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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.02.2021

PRONOUNCED ON : 09.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

S.A.No.403 of 2001

1.Govindarajan (Deceased)
2.Valliammal
3.Rukmani
4.Visalatchi
5.Irusayee
6.Shanthi
7.Kalabharathi
8.Radha
9.Chandramouli ... Appellants/Respondents/Plaintiffs 2 to 5

.. Vs ..

1.Angappan (Deceased)
2.Muthusamy
3.Palaniammal
4.Palanisamy
5.Rajalakshmi
6.Palaniammal
7.Ayyammal
8.Guruvayee
9.Saminathan
10.Poochi @ Bhoopathi
11.Pushpa ... Respondents/Appellants/Defendants 2 to 6

[R2, R3, R6 dismissed as abated vide order dated 06.03.2020]

[Appellants 5 to 9 brought on record as legal representatives of the deceased first appellant and R6 to R11 brought on record as legal representative of the deceased first respondent vide order of this Court dated 11.12.2014 made in CMP.No.10083 of 2001 and CMP.Nos.1016 to 1018 of 2013 in S.A.No.403 of 2001]

PRAYER: Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 08.04.1999 made in A.S.No.114 of 1998, on the file of the Sub Court, Bhavani, reversing the judgment and decree dated 07.04.1998 made in O.S.No.374 of 1994, on the file of the Additional District Munsif Court, Bhavani.



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For Appellants : Mrs.Zeenath Begam
For R1, 4 & 5 : Mrs.J.Prithivi
for Mr.S.Kaithamalai Kumaran
For R2, 3 & 6 : dismissed as abated
For R7 to R11 : No appearance

JUDGMENT

(The case has been heard through video conference)
The plaintiffs in the suit in O.S.No.374 of 1994 are the appellants herein.

2.The grand father of the plaintiffs and the grand father of the defendants 1 and 2 are the brothers. In other words, the plaintiffs party and the defendants party are pangalis. For the sake of convenience, parties are referred to as per the ranking before the Trial Court.

3.The brief facts of the case are as follows:

(i)The plaintiffs have filed a suit in O.S.No.374 of 1994, before the learned Additional Munsif Court, Bhavani, for the grant of permanent injunction to restrain the respondents/defendants from interfering with the peaceful possession and enjoyment of the suit property.

(ii)The plaint proceeds on the basis that the suit property exclusively belongs to the plaintiffs and the respondents/defendants herein who owns property in the East of the schedule property attempted to encroach upon the suit property necessitating to file the suit.

(iii)In the written statement, inter alia contend that as per the revenue records, the suit property is standing in the name of the several persons in the absence of partition and demarcation of specific extent the suit framed as such is not maintainable.

(iv)Before the Trial Court, on behalf of the plaintiffs one Govindaraj was examined as PW1 and marked Exs.A1 & A2, the second defendant/deceased viz., Angappan was examined as DW1 and marked Exs.D1, D2 & D3.

(v)The Trial Court has decreed the suit based upon the admission made in Ex.A1/Release deed, wherein, the respondents have accepted the suit property was lying on the Western side of their property.



(vi) Aggrieved against the said decree and judgment, the defendants have preferred an appeal in A.S.No.114 of 1998, before the Sub Court, Bhavani and the said appeal was allowed on the ground that since, the suit property was under joint patta and in the absence of any demarcation between joint-pattadar, there cannot be an injunction in respect of specific extent with specific boundaries thereto and hence, the second appeal.

4. The above second appeal was admitted on the following substantial question of law:

1. Whether the finding of the trial Court that the plaintiff was not in possession of the property is vitiated by perversity?

5. Heard the learned counsel for the appellants on the substantial question of law and the learned counsel for the respondents reported no instructions.

6. As stated supra, the plaintiffs and the defendants are Pungalies, i.e., the respective grand-fathers are the brothers. The plaintiffs seeking the relief of injunction for a specified extent as mentioned in the schedule of the property. The main reliance is placed upon Ex.A1/release deed said to have been executed by the deceased in favour of their brothers namely the defendants herein wherein one of the boundary is shown as property of the plaintiffs herein.

7. Per contra, the case of the respondents/defendants is that the suit property is a smaller portion of the large extent, wherein a joint patta was granted to all the persons and relied upon Ex.B1, B2, B3, viz., copy of Chitta, copy of Adangal, copy of registration on land survey. The factum that the suit property is a part of a larger extent for which a joint patta has been granted would not be disputed in view of Ex.B3.

8. The Lower Appellate Court, on consideration of oral and documentary evidence, has rendered a categorical finding that in respect of the suit property, there is no separate patta neither in the name of the plaintiffs nor in the name of the plaintiffs' father and this factual possession is not disputed. Under Ex.A1, the sister of the defendants had executed a released deed in respect of 20 cents. In the said released deed, the boundaries of West, North and East are referred to Sankara Gounder. No doubt, the defendants' sister had executed Ex.A1/release deed but however, that does not confer exclusive possession or title in respect of the plaintiffs. As the plaintiff is not a party to the said document, the Ex.A1 - can be only treated as document, not inter party and hence, the same cannot advance the case of the



9. Admittedly, on a perusal of Exs.B1, B2 & B3, goes to show that it is a joint patta and it is in their joint enjoyment and the entire survey number has not been subdivided and hence, in respect of a specific portion in the undivided survey number, injunction cannot be granted. Though, DW2 has accepted that the Samadi of the plaintiffs' grand mother is situated in suit property. However, the same cannot advance the case of the plaintiffs that they are using the property exclusively, since both the plaintiffs and the defendants are belongs to same clan. In the absence of any plea that there was oral partition among the plaintiffs and joint pattadar in survey No.955/1 which is measuring to an extent of 72 cents, there cannot be any injunction in respect of specified extent with boundaries to an extent of 13 cents. The similar finding rendered by the Lower Appellate Court cannot held to be erroneous.

10. Further, it remains to be stated that the admission of DW1 that the respective parties are cultivating the land and enjoying the property cannot be a ground to grant a decree in favour of the plaintiffs and hence, the prayer for injunction in respect of specified extent with specified boundary cannot be granted. Hence, this Court does not find any error in the judgment rendered by the Lower Appellate Court and the substantial question of law is answered in negative against the appellants.

11. Accordingly, the Second Appeal is devoid of merits and it is dismissed. No costs.

Sd/-
Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

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To

1. The Sub Judge, Bhavani.

2. The Additional District Munsif Court,
Bhavani.

Copy To

The Section Officer,
VR Section, High Court, Madras.

S.A.No.403 of 2001

PA(CO)

CMY(24/09/2021)