



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 13.10.2020	Pronounced on: 22.10.2020
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Coram::

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

S.A.No.1019 of 2009
& M.P.No.1 of 2009

1. Ganesan,
S/o.Muthusamy Padayachi,
U.Sellur Village,
Ulundurpet Taluk.
2. Subramaniam,
S/o.Muthusamy Padayachi,
U.Sellur Village,
Ulundurpet Taluk. ... Appellants/Plaintiffs

/versus/

1. Kaliyaperumal,
S/o.Muthaiah Padayachi,
U.Sellur Village,
Ulundurpet Taluk.
2. Balaraman,
S/o.Muthaiah Padayachi,
U.Sellur Village,
Ulundurpet Taluk. Respondents/Defendants

Prayer: Second Appeal is filed under Section 100 of C.P.C., praying against the judgment and decree of the Learned Principal Subordinate Judge, Villupuram, made in A.S.No.61 of 2007 dated 08.04.2009 reversing the Judgment and decree of the Learned II Additional District Munsif, Ulundurpet, dated 31.01.2006 made in O.S.No.355 of 2004.

For Appellants : Mr.Rajarajan,
for Mr.D.Rajasekar

For Respondents: Dr.A.Thiyagarajan, Senior Counsel
for Mr.S.Ramesh Kumar

JUDGMENT

(The case has been heard through video conference)

Heard the Learned Counsel for the Appellants and Learned Counsel for the respondents.

2. The subject matter of this Second Appeal is, a 4 cent vacant land out of 17 cents in R.S.No.149/8, (New Survey No.149/8A within the 4 specified boundaries in Sellur Village, Ulundurpet Taluk.

3. The Appellants herein filed the suit for declaration of title and permanent injunction in respect of the above suit property.

4. The Trial Court decreed the Suit. On appeal by the defendants, the First Appellate Court set aside the judgement and decree of the Trial Court. Allowed the Appeal and thereby, dismissed the suit. Hence, the present Second Appeal, by the plaintiffs.

5. Case of the plaintiffs/Appellants:

The plaintiffs are sons of Muthusamy Padaiyachi. The suit property was initially held by Chinnathu Padaiyachi and Thonnaiyan @ Koneri Padaiyachi. From them, the great grand father of the plaintiffs, Pichaikara Padaiyachi purchased the suit property under a registered sale deed dated 08/10/1936. The said Pichaikara Padaiyachi took possession of the property and enjoying it, till his lifetime. After the death of Pichaikara Padaiyachi, his only son Alagappa Padaiyachi, succeed the property. After his lifetime, his son Konari Padaiyaachi and then his son Muthusamy inherited the property. Muthusamy Padaiyachi died leaving behind wife, two sons (who are the plaintiffs) and three daughters. After his death, the suit property is jointly enjoyed by them. The old Patta number of the suit property is 242 which stands in the name of Alagappa Padaiyachi and Muthusamy Padaiyachi. The new patta number for the suit property is 365 which stands in the name of the plaintiffs and others. The survey number of the suit property originally was 149/8 and the new Survey Number is S.No.149/8A. The plaintiffs and their forefathers are in continuous possession of the suit property without any encumbrance for several years. The defendants have no right in the suit property. Taking advantage of inclusion of their name in the

recent UDR update, the defendants want to encroach upon the suit property and take possession forcible. Hence, the suit for declaration and permanent injunction.

6. Case of the defendants:

The plaintiffs and his ancestors have no right in the suit property. The plaintiffs father purchased the property adjacent to the suit property. In that sale deed, the southern boundary is not shown as the plaintiff's ancestral property. In the chitta of the year 1919, the name of the defendant's grand father Motchaikottai @ Narayanasamy is mentioned. Later, the land in S.F.149/8A and 149/10B was allotted to the defendants and patta No.365 was issued by the Tashildar, on 31.11.1984. In the said land, the defendants have constructed house and living. Necessary tax has been paid to the Government. The lie and location of the plaintiffs property is not known. The inclusion of plaintiffs name in the patta No.365 is wrong.

7. The Trial Court framed the following issues:

(i). Whether the suit properties had originally belonged to Chinnadhu Padaiyachi and Thonnaiyan Padaiyachi as claimed by the plaintiffs is true or not?

(ii). Whether the sale deed dated 08.10.1936 is true valid and binding or not?

(iii). Whether the plaintiff have become the absolute owners of the suit properties by way of inheritance or not?

(iv). Whether the plaintiffs are in absolute possession and enjoyment of the suit property or not?

(v). Whether the genological particulars given by the plaintiff is correct or not?

(vi). Whether the plaintiff is entitled to the relief of Declaration & Permanent injunction as prayed for or not?

(vii). To what other relief the plaintiff is entitled for or not?

8. After considering the evidence placed before it, the Trial Court answered all the issues in favour of the plaintiffs and decreed the suit.

9. The Appellate Court, taking into consideration of the chitta issued in the year 1919 in favour of Motchaikottai @ Narayananasamy, the ancestor of the defendants and the sale deed of the year 1936 executed in favour of Pichaikara padaiyachi, who is the ancestor of the plaintiffs held that the suit property is jointly in the name of the plaintiffs and defendants, so, the suit for partition alone is maintainable and not exclusive declaration of title in favour of the plaintiffs.

10. This Second Appeal is filed by the plaintiffs/appellants on the ground that, despite, the plaintiffs proving their title through Ex.A-1 and possession through Ex.A.2 to Ex.A.6 the Lower Appellate Court reversed the well considered judgment of the Trial Court overlooking the 70 years old document Ex.A-1. The Lower Appellate Court erred in relying upon Ex.B-1 the certified copy of the sale deed executed jointly by Arumbalammal Ramalingam in favour of Vellaiyan @ Muthusamy, as anterior in time to disbelieve Ex.A-1 the registered sale deed dated 08.10.1936.

11. Heard the counsels for the appellants and the Learned Counsel for the respondents.

12. After comparing Ex.A-1 sale deed of the year 1936 in favour of Pichaikarra Padaiyachi and Ex.B.1 the entry in the chitta extract of the year 1919 in the name of Mochakottai @ Narayananasamy, the Trial Court has held that the plaintiff got better title over the suit property among the plaintiffs and the defendants. Contrarily, the Lower Appellate Court has pointed out that the plaintiff not proved that they are descendents of Pichaikarra Padaiyatchi. The genealogy traced by them is inconsistent and contrary to the records. Hence, reversed the judgement of the trial Court.

13. As per the plaint, Pichaikara Padaiyatchi, purchased 4 cents out of 17 cents in the year 1936 under Ex.A-1. The property passed through his son Alagappa Padaiyachi, grandson Konari Padaiyatchi and great grand son Muthusamy Padaiyachi, who is the father of the plaintiffs. For the said piece of land, the old patta number was 242, the new patta number is 365. Admittedly, the patta is joint patta bearing names of other sharers. The old survey number for the suit property was 149/8, later sub-divided and renumbered as 149/8A. The Trial Court has accepted the genealogy and the boundaries shown in the plaint based on the admission by D.W-1/Kaliyaperumal, in the cross examination.

14. The Lower Appellate Court, on examining the recital of the plaintiffs title document Ex.A-1 and the description of the property purchased by them under Ex.A-1, has found that, the

property purchased is not a vacant site as pleaded in the plaint schedule. It was 4 cent of land with superstructure. In Ex.A.2, the old patta No.242 stands in the name of Alagappa Padaiyachi S/o.Muthusamy Padaiyatchi. Therefore, if the property of Pichaikara Padaiyachi passed to his son Alagappa Padiayachi is true and correct, then, the patta in Ex.A-2 should have been in the name of Alagappa Padaiyachi S/o.Pichaikara Padaiyachi and not in the name of Alagappa Padiayachi S/o.Muthusamy Padaiyachi. In the cross examination, the plaintiff was not able to explain how Ex.A-2 is relevant to the suit property over which, he claims title. He could not say the other co-owners of the 17 cents land covered under new patta 365.

15. Out of six documents relied by the plaintiffs, Ex.A-1 is the title deed and Ex.A-4 to Ex.A-6 are the encumbrance certificates. Ex.A-2 is the patta pass book in the name of Alagappa Padaiyachi S/o. Muthusamy and Ex.A-3 is the proceedings of the Zonal Dy.Tashildar, regarding change of patta. As pointed out by the Lower Appellate Court, Ex.A-2 disproves the case of the plaintiffs that the suit property devolved upon them through their ancestor Pichaikara Padaiyachi.

16. The specific case of the plaintiffs is the suit property is 4 cents of vacant site out of 17 cents. Whereas, under Ex.A-1, 4 cent of land and superstructure is conveyed to Pichaikara Padaiyatchi in the year 1936. Thus, the plaintiffs have failed to identify the lie and location of the suit property through proper documents and evidence.

17. In Ex.A-1, the title document of the year 1936 in the name of Pichaikara S/o. Padaiyachi and the nil encumbrance certificates Ex.A-4 to Ex.A-6 are not adequate to conclude that the plaintiffs are descendants of Pichaikara Padaiyachi and the suit property is in possession of the plaintiff. Contrarily, in the light of Ex.B-1, the title deed. Ex.B-3 and Ex.B-4 Patta. Ex.B-6 to Ex.B-10 and Ex.B-14, House Tax Receipts. Ex.B-2, Ex.B-4, Ex.B-5, and Ex.B-11, the chitta extracts, it is clear that the property in possession of the defendants is not the property of the plaintiffs. Hence, the plaintiffs are not entitled for the relief of declaration of title and injunction over the property of the defendants.

18. For the reasons stated above, the finding and conclusion of the Lower Appellate Court is in accordance to law, evidence and probabilities. Hence, the Second Appeal is dismissed. No order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VI)

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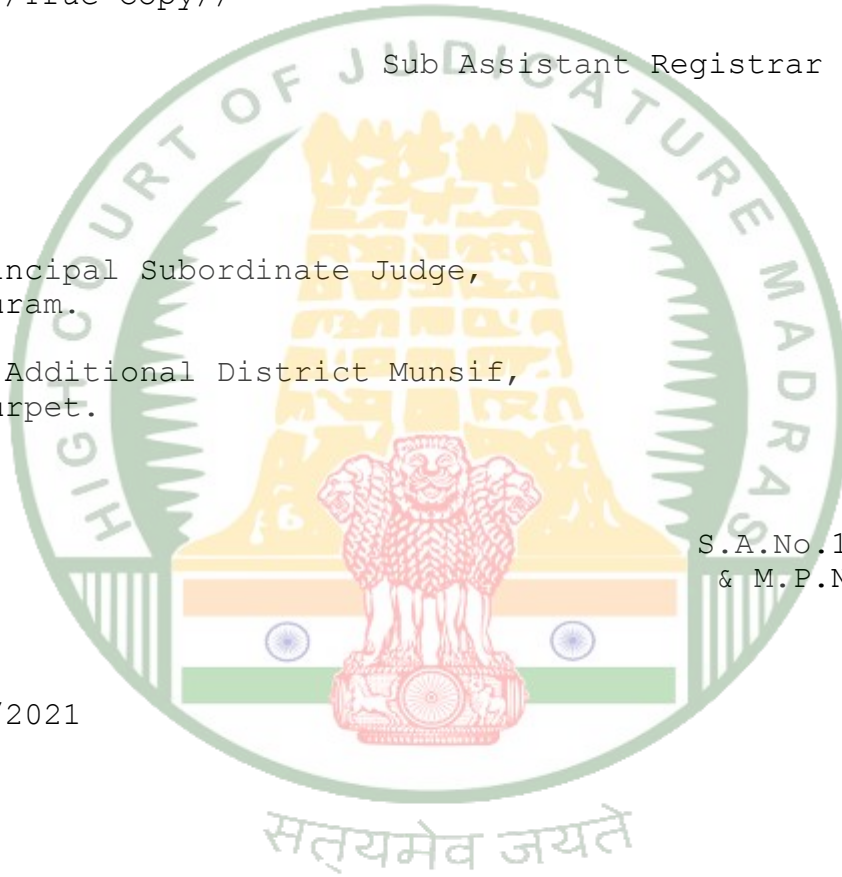
Sub Assistant Registrar

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To:-

1. The Principal Subordinate Judge,
Villupuram.
2. The II Additional District Munsif,
Ulundurpet.

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& M.P.No.1 of 2009

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