



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 24.11.2020

Pronounced on: 03.12.2020

WEB COPY

Coram::

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

S.A.No.1443 of 2010
& M.P.No.1 of 2010

Ramalingam,
S/o.Rajagopal Naidu,
Arangamangalam Village and Post,
(Via) Kurinjipadi,
Cuddalore Taluk,
Cuddalore District.

...Appellant/Appellant/Defendant

/versus/

1. Kalaiselvan, ... 1st Respondent/1st Respondent/ 1st Plaintiff

2. Thayarammal (Died) ...2nd Respondent/2nd Respondent

R2 Died. R1 is recorded as LR of the deceased R2 viz.,
Thayarammal vide order of Court dated 05.10.2020 made in
S.A.No.1443 of 2010 & M.P.No.1 of 2010 as per memo dated
24.09.2020 in USR.No.14088 of 2020 are recorded (Dr.GJJ).

Prayer: Second Appeal is filed under Section 100 of C.P.C,
praying against the judgment and decree of the Learned (Fast
Track Judge II) of Cuddalore, (Additional District Judge) dated
26.07.2010 passed in A.S.No.17 of 2004 dismissing the appeal,
confirming the judgment and decree of the Learned Principal
District Munsif of Cuddalore in O.S.No.651 of 1990 dated
10.12.2002.

For Appellant : Mr.R.Gururaj

For Respondents: Mr.T.S.Baskaran

J U D G M E N T

(The case has been heard through video conference)

The appellant herein is the defendant in the suit
filed for declaration of title and permanent injunction against
him. Against the concurrent findings of the Courts below, the
Second Appeal is filed.



2. The suit property is dry agricultural land to extend of AC 4.02 comprising in S.Nos.433/1, 433/2, 433/3, and 433/4 at Cherakuppam Village, Cuddalore Taluk.

3. The case of the plaintiffs:

WEB COPY The suit property originally belonged to one Govindappa Naidu. He died in the year 1950 leaving behind his two sons Jayarama Naidu and Ramanuja Naidu. In the year 1954, Jayarama Naidu and Ramanuja Naidu divided among themselves. Except AC.3.42 comprising in S.Nos.433/1, 433/2 and 433/4 all other properties left behind by their father. Till 1988, this property was jointly enjoyed by Jayarama Naidu and the sons of Ramanuja Naidu. On 13.01.1988, Rajendran and Dayalan who are the sons of Ramanuja Naidu sold their share measuring AC 1.72 to Kalaiselvan S/o. Jayarama Naidu. Thus, Jayarama Naidu (first plaintiff) and his son Kalaiselvan (second plaintiff) become the absolute owner of the entire suit property and in possession of it. The patta stands in their name and they are regularly paying the Kist. While so, the defendant, without any right, threaten to trespass into the suit land and attempt to dispossess the plaintiffs.

4. The case of the defendant:

The plaint averments are false and suffers suppression of facts. The suit property is the ancestral property jointly inherited by Govindappa Naidu and his brother Rajagopal Naidu. In the partition between them, Govindappa Naidu was allotted the western half and Rajagopal Naidu was allotted the eastern half. Rajagopal Naidu had two wives. Through his first wife Ellammal, he had two sons (Devaraj and Ramalingam) and one daughter (Thirumalai). Through his second wife Kuppammal, he had one son by name Baktavatsalam. The defendant is one of the sons of Rajagopal Naidu born to his first wife. In the oral partition between the brothers, the suit property came to the share of the defendant. Since then, the defendant is in continuous possession and uninterrupted enjoyment open and adverse to the plaintiffs. The patta for the property is given jointly in the name of Ramanuja Naidu s/o Govindappa Naidu and the defendant Ramalingam s/o Rajagopal Naidu.

5. The defendant's step brother Baktavatsalam filed O.S.No.126 of 1984 for partition against this defendant, first plaintiff and other family members. In that suit, taking advantage of the defendant's ignorance, the first plaintiff contested the case on his behalf. As tutored by the plaintiff, he deposed in that case disowning right in the present suit property, which were items Nos.3 to 6 in the earlier suit. The admissions born out of ignorance and mistake at the most may create an estoppel to the defendant but it cannot convey title to the plaintiff. The first plaintiff played fraud and cheated the defendant. The findings in the earlier suit is not binding.



It will not constitute res judicata especially when a fraud has been played.

6. The Trial Court framed as many as five issues. P.W-1 and D.W-1 to D.W-3 were examined. 32 Exhibits on the side of the plaintiffs and 35 Exhibits on the side of defendant marked. The photocopy of the petitions filed in this suit were marked as Ex.C-1 to Ex.C-3.

7. The Finding of the Trial court and the Appellate Court:-

The Trial Court, taking note of the fact that, in respect of the suit property and other properties jointly held by Govindappa Naidu and Rajagopal Naidu, partition suit O.S.No.126 of 1984 was filed by Baktavatsalam against the other siblings. In that suit, the first plaintiff and the defendant were arrayed as co-defendants. In that suit, the defendant had deposed before the Court that the present suit properties have been allotted to the branch of Govindappa Naidu during the partition between the family members held in the year 1954. He and his step brother Baktavatsalam, who are the members of Rajagopal Naidu branch have no right in it. The Trial Court referring the judgment in O.S.No.126 of 1984 marked as Ex.A-17 in extenso, decreed the suit as prayed.

8. The First Appeal filed against the decree passed by the Trial Court. The First Appellate Court, after framing the points for determination, re-appreciated the evidence and dismissed the appeal. The contention of the appellate that the plaintiff suppressed about the earlier suit O.S.No.126 of 1984 in the plaint and fraud played on the defendant while joining him to contest the earlier suit O.S.No.126 of 1984 were rejected by the First Appellate Court as no truth in it. The attack on the conduct of the plaintiff that after dismissal of this suit for default filed petition to restore the same after 3 years and meanwhile filed another bare injunction suit. O.S.No.144 of 1995 by playing fraud on the Court also rejected by the Court.

9. Aggrieved by the above findings of the Courts below, the Second Appeal is filed on the ground that the Courts below not properly appreciated the oral and documentary evidence. The judgment is against law, weight of evidence and the probabilities. The sale deed Ex.A-32 in respect of 1 acre 72 cents dated 13.01.1988 executed by the sons of Ramanuja Naidu got registered after the institution of the suit. Therefore, on the date of filing the suit, the plaintiff had no title over the property. The plaintiff allowed this suit to be dismissed for default and filed another suit O.S.No.144 of 2015 for injunction and got interim injunction. After restoration of this suit, allowed the subsequent suit to be dismissed for default. This conduct of the plaintiff committing fraud on the Court not taken note by the Courts below. In spite of several judgments cited as precedent non suiting the parties playing fraud on the Court,



the Courts below ignored those judgements.

10. The following judgments were cited in support of his submissions:-

1. S.S.Sandhu and others -vs- M/s.Fertilizer Corporation of India Ltd reported in AIR 1974 SC 1967.
2. State of Tamil Nadu etc., -vs- Sitalakshmi Mills etc., reported in AIR 1974 SC 1505.
3. M.M.Quasim -vs- Manohar Lal Sharma and others reported in AIR 1981 SC 1113.
4. Yeshwant Deorao -vs- Ramchand reported in AIR (38) 1951 SC 16.
5. Vinay Krishna -vs- Keshav Chandra and another reported in AIR 1993 SC 957.
6. Ambika Prasad Thakur and others etc., -vs- Ram Ekbal Rai (dead) by his legal representatives and others reported in AIR 1966 SC 605.

11. The Learned Counsel for the respondent submitted that, there is no fraud or misrepresentation on the part of the respondent. In the plaint, the judgment copy in O.S.No.126 of 1984 (Sub-Court at Cuddalore) was shown as one of the documents relied. The appellant, in the written statement admitting the fact about the partition suit O.S.No.126 of 1984 filed by his step brother Baktavatsalam and the decree passed in that suit, contrary to his pleading and deposition in that suit, had taken a peculiar plea that, he was misled by the respondent and was cheated. The said defence was held by the Courts below as not true and invented for the present suit. It is the appellant, who in fact attempted to play fraud on the Court by pleading innocence. The suit schedule property was allotted to the Govindappa Naidu in the partition between Govindappa Naidu and Rajagopal Naidu. The appellant being a party in the earlier proceedings, the judgment Ex.A-17 binds him.

12. After the demise of Govindappa Naidu, the respondent along with the legal heirs of his brother Ramanuja Naidu were enjoying the suit property. In the year 1988 under Ex.A-32, the legal heirs of Ramanuja Naidu sold away their half share to the 2nd plaintiff and thus, the respondents became the absolute owner of the entire property. The sale deed when presented for registration on 13.01.1988 it was impounded for deficit stamp duty and same got released after filing the suit. This fact disclosed in the plaint paragraph-IV. Therefore, the Second Appeal filed on flimsy grounds deserve to be dismissed.



13. The Learned Counsel for the appellant would point out that joint patta was issued for the suit property in the name of Ramanujam Naidu and Ramalingam Naidu. Ex.B.1, Ex.B.2 and Ex.B.3 proves the share of the defendant in the suit property. Though the plaintiffs claims that the patta was issued in his name, they did not file the patta passbook, fearing the truth will come to light. Therefore, for withholding the best evidence available, adverse inference should be drawn against them.

14. On scrutiny Ex.B.1 & Ex.B.3, we find that in Ex.B.1 patta passbook No.310, there are 9 items of property which includes 4 suit items. There is no indication which are the properties owned by Ramanujam and which are properties owned by Ramalingam. Similarly, on scrutinising Ex.B.3 of the year 1974, the Patta No.807 issued for the suit properties and five other properties, it is in the name of Ramalingam Naidu and others. This document was marked during the cross examination of P.W.1. Therefore, having marked the patta for the suit property and the document has come before the Court for scrutiny, there is no ground for drawing adverse inference against the plaintiff. Ex.B.3 is joint patta for 9 items, it does not indicate either the names of the other pattadars or the extent of land each pattadar hold in the respective items.

15. The Learned Counsel for the appellant relying upon the judgment of the Hon'ble Supreme Court rendered in Ram Saran Lall and others -vs- Mst. Domini Kuer and others reported in AIR 1961 SC 1747, argued that, the document is complete only when it is registered and entered in the index. Maintained at Registrar Office and therefore, on the date of filing the suit, the plaintiff had no title whatsoever in respect of AC 1.72 conveyed under Ex.A.32. This submission does not carry any merit since in the plaint itself, the date of presentation of the document for registration and pendency of that document before Sub Collector being stated. The law, on this point is that, once a document got registered, the validity is from the date of execution and not from the date of registration. Likewise, he cannot attribute any motive or fraud just because, the suit was dismissed for default. If at all there was any grievance for the appellant on this score, he should have challenge the order of condoning the delay and restoration, it is too late for the appellant to agitate that issue.

16. The appellant in the earlier suit O.S.No.126 of 1984 had mounted the witness box and on oath, admitted the title of the respondent herein. He cannot leisurely turn around topsy turvy and plead in the subsequent suit contrary to the earlier admission. If the appellant now wants to say that in the earlier proceedings, he has falsely deposed to cheat his step brother then, he has to carry the cross for his sin. He cannot stake his right in the suit property, which he has explicitly



disowned in the earlier proceedings. Court cannot fall pray to the cock and bull story of the unscrupulous litigant, who accepted the partition of the year 1959 in one proceedings, when it suited him and subsequently deny the partition, when it does not suit him.

17. The Learned Counsel referring the judgment of the Hon'ble Supreme Court in Immani Appa Rao and others Vs. Gollapalli Ramalingamurthi and others reported in AIR 1962 SC 370, wherein, while dealing with legal maxim namely "ex dolo malo non oritur action or ex turpi causa non oritur actio" (Literal Meaning:- "A right of action cannot arise out of fraud" or "No action arises from an immoral cause or base consideration.") had contended that, when each party is equally in fraud the law favours him who is actually in possession. The fallacy in the said submission of the Learned Counsel is that, first of all, the first plaintiff had not committed any fraud. He has taken the consistent stand in both the suits that there was partition between the Govindappa Naidu and Rajagopal Naidu. The suit property fell into the hands of Govindappa Naidu. On his demise, the legal heirs of Govindappa Naidu are in possession and enjoyment of the property. The appellant has concurred this and supported the above contention in the earlier suit.

18. In the present suit, he wants to turn saint and accuse his Advocate Clerk, and his co-defendant in the earlier suit to get rid of his admission on oath. It was the appellant, who try to play fraud. Either his support to the plaintiff herein in the earlier suit to defeat the interest of his step brother must be a fraud or the present plea must be a fraud. The person, who admits fraud as to suffer the fraud. The Court cannot come to a rescue of a fraudsters. The Kist receipt for intermittent period referring the joint patta number is not a proof for possession of the suit properties. The Courts below has rightly held against the appellant and this Court has no hesitation for confirming the same.

19. In the result, the Second Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

bsm



To:

1.The Principal District Munsif,
Cuddalore.

2.The Fast Track Judge-II,
Additional District Judge,
Cuddalore.

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

+2cc to Mr.R.Gururaj, Advocate, S.R.No. 39182

+1cc to Mr.T.S.Baskar, Advocate, S.R.No. 38850

S.A.No.1443 of 2010
& M.P.No.1 of 2010

CNR(CO)
GN(18/08/2021)