



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.12.2021

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THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

S.A(MD)No.663 of 2020

and

C.M.P(MD)No.7059 of 2020

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R.Ramasamy

... Appellant/Appellant/Defendant

Vs.

Appavu @ Rengasamy

... Respondent/Respondent/Plaintiff

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure to set aside the judgment and decree, dated 17.03.2020 passed in A.S.No.29 of 2019, on the file of the Subordinate Court, Manapparai, confirming the judgment and decree dated 06.11.2019 passed in O.S.No.426 of 2014 on the file of the Additional District Munsif Court, Manapparai.

For Appellant

: Mr.A.Haja Mohideen

For Respondent

: Mr.Raguvaran Gopalan

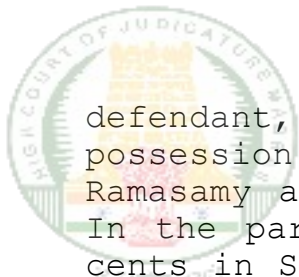
for Mr.K.Prabhakar

JUDGMENT

The concurrent Judgments and decrees passed in O.S.No.426 of 2014 by the Additional District Munsif Court, Manapparai and in A.S.No.29 of 2019, by the Subordinate Court, Manapparai, are being challenged in the present Second Appeal.

2. The respondent/plaintiff has instituted a suit in O.S.No.426 of 2014 on the file of the trial Court for the relief of permanent injunction and to restrain the defendant, his men, agents and servant and all persons claiming through or under them from interfering with the plaintiff's peaceful possession and enjoyment of the suit 'A' schedule property either by trespassing into the suit 'A' schedule property or in any manner whatsoever and for declaration that the plaintiff is entitled to exercise free ingress and egress into the suit 'B' schedule property and right to use the motor pump set erected in the Well in the suit 'B' schedule property, wherein, the present appellant has been shown as defendant.

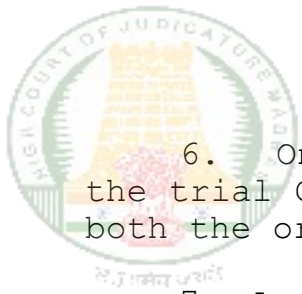
3. The case of the plaintiff is that the suit properties and other properties are the ancestral joint family properties and subsequently acquired out of the joint family nucleus. One Narayanasamy had two sons, namely, Ramasamy and Nallusamy and they were in possession and enjoyment of the entire properties. After his demise, the said Ramasamy, who is the father of the plaintiff,



defendant, Lavunga Reddy and Ponnusamy and Nallusamy were in possession and enjoyment of the suit properties. The sons of Ramasamy and Nallusamy divided the entire joint family properties. In the partition, the land measuring an extent of 3 acres and 26 cents in Survey No.154/4 in Palayamkottai was allotted to the share of the plaintiff, Lavunga Reddy and Nallusamy and the lands in Inamrettiyapatti was allotted to the share of the defendant, Ponnusamy and Nallusamy. As per the said partition, the suit old S.F.No.154/4 was sub-divided into S.F.Nos.154/4A-Lavunga Reddy, 154/4B-suit 'A' schedule property, 154/4C-suit 'B' schedule property and 154/4D-Nallusamy. The suit 'A' schedule property described as S.F.No.154/4B was allotted to the share of the plaintiff, who was in possession and enjoyment of the same and also suit 'B' schedule property described as S.F.No.154/4C with other co-sharers are entitled to use motor pump set erected in the said property, which is in joint possession of all the brothers. When the plaintiff has taken steps to demarcate the suit properties with the help of revenue officials, the defendant has raised an objection and resisted the measurement of the suit properties. The defendant has also tried to trespass and interfere with the plaintiff's peaceful possession and enjoyment of the suit properties. The plaintiff further submits that the suit 'A' schedule property belongs to him and it was allotted to him in partition and the plaintiff has ingress and egress right and right to use the motor pump set in the suit 'B' schedule property and the defendant interfered with the said rights of the plaintiff. Hence, the plaintiff left with no other alternative remedy, has filed the suit.

4. The defendant filed a written statement denying all the averments made in the plaint and submitted that the plaintiff has no manner of exclusive right, title and possession over the suit properties and the suit properties are undivided Hindu Joint family properties. The defendant claimed that the plaintiff has not filed appropriate genealogy list. The defendant has also intended to file a suit for partition in respect of the suit properties. The defendant claimed that he was enjoying the suit properties along with others in common and further denied that the defendant was not interfering with the possession and enjoyment of the suit properties, but, only the plaintiff was interfering with the possession and enjoyment of the suit properties and removed the bund between the properties with the help of the Tractor. The plaintiff has not proved that his name is Appavu @ Rengasamy and the cause of action for the suit does not arise and the suit for permanent injunction without the relief of partition, the properties were undivided cannot be maintained.

5. Before the trial Court, on the side of the plaintiff, the plaintiff examined himself as P.W.1 and one Rengaraj was examined as P.W.2 and Exs.A1 to A12 were marked. On the side of the defendant, the defendant examined himself as D.W.1 and Exs.B.1 to B.11 were marked. Ex.C.1 to Ex.C.3 were marked.



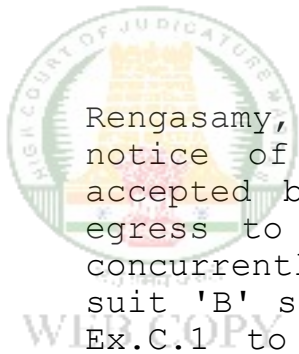
6. On the basis of the rival pleadings made on either side, the trial Court, after framing necessary issues and after evaluating both the oral and documentary evidence, has decreed the suit.

7. Aggrieved by the Judgment and decree passed by the trial Court, the defendant, as appellant, had filed an Appeal Suit in A.S.No.29 of 2014. The first appellate Court, after hearing both sides and upon reappraising the evidence available on record, has dismissed the appeal and confirmed the Judgment and decree passed by the trial Court.

8. Challenging the said concurrent Judgments and decrees passed by the Courts below, the present Second Appeal has been preferred at the instance of the defendant, as appellant.

9. The learned counsel appearing for the appellant/defendant would submit that the case of the plaintiff is that the heirs of Ramasmy and Nallusamy had orally partitioned the entire properties in S.F.No.154/4 measuring an extent of 3.26 cents situated in Palayamkottai Village was allotted to the plaintiff, Lavunga Reddy and Nallusamy, the property situated in the Village of Inamrettiyapatti were allotted to the share of the defendant, Ponnusamy and Nallusamy, but he failed to prove the same through documentary and oral evidence. Ex.A.4-Kist receipt, dated 25.04.1994 stands in the name of Appavu Reddy and the kist receipt, dated 26.03.2002 stands in the name of Appavu @ Rengasamy and that will not be sufficient to prove the right, title and interest of the plaintiff in the suit properties. Ex.A.7-rough sketch is without any measurement and boundaries and there is no mentioning about the electric motor pump set and service connection and the same is not acceptable. Ex.A.8 to Ex.A.10 are not sufficient enough to prove the partition of the properties of the plaintiff and the defendant father Ramasamy and there is no specific mentioning about the partition of properties of Survey No.154/4 ie., the suit properties and other properties. The first Appellate Court had erroneously held that the plaintiff having a common right in the suit 'B' schedule property, in the absence of proof for the cultivation of the suit 'A' schedule property, prayed for allowing the Second Appeal.

10. The learned counsel appearing for the respondent/plaintiff would submit that the defendant has admitted that the property originally belonged to Ramasamy and Nallusamy. In his cross-examination, as D.W.1, has admitted that the oral partition and division of shares and he has also admitted the allotment of land to him. Further, in oral evidence, he has admitted that separate patta have been issued to all brothers subsequent to oral partition. The Courts below have relied on Ex.A.1-patta and Ex.A.11-patta pass book to conclude that the plaintiff was in possession of the suit 'A' schedule property and also relied on Ex.A.8 to Ex.A.10-sale deeds. The defendant has also admitted the dispute in the name of the plaintiff - Appavu @



Rengasamy, the Courts below have concurrently relied on Ex.A.5-reply notice of the defendant, wherein, Appavu @ Rengasamy has been accepted by the defendant. With respect to right of ingress and egress to the suit 'B' schedule property, the Courts below have concurrently relied on Ex.A.11-patta pass book, which shows that suit 'B' schedule Survey No.154/4C to be in joint patta and also on Ex.C.1 to Ex.C.3 and evidence of D.W.1 that water from Survey No.154/4C is taken to Survey No.154/4B via channel and submitted that there is no legal infirmity in the judgments and decrees of the Courts below and prayed for dismissal of the Second Appeal.

11. In support of his contention, the learned counsel appearing for the respondent/plaintiff relied on the following Judgments:-

(i) In ***Digambar Adhar Patil Vs. Devram Girdhal Patil [1995 Supp (2) SCC 428]***, wherein, it has been held as follows:-

"5. We find no force in the contention. Section 32B clearly postulates that the land held as an owner or as a tenant alone should be taken into consideration to determine ceiling limit and if the land held as owner or tenant is within the ceiling limit, he shall be entitled to purchase the land held by him as a tenant. Admittedly, the respondent held the land as an owner to the extent of 36 acres 1 guntas. The area of dispute is only in respect of the land held by his minor son and the land allotted at a partition to his brother Ram Chander. With regard to the land held by the son, even assuming that it is a joint family property for the purpose of the Act and it is incuudible in his holding yet he is within the ceiling limit, namely, 43 acres 35 guntas. As rightly held by the High Court he cultivated it on behalf of his minor son. As to the land allotted to the brother of the respondent, the Tribunals below negatived it on two grounds, namely, in the cultivation column of the Revenue records, it was shown that the respondent had cultivated the land and no documentary evidence of partition was produced before the authorities. The Tribunals below did not advert to the entries in the Record of Rights or to the factum of partition, while the High Court has taken this factor into consideration, which in our considered view had rightly been taken into account. The entries in the Record of Rights regarding the factum of partition is a relevant piece of documentary evidence in support of the oral evidence given, by the respondent and his brother to prove the factum of partition. Even in the evidence of Ram Chander, he dearly stated that there was a partition but he could not give the date and year in



which the partition was effected nor the deed of the partition was produced. Under the Hindu Law, it is not necessary that the partition should be effected by a registered partition deed. Even a family arrangement is enough to effectuate the partition between coparceners and to confer right to a separate share and enjoyment thereof. Under those circumstances, when the factum of partition was evidenced by entries in the Record of Rights, which was maintained in official course of business, the correctness thereof was not questioned, it corroborates the oral evidence given by the brother and lends assurance to accept it.

6.The High Court, therefore, was right in its conclusion that the land allotted to the brother of the respondent, namely, Ram Chander should be excluded. If that land is excluded necessary conclusion is that the respondent was within the ceiling limit. Consequently, he is entitled to purchase the land of the appellant who is the owner under the provisions of the Act as he is a deemed tenant on the tiller date under s32 of the Act. Whether the respondent is in excess of the land or not would be considered while computing the holding as ordered by the High Court in its remand order. The appeal, therefore, does not warrant interference. It is accordingly dismissed."

(ii) In **Kesharbal Vs. Tarabai [2014 (4) SCC 707]**, wherein, it has been held as follows:-

"21.In our opinion, the aforesaid presumption is wrong in law in view of the fact that the High Court has affirmed the findings of the trial court that in 1985, there was a complete partition and the parties had acted on the same. It is a settled principle of law that once a partition in the sense of division of right, title or status is proved or admitted, the presumption is that all joint property was partitioned or divided. Undoubtedly the joint and undivided family being the normal condition of a Hindu family, it is usually presumed, until the contrary is proved, that every Hindu family is joint and undivided and all its property is joint. This presumption, however, cannot be made once a partition (of status or property), whether general or partial, is shown to have taken place in a family. This proposition of law has been applied by this court in a number of cases. We may notice here the judgment of this Court in *Bhagwati Prasad Sah & Ors. Vs. Dulhin Rameshwari Kuer & Anr.*[1], wherein it was inter alia

observed as under:



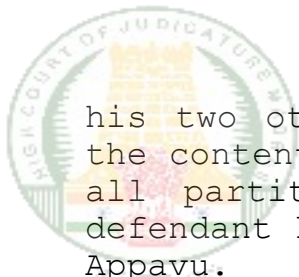
"8. Before we discuss the evidence on the record, we desire to point out that on the admitted facts of this case neither party has any presumption on his side either as regards jointness or separation of the family. The general principle undoubtedly is that a Hindu family is presumed to be joint unless the contrary is proved, but where it is admitted that one of the coparceners did separate himself from the other members of the joint family and had his share in the joint property partitioned off for him, there is no presumption that the rest of the coparceners continued to be joint. There is no presumption on the other side too that because one member of the family separated himself, there has been separation with regard to all. It would be a question of fact to be determined in each case upon the evidence relating to the intention of the parties whether there was a separation amongst the other co-parceners or that they remained united. The burden would undoubtedly lie on the party who asserts the existence of a particular state of things on the basis of which he claims relief."

This principle has been reiterated by this Court in *Addagada Raghavamma & Anr. Vs. Addagada Chenchamma & Anr.*[2]

22. In this case, the trial court as well as the High Court has held that there was a complete partition in the year 1985. Therefore, the presumption would be that there was complete partition of all the properties. Consequently, the burden of proof that certain property was excluded from the partition would be on the party that alleges the same to be joint property. Therefore, in our opinion, the High Court clearly committed an error in placing the burden of proof on the petitioners, who were defendants in the suit to prove that the Nageshwarwadi property at Aurangabad was a self-acquired property of Eknathrao."

12. Heard the learned counsel for the appellant and the learned counsel for the respondent and also perused the records carefully.

13. It is the contention of the plaintiff that the suit 'A' schedule property belongs to the plaintiff and it was allotted to him in partition. The plaintiff had ingress and egress right and right to use motor pumpset in 'B' schedule property. The plaintiff has also claimed that old S.F.No.154/4 was partitioned among him and



his two other brothers, namely Lavunga Reddy and Ponnusamy. It is the contention of the defendant that the suit properties were not at all partitioned and it was not allotted to the plaintiff. The defendant has also disputed that the plaintiff has no other name as Appavu.

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14. The plaintiff has marked the computer patta and kist receipts for suit 'A' schedule property, which were marked as Ex.A.1 and Ex.A.4 and the patta pass book stands in the name of the plaintiff was marked as Ex.A.11. A perusal of Ex.A.1-patta and Ex.A.11-patta passbook shows that the plaintiff has a separate and exclusive right over the suit 'A' schedule property. The main contention of the defendant is that the plaintiff has no other name as Appavu. In Ex.A.1-patta and Ex.A.4-kist receipts, the name of Appavu Reddy, son of Ramasamy Reddy was mentioned, whereas, in Ex.A.11, the name is mentioned as Appavu @ Rengasamy and the plaintiff has another name as Appavu. The notice issued by the Tahsildar was marked as Ex.A.3 and the legal notice issued by the defendant to the plaintiff and the Tahsildar was marked as Ex.A.5. In Ex.A.3 notice, the plaintiff's name has been mentioned as Appavu @ Rengasamy and in Ex.A.5-legal notice, the defendant himself has mentioned the name of the plaintiff as Appavu. The defendant has admitted the issuance of Ex.A.5-legal notice to the plaintiff in his written statement.

15. The defendant claimed that there was no partition of the suit properties. To prove the partition, the plaintiff has marked the sale deeds executed by the defendant and Lavunga Reddiar, one of the brother, which were marked as Ex.A.8 to Ex.A.10. On going through the documents, it is found that the defendant has executed a sale deed in favour of one Indira Devi on 10.06.1987, wherein, it has been conveyed that the properties were allotted to him by partition and in Ex.A.9, the defendant along with his son and daughters had sold some properties in favour of Lavunga Reddiar on 22.04.2016 by mentioning the partition of properties among themselves. The defendant himself has purchased the properties allotted to Lavunga Reddiar in partition on 22.04.2016 through Ex.A.10-sale deed. Hence, the above said documents would prove that the properties were already partitioned among the plaintiff, defendant and his brothers. A separate patta was issued in the name of the plaintiff which was established through Ex.A.1 and Ex.A.11, which clearly contemplates that the suit 'A' schedule property was allotted to the share of the plaintiff.

16. The plaintiff has claimed right to ingress and egress and the right to use motor pumpset in Well in suit 'B' schedule of the property. The plaintiff's name was also included in Ex.A.2-patta and Ex.A.11-patta pass book. The defendant's name. In Ex.A.11-patta pass book, it is

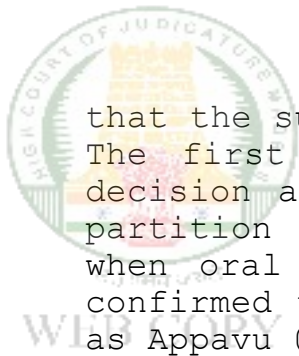


mentioned that the plaintiff has joint ownership over the suit 'B' schedule property along with the defendant. The Commissioner's report and plan shows that there is a Well in the suit 'B' schedule property and a channel runs through suit 'B' schedule property to suit 'A' schedule property. Based on the Advocate Commissioner's report and plan, the trial Court has come to the conclusion that the plaintiff has proved his possession and enjoyment over the suit 'A' schedule property and the suit 'B' schedule property with appropriate evidence and decreed the suit as prayed for. The trial Court has further come to the conclusion that the claim of possession regarding Survey No.154/4B and the kist receipts and pre-suit notice also proves that the plaintiff has been addressed as Appavu @ Rengasamy and the defendant cannot raise all these issues without any appropriate evidence and the same was also negatived by the trial Court and the first Appellate Court, holding that there was a family partition even before 1987 by way of registered document and also in cross-examination, the defendant himself has admitted that there was a partition among themselves and the brothers have purchased the properties and sold the properties. As the water channel was in existence from 'B' schedule property to 'A' schedule property establishing the title in usage of the ingress and egress right by the plaintiff and decreed the suit.

17. The first Appellate Court has also confirmed the Judgment and Decree of the trial Court on consideration of all the relevant documents and oral evidence that the application in I.A.No.3 of 2019 filed by the defendant for production and acceptance of 8 additional documents under Order 41 Rule 27 C.P.C was rejected. Except the second document, all other documents were rejected, as they do not pertain any relation to Survey Nos.154/4B or 154/4C. The second document was the original sale deed under which their father Ramasamy and Nallusamy have purchased the properties. Since the original title of Ramasamy and Nallusamy had been accepted by the parties, the document was rejected is not relevant.

18. The first Appellate Court has also considered the oral evidence of D.W.1, who has admitted in the cross-examination, that the plaintiff is his brother and the properties were divided as early as in the year 1967 and he has been allotted shares in Inamrettiyapatti lands and Survey No.154 was sub-divided and separate patta was issued and they are in possession and enjoyment of the same and the defendant has also admitted that he purchased the divided share of his brother Lavunga Reddy and the existence of a Well in Survey No.154/4C and water is drawn through a channel for Survey Nos.154/4C to 154/4B and the same was also considered. The first Appellate Court has come to the conclusion that the burden of proving that one of the properties of the family was joint when all others properties are divided would be on person asserting the same.

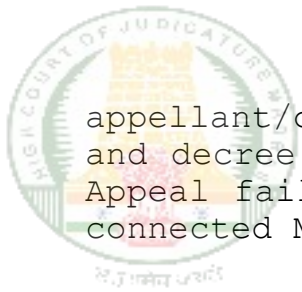
<https://hccourts.gov.in/cases/> The first Appellate Court also held that the defendant, who asserts



that the suit properties alone were joint had discharged his burden. The first Appellate Court has also relied on the Supreme Court decision and held that the patta had been issued based on an oral partition and the genuineness of the same has not been questioned, when oral partition is confirmed. The first Appellate Court also confirmed that Ex.A.5 would show that the plaintiff's name is known as Appavu @ Rengasamy.

19. The grounds raised by the learned counsel appearing for the appellant/defendant do not make out a case *prima facie* for interfering with the concurrent findings of the trial Court as well as the first Appellate Court, when the defendant has admitted that the property originally belonged to Ramasamy and Nallusamy and oral partition was admitted by the defendant and the division of shares was also admitted and separate patta has been issued to all the brothers subsequent to the oral partition and based on the same, there was also sale of lands between the brothers, who have also admitted that there was an oral partition. Ex.A.1-patta and Ex.A.11-patta pass book would show that the plaintiff is in possession of the suit 'A' schedule property and Ex.A.1 and Ex.A.11 has not been objected to by the defendant and the entry in the record of rights or revenue records, the correctness of which is not questioned in evidence or oral partition. The first Appellate Court also relied on the sale deeds, namely Ex.A.8 to Ex.A.10, wherein, the defendant has sold some of the properties. Under Ex.A.10, the defendant had purchased the properties from his brother Lavunga Reddy and all these documents would prove that there was already a family partition, which is a oral partition, which has been accepted and acted upon by the defendant and other brothers. The claim of the defendant that the suit properties alone has not been divided, the burden to prove the same is on the person claiming, one property as joint family properties when admitted that all the other properties are divided. As the defendant has not proved the same by letting any substantial evidence to prove that the suit properties are not partitioned. The Advocate Commissioner's report would clarify and prove that water has been taken from the Well in Survey No.154/4C to Survey No.154/4B through a channel and further, both the Courts below have rightly come to the conclusion that the plaintiff has proved his case beyond doubt and the defendant has failed to prove his case by letting in appropriate evidence either orally or documentary. The oral evidence of D.W.1 was accepted and the portion of the said admission was also incorporated in the Judgment and Decree of the trial Court as well as the first Appellate Court, this Court is of the view that the defendant has not made out any case and no question of law, much less the substantial question of law to be decided by this Court in this appeal.

20. For the reasons aforesaid, this Court is of the considered view that no substantial questions of law has been made out by the



appellant/defendant to interfere with the well considered judgment and decree rendered by the Courts below and accordingly, the Second Appeal fails and the same stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

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Assistant Registrar (CS-II)

// True Copy //

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Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

- 1.The Subordinate Judge,
Manapparai.
- 2.The Additional District Munsif,
Manapparai.
- 3.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1 CC to M/s.K.PRABHAKAR, Advocate (SR-39650[F] dated 20/12/2021)

Judgment made in
S.A(MD)No.663 of 2020
20.12.2021

DJ(CO)

GC(24.01.2022) 10P 6C