a registered sale deed dated 21.10.1953, which document has come to be marked as Ex.A1. The defendants have not challenged the abovesaid sale deed. On a perusal of Ex.A1 sale deed, it is found that Krishna Chettiyar had acquired an extent of 3 acres and 10 cents in Survey No.264 and furthermore, on a perusal of Ex.A1, it is further noted that the old Survey No.264 totally consists of 6 acres and 20 cents and out of the same, Krishna Chettiyar had acquired the western half share measuring an extent of 3 acres and 10 cents by way of Ex.A1 sale deed.

11. Now according to the plaintiffs 2 and 3, in the partition effected amongst the family members of the plaintiffs 2 and 3, the suit property measuring an extent of 3 acres and 38 cents in Survey No.264 had been allotted to the share of the plaintiffs 2 and 3.

12. It is the case of the second defendant that his father Narayana Kounder had purchased an extent of 3 acres and 10 cents

in Survey No.264 on the eastern side by way of a sale deed dated 05.05.1949 marked as Ex.B2 and from Ex.B2, it could also be seen that the old survey No.264 totally measures an extent of 6 acres and 20 cents and out of the same, only the eastern half comprising of an extent of 3 acres and 10 cents had been acquired by the second defendant's father Narayana Kounder and furthermore from Ex.A1 sale deed, it is found that the third plaintiff's junior paternal uncle Krishna Chettiyar had purchased the western half share and the abovesaid document recites that the abovesaid western share comprising of an extent of 3 acres and 10 cents is situated to the west of the eastern half share belonging to Narayana Kounder. Furthermore, as could be seen from the document marked as Ex.B1, the copy of the decree passed in O.S.No.602 of 1939 dated 17.10.1941, it is found that the vendor of the second defendant's father had owned equal half share in survey No.264 and on the basis of the same, it is found that the he had alienated the eastern half share belonging to him to the second defendant's father by way of Ex.B2 sale deed.

13.Now, according to the plaintiffs 2 and 3 in the partition effected amongst the family members of the plaintiffs 2 and 3, the suit property measuring an extent of 3 acres and 38 cents in survey No.264 had been allotted to the share of the plaintiffs 2 and 3. The abovesaid fact has been seriously challenged by the second defendant. Despite the same, the plaintiffs had not endeavored either to produce the original partition deed dated 02.05.1968 or the copy of the same to establish that the extent of 3 acres and 38 cents in survey No.264 was the subject matter of the abovesaid partition deed and that the same had been allotted to the plaintiffs 2 and 3. Now according to the plaintiffs, the suit property measuring an extent of 3 acres and 38 cents in survey No.264 have been enjoyed by Krishna Chettiyar and he had thrown the same into the common hotchpot and enjoying the same jointly with the family members and by way of the partition deed dated 02.05.1968, the abovesaid property had been allotted to the share of the plaintiffs 2 and 3. However to substantiate that Krishna Chettiyar had enjoyed the suit property measuring an extent of 3 acres and 38 cents in survey No.264 and thereafter enjoyed the same as the joint family property by throwing the same into the common hotchpot, absolutely there is no material forthcoming on the part of the plaintiffs. When as per Ex.A1, it is found that Krishna Chettiyar had purchased the western half share measuring 3 acres and 10 cents only in Survey No.264, the case projected by the plaintiffs that he had been enjoying an extent of 3 acres 38 cents in the abovesaid survey number as put forth by them cannot be countenanced in any manner sans any material pointing to the same. Accordingly, it is found that the same had been rightly negated by the Courts below.

14. In support of the plaintiffs' case, the counsel for the plaintiffs contended that in the documents of title of the plaintiffs, the extent is roughly given and considering the boundaries, according to him the suit property belonged to the plaintiffs and their ancestors as put forth by the plaintiffs and accordingly it is further contended by him that based on the possession and enjoyment of the suit property by the plaintiffs 2 and 3, the patta had been issued in their favour, which document has come to be marked as Ex.A2. Thus, it is noted that only by way of Ex.A2 patta document, the plaintiffs seem to have projected the case that they are having title to an extent of 3 acres 38 cents in survey No.264 and according to the plaintiffs, the abovesaid patta had been issued on the basis of their possession and enjoyment of the suit property. It is further noted that according to the plaintiffs' case, based on Ex.A2 patta, the plaintiffs 2 and 3 seem to have alienated the suit property in favour of the first plaintiff by way of the sale deed dated 30.11.1992 marked as Ex.A5 and on that footing appears to have laid the suit against the defendants. On the other hand, as rightly determined by the Courts below, on a perusal of Ex.A5 sale deed, it is found that there is no mention of the patta marked as Ex.A2 in the lis. On the other hand, the plaintiffs 2 and 3 have traced the title to the property in Ex.A5 only as ancestrally acquired by way of the partition, however when from Ex.A2 sale deed, the plaintiffs' ancestor Krishna Cheittyar is found to have acquired only an extent of 3 acres 10 cents and when the plaintiffs had not endeavoured to produce their title deed namely the partition deed dated 02.05.1968 for holding that the plaintiffs 2 and 3 had been allotted the suit property under the said partition and when there is no material to evidence that the plaintiffs' ancestors had been in the possession and enjoyment of the suit property, in such view of the matter, as rightly determined by the Courts below, it is found that the plaintiffs 2 and 3 in collusion with the first plaintiff seem to have obtained the patta for an extent of 3 acres and 38 cents namely the suit property clandestinely and surreptitiously without notice to second defendant in particular and on that footing seem to have been laid a false case against the defendants. When the title deeds projected by the plaintiffs show that their ancestors owned only an extent of 3 acres and 10 cents in the suit survey number, it does not stand reason as to how under the UDR scheme, plaintiffs would have been granted the patta in respect of an extent of 3 acres and 38 cents in the suit survey number. It is thus found that without any basis or foundation, the plaintiffs seem to have obtained the patta marked as Ex.A2 in their favour and accordingly as rightly determined by the Courts below, no reliance could be placed upon Ex.A2 patta for according the reliefs sought for by the plaintiffs.

15. The contention has been put forth by the plaintiffs' counsel that in the sale deed marked as Ex.A1, the measurement is roughly given and on the basis of the boundaries, the plaintiffs should be held to be having title to an extent of 3 acres 38 cents in the suit survey number. On the other hand, as rightly determined by the Courts below, on a perusal of Ex.A1 sale deed as well as Ex.B2 sale deed, it is found that of the total extent of 6 acres and 20 cents is available in survey No.264 and of that, the plaintiffs' ancestor namely Krishna Chettiyar had acquired only the western half share measuring an extent of 3 acres and 10 cents by way of Ex.A1 sale deed and when the abovesaid property has been clearly described in the said document and when the extent and the boundaries had been clearly mentioned therein, to contend that the extent had been roughly given in the sale deed as put forth by the plaintiffs counsel, the same had been rightly negatived by the Courts below. In this connection, the plaintiffs' counsel would contend that in the UDR scheme based on the stone revetment structures lying midway between the shares of the two parties in the suit survey number, the patta had been granted in favour of the plaintiffs for an extent of 3 acres 38 cents. However, when from the evidence placed on record, it is seen that the stone structures lying in the suit survey number three in number had been put up by the second defendant and his brother and the same lies in the share belonging to the second defendant and his brother and furthermore, considering the lie of the western half share at a lower level, it is found that to prevent soil erosion, the defendants have put up stone structures in their share and when it has been admitted by the plaintiffs that the stone structures available in the suit survey number had been put up by the second defendant, to say that the abovesaid stone structures had been taken as the dividing line between the two shares of the respective parties under the UDR scheme cannot be upheld in any manner and accordingly it is found that the plaintiffs on the basis of obtaining patta under the UDR scheme of a larger extent without issuance of any notice to the second defendant in particular and also without placing any valuable title deeds in their favour, seem to have projected a false case as if they are entitled to the suit property ancestrally and in such view of the matter when the plaintiffs have not placed any valid material for sustaining their case of the issuance of patta Ex.A2 in their favour in respect of the suit property legally and on the other hand, when the materials placed on record would disclose that the plaintiffs and their ancestors owned only an extent of 3 acres and 10 cents on the western side of the suit survey number and not more than that and when with reference to their claim of title to an excess extent of 28 cents has not been established by the plaintiffs by placing acceptable and reliable materials, the Courts below are fully justified in declining the reliefs sought for by the plaintiffs.

16. The argument put forth by the plaintiffs' counsel that the boundaries would prevail over the extent would not be applicable to the case when it is found that Ex.A1 sale deed has given a clear description of the property comprised therein and furthermore, when the plaintiffs have not even chosen to describe the suit property in the plaint by furnishing the boundaries to the same and when they had not endeavored to place their title deed ie., the partition deed dated 02.05.1968 and they seem to have based their lis only upon Ex.A2 patta and when the abovesaid patta is not shown to have been issued in favour of the plaintiffs validly after issuing notice to one and all, the contention put forth by the plaintiffs that the issuance of patta under UDR scheme having become final and therefore on the failure of the defendants to challenge the same within the time allowed as provided under Tamil nadu Survey and Boundaries Act 1923 would be fatal to their defence as such cannot be countenanced in any manner and it is found that the Courts below have analysed the materials placed on record in the matter, both oral and documentary, in the right perceptive and correctly held that the plaintiffs are not entitled to obtain the reliefs sought for.

17. For the reasons aforesaid, the substantial questions of law formulated in the second appeal are accordingly answered against the plaintiffs and in favour of the defendants.

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

mfa

Sd/-
Assistant Registrar (CS IV)

//True Copy//सत्यमेव जयते

Sub Assistant Registrar

To

1. The Subordinate Judge,
Subordinate Court,
Mettur.

2. The District Munsif cum Judicial Magistrate,
District Munsif cum Judicial Magistrate Court,
Omalur.

Copy to

The Section Officer,
VR Section,
High Court.

+1cc to Mr.P.Mani, Advocate, SR.No.16178

+1cc to M/s.Sarvabhauman Associates, Advocate, SR.No.15805

S.A.No.2128 of 2004

Kak(30/05/2019)



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