



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.04.2019

PRONOUNCED ON : 22.05.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

S.A.No.39 of 2013

1. M. Selvarasu
2. M. Ramamoorthy

... Appellants/Defendants

Vs.

C. Rajalakshmi

... Respondent/plaintiff

PRAYER : Second Appeal filed under Section 100 of C.P.C., against the judgment and decree dated 31.08.2012 made in A.S.No.15 of 2011 on the file of the Subordinate Judge, Neyveli, confirming the judgment and decree dated 20.04.2011 made in O.S.No.56 of 2005 on the file of the District Munsif cum Judicial Magistrate, Neyveli.

For Appellants : M/s. K. Thilageswaran

For Respondent : M/s. P. Mani

JUDGMENT

This second appeal has been filed by the defendants against the judgment and decree passed by the Sub-Judge, Neyveli, in A.S.No.15 of 2011 dated 31.08.2012 confirming the judgment and decree passed by the District Munsif-cum-Magistrate, Neyveli, in O.S.No.56 of 2005 dated 20.04.2011.

2. The respondent herein had filed a suit in O.S.No.56 of 2005 on the file of the District Munsif-cum-Judicial Magistrate, Neyveli, to declare that the suit property absolutely belongs to her and for permanent injunction restraining the defendants, their men, etc, from interfering with her peaceful possession and enjoyment of the suit property. The learned District Munsif-cum-Judicial Magistrate, Neyveli, by the judgment dated 20.04.2011 had decreed the said suit as prayed for. Aggrieved by the same, the defendants had filed an appeal in A.S.No.15 of 2011 on the file of the Sub-Judge, Neyveli. The learned Sub-Judge, Neyveli, had dismissed the said appeal confirming the judgment and decree passed by the trial court. Feeling aggrieved, the appellants/defendants have filed the present second appeal.



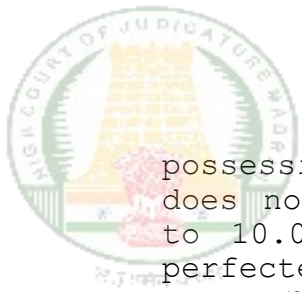
3. For the sake of convenience, the parties are referred to as described before the trial court.

4. The averments made in the plaint are, in brief, as follows:

The suit properties originally belonged to one Chinnavan and his brother Nainathotti. After the death of the said Chinnavan and Nainathotti, sons of Chinnavan viz, Pavadai and Govindan and the sons of Nainathotti viz., Makali and Nallusamy had divided their family properties including the suit properties orally 40 years ago. In the said oral partition, the suit properties were allotted to the share of Pavadai. The patta also transferred in the name of Pavadai and he had been in possession and enjoyment of the suit properties. The said Pavadai and his sons had sold the suit properties to the plaintiff under a registered sale deed dated 14.05.1981 and from that date onwards, the plaintiff has been in possession and enjoyment of the suit properties. Patta also has been transferred in her name and she paid kist to the Government. She has been in possession and enjoyment of the suit properties continuously without any interruption and hence she perfected title by adverse possession also. The defendants are not having any right over the suit properties. They are relatives to the vendors of the plaintiff and hence they are claiming right over the suit properties and tried to interfere with the possession of the plaintiff. Hence, the plaintiff was constrained to file the above suit for declaration and permanent injunction.

5. The averments made in the written statement filed by the first defendant and adopted by the second defendant are, in brief, as follows:

(a) The suit properties have not been properly described. The same boundaries have been shown for both the items of the suit properties. In Item No.2, the new Survey Number has been wrongly mentioned as 27/6 A-1. For old S.No.532/8 measuring 71 cents and 532/9 measuring 65 cents in re-survey, new survey numbers have been given as S.No.27/5A measuring 0.23.0 hectares and S.No.27/5B measuring 0.29.0 hectares. The property situated in S.No.27/5 is related to the patta No.11. The said patta has been given in the name of the defendants' father, Makali and his purchasers viz., Kumaravel and Sadagopan even prior to 10.01.2005. It is false to state that the suit properties and other properties were divided orally 40 years ago and in the said partition, the suit properties were allotted to the share of Pavadai. It is also false to state that the said Pavadai and his sons had sold the suit properties under a registered sale deed dated 14.05.1981 in favour of the plaintiff. The said sale deed is not a valid document and the same does not confer any right or title to the plaintiff. The plaintiff is not at all in



possession and enjoyment of the suit properties. The plaintiff does not produce any document to show that she got patta prior to 10.01.2005. It is also false to state that the plaintiff perfected title by adverse possession also.

(b) The oral partition took place 35 years ago and in the said partition, the suit properties were allotted to the share of one of the sons of Chinnavan viz, Govindan and sons of Nainathotti viz, Makali and Nallusamy. Pavadai was allotted share in other properties of the family. Out of 71 cents in S.No.532/8, Govindan got 43½ cents and Makali and Nallusamy jointly got 27½ cents and entire 65 cents in S.No.532/9. The said Govindan sold 43½ cents and Makali sold 32½ cents totally 76 cents which they got in the oral partition, to one Sadagopan and Kumaravel under a registered sale deed dated 02.11.1978. Nallusamy, after his marriage, permanently settled in his father-in-law's house and hence, he abandoned his right over the aforesaid property and the same has been confirmed by the said Nallusamy by the release deed dated 06.06.1980 executed by him in favour of Sadagopan and Kumaravel. After selling 76 cents by Govindan and Makali, under the sale deed dated 02.11.1978, the remaining 60 cents have been in exclusive possession and enjoyment of Makali only. The said 60 cents are the suit properties. Hence, patta for the entire extent of 1.36 acres stands in the name of Makali, Sadagopan and Kumaravel. In the said patta, the names of Pavadai, Govindan and Nallusamy are not find place. So, excluding the aforesaid persons, Makali alone has been in possession and enjoyment of the suit properties. Therefore, the said Pavadai is not entitled to execute the sale deed in favour of the plaintiff. The said sale deed will not confer any right or title in favour of the plaintiff. After the death of Makali, the defendants being his sons and their brother Arumugam, are in possession and enjoyment of the suit properties. They have perfected title by adverse possession also. The suit is bad for non-joinder of Arumugam as a party. Therefore, the defendants prayed to dismiss the suit.

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

The suit properties are Panchami land and they have been exclusively allotted by the Government to the people of Schedule Caste. The said properties were granted to the forefathers of the defendants and the defendants are in possession of the said properties. The said properties cannot be sold to non-schedule caste persons. The plaintiff belongs to Vaniyar Community which comes in the backward class. Therefore, the aforesaid transaction is void and hence, the plaintiff has committed offence punishable under Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act.



7. Based on the aforesaid pleadings, the learned District Munsif- cum-Judicial Magistrate, Neyveli, had framed necessary issues and tried the suit. During trial, on the side of the plaintiff, the plaintiff examined herself as PW1 and also examined two more witnesses as PW2 and PW3. She had marked Exs.A1 to A3 as exhibits. On the side of the defendants, the defendants 1 and 2 examined themselves as DW1 and DW2 and also examined two more witnesses as DW3 and DW4. They had marked Exs.B1 to B10 as exhibits and one exhibit was marked as Ex.X1.

8. The learned District Munsif-cum-Judicial Magistrate, after considering the materials placed before him, found that the suit properties and other properties were originally belonged to one Chinnavan and his brother Nainathotti and after their death, their sons orally partitioned the properties belonged to their family and in the said oral partition, the suit properties were allotted to the share of one of the sons of the said Chinnavan viz., Pavadai. He further found that the said Pavadai and his sons had sold the suit properties to the plaintiff under Ex.A1 dated 14.05.1981 for valuable consideration and from that date onwards, she has been in possession and enjoyment of the suit properties. He further found that the defendants have not proved that their father viz., Makali was entitled to the suit properties and after his death, the defendants inherited the said properties and they are in exclusive possession and enjoyment of the suit properties. He further found that even assuming that the suit properties are panchami lands and in violation of the conditions, the said Pavadai and his sons sold the suit properties to the plaintiff, since the defendants are strangers, they cannot question the said transaction and it is for the Government to take appropriate action against the concerned persons. Accordingly, he decreed the suit as prayed for. Aggrieved by the same, the defendants had filed an appeal in A.S.No.15 of 2011 on the file of the Sub-Judge, Neyveli. The learned Sub-Judge, Neyveli, had dismissed the said appeal confirming the judgment and decree passed by the trial court. Feeling aggrieved, the defendants 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 purchase made by a person from a person who has no valid document or title over the property is valid or not?

2. Whether the purchase, made by a person other than Scheduled Caste and Scheduled Tribe, of a land assigned to Scheduled Caste person by the Government with a condition not to alienate or transfer to the



persons other than Scheduled Caste and Scheduled Tribe is valid?

3. Whether the person who obtained a Sale Deed and not in physical possession of an immovable property can said to be in legal possession of the land?"

10. Heard Mr.K.Thilageswaran, learned counsel for the appellants/defendants and Mr.P.Mani, learned counsel for the respondent/respondent.

11. Substantial Questions of law 1 to 3:

The learned counsel for the appellants/defendants has submitted that the courts below failed to note that the vendors of the plaintiff did not have any title over the suit properties. He further submitted that the courts below failed to note that till the year 2005, patta, chitta and adangal of the suit properties were stood only in the name of father of the defendants viz., Makali. He further submitted that it is an admitted fact that the suit properties and other properties were allotted by the Government to the landless Scheduled Caste people and there is a specific bar that the said lands cannot be sold to the persons other than Scheduled Caste persons and as such, the courts below, ought to have rejected the sale deed dated 14.05.1981 and dismissed the suit. He further submitted that courts below failed to note that till the year 2005, patta and other revenue records stood only in the name of the father of the defendants but the plaintiffs surreptitiously transferred the patta in her name in the year 2005 and filed a suit. He further submitted that the oral and documentary evidence adduced by the defendants would clearly show that in the oral partition which took place between the sons of the original owners viz., Chinnavan and Nainathotti, no share was allotted in old S.Nos.532/8 and 532/9 to Pavadai. He further submitted that the patta and other revenue records produced by the defendants would clearly show that the defendants' father Makali alone had been in possession and enjoyment of the suit properties and after his death, the defendants and their brother Arumugam are in possession and enjoyment of the suit properties. He further submitted that without considering the aforesaid facts, the trial court had decreed the suit and the first appellate court also mechanically confirmed the findings of the trial court and therefore, he prayed to allow the second appeal and set aside the judgment and decree passed by the courts below and dismiss the suit.

12. Per contra, the learned counsel for the respondent/plaintiff has submitted that Ex.X.1 would show that the land admeasuring 71 cents comprised in old S.No.532/8 was assigned to Nainathotti and the land admeasuring 65 cents



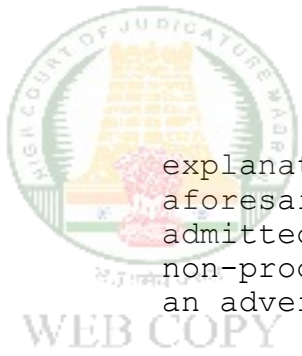
comprised in old S.No.532/9 was assigned to his brother Chinnavan. He further submitted that after the aforesaid assignments, the brothers viz., Chinnavan and Nainathotti had jointly enjoyed the aforesaid properties and died intestate and hence, their sons viz., Pavadai, Govindan, Makali and Nallusamy had inherited to the aforesaid properties. He further submitted that in the oral partition which took place 40 years ago between the four sons of Chinnavan and Nainathotti, out of total extent of 1.36 acres (71 cents in S.No.532/8 and 65 cents in S.No.532/9), 60 cents (suit properties) were allotted to the share of Pavadai and remaining 76 cents were allotted to the share of other three sons viz., Govindan, Makali and Nallusamy. He further submitted that the defendants themselves admitted in their written statement that the said Govindan and Makali had sold their shares i.e. 76 cents under a registered sale deed dated 02.11.1978 to one Sadagopan and Kumaravel. He further submitted that the defendants also admitted in their written statement that Nallusamy, after marriage permanently settled in his father-in-law's house and relinquished his right in respect of his share and confirming the same, he executed a registered release deed dated 06.06.1980 in favour of the said Sadagopan and Kumaravel and therefore, the aforesaid Govindan, Makali and Nallusamy had no right over the suit properties. He further submitted that since the said Govindan and Makali had sold their share to Sadagopan and Kumaravel under a sale deed dated 02.11.1978 and subsequently Nallusamy executed a release deed dated 06.06.1980, the remaining extent i.e., 60 cents was in exclusive possession and enjoyment of the Pavadai and the said Pavadai and his sons had sold the said 60 cents (suit properties) under a registered sale deed dated 14.05.1981 to the plaintiff for valuable consideration and from that date onwards, the plaintiff is in possession and enjoyment of the suit properties. He further submitted that merely because patta for the entire properties stood in the name of Makali, that would not confer any right to him in respect of the entire properties. He further submitted that even assuming that the suit properties are panchami lands and exclusively allotted to the Scheduled Castes people only and in violation of the said conditions, the said Pavadai had sold the property to the plaintiff, it is for the Government to question the same. He further submitted that since the defendants' father Makali also sold the property to non-scheduled caste persons, the defendants cannot question the sale deed dated 14.05.1981. He further submitted that the defendants are in no way connected with the suit properties and they cannot question the said transaction. He further submitted that the trial court taking into consideration of the aforesaid facts had rightly decreed the suit and the first appellate court also confirmed the same and in the said factual concurrent findings, this court cannot interfere and therefore, he prayed to dismiss the second appeal.



13. As per the plaint schedule, the suit property is admeasuring 0.23.0 hectares situated in a new S.No.27/5A (old S.Nos.532/8 and 532/9) of Vadakuthu village, Panruti Taluk. It is an admitted fact that the property situated in old S.Nos.532/8 and 532/9 were originally belonged to one Chinnavan and his brother Nainathotti. Exs.B6 and X1 would show that the property admeasuring 71 cents comprised in old S.No.532/8 was assigned by the Government to Nainathotti and the property admeasuring 65 cents comprising in old S.No.532/9 was assigned to his brother Chinnavan. Though the aforesaid properties were separately assigned to Chinnavan and Nainathotti, the evidence on record would show that both of them had jointly enjoyed the aforesaid properties and with regard to the said facts, there is no dispute.

14. It is also an admitted fact that the said Chinnavan had two sons viz., Pavadai and Govindan and that Nainathotti had two sons viz, Makali and Nallusamy. It is also an admitted fact that after the death of the said Chinnavan and Nainathotti, an oral partition took place between the sons of the said Chinnavan and Nainathotti. According to the plaintiff, in the said oral partition, the suit properties were allotted to the share of Pavadai and remaining extent i.e 76 cents in the aforesaid survey numbers were allotted to Govindan, Makali and Nallusamy. But the case of the defendants is that in the said oral partition, in the aforesaid old S.Nos.532/8, 532/9 no share was allotted to Pavadai and he was allotted share in other family properties. Their further case is that in the aforesaid two survey numbers, shares were allotted only to Govindan, Makali and Nallusamy. But there is no evidence that the family of the said Chinnavan and Nainathotti got any other properties apart from the properties granted by the Government to them in old Survey Nos.532/8 and 532/9. Therefore, the contention of the defendants that no share was allotted to the said Pavadai in old S.No.532/9 and he was allotted in some other properties, cannot be accepted.

15. The defendants have stated in their written statement that out of 71 cents in old S.No.532/8, Govindan got 43½ cents on the eastern side and the remaining 27½ cents were allotted to Makali and Nallusamy. They also stated that the entire extent of 65 cents in S.No.532/9 was allotted to the share of Makali and Nallusamy. They further stated that the said Govindan and Makali, out of their shares, sold 76 cents to one Sadagopan and Kumaravel under a sale deed dated 02.11.1978 on the eastern side and subsequently, the said Nallusamy had executed a release deed dated 11.06.1980 in favour of the aforesaid Sadagopan and Kumaravel relinquishing his right in respect of his share. But they have not produced a copy of the said sale deed dated 02.11.1978 and release deed dated 06.06.1980. There is no



explanation from the defendants for non- production of the aforesaid documents. In the said documents, they would have admitted the share of Pavadai and that must be the reason for non-production of the copies of the said documents. Therefore, an adverse inference has to be drawn against them.

16. As already pointed out that the original owners viz., Chinnavan and Nainathotti got the properties in old S.Nos.532/8 and 532/9 by way of assignment made by the Government and after their death, naturally their sons viz, Pavadai, Govindan, Makali and Nallusamy would have inherited the said properties. Therefore, merely because the patta and other revenue records contain the name of one of the sons viz., Makali alone, it cannot be said that he alone is entitled to the entire properties. Under the said circumstances, the contention of the plaintiff that out of the total extent of 1.36 acres in both the survey numbers, Govindan, Makali and Nallusamy were allotted 76 cents and the remaining 60 cents were allotted to Pavadai and subsequently that the said Govindan and Makali had sold their entire shares to Sadagopan and Kumaravel under a sale deed dated 02.11.1978 and subsequently, the said Nallusamy had relinquished his share by executing a release deed dated 06.06.1980 appears to be acceptable one.

17.It is also to be pointed out that one of the sons of Pavadai Viz., Thambusamy who is also one of the vendors of the plaintiffs was examined as PW2 and he had deposed that in the oral partition, the suit properties were allotted to his father and the remaining extent of 76 cetns were allotted to Govindan, Makali ad Nallusamy and they had sold their shares in the year 1978 to one Sadagopan and Kumaravel. Therefore it is clear that in the oral partition, the suit properties (66 cents) were allotted to the share of Pavadai and the remaining 76 cents were allotted to Govindan, Makali and Nallusamy and they had sold their share to one Sadagopan and Kumaravel. Therefore, the defendants being the sons of Makali cannot claim any right over the suit properties.

18. The plaintiff has produced patta which stands in her name and marked as Ex.A3 and also produced kist receipts and marked as Ex.A2 series and the said documents would show that she is in possession of the suit properties. Further, the first defendant while examining himself as DW1 has categorically admitted in his cross-examination that he has not produced any kist receipt to show that he is enjoying the suit property. Therefore, it is clear that the plaintiff is in possession and enjoyment of the suit properties.

19. It is seen from the evidence of DW4 (Tahsildar) that the suit properties are panchami lands and they were granted to



Scheduled Caste people viz., Nainathotti and Chinnavan under Ex.X.1 with a condition that they should not alienate the properties to other than Schedule Caste persons. In such a case, it is for the Government to take appropriate action. As held by the courts below, the defendants being the third parties and they are not having any right over the suit properties, they cannot question the sale which has been made by the real owners, Pavadai and his sons in favour of the plaintiff. At the same time, the plaintiff cannot seek the relief of declaration of title over the suit properties because as per the evidence of DW4, the said properties cannot be alienated to any person other than Scheduled Caste person. Admittedly, the plaintiff is not a Scheduled Caste member. Therefore, this court is of the view that she is not entitled to the relief of declaration of title. But since she is in settled possession of the suit properties and the defendants are not having any better title, she is entitled to the relief of permanent injunction against the defendants. To that extent, the judgment and decree of the courts below have to be modified. Accordingly, the substantial questions of law are answered.

20. In the result, the second appeal is partly allowed. The judgments and decrees of the courts below are modified to the effect that the plaintiff is entitled for the relief of permanent injunction alone. She is not entitled to the relief of declaration of title and hence the suit is dismissed in respect of the relief for declaration of title. The judgments and decrees of the courts below are confirmed in respect of the relief for permanent injunction alone. Considering the facts and circumstances of the case, the parties are directed to bear their respective costs.

-s/d-

Assistant Registrar(CSIII)

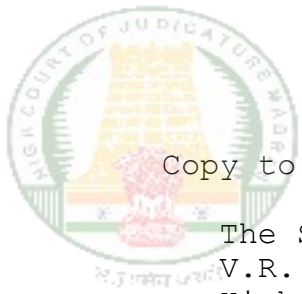
True Copy

Sub-Assistant Registrar

gv

To

1. The Subordinate Judge,
Neyveli.
2. The District Munsif cum Judicial Magistrate,
Neyveli.



Copy to

The Section Officer,
V.R. Section,
High Court, Madras.

WEB COPY

+1 cc to M/s.K.Thilageswaran Advocate sr44181

S.A.No.39 of 2013

sj (co)
aa31/10/219