

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 05.02.2020

Date of Verdict : 27.02.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

S.A.Nos.1341 & 1754 of 1999

S.A.No.1341 of 1999

1.R.Chinnakulandai

2.Rajamanickam(died)

3.R.Kannan by power of attorney
agent Krishna Manidir

4.R.Logan

5.Saroja Ammal

6.Suguna

7.Krishnamoorty

8.Poongudi

9.Prema

10.Priya

11.Prathap

(Appellants 5 to 11 brought on record as
LR's of the deceased 2nd appellant viz.,
Rajamanickam vide order of court
dated 22.10.2019 made in CMP.No.
17151/2019 in SA.No.1341/1999)

...Appellants/Plaintiff

Vs.

1.Swaminathan

2.Venkatesan

3.Sundaram

4.Logan

5.Mohan

6.Alamelu Ammal

7.Jayarama Chettiar

8.Vasu

9.Gomathi Ammal

10.A.Devivasigamani

11.Vijayakumar

12.Andal Ammal

13.Krishnaveni

14.K.Vinoth Kumar

15.M.Vimala

16.K.Sarala

(RR14 to 16 impleaded vide order of
court dated 27.07.2017 made in
CMP.No.11807 of 2017 in SA.No.
1341 of 1999)

...Respondents/ Defendants

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 28.01.1997, in A.S.No.148 of 1993 on the file of the Principal District Judge, Vellore, confirming the decree and judgment dated 05.07.1993 in O.S.No.983 of 1985 on the file of the Principal District Munsif, Vellore.

For Appellants : Mr.T.R.Rajaraman

For Respondents

For R1, 14 to 16: Mr.M.Balasubramanian

For R2 to 9,11to13 : Notice served - no appearance
R10 : died

S.A.No.1754 of 1999

1.R.Chinnakulandai(died)

2.Rajamanickam(died)

3.R.Logan

4.Rajammal

5.Selvi

6.Shanthi

7.C.Kumar

8.Ranganayaki

9.Sudha

10.Saroja Ammal

11.Suguna

12.Krishnamoorty

13.Poongudi

14.Prema

15.Priya

16.Prathap

(Appellants 4 to 9 brought on record as LR's of the deceased 1st appellant viz., R.Chinnakulandai vide order of court dated 19.07.2017 made in CMP.Nos. 386 to 388/2015 in SA.No.1754/1999)

(Appellants 10 to 16 brought on record as LR's of the deceased 2nd appellant viz., Rajamanickam vide order of court dated 22.10.2019 made in CMP.No. 17152 of 2019 in SA.No.1754 of 1999

...Appellants/ Defendants1,2&4
Vs.

1.Swaminathan

2.R.Kannan(died)

3.K.Vinoth Kumar

4.M.Vimala

5.K.Sarala

(RR3 to 5 impleaded as LR's of the deceased R2 viz., Kannan vide order of

court dated 27.07.2017 made in CMP.No.11808 of 2017 in SA.No.

<https://hcservices.ecourts.gov.in/hcservices/>
1754 of 1999)

...Respondents

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 28.01.1997, in A.S.No.149 of 1993 on the file of the Principal District Judge, Vellore, confirming the decree and judgment dated 05.07.1993 in O.S.No.1079 of 1988 on the file of the Principal District Munsif, Vellore.

For Appellants : Mr.T.R.Rajaraman
For Respondents
For R1 : Mr.M.Balasubramanian
R2 : died
For R3 to R5 : Mr.R.Subramanian

COMMON JUDGMENT

These second appeals are directed as against the judgment and decree dated 28.01.1997, in A.S.No.148 of 1993 on the file of the Principal District Judge, Vellore, confirming the decree and judgment dated 05.07.1993 in O.S.No.983 of 1985 on the file of the Principal District Munsif, Vellore and the judgment and decree dated 28.01.1997, in A.S.No.149 of 1993 on the file of the Principal District Judge, Vellore, confirming the decree and judgment dated 05.07.1993 in O.S.No.1079 of 1988 on the file of the Principal District Munsif, Vellore.

2. For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

3. The case of the plaintiffs in O.S.No.983 of 1985 in brief is as follows :-

3.1 The suit is filed for declaration and recovery of possession. The plaintiff's father Ranga Manthri and his elder brother Ponnusamy Manthri and younger brother Velu Manthri formed joint undivided hindu family. The defendants 1 to 5 and the 12th and 13th defendants are the sons and daughters of Govindhasamy Manthri son of Ponnusamy Manthri. The sixth defendant is the widow of Govindhasamy Manthri. The property admeasuring 2.38 acres in the southern portion of the land comprised in survey No.568 in Sathuvachari village originally form part of joint family property of three above said brothers. It was being treated and enjoyed as joint family property by them, in which 1.24 acres was purchased by their father. Later, Ponnusamy Manthri who was being the elder brother and the manager of the joint family, purchased another property admeasuring 1.14 acres for the family by the income derived from the joint family property. All the three brothers were in possession and enjoyment of the entire extent of the property admeasuring 2.38 acres. Thereafter they effected partition and was allotted 1/3 share. The land comprised in survey No.568, the Ponnusamy Manthri was allotted his 79 1/3 acres on the south, the Ranga Manthri was allotted 79 1/3 acres to the north of the Ponnusamy Manthri's share.

The Velu Manthri was allotted 79 1/3 acres to the north of Ranga Manthri's share. The share allotted to Ranga Manthri and the Velu Manthri exchanged their share for better enjoyment. The Velu Manthri surrendered 14 cents out of his total share of 79 1/3 to Ranga Manthri. Thus, the said Ranga Manthri became entitled to 98 1/3 acres in the land comprised in survey No.568. After his demise, the plaintiffs are being his sons and wife are in possession and enjoyment of the same. Since they are residing in Bangalore, the defendants 1 to 6 are in possession of share of the Ponnusamy Manthri admeasuring 79 1/3 cents and encroached into the portion of the plaintiffs land adjacent to their land to an extent of about 26 cents. Hence, the suit.

4 Resisting the same, the first defendant filed written statement and stated that the plaintiff's father Ranga Manthri, Ponnusamy Manthri and Velu Manthri are brothers and sons of Kattaya Manthri. The defendants 1 to 5 are the sons of Govindhasamy Manthri son of Ponnusamy Manthri. The said Govindhasamy Manthri predeceased his father Ponnusamy Manthri. The sixth defendant is the widow of the deceased Govindhasamy Manthri. Ponnusamy Manthri did not purchase 1.14 acres of land for family with family funds. Further they also did not purchase any property admeasuring 1.14 acres. The said Ponnusamy Manthri purchased the said property out of his own money by registered sale deed dated 24.07.1937 and he was in possession and enjoyment of the said property. Therefore, the other brothers, namely the father of the plaintiff and the other Velu Manthri have no right over the said property. They mortgaged the said property by mortgage deed dated 20.02.1939 and raised funds to discharge the mortgage debt executed in favour of one Advocate when the Ponnusamy Manthri was the absolute owner of the property of the land admeasuring 1.14 cents of land along with the extent of 1.24 acres comprised in survey No.568. Therefore, the Ponnusamy Manthri had no need to throw his own property to the family property, which was duly purchased by his own funds. Therefore, the joint family possessed only 1.24 acres and after their partition, each one of them got entitled to 1/3 share admeasuring 41 cents in survey No.568 out of 1.24 acres. It was happened even before 1936 and after the partition deed, the land admeasuring 1.14 acres comprised in survey No.568 was purchased by the Ponnusamy Manthri. Therefore, it was his absolute property and the defendants 1 to 6 are the absolute owners of the said property along with 1/3 share admeasuring 41 cents was derived by the partition deed. Therefore, the entire averments made in the plaint are false and frivolous. Thereafter, the other brother Velu Manthri mortgaged his share by the mortgage deed dated 10.10.1941 in favour of Sadaya Manthri and Chinnapa Manthri for a sum of Rs.200/- property admeasuring 41 1/3 cents out of 1.24 acres. Thereafter, the first defendant also purchased 57 cents in the same survey No.568 by the registered sale deed dated 27.09.1943. Therefore, their family owned 98 1/3 cents in survey No.568. The Velu Manthri and his wife

sold away the property admeasuring 1.23 acres in survey No.568 to one, Annamalai Mudaliar. When they are having only 98 1/3 cents, they stealthily sold more 25 cents which belongs to Ranga Manthri. Therefore, the entire stand of the plaintiffs is not correct. In fact, the first defendant has been paying kist for his land comprised in survey No.568. Therefore, the plaintiffs are not entitled to seek any relief as prayed for and sought for dismissal of the suit.

4.1 The second defendant filed written statement, which was adopted by defendants 3 to 11, stating that the first defendant is only in possession of the suit property. Further stated that they are unnecessary parties to the suit and as such the suit is liable to be dismissed for misjoinder of unnecessary parties. The defendants 12 and 13 also adopted the written statement filed by the first defendant.

5. The case of the plaintiff in O.S.No.1079 of 1988 in brief is as follows:

5.1 The suit is filed for declaration and permanent injunction. The first defendant's father Ranga Manthri, Ponnusamy Manthri and Velu Manthri are brothers and sons of Kattaya Manthri. The defendants 2 to 5 are the sons of Ranga Manthri. The said Govindhasamy Manthri predeceased his father Ponnusamy Manthri. Ponnusamy Manthri did not purchase 1.14 acres of land for family with family funds. Further they also did not purchase any property admeasuring 1.14 acres. The said Ponnusamy Manthri purchased the said property out of his own money by registered sale deed dated 24.07.1937 and he was in possession and enjoyment of the said property. Therefore, the other brothers, namely the father of the first defendant and the other Velu Manthri have no right over the said property. They mortgaged the said property by mortgage deed dated 20.02.1939 and raised funds to discharge the mortgage debt executed in favour of one Advocate when the Ponnusamy Manthri was the absolute owner of the property of the land admeasuring 1.14 cents of land along with the extent of 1.24 acres comprised in survey No.568. Therefore, the Ponnusamy Manthri had no need to throw his own property to the family property, which was duly purchased by his own funds. Therefore, the joint family possessed only 1.24 acres and after their partition, each one of them got entitled to 1/3 share admeasuring 41 cents in survey No.568 out of 1.24 acres. It was happened even before 1936 and after the partition deed, the land admeasuring 1.14 acres comprised in survey No.568 was purchased by the Ponnusamy Manthri. Therefore, it was his absolute property.

5.2 Further stated that thereafter, the other brother Velu Manthri mortgaged his share by the mortgage deed dated 10.10.1941 in favour of Sadaya Manthri and Chinnapa Manthri for a sum of Rs.200/- property admeasuring 41 1/3 cents out of 1.24 acres. Thereafter, the plaintiff also purchased 57 cents in the same survey No.568 by the registered sale deed dated

27.09.1943. Therefore, their family owned 98 1/3 cents in survey No.568. The Velu Manthri and his wife sold away the property admeasuring 1.23 acres in survey No.568 to one, Annamalai Mudaliar. When they are having only 98 1/3 cents, they stealthily sold more 25 cents which belongs to Ranga Manthri. In fact, the plaintiff has been paying kist for his land comprised in survey No.568 and as such the defendants 1 to 4 have no right in respect of the same. Hence, the suit.

6. Resisting the plaintiff's case, the defendants 1, 2 and 4 filed written statement stating that the first defendant's father Ranga Manthri and his elder brother Ponnusamy Manthri and younger brother Velu Manthri formed joint undivided hindu family. The property admeasuring 2.38 acres in the southern portion of the land comprised in survey No.568 in Sathuvachari village originally form part of joint family property of three above said brothers. It was being treated and enjoyed as joint family property by them, in which 1.24 acres was purchased by their father. Later, Ponnusamy Manthri who was being the elder brother and the manager of the joint family, purchased another property admeasuring 1.14 acres for the family by the income derived from joint family property. All the three brothers were in possession and enjoyment of the entire extent of the property admeasuring 2.38 acres. Thereafter they effected partition and was allotted 1/3 share. The land comprised in survey No.568, the Ponnusamy Manthri was allotted his 79 1/3 acres on the south, the Ranga Manthri was allotted 79 1/3 acres to the north of the Ponnusamy Manthri's share. The Velu Manthri was allotted 79 1/3 acres to the north of Ranga Manthri's share. The share allotted to Ranga Manthri and the Velu Manthri exchanged their share for better enjoyment. The Velu Manthri surrendered 14 cents out of his total share of 79 1/3 to Ranga Manthri. Thus, the said Ranga Manthri became entitled to 98 1/3 acres in the land comprised in survey No.568. After his demise, the first defendant is being his legal heir in in possession and enjoyment of the same. Since they are residing in Bangalore, the plaintiff is in possession of share of the Ponnusamy Manthri encroached into the portion of the first defendant's land adjacent to their land to an extent of about 26 cents. The first defendant also filed O.S.No.931 of 1985 against the plaintiff seeking recovery of possession. Further, even assuming that the plaintiff is paying kist to the suit property, the plaintiff cannot have right over the same. Hence, prayed for dismissal of the suit.

7. The trial court conducted joint trial. In O.S.No.983 of 1985, in support of the plaintiff's case, P.W.1 and P.W.2 were examined and seven documents were marked as Ex.A.1 to Ex.A.7. On the side of the defendants, D.W.1 was examined and Ex.B.1 to Ex.B.13 were marked. In the suit in O.S.No.1079 of 1988, on the side of the plaintiff, 57 documents were marked as Ex.A.1 to Ex.A.57. On considering the oral and documentary evidences adduced by the respective

parties and the submissions made by the learned counsel, the trial Court dismissed the suit in O.S.No.983 of 1985 and allowed the suit in O.S.No.1079 of 1988. Aggrieved over the judgment and decree of the trial Court, the plaintiffs in O.S.No.983 of 1985 and the defendants in O.S.No.1079 of 1988 preferred an appeal suit in A.S.Nos.148 and 149 of 1993 before the Principal District Court, Vellore respectively. The first appellate Court on appreciating the materials placed on records, dismissed both the appeals by confirming the judgment and decree passed by the trial Court in both the suits. Challenging the same, the plaintiffs in O.S.No.983 of 1985 and the defendants in O.S.No.1079 of 1988 have come forward with the present second appeals.

8. At the time of admission of the second appeals, the following common substantial questions of law were framed :-

a) Is the learned District Judge right in holding the suit property viz., 1.14 acres in survey No.568 is the exclusive property of Ponnusamy when the evidence discloses that the family remained joint until the partition effect after 1949?

b) Is the learned District Judge right in basing his conclusion only upon Ex.B4 when the other documents produced on the side of the Plaintiffs show that the joint family remained till 1949?

c) When there was no proof of ouster or diverse possession in the facts and circumstances of the case is the learned District Judge right in non-suiting the plaintiffs on the basis of an old document., viz., sale deed in favour of Ponnusamy?

9. The learned counsel appearing for the appellants submitted that their father along with his two brothers, namely Ponnusamy Manthri and Velu Manthri have owned property admeasuring 3.41 acres, in which the property admeasuring 2.38 acres is treated as joint family property. An extent of 1.24 acres was purchased by the three brothers. An extent of 1.14 acres was purchased by the elder brother, namely Ponnusamy Manthri from the funds derived from joint family in his name. Thereafter there was oral partition and all the brothers had got each 7 1/3 cents. The Velu Manthri gifted 14 cents out of his share in favour of Ranga Manthri. Therefore, Ranga Manthri entitled to have the property admeasuring 98 1/3 acres. While being so, the defendants 2 to 6 encroached 26 cents in the property belongs to the plaintiff. Further submitted that though the defendants contended that the property purchased in the name of Ponnusamy Manthri is a self

acquired property, they did not prove by any piece of evidence that the said property was purchased from the individual income. Ex.A.11, in O.S.No.1079 of 1988, mortgage deed executed by all the joint family members. Thus, the entire property construed as joint family property and entitled for partition. Unfortunately both the courts did not consider the same. Further, in the said mortgage deed, there is no recital that the three brothers mortgaged the same by individually. Since the said Ponnusamy Manthri was the eldest brother, the said property was purchased in his name. Therefore, the said property is also joint family property. In respect of partition prior to 1949 is also not proved and as such the boundaries description refers to Ranga Manthri's property as one of the boundaries. He further submitted that the defendants also failed to prove their adverse possession, since there is absolutely no pleadings to that effect and they also failed to prove their possession to claim adverse possession of the suit property. In this regard, he relied upon the following judgments.

(i) Dagadabai (dead) by legal representatives Vs. Abbas alias Gulab Rustum Pinjari reported in (2017) 13 SCC 705.

(ii) Bhimbai Mahadeo Kambekar (dead) through legal representative Vs. Arthur Import and Export Company and others reported in (2019) 3 SCC 191.

and (iii) Ram Nagina Rai and another Vs. Deo Kumar Rai (deceased) by legal representatives and another reported in (2019) 13 SCC 324.

9.1 He also specifically contended that in all the documents are pertaining to the said common property and the property belong to them. Thus, they categorically proved that all the properties are joint family properties and as such all are having equal share in the total extent of the property, namely 2.38 acres.

10. Per contra, the learned counsel for the respondents submitted that the trial court rightly concluded that the suit property in O.S.No.983 of 1985 is in possession and enjoyment of the first defendant and thereby, the first defendant has prescribed title, adverse possession and rightly dismissed the suit filed by the plaintiff.

11. Heard Mr.T.R.Rajaraman, learned counsel appearing for the appellants, and Mr.M.Balasubramanian, learned counsel and Mr.R.Subramanian, learned counsel appearing for the respondents.

12. This Court considered the rival submissions made by the learned counsel on either side, and the principles of law outlined in the above said positions are taken into consideration and followed as applicable to the case on hand.

13. The plaintiff's father and his elder brother Ponnusamy Manthri and younger brother Velusamy Manthri were born to one Kattaya Manthri. They owned property admeasuring 2.38 acres comprised in survey No.568 in Sathuvachari village. They treated the suit property as joint family property. The property admeasuring 1.24 acres was purchased in the name of Ponnusamy Manthri. Since after death of their father he was being the eldest brother the property was purchased in his name from the income derived from the joint family property. Whereas, the case of the first defendant is that their grandfather, namely Ponnusamy Manthri purchased to an extent of the property admeasuring 1.24 acres from his own income and as such the said property is not belonged to joint family property. P.W.1 deposed that Kattaya Manthri had three sons, the elder son Ponnusamy Manthri was managing the entire family and purchased an extent of 1.24 acres in survey No.568 situated at Sathuvachari village by the registered sale deed which was marked as Ex.A.2 in the name of Kattaya Manthri.

14. Thereafter, to an extent of 1.14 acres of land was purchased in the name of Ponnusamy Manthri and the said sale deed was marked as Ex.A.4. He also deposed that the said Ponnusamy Manthri had no means to purchase the said property and only from the joint family income, the property was purchased. The mortgage deed executed by all the three brothers, which was marked as Ex.A.5 to an extent of property admeasuring 1.24 acres purchased in the name of their father Kattaya Manthri. Thereafter, in the year 1949, they executed another mortgage deed for their family expenditure and also to an extent of 2.95 acres in survey No.568. After 7 or 8 months from the mortgage deed, they orally partitioned the property admeasuring 2.38 acres by equal share, namely 79 1/3 cents. The first defendant deposed that the Kattaya Manthri, namely the father of the three brothers owned 1.24 acres and the said property was divided into three shares, namely 41 cents to each share. After partition, the said Ponnusamy Manthri purchased 1.14 acres comprised in survey No.568 from out of his own funds, which was marked as Ex.B.4. Thereafter, they claimed that the property purchased by his grandfather from his own money and it is a separate property belonged to the said Ponnusamy Manthri alone. Thereafter, the plaintiffs left the village and went to Bangalore. Therefore, the plaintiffs did not produce any document to show their possession. The plaintiffs also did not pay any tax to the suit property. Therefore, the evidence proved that the said Ponnusamy Manthri purchased the property admeasuring 1.14 acres comprised in survey No.568 from his own funds and treated as separate property.

15. While being so, the case of the plaintiff is that the defendants encroached upon the portion of 26 cents of land and as such they are entitled for recovery of possession. P.W.2 deposed that he does not know about the cultivation of

the suit property and who cultivated the property. Further the plaintiffs also failed to prove their ownership of the suit property. Whereas the first defendant filed mortgage document Ex.A.30 to Ex.A.49 the kist receipts for the suit property and proved his possession and enjoyment of the same. On mortgaging the property, he also availed loan and thereafter discharged the said loan and receipts were marked as Ex.A.50 to Ex.A.57 in his suit. Therefore, this Court finds that all the above judgments cited by the learned counsel for the appellants are not applicable to the case on hand.

16. Therefore, this Court does not find any valid reason to interfere with the findings rendered by the Courts below as such the Courts below have analyzed the evidences both the documentary and oral in detail, adduced by the parties and by giving cogent reasons, concluded rightly. Accordingly, this Court is of the considered opinion that no substantial questions of law are involved in these second appeals. Be that as it may, all the substantial questions of law formulated by this Court in the Second Appeal in SA.No.1341 of 1999 are answered in favour of the defendants and as against the plaintiff, and in the Second Appeal in SA.No.1754 of 1999, the same are answered in favour of plaintiffs and as against the defendants.

17. In the result, both the Second Appeals are dismissed. No order as to costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal District Judge,
Vellore
2. The Principal District Munsif,
Vellore.
3. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.

+2ccs to Mr.T.R.Rajaraman, Advocate SR.No. 174231 17422

+2ccs to Mr.R.Subramanian , Advocate SR.No. 17554 17555

S.A.Nos.1341 & 1754 of 1999

A.SK(04/09/2020)

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