

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 20.02.2020

Date of Verdict : 02.06.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

S.A.No.1267 of 2001

1. Chinnammal
2. Irua Gounder
3. Ammasai
4. Pappathi @ Muniammal
5. Mottai @ Mariammal ...Appellants/ Defendants1 to 3,6&7

Vs.

1. Siddha Gounder (Died)
2. The Special Tahsildar,
Natham Resurvey Plan,
Bhavani.
3. The State of Tamil Nadu
rep by The District Collector,
Erode District,
Erode.
4. Muthu
5. Mani
6. Ammaniammal
(Respondents 4 to 6 are
brought on record as
legal heirs of the deceased
first respondent vide order
of the Court dated 15.11.2018
made in C.M.P.No.18471 of
2017 in S.A.No.1267 of 2001)

...Respondents/4&5th Defendant

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 28.03.2001 made in A.S.No.33 of 2000 on the file of the Subordinate Court, Bhavani, confirming the judgment and decree dated 27.11.1998 made in O.S.No.180 of 1991 on the file of the Principal District Munsif Court, Bhavani.

For Appellants : Mr.N.Manokaran

For Respondents

R1 : Mr.P.Senthil Kumar
For R2 & R3 : Mr.S.Jagannathan
Government Advocate (CS)
For R4 : No appearance
R5 & R6: Dismissed vide Court order
dated 02.01.2020

JUDGMENT

This second appeal is directed as against the judgment and decree dated 28.03.2001 made in A.S.No.33 of 2000 on the file of the Subordinate Court, Bhavani, confirming the judgment and decree dated 27.11.1998 made in O.S.No.180 of 1991 on the file of the Principal District Munsif Court, Bhavani.

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

3. The case of the plaintiff in brief is as follows :-

3.1. The suit is filed for declaration and injunction. The plaintiff is the son of one Aanai Gounder. The defendants are the second wife and two sons born through the second wife. The defendants 6 and 7 are female children born through the second wife of the said Aanai Gounder. The suit property originally belonged to the Government classified as porambokku. The plaintiff occupied the suit A schedule property even before 41 years and constructed house and also the shops and all are in possession and enjoyment of the plaintiff. The door number was given as 4/75B, 4/75 and subsequently changed as 4/78. All the houses were assessed to the house tax and paid house tax regularly. For those houses he also obtained electricity connections as 74 & 76 respectively and paid electricity charges regularly.

3.2. In the year 1992, since those houses are in dilapidated condition, there was exemption from paying house tax. Therefore electricity service connections also disconnected. Therefore, the plaintiff constructed compound wall around the A schedule property and tide his cattle and he is in possession and enjoyment of the suit property. In the said A schedule property his father or other legal heirs have no right, interest or title over the property. In respect of the B schedule property, the same was in occupation of his father Aanai Gounder. After his second marriage, there was a partition, in which half share was allotted to the plaintiff in the B schedule property. Therefore, in respect of the B schedule property, the plaintiff and the defendants 1 to 3, 6 & 7 are having equal half share.

3.3. When the fourth defendant surveyed the suit property, A schedule property was re-numbered as R.S.No.372/3 and B schedule property as R.S.No.372/4. In fact, the plaintiff also applied patta for the land in his possession and enjoyment viz., A schedule property and half portion in the B schedule property. While being so, the defendants 1 to 3 caused legal notice stating that the entire suit property are ancestral properties and as such they sought for partition. On receipt of the same, the plaintiff caused reply notice. While being so, on receipt of the application from the defendants 1 to 3, the fourth defendant issued joint patta insofar as the A & B schedule properties for the plaintiff and the defendants 1 to 3. Therefore, the plaintiff filed suit for declaration and injunction in respect of the A schedule property. In respect of the B schedule property, he prayed for partition by allotting half share.

4. Resisting the same, the defendants 4 and 5 filed written statement stating that only on the statement recorded from the parties, they ordered to issue patta. Accordingly, the patta was issued in favour of the plaintiff and the defendants 1 to 3 in respect of the A & B schedule properties. Therefore, they prayed for dismissal of the suit.

5. The defendants 1 to 3 filed separate written statement and denied the entire allegation and averments made in the plaint as false and frivolous. The suit properties were originally occupied by their father Aanai Gounder and constructed house. Therefore, the patta was issued in their favour. In fact, the plaintiff already constructed terrace house in D.No.5/78 and resided there along with his family members. Even after death of his father, the plaintiff never visited the suit property. After due enquiry, the patta was issued in favour of the plaintiff as well as the defendants 1 to 3 herein. Therefore, they are ready for partition of the entire suit property and they are willing to give 1/6th share in favour of the plaintiff. Therefore, the plaintiff is not entitled for declaration and injunction and insofar as other reliefs sought for in respect of the suit properties, prayed for dismissal of the suit.

6. In fact, the plaintiff also filed another suit in O.S.No.368 of 1993 as against the same defendants for injunction. Both the suits were clubbed together and jointly tried by the trial Court. On the side of the plaintiff, he examined P.W.1 & P.W.2 and were marked Ex.A.1 to Ex.A.9. On the side of the defendants, they examined D.W.1 to D.W.3 and were marked Ex.B.1 to Ex.B.13. On perusal of the material produced on record and on considering both the oral and

documentary evidences adduced by the respective parties and also the submissions made, the trial Court decreed the suit insofar as the A schedule property and allotted 1/6th share to the plaintiff insofar as the B schedule property. Aggrieved by the same, the defendants preferred an appeal suit in A.S.No.33 of 2000 and the first appellate Court dismissed the suit and confirmed the judgment and decree passed by the trial Court. Aggrieved by the same the defendants filed this present second appeal.

7. At the time of admission of this second appeal on 27.08.2001, the following substantial questions of law were formulated for consideration:-

"1. Whether the Courts below erred in law and misdirected themselves in granting the declaration relief merely on the basis of the oral evidence in the absence of any documentary evidence of title or in the absence of alleged acquiring of suit properties in the alleged encroachment?

2. Whether the Courts below erred in law and misdirected themselves in granting relief with respect to the entire "A" schedule property, especially when the validity of Ex.B.2/Ex.A.8 is not challenged before the appellate Forum?

3. Whether the decision of the First Appellate Court is vitiated in not framing the necessary points for determination in the appeal?"

8. Heard Mr.N.Manokaran, learned counsel appearing for the appellant/defendants, Mr.P.Sethil Kumar, learned counsel appearing for the first respondent/plaintiff and Mr.S.Jagannathan, learned Government Advocate (CS) appearing for the respondents 2 & 3/defendants 4 & 5.

9. Admittedly, the plaintiff and the defendants 2, 3, 6 & 7 were born to one Aanai Gounder. The plaintiff was born through his first wife and the defendants 2,3,6 & 7 were born through his second wife viz., first defendant. According to the plaintiff, he occupied A schedule property even before 40 years and also obtained patta for the same. He constructed house and shops, which were also assessed to the house tax. He obtained electricity service connection and were paying electricity bills regularly insofar as the A schedule property is concerned. B schedule property is occupied by his father

and there he was constructed a house and he was in possession and enjoyment of the B schedule property. On the resurvey, the fourth defendant wrongly issued join patta for the plaintiff and the defendants 1 to 3, 6 & 7. It is also corroborated by P.W.2. Whereas the defendants contended that the entire property was occupied by their father and also paid house tax for house situated in the suit properties.

10. On perusal of the receipts, they are pertained to Door No.5/55B and assessment No.843. i.e. B schedule property. The assessment No.623 was allotted insofar as the A schedule property and its door No.4/78. Ex.A.8 the order passed in Na.Ka.No.193/91 dated 04.03.1991 proved the same. Therefore, due to dilapidated condition, the electricity service connections were disconnected and assessment of tax also cancelled. Further, the plaintiff proved the occupation in the A schedule property and also obtained patta.

11. Admittedly, the land is classified as Natham and who ever occupied the land classified as Natham, they are entitled to have right and interest over the property. Therefore, both the Courts below rightly decreed the suit in favour of the plaintiff insofar as the A schedule property is concerned. Insofar as the B schedule property is concerned admittedly it was occupied by their father and the defendants also willing to give share to the plaintiff. Therefore, both the Courts rightly held that the plaintiff is entitled to have 1/6 share in the B schedule property.

12. In view of the above discussion, this Court does not find any valid reason to interfere with the reasoning and findings rendered by the Courts below for upholding the case of the defendants. As such, this Court is of the considered opinion that no substantial question of law involved in this appeal. Be that as it may, all the substantial questions of law formulated by this Court are answered in favour of the plaintiff and as against the defendants.

13. In fine, the second appeal stands dismissed by confirming the judgment and decree passed by Courts below. There is no order as to costs.

Sd/-

Assistant Registrar(CS)

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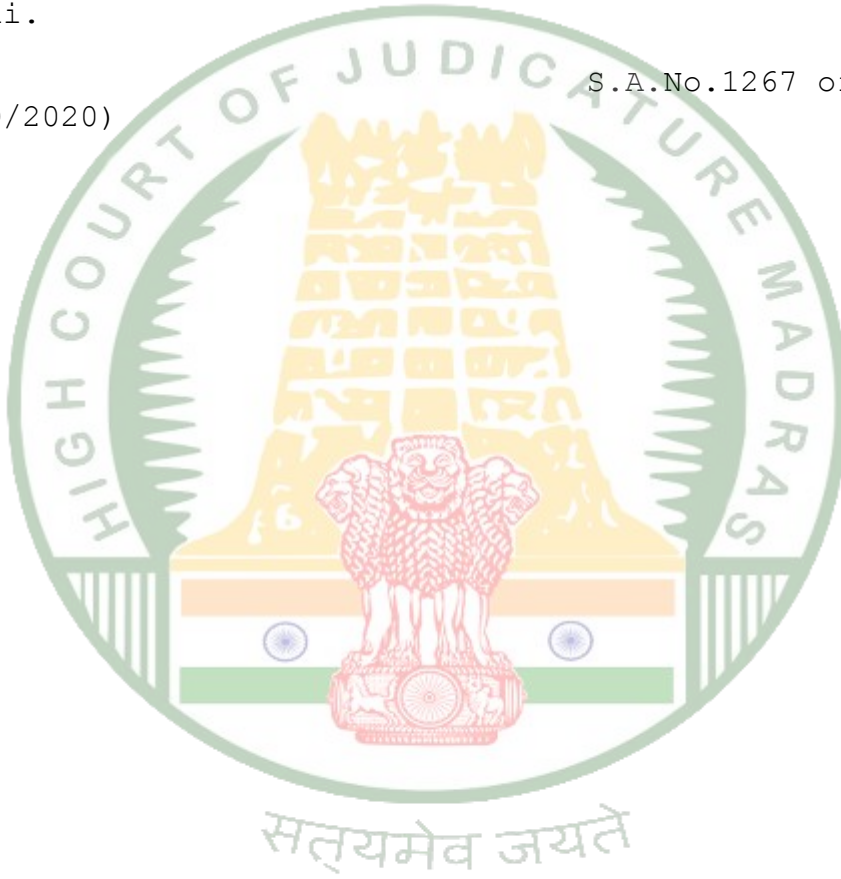
Sub Assistant Registrar

To

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

A.SK(04/09/2020)

S.A.No.1267 of 2001



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