



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.02.2021

PRONOUNCED ON : 05.03.2021

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CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.877 of 2008

and

C.M.P.No.1789 of 2021

1. Rangasamy,
S/o, Perumal Gounder,
Rodupalayam,
Thandarampet village,
Chengam Taluk,
Thiruvannamalai District.
2. Mani,
S/o, Perumal Gounder,
Thullukuttipalayam,
Kizhvanakkambadi village,
Chengam Taluk,
Thiruvannamalai District.
3. Chinnaraja (died)
S/o, Perumal Gounder,
Thullukuttipalayam,
Kizhvanakkambadi village,
Chengam Taluk,
Thiruvannamalai District.

[3rd appellant died.

1st appellant is recorded as LR of the deceased
Viz., Chinnaraj, vide order of Court dated
20.03.2019 made in S.A.No.877 of 2008,
as per memo dated 20.03.2019 is recorded].

... Appellants/Defendants

Vs.

1. Kamalanathan, (Died),
S/o, Bethu Reddiar,
Rodupalayam,
Thandarampet Village,
Chengam Taluk,
Thiruvannamalai District,



2. Kumuthamani,
W/o, Kamalanathan

3. K.Sivaperumal,
S/o, Kamalanathan

4. K.Thamilselvan,
S/o, Kamalanathan
R2 to R4 are residing at
Road Palayam Village,
Thandrampet Post,
Chengam Taluk,
Tiruvannamalai.

... Respondents/LRs of the Plaintiff
[R2 to R4 are brought on record
as Lrs of the deceased sole respondent
vide order of Court dated 24.02.2014
made in MP.Nos.1 to 3 of 2013 in
S.A.No.877 of 2008]

Prayer:Second Appeal filed under Section 100 of C.P.C., against
the judgment and decree dated 09.08.2006 made in A.S.No.59 of
2005 on the file of the Court of the Principal Subordinate
Judge, Thiruvannamalai, confirming the judgment and decree dated
26.04.2005 made in O.S.No.82 of 1999 on the file of the Court of
the Additional District Munsif, Chengam.

For Appellants : Mr.T.M.Naveen

for M/s. D.Kamatchi

For Respondents : Mr.P.Mani

J U D G M E N T

Challenge in this second appeal is made to the judgment and
decree dated 09.08.2006 passed in A.S.No.59 of 2005 on the file
of the Principal Subordinate Court, Thiruvannamalai, confirming
the judgment and decree dated 26.04.2005 passed in O.S.No.82 of
1999 on the file of the Additional District Munsif Court,
Chengam.

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

3. The defendants in O.S.No.82 of 1999 are the appellants in
this second appeal.

4. Suit for declaration and permanent injunction.

5. In this matter, only notice of admission has been ordered
and the second appeal has not been admitted.



6. Briefly stated the case of the plaintiff is that the suit property is the self acquired property of one Venkatasami Reddiar and the plaintiff had purchased the same from him by way of a sale deed dated 22.11.1985 and since then it is only the plaintiff who has been in the possession and enjoyment of the suit property by obtaining patta, paying Kists etc., and the defendants without any manner of right, title or interest over the suit property, endeavored to disturb his possession and enjoyment of the suit property. Hence the suit has come to be laid by the plaintiff for appropriate relief.

7. The defendants resisted the plaintiff's suit and after denying the claim of the plaintiff's title, possession and enjoyment of the suit property as putforth in the plaint, has putforth the case that the suit property and other properties are the joint family properties of the defendants and their father by way of a partition deed dated 20.09.1981. The suit property had been allotted to the share of the first defendant and since then it is only the first defendant who has been in the enjoyment of the suit property by obtaining patta, paying Kists etc., Therefore, according to the defendants, the plaintiff has no cause of action to lay the suit and the suit is liable to be dismissed.

8. In support of the plaintiff's case, P.Ws.1 to 4 were examined. Exs.A1 to A19 were marked. On the side of the defendants, D.Ws.1 and 2 were examined. Exs.B1 to B6 were marked. Exs.C1 and C2 were also marked.

9. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the Courts below were pleased to decree the suit in favour of the plaintiff as prayed for. Impugning the same, the second appeal has been preferred by the defendants.

10. From the pleas and materials placed on record and the submissions putforth by the respective parties, it is found that the plaintiff claims title to the suit property by way of the sale deed dated 22.11.1985 marked as Ex.A1 and the plaintiff's vendor one Venkatasami Reddiar claims title to the suit property by way of an assignment. It is seen that the suit has been originally laid by the plaintiff declaring that the suit property lies in S.No.60/1A consisting of 48 cents within specific boundaries as recited in Ex.A1. Pending suit, after the Advocate Commissioner had inspected the suit property with the help of the surveyor, who noted that the survey number has been wrongly mentioned/furnished and hence the plaintiff has preferred the petition to amend the plaint for altering the said suit survey number from 60/1A to 60/1B and the same had been



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entertained. As against the said order, no further challenge has been made by the defendants before the higher forum. Therefore, it is seen that the plaintiff claims title to the suit property consisting of 48 cents in S.No.60/1B within the specific boundaries. As rightly held by the Courts below, considering the revenue documents projected in the matter, marked as Exs.A11 to 19, it is seen from Ex.A11 proceedings, the plaintiff's vendor Venkatasami Reddiar had been assigned 62 cents out of 86 cents in S.No.60/1 and the remaining extent in S.No.60/1 has been marked as "Tharisu". Subsequently, it is seen that the S.No.60/1 had been subdivided as 60/1A and 60/1B. As concluded by the Courts below, the Courts below on a perusal of Ex.A12, it is seen that only S.No.60/1B had been assigned in favour of the plaintiff's vendor. The plaintiff has furnished the correct boundaries and extents both in the sale deed marked as Ex.A1 as well as in the plaint, however, in the patta granted to the plaintiff marked as Ex.A2, the survey number is shown as 60/1A measuring 48 cents and the same is also reflected in Ex.A5 patta pass book and the chitta extract marked by the plaintiff. Considering the field maps projected in the matter, it is noted that the S.No.60/1 had been subdivided as S.No.60/1A and S.No.60/1B, but as per the Commissioner's report, the S.No.60/1A has been given a new survey number as 60/1 and 60/1B has been given new survey number 60/3.

11. The defendants would claim title to the extent of 38 cents lying in S.No.60/1B by way of a partition deed marked as Ex.B1. Therefore, at the foremost, the defendants do not claim title to the extent of 48 cents by way of Ex.B1 partition deed. Therefore, as concluded by the Courts below, the extent of land over which the plaintiff and the defendants claim title vary. The plaintiff claims title to the extent of 48 cents whereas, the defendants claim title to the extent of 38 cents. From the patta projected by the defendants marked as Ex.B2, particularly, the sketch found therein, as held by the Courts below, S.No.60/1B does not find a place therein and therefore, Ex.B1 is found to have been issued only in respect of S.No.60/1A presently S.No.60/1. Further, it is seen that on the south of S.No.60/1, S.No.60/1B / S.No.60/3 is shown lying. Therefore, even as per Ex.B2, it is evident that the defendants have no right over the property comprised in S.No.60/1B ie., S.No.60/3. Despite the abovesaid position, it is found that the revenue authorities without considering the materials available on record in the proper perspective had carelessly issued the patta in favour of two persons for the same property ie., in favour of the plaintiff and in favour of the first defendant. However, considering the factual matrix, when it is noted that the defendants have not placed any material to show that their family had lawfully acquired the property comprised in S.No.60/1B/S.No.60/3 and when the materials available on record



go to show that the northern portion of the suit property remains as "Kallankuthu" which could also be gathered from the Commissioner's report and plan and therefore it is evident that the plaintiff's vendor would have been assigned only the property lying to the south of Kallankuthu portion ie., S.No.60/1B and taking advantage of the mistakes committed by the revenue authorities while granting patta, the defendants are found to have been wrongly claiming title to the suit property based on Ex.B1 partition deed and Ex.B2 patta. However, as rightly held by the Courts below, considering the materials available on record in the proper perspective, when it has been established that the plaintiff has established both his claim of title and his vendor's claim of title to the suit property measuring an extent of 48 cents in S.No.61/1B / S.No.60/3 and the defendants having failed to establish their claim of title, possession and enjoyment of the suit property as put forth by them, particularly, the defendants having not established their predecessors' title and right over the suit property in any manner, all put together, the Courts below were pleased to decree the suit in favour of the plaintiff as prayed for and I do not find any valid reason warranting interference with the reasonings and conclusions of the Courts below for upholding the plaintiff's case which are found to be proper and on a correct appreciation of the materials placed on record, both oral and documentary and when they are not shown to be in any manner perverse, illogical and irrational, they are to be upheld. No substantial question of law is involved in this second appeal.

12. In such view of the matter, the petition preferred by the appellants for the reception of additional evidence is not taken up for consideration, particularly when the second appeal has not been admitted. Hence the petition is closed.

13. In conclusion, the judgment and decree dated 09.08.2006 passed in A.S.No.59 of 2005 on the file of the Principal Subordinate Court, Thiruvannamalai, confirming the judgment and decree dated 26.04.2005 passed in O.S.No.82 of 1999 on the file of the Additional District Munsif Court, Chengam are confirmed. Resultantly, the second appeal is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CS-V)

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Sub Assistant Registrar



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To

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1.The Principal Subordinate Judge,
Principal Subordinate Court,
Thiruvannamalai.

2.The Additional District Munsif,
Additional District Munsif Court,
Chengam.

+1cc to Mrs.D.Kamatchi, Advocate, S.R.No.14001

+1cc to Mr.P.Mani, Advocate, S.R.No.14455

S.A.No.877 of 2008
and

C.M.P.No.1789 of 2021

PA(CO)
CB(21/09/2021)