



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 24.04.2019

PRONOUNCED ON: 30.07.2019

CORAM

THE HONOURABLE MRS. JUSTICE NISHA BANU

SECOND APPEAL (MD) No.226 of 2017

and

C.M.P. (MD) .No.4436 of 2017

R.Ramakrishnan

... Appellant / Appellant / Plaintiff

Vs.

1.S.Vellaichamy

2.S.Ramayya

3.S.Sethu

4.P.Jeyalakshmi

5.R.Jeyaram

6.R.Ramasamy

7.R.Raja

... Respondents / Respondents / Defendants

(Respondents 5 to 7 did not contest the suit and were set exparte in the suit as well as in the appeal and hence, notice dispensed with)

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree, dated 27.01.2017, passed in A.S.No.116 of 2013 by the Additional Subordinate Judge, Dindigul confirming the judgment and decree, dated 10.10.2013 passed in O.S.No.73 of 2012 by the District Munsif, Nilakottai.

For appellant

... Mr.S.Anand Chandrasekar for
M/s.Saravanabhauman Associates

For respondents 1 to 4 ... Mr.R.Subramanian

For respondents 5 to 7 ... Mr.J.Lakshmi Prasanna

JUDGMENT

This second appeal has been filed by the appellant/plaintiff <https://hcservices.pco.judges.gov.in/hcservices/> challenging the concurrent judgments passed by the Courts below, whereby and whereunder the Courts below dismissed the suit.



2. The appellant / plaintiff filed the suit in O.S.No.73 of 2012 for declaration and permanent injunction against the respondents/defendants. The appellant / plaintiff and the defendants 5 to 7 are brothers. The defendants 1 to 3 and the 4th defendant are the sons of the paternal uncle of the plaintiff and the defendants 5 to 7.

3. The appellant / plaintiff has averred in the plaint that the suit property and other properties were owned by his father and after his death on 29.10.1980, himself, his mother viz., Paramayee Ammal and the defendants 5 to 7 have been in possession and enjoyment of the same. On 16.10.1985, they partitioned the same by way of a partition deed dated 16.10.1985 and that on 23.01.2007 his mother gifted the "E" schedule property which was allotted to her through partition, to him by way of a gift deed dated 23.01.2007. Since then, he has been in possession and enjoyment of the suit property by obtaining patta and paying kist for the suit property. While so, the defendants 1 to 4, who have no title, right or possession over the suit property, have tried to interfere with the peaceful possession and enjoyment of the plaintiff and in order to threaten, they lodged a criminal complaint against him on 20.02.2012. Hence, he filed the suit.

4. According to the defendants 1 to 4, the suit property and other properties originally were belonged to their paternal grandfather by name Ramaya Chettiar and he died intestate in the year 1950, leaving behind his five sons viz., Sudalaimuthu, Perumal, Rajamanickam, Ramasamy and Paramasivam. The plaintiff and the defendants 5 to 7 are the sons of Rajamanickam @ Rajamani Chettiar. The defendants 1 to 4 are the legal heirs of Sudalaimuthu Chettiar. Since Sudalaimuthu Chettiar, Perumal and Paramasivam shifted their residence to Madurai, the plaintiff's father Rajamanickam was looking after the suit property and other properties. The income derived from the suit property periodically shared between the co-owners, including the defendants. In the year 1950 and 1956, the father of the defendants 1 to 4 viz., Sudalaimuthu Chettiar and his brother Perumal Chettiar, Rajamanickam Chettiar and Ramasamy Chettiar were jointly executed a registered mortgage deed and subsequently they redeemed the same. Taking advantage of the absence of their father and his brothers viz., Perumal Chettiar and Paramasivam Chettiar, the plaintiff's father fraudulent obtained patta in his favour as if he was the sole owner of the property. The partition deed and gift deed are only fabricated documents. Since the plaintiff sold some of the joint family properties illegally, they lodged a criminal complaint against the plaintiff on 20.02.2012. Injunction cannot be granted against co-owners.

<https://hcservices.ecourts.gov.in/hcservices/>

5. On the side of the appellant / plaintiff, the plaintiff himself was examined as PW1 and one Veerapathiran and the mother



of the plaintiff viz., Paramayee Ammal were examined as PWs.2 and 3 and Exs.A1 to A7 were marked. On the side of the defendants, the 2nd defendant was examined as RW1 and Exs.B1 to B5 were marked.

6. The trial Court, after trial, has dismissed the suit holding that the plaintiff has not even averred as to how his father derived title to the suit property and as to how the defendants 1 to 4 are not entitled to the suit property and he also not proved the same through oral and documentary evidence. The trial Court has further held that after registration of the criminal complaint, the plaintiff and the defendants 5 to 7 gave a consent letter - Ex.B1 to the defendants 1 to 4 accepting to give share in the joint family properties, which would show that the suit property is the joint family property. Aggrieved by the same, the appellant/plaintiff filed appeal in A.S.No.116 of 2013. In the first appellate Court, the appellant/plaintiff filed an application seeking to mark additional documents. The first appellate Court, after detailed discussions, has dismissed the said interim application and appeal, thereby confirmed the judgment and decree passed by the trial Court. Challenging the said concurrent judgments, the appellant/plaintiff filed this second appeal.

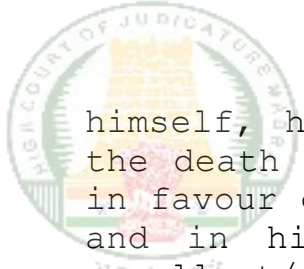
7. This second appeal is admitted on the following substantial question of law:

"Whether the approach of the Courts below in not granting the lesser relief of permanent injunction in favour of the appellant, while declining the larger relief of declaration, when the appellant has substantiated his independent possession is correct in law?"

8. Heard the learned counsel appearing for both sides and perused the records carefully.

9. The main contention of the learned counsel for the appellant/plaintiff is that though the plaintiff has proved that they have been in possession and enjoyment of the suit property by obtaining patta and paying kisth from the year 1981, the Courts below have failed to grant injunction in their favour.

10. Admittedly, in this case, the appellant/plaintiff has not produced any document by which his father got title in respect of the suit property, though he has admitted that the suit property was originally belonged to his grandfather Ramaya Chettiar and it was a joint family property in Ex.A1. The said Ramaya Chettiar died leaving behind his five sons, including the father of the plaintiff and defendants 5 to 7, and the father of the defendants
<https://hcservices.ecdtps.gov.in/hcservices/> legal heirs. The appellant/plaintiff did not even aver as to how and as to when the suit property was allotted to his father. He has produced only the partition entered among



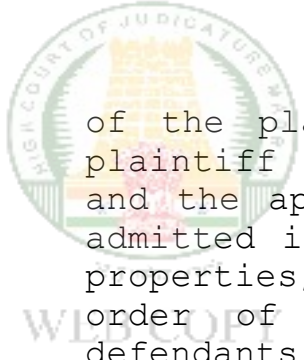
himself, his brothers (defendants 5 to 7) and his mother, after the death of his father and further settlement made by his mother in favour of him and then, patta issued in the name of his mother and in his name. Before the first appellate Court also, the appellant/plaintiff attempted to produce only the patta issued in the name of his father for the fasili year 1980 and in the name of his mother for the fasili years 1981 and 1982, and mortgage deed dated 05.03.2003; sale agreement dated 29.08.2007 and mortgage deed dated 04.02.2011. It is a settled law that patta and chitta will not confer title. Therefore, as rightly stated by the first appellate Court, the documents marked and produced on the side of the appellant/plaintiff would not lead to decide the title of the suit property and to grant the relief of declaration. More over, as per Ex.B1 - consent letter, which has not been disputed by the appellant/plaintiff, the appellant/plaintiff has agreed to give share in the joint family property. It gives an impression that joint family properties are still being enjoyed by both the appellant/plaintiff and the defendants.

11. According to the appellant/plaintiff, the suit property was allotted in the name of his father through oral family arrangement and based on the same, his father obtained patta in the year 1981 and since then, they have been in possession and enjoyment of the suit property by obtaining individual patta and therefore, they are entitled to the relief of permanent injunction. According to the defendants 1 to 4, the plaintiff and the defendants are in joint possession and enjoyment of the suit property as co-owners without any partition till today and the patta was issued only against law.

12. It is a general proposition of law that possession of one co-owner would be treated to be possession of all. Therefore, an exclusive use of land held in common by a co-owner does not amount to an ouster of the other co-owners. In other words, the possession of one co-owner cannot be adverse to the other co-owners, unless there has been a denial of title and an ouster to the knowledge of the other. In this case, though the appellant/plaintiff stated that the suit property was allotted in the name of his father through oral family arrangement, he has not proved the same through oral and documentary evidence. Even the mother of the plaintiff, who is examined as PW3, did not say anything about the oral family arrangement stated to be made among LR's of Ramaya Chettiar. However, PW3 has admitted in her evidence that every year the defendants are visiting the village and that recently both the appellant/plaintiff and defendants renovated a building commonly. The evidence of PW3 would show that there are properties which are still being enjoyed by both the parties commonly.

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13. The Courts below have held that when there was nothing to clinchingly show that the suit property was allotted to the father



of the plaintiff through partition and the possession of the plaintiff was adverse to the knowledge of the defendants 1 to 4 and the appellant/plaintiff and the defendants 5 to 7 themselves admitted in Ex.B1 that they would give share in the joint family properties, it cannot be said that the plaintiff is entitled to an order of injunction to restrain the respondents 1 to 4 / defendants 1 to 4, who are none other than co-owner of the property. The question of law is answered against the appellant/plaintiff. This Court does not find any reason to interfere with the concurrent judgments passed by the Courts below.

14. In the result, this second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Additional Subordinate Judge, Dindigul.

2.The District Munsif, Nilakottai.

Copy to:

The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.(2 copies)

+1 CC to M/S.SARVABHAUMAN ASSOCIATES, Advocate (SR-78438[F] dated 30/07/2019)

+1 CC to Mr.R.SUBRAMANIAN, Advocate (SR-78753[F] dated 31/07/2019)

judgment made in
S.A.(MD) No.226 of 2017
30.07.2019

gcg

AE/(14.08.2019) 5P 7C