

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 30.01.2019

Pronounced on: 05.02.2019

Coram:

The Honourable Dr.Justice G.Jayachandran

Second Appeal No.2221 of 2004

1. Semmandai,
S/o.Valyapuri.

2. Palanisami,
S/o.Vaiyapuri Nadar.

3. Periyammal,
W/o.Arunachalam.

All are residing at
Vellalagundam Village & Post,
Valapadi Taluk,
Salem District.

... Appellants / Defendants 2,3 & 4

/versus/

1. Sannasi,
S/o.Arumugha Nadar.

2. Manickam,
S/o.Arumugha Nadar.

3. Palanisami,
S/o.Arumugha Nadar.

... Respondents 1 to 3 / Plaintiffs

4. Periannan,
S/o.Arumugha Nadar.

All residing at Vellala Gundam Vilage & Post,
Salem Taluk.

... 4th Respondent / 1st Defendant

PRAYER: This Second Appeal has been filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 26.02.2004 made in A.S.No.109 of 2003 on the file of Principal District Court, Salem confirming the judgment and decree dated 06.01.2003 made in O.S.No.584 of 1998 on the file of the Court of II Additional District Munsif, Salem.

For Appellants : M/s.R.Janani
for N.S.Siva Kumar

For Respondents : No appearance

J U D G M E N T

The defendants 2, 3 and 4 in the suit for partition are the Appellants herein. The partition suit was laid in respect of two items of properties one being a titled house with vacant site bearing Natham S.No.375/9 in the Vellalagundam Village, Salem Taluk. The other items of the suit property is 4 cents of vacant site in the same village.

2. The case of the plaintiffs is that, the suit properties originally owned by the joint family consisting of Arumugha Nadar and his brother Vaiyapuri Nadar. The plaintiffs are sons of Arumugha Nadar. The defendants 1 to 3 are sons of Vaiyapuri Nadar. The 4th defendant is the wife of Pandiyan (deceased son of Vaiyapuri Nadar). In the joint family property, Arumugha Nadar and his brother Vaiyapuri Nadu had $\frac{1}{2}$ share each.

3. The 1st item property which is a titled house was enjoyed by Arumugha Nadar on the Southern portion and by Vaiyapuri Nadar on the Northern portion. Due to efflux of time, the Southern portion of the titled house which was occupied by Arumugha Nadar's family got dilapidated. Therefore, the plaintiffs vacated the house and living in the field sheds. The 1st defendant continue to occupy the Northern portion of the titled house. The rest of the defendants are living elsewhere.

4. The 2nd item of the suit property is a vacant site in the Village Natham used by the family for gathering cattles and keeping manure. During the recent survey, the Natham property i.e., item No.1 has been assigned S.No.375/9 and Patta No.741 has been issued in the joint names of the plaintiffs, defendants and deceased pandiyan, who is none other than the husband of the 4th defendants.

5. Alleging that the 3rd defendant with intention to grab the property and enjoy it, excluding the plaintiffs, making attempts to put up construction in the 1st item property. He has issued notice seeking division of the property. Instead of replying to the notice, the defendants are going ahead, with the construction activity by collecting building materials. Hence, the suit for partition and separate possession has filed.

6. The defendants in their written statement resisted the suit contending that the Government of Tamil Nadu is

constructing houses in their village under the Fee Groups Houses Scheme. They are proceeding with constructing house in the suit property. Therefore, the Government of Tamil Nadu is a necessary party to the suit. Further, it is contended by the defendants that, not the entire suit property belongs to the joint family. The plaintiffs are not the co-owners of the property along with the defendants. The property in S.No.375/9 is measuring 2000 sq.ft and patta is granted in favour of the 3rd defendant, which is on the western side of the 2000 sq.ft, in which there is a thatched house. The Government of Tamil Nadu is constructing a house in 1000 sq.ft of land on the southern side. As far as the remaining 1000 sq.ft out of 2000 sq.ft, a titled house is present and it is in possession and enjoyment of the 3rd defendant's son.

7. As far as, the 1st item of the suit property is concerned, the description is not given. Whereas, the 2nd item of the property is concerned, the land is not at all in existence as described in the plaint.

8. Based on the above rival averments, the trial Court has framed the following issued.

(i). Whether the plaintiffs are entitled to the relief of partition and separate possession?

(ii). What the relief the plaintiffs are entitled to?

9. The 1st plaintiff was examined as PW.1. 10 Exhibits were marked on the side of the plaintiffs. The 3rd defendant/Palaniswamy was examined as D.W.1. Four witnesses were examined and 27 Exhibits were marked in support of the defendants.

10. Regarding the 1st item of the suit property, the trial Court has relied upon Ex.A.2 patta issued by the Tahsildar and Ex.A.2 chitta in the name of the plaintiffs and the defendants jointly. The Court has held that property in S.No.375/9 is jointly possessed by the plaintiff and the defendants. There is no evidence to show that the suit property is the ancestral properties of the plaintiffs and the defendants. Whereas Ex.A.2 shows that suit item No.1 is jointly possessed and enjoyed by the plaintiffs and the defendants. Though, Ex.A.2 patta is not a document of title, it is a document for possession granted by the authorities after enquiry made in the locality, to ascertain who are in actual possession of the property. Since, the properties are Village Natham. The trial Court has deemed it as a property acquired by the joint effect of plaintiffs and the defendants. Therefore, passed a

preliminary decree for division of item No.1 of the suit property into two equal half.

11. Regarding 2nd item of the property, the trial Court has held that there is no evidence adduced by the plaintiffs that the said property is jointly possessed by the plaintiffs along with the defendants. In fact, there is no clear evidence to show in whose possession the said property is vested. Therefore, dismissed the claim of the plaintiffs seeking partition of the 2nd item schedule.

12. Aggrieved by the preliminary decree passed in respect of the 1st item of the property, the defendant has preferred A.S.No.109/2003 whereas, as against the dismissal of the partition suit in respect of 2nd item of the property, the plaintiff has preferred A.S.No.70 of 2003. Both the Appeals were heard together by the Appellate Court and both the Appeals were dismissed confirming the judgment and decree passed by the trial Court in O.S.No.589 of 1998. Thus, the partition prayer in respect of "A" schedule property alone was granted by the trial Court and confirmed by the Appellate Court.

13. Against the common judgment, the plaintiffs have not preferred any appeal. Whereas, the defendants 2 to 3 have preferred the present Second Appeal raising the following Substantial Questions of law.

(i). Whether the findings of the Courts below that since the suit properties are village natham, it can be deemed that they were acquired by joint efforts of the plaintiffs and defendants 1 to 3 and their fathers, are correct in law?

(ii). Whether the findings of the Courts below that granting of joint patta in favour of the plaintiffs and defendants shows that they are in joint possession of item No.1 of the suit schedule properties, are correct in law?

14. The learned counsel appearing for the appellants would submit that the appellants have clearly proved through documents that the suit properties are in exclusive possession of the 3rd defendant and his sons. When the plaintiffs were never in joint possession, merely based on the patta, which is not proof of title or possession the Courts below has erroneously granted relief of partition in respect of the 1st item of the suit schedule. The reasoning given by the Courts below that the suit properties being Village Natham, the joint patta issued in the name of the plaintiffs and the defendants will prove the joint exertion is contrary to law.

15. In support of his submission, the following judgment were relied by the learned counsel for the appellants:

(i). C.Sankaranarayana Mudaliar Vs. Tangaratna Mudaliar and others reported in 1929 CJ (Mad) 110.

(ii). Babubhai Girdharlal vs Ujamlal Hargovandas reported in (1937) 39 BOMLR 846.

16. There is no doubt in the legal proposition that patta is not a document of title. The Courts below have also not considered the joint patta as a document of title. The Courts below has emphasized and relied upon the joint patta issued in favour of the plaintiffs and the defendants only to show that the patta has been issued in the Natham property, after due enquiry by the authorities, after ascertaining the persons who were in possession of the property.

17. The un-disputed facts in this case is that the 1st item property was initially in possession and enjoyment of Arumugha Nadar and Vaiyapuri Nadar. The plaintiffs and the defendants are descendents of Arumugha Nadar. It is not disputed by the appellants that till some point of time, the northern portion of the "A" schedule property was in possession and occupying of Vaiyapuri Nadar and his family. The southern portion of the property was in possession and enjoyment of the Arumugha Nadar. This fact is proved both by admission as well as from the documents.

18. While the plaintiffs themselves admit that the portion occupied by them got dilapidated so they left the suit property and living in the field shed. Naturally, the tax has been collected by Local Authorities from the persons who were in actual occupation of the premises. This occupation cannot be construed as an exclusive occupation excluding the constructive possession of the plaintiffs.

19. Both the plaintiffs and the defendants have not produced any title document in respect of 1st item. Obviously, the land being a Natham land, for the first time, the parties have got some Revenue Document to ascertain the possession and the title by way of grant of patta. In such circumstances, the patta issued by assigning the grant in favour of the parties will be the premodial document for proof of tile and possession. Precisely for that reason, the trial Court has said that 1st item property was joint family property held by the brothers of Aruguma Nadar and Vaiyapuri Nadar. Through them the plaintiffs and defendants have inherited the properties. The joint possession and enjoyment over the property is fortified by the issuance of patta by the Revenue Authorities.

20. In such circumstances, prayer to divide the property by metes and bound as per their entitlement is absolutely within the legal frame work. The Courts below has rightly held in favour of the respondents by passing a preliminary decree for partition in respect of "A" schedule property. Therefore, I find that there is no ground to interfere the judgment of the Trial Court. Hence, the Second Appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CS-VIII)

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Sub Assistant Registrar

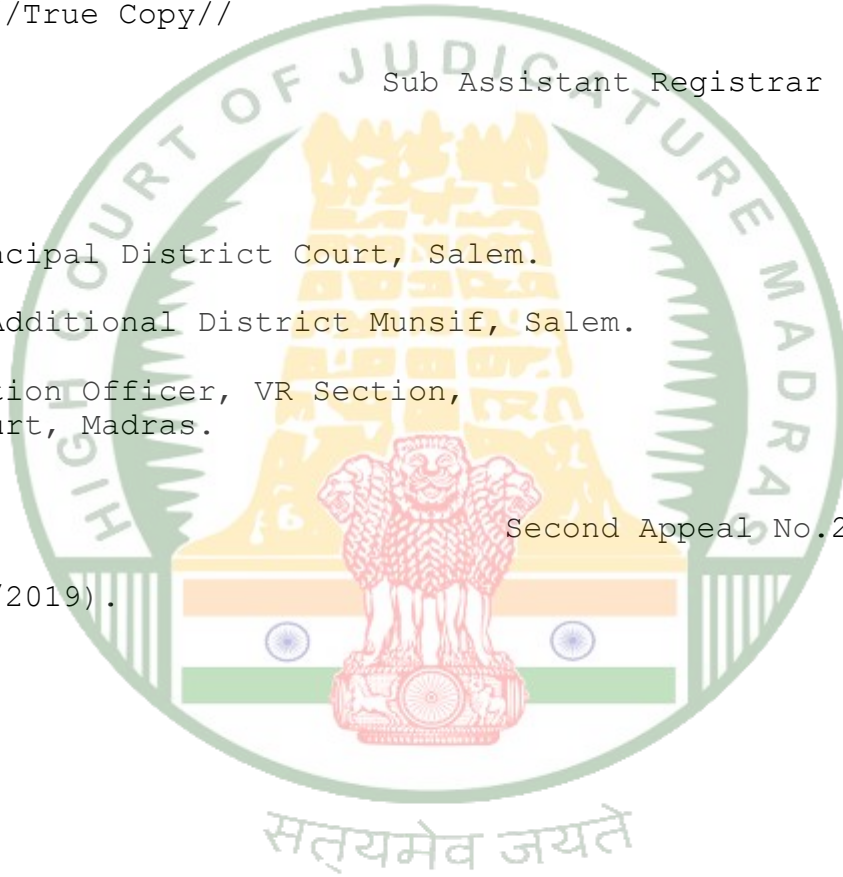
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To,

- 1.The Principal District Court, Salem.
- 2.The II Additional District Munsif, Salem.
- 3.The Section Officer, VR Section,
High Court, Madras.

Judgment in
Second Appeal No.2221 of 2004

CNR(CO)
SSM(25/03/2019).



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