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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 11.08.2021

CORAM

THE HONOURABLE Ms. JUSTICE P.T.ASHA

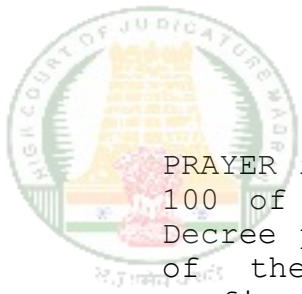
S.A.Nos.576 & 577 of 2021 &
CMP.Nos.12302 & 12303 of 2021 in
S.A.Nos.576 & 577 respectively

S.A.No.576 of 2021

1. Muthusamy
2. Balasubramani .. Appellants/Appellant/
Defendants in Trial Court
Vs.
1. Palaniammal
2. Kala ... Respondents/Respondents/
Plaintiffs in Trial Court

S.A.No.577 of 2021

Balasubramani .. Appellant/Appellant/
Plaintiff in Trial Court
Vs.
1. Palaniammal
2. Kala
3. The Government of Tamil Nadu
Represented by the District Collector,
Salem, Salem District.
4. The Revenue Divisional Officer,
Mettur Taluk,
Salem District.
5. The Tahsildar,
Mettur Taluk Office,
Mettur Dam - 1
Salem District.
6. The Village Administrative Officer,
Alamarathupatty Village,
Chithrapattypudur,
Kolathur Post,
Mettur Taluk,
Salem District. ... Respondents/Respondents/
Defendants in Trial Court



PRAYER in S.A.No.576 of 2021: Second Appeal filed under section 100 of the Civil Procedure Code against the Judgement and Decree passed in A.S.No.98 of 2019 dated 30.07.2020 on the file of the Additional District (Fast Track) Court, Mettur, confirming the judgment and decree passed in O.S.No.47 of 2013 dated 13.08.2019 on the file of the Subordinate Court, Mettur.

PRAYER in S.A.No.577 of 2021: Second Appeal filed under section 100 of the Civil Procedure Code against the Judgement and Decree passed in A.S.No.97 of 2019 dated 30.07.2020 on the file of the Additional District (Fast Track) Court, Mettur, confirming the judgment and decree passed in O.S.No.164 of 2012 dated 13.08.2019 on the file of the Subordinate Court, Mettur.

For Appellant : Mr.A.Sundaravadhanan

COMMON JUDGMENT

S.A.No.577 of 2021 is filed by the plaintiff in O.S.No.164 of 2012 on the file of the Subordinate Court, Mettur, whose suit was dismissed and the appeal filed thereon in A.S.No.97 of 2019 on the file of Additional District (Fast Track Court) Court, Mettur had also ended in dismissal. S.A.No.576 of 2021 is filed by the appellant in S.A.No.577 of 2021 and one Muthusamy, who were defendants in the suit in O.S.No.47 of 2013 on the file of the Subordinate Court, Mettur wherein the suit against them was decreed and the same had been challenged by them in A.S.No.98 of 2019 on the file of the Additional District (Fast Track Court), Mettur. The appeal had also ended against the Appellants herein.

2. The facts in brief are as follows:

The appellant in S.A.No.577 of 2021 had filed the suit in O.S.No.164 of 2012 for declaring his title to the suit property and for a consequential injunction restraining the defendants from interfering or trespassing into the suit property. An amendment was thereafter permitted in and by which the plaintiff also asked for the relief of declaration that the order of the fourth respondent dated 04.02.2013 was null and void. The case in brief of the plaintiff is that the property measuring 9.23 acres which is situated in old S.No.459 of Alamarathupatti Village fell to the share of his grandmother Chinnammal in a family partition dated 20.04.1964. This property was described as the 'A' Schedule therein. The plaintiff's grandmother had died 40 years ago leaving behind her surviving her son Muthusamy, the first appellant in S.A.No.576 of 2021 and Kuttiyappan and Palanichamy.



3. On her death, her three sons had divided the properties among themselves. An extent of 5.99 acres in S.No.1007/1, 1007/2 and 1007/3 was allotted to the share of plaintiff's father. The remaining extent was allotted to Kuttiyappan and Palanichamy was given the cash of his mother. The revenue records were thereafter mutated in the respective names. The plaintiff's father, Muthusamy gifted the suit property to the plaintiff under a registered settlement deed dated 19.12.2003 and the plaintiff had taken possession thereon.

4. The first defendant Palani Ammal was the wife of the Palanisamy, brother of the Muthusamy and the plaintiff's paternal uncle. The second defendant is the daughter of the first defendant and Palanisamy. Palanisamy had passed away three years prior to the filing of the suit. On 12.10.2012, the defendant had attempted to trespass into the suit property claiming a right and title over the same. The plaintiff was able to successfully prevent this. The defendant's were also moving to have the revenue records changed. In view of the above, the plaintiff had come forward with the suit in question.

5. The first defendant had filed a written statement inter alia contending that in the partition, after the death of Chinammal, her property was divided into four schedules and 'A' schedule fell to the share of Chinammal, 'B' schedule to Muthusamy (First Appellant in S.A.No.576 of 2021), 'C' schedule will go to Kuttiappan and 'D' schedule was allotted to the husband of the first defendant viz., Palanisamy. After the death of Chinammal, her estate was divided equally amongst the brothers.

6. Since the defendant's husband Palanisamy had fallen ill, he had trusted his brother Muthusamy with the property. In fact, Muthusamy had requested the husband of the first defendant to give him the lands so as to enable them to cultivate the same. The said Palanisamy had also acceded to his request. Without the knowledge of Palanisamy, Muthusamy has clandestinely got the property and transferred in his name. Thereafter, Palanisamy passed away in 2010 and when the defendants 1 and 2 had approached Muthusamy for handing over possession, he had given out that the property belongs absolutely to him and that patta had also been transferred in his name. The defendants thereafter preferred an appeal before the Revenue Divisional Officer. After enquiry, the patta granted to Muthusamy. The defendant would also submit that they have also filed O.S.No.47 of 2013 to declare the settlement deed in favour of the plaintiff as null and void. This suit is the subject matter of the other Second Appeal, S.A.No.576 of 2021.

7. The fifth defendant, viz., Tahsildar had filed a written



statement which was adopted by the Government officials stating that the fourth defendant had passed an order only after an enquiry and that the fourth defendant had ample powers to decide the appeal filed by defendants 1 and 2. The plaintiff had not made out any case against them and therefore, the suit is liable to be dismissed. The fifth defendant would also submit that as regards the suit in O.S.No.47 of 2013, for declaring the plaintiffs' title over the suit properties, declaring the settlement deed dated 19.12.2003 as null and void and directing the defendants 1 and 2 to deliver the possession of the suit properties to the plaintiff and consequential reliefs, the suit is pending and that there is no cause of action for filing their suit. Defendants 1 and 2 who had filed O.S.No.47 of 2013 had reiterated the contents of the written statement in O.S.No.164 of 2012 and likewise, the plaintiff and his father Muthusamy had reiterated the contentions of the plaint in O.S.No.164 of 2012 as the written statement in the suit O.S.No.47 of 2013.

8. Before the learned Subordinate Judge, Mettur, the evidence was recorded in suit O.S.No.64 of 2012. The plaintiff had examined himself as PW1 and marked Exs.A1 to A11. On the side of the defendants, the first defendant had examined herself as DW1 and one Mahendran as DW2. On the side of the revenue officials, the Village Administrative Officer was examined as DW3. Exs.B1 to B18 were marked on their side.

9. On a perusal of the evidence on record, the learned trial Judge had dismissed the suit filed by the plaintiff and decreed the suit filed by defendants 1 and 2. Aggrieved by the same, the plaintiff in O.S.No.164 of 2012 had filed an appeal in A.S.No.97 of 2019 on the file of the Additional District [Fast Track Court] Mettur and against the judgment and decree in O.S.No.47 of 2013 he and Muthusamy had filed A.S.No.98 of 2019. The appellate Court had drawn out elaborate points for consideration which is extracted herein below.

"1. Whether the appellant in A.S.No.97/2019 has proved his entitlement to have a decree of declaration of title in respect of the suit properties?

2. Whether appellant No.1 in A.S.No.98/2019 is competent to execute Ex.A.4 settlement deed in favour of the 2nd appellant?

3. Whether the 4th respondent in A.S.No.98/2019 had acted within this jurisdiction as contemplated in Tamil Nadu Patta Pass Book Act, 1983?



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4. Whether the order passed by the 4th respondent in A.S.No.98/2019 is barred by time?

5. Whether the claim of respondents 1 and 2 in A.S.No.97/2019 and A.S.No.98/2019 barred by limitation in view of Ex.A.4?

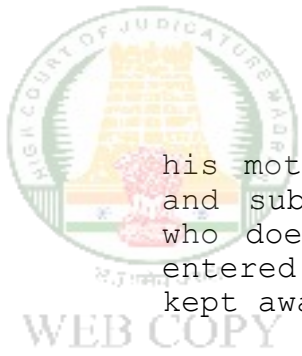
6. Whether the trial court is right in allowing the suit in O.S.No.47/2013 and in dismissal of O.S.No.164/2012?

7. What relief the appellants are entitled to?"

10. The learned Judge on considering the evidence both oral and documentary, confirmed the judgment and decree passed by the trial Court and dismissed the appeals filed by the plaintiff and Muthusamy. It is challenging these judgment and decree, the appellant is before this Court.

11. Mr.Sundaravadhanan, learned counsel appearing on behalf of the plaintiffs in O.S.No.164 of 2012 and defendants 1 and 2 in O.S.No.47 of 2013 would contend that the oral partition had been given effect to and it is for this reason that the patta had been issued to the plaintiff's father. Muthusamy, the second defendant in O.S.No.47 of 2013 in the year 1989 itself and they have been in possession of the same. The fourth respondent without following the due process of law of holding an enquiry, had unilaterally cancelled the patta. He would therefore submit that this factor has not been taken note of by the both Courts below and this omission has led to an erroneous judgment.

12. On perusal of the records and the judgments of the Courts below would show that the plaintiff, the appellant herein was not able to prove the oral partition projected by him. It is needless to state that as the plaintiff, he is duty bound to prove his case. However, the Courts below have perused the admission of the plaintiff as PW2 wherein he would admit that an oral partition had taken place after the death of Chinnammal and the properties had been divided. This is the oral partition pleaded by the respondents. Under this partition, distinct properties had been divided among her sons, viz., Muthusamy, the second defendant in O.S.No.47 of 2013, Kuttiappan and Palanisamy, the husband of the first plaintiff in O.S.No.47 of 2013 and the father of the second plaintiff in the said suit. The Courts below have also drawn an adverse inference on the non-examination of Muthusamy, who was available and was the best person to speak about the partition, pursuant to the death of



his mother. Muthusamy has not chosen to enter into witness box and submit himself for cross-examination. It is the plaintiff who does not have a direct knowledge about the same, who has entered the witness box. Therefore, the best evidence has been kept away from the Court.

13. The next argument put forward by the plaintiff was that the fourth defendant, the Tahsildar had not afforded an opportunity to him before cancelling the patta in the name of Muthusamy is proved wrong. The records would reveal that the fourth respondent before passing his order, which has been marked as Ex.B8, has issued notice to both parties and it is only after a full fledged enquiry, the patta given by the Tahsildar had been cancelled, since the Tahsildar had not followed the procedure contemplated under Section 3(7) of the Tamil Nadu Patta Passbook Act. The plaintiff's father had not objected to the enquiry, on the contrary had participated in the same. Once again on account of his non-examination, the true facts have not been brought to light. The non-examination of Muthusamy is fatal to the case of the plaintiff. The plaintiff having himself admitted the oral partition and that the patta had been cancelled after due enquiry, the order passed by the Courts below cannot be found fault with and the plaintiff/appellant has not made out any case for interfering with this well considered judgment and decree and they have not made out any substantial question law. Hence, the Second Appeals are dismissed. No order as to costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

Kal

To

1. The Additional District (Fast Track) Judge,
Mettur.
2. The Subordinate Judge,
Mettur.
3. The District Collector,
Salem District.



4. The Revenue Divisional Officer,
Mettur Taluk,
Salem District.

5. The Tahsildar,
Mettur Taluk Office,
Mettur Dam - 1
Salem District.

6. The Village Administrative Officer,
Alamarathupatty Village,
Chithrapattypudur,
Kolathur Post,
Mettur Taluk,
Salem District.

Copy To

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

S.A.Nos.576 & 577 of 2021 &
CMP. Nos.12302 & 12303 of 2021

GPL (CO)
GN (19/11/2021)