



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:19.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

A.S.(MD)No.158 of 2019

and

C.M.P.(MD) .No.8221 of 2019

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Nagammal (died)

- 1.Vijaya
- 2.Ramalakshmi
- 3.Ramachandran
- 4.Krishnaveni
- 5.Rathinakumar
- 6.Chandra
- 7.Indira

: Appellants 1 to 7/Defendants 2 to 8

Vs .

- 1.Lakhsmi
- 2.Parvathi
- 3.Kalimuthu Kumar
- 4.Malliga
- 5.Anusiya
- 6.Durga
- 7.Bharathi
- 8.Shanthi

: Respondents 1 to 8/Plaintiffs 1 to 8

9.Selvaraj

: 9th Respondent/9th Defendant

PRAYER: Appeal is filed under Section 96 of the Code of Civil Procedure praying to set aside the judgment and decree dated 15.02.2019 made in O.S.No.7 of 2016, on the file of the learned Principal District Judge, Ramanathapuram and allow the appeal suit.

For Appellants : Mr.K.Srinivasa Raghavan

For R-1 to R-8 : Mr.P.Paranthaman

J U D G M E N T

Aggrieved over the judgment and decree of the trial Court granting preliminary decree, the present appeal is filed.

2. For the sake of convenience, the parties are referred to herein, as per their ranking before the Trial Court.



3. The brief facts leading to the filing of this Appeal Suit, is as follows:-

3.(1). The suit property originally belonged to one Kuthiri Pagadai. By virtue of the purchase of the above said property in the year 1947, the said Kuthiri Pagadi died on 15.03.1970, leaving behind his son, viz., Kali and daughter viz., Kali @ Kaliammal. His son and daughter also died. The said Kali @ Kaliammal died leaving behind her sons and daughters, namely, Muthumani, Lakshmi, Ramalingam, Parvathi and Kalinuthu kumar. The plaintiff Nos.1 to 3 are the legal heirs of Kali @ Kaliammal. The above said Ramalingam, who is the son of Kali @ Kaliammal also died, leaving behind her wife and daughters. The fourth plaintiff is the wife of the deceased Ramalingam and the fifth and sixth plaintiffs are the daughters of the deceased Ramalingam. The above said Muthumani also died. The seventh and eighth plaintiffs are the legal heirs of the deceased Muthumani. The second to eighth defendants are the legal heirs of the deceased Kali, son of the original owner Kuthiri Pagadai. The suit properties were in joint possession of the plaintiffs and the defendants. Despite the request made for partition, the defendants are not come forward to divide the properties. Hence, the suit.

3.(2). The defendant Nos.1 to 8 filed a written statement. In the written statement, it has been stated that the above said Kuthiri Pagadai, died leaving behind one son namely Kali and in the written statement, it is further stated that he had no daughter. The plaintiffs had obtained the documents from the Government Authorities and filed a suit. It is the further contention of the defendants that they are in exclusive possession, since the defendants had not admitted the fact that Kali @ Kaliammal was born to Kuthiri Pagadai and they have taken the plea of adverse possession instead of ouster. It is the further contention of the defendants that the plaintiffs were admittedly out of possession and enjoyment of the suit property and there is no proof to show that they have ever enjoyed the suit property at any point of time along with the son of Kuthiri Pagadai.

4. Based on the above pleadings, the trial Court has framed the following issues:-

"(i).Whether the plaintiffs are entitled to partition as prayed for?

(ii).Whether the defendants 1 to 3 perfected their title by an adverse possession of the suit property?

(iii).Whether the plaintiffs are entitled to

claim 1/4th share of the suit property



(iv).To what other relief, the plaintiffs are entitled?"

5. During trial, on the side of the plaintiff, P.W.1 to P.W.3 were examined and Ex.A.1 to Ex.A.15 were marked. On the side of the defendants, D.W.1 was examined and Ex.B.1 to Ex.B.3 were marked.

6. Based on the evidences and materials, the trial Court had negatived the defence of the defendants and granted preliminary decree in favour of the plaintiffs. Aggrieved over the same, the present appeal has been filed.

7. Mr.S.Srinivasa Raghavan, learned Senior Counsel appearing for the appellants submitted that the plaintiffs had not established the legal heirship certificate properly and the paternity has also not been established. He further submitted that there is no clinching evidence to show that Kuthiri Pagadai had two wives and through his second wife viz., Karuppi, a daughter viz., Kali @ Kailammal was born. The plaintiffs ought to have established the same. But, in any event, it is the contention of the learned counsel that the plaintiffs were never in possession of the property at any point of time. The trial Court has not properly appreciated the evidence and proceeded as if the defendants admitted the legal issue. Hence, he prayed for allowing the appeal.

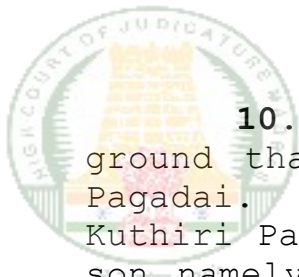
8. Whereas, Mr.P.Paranthaman, learned counsel appearing for the respondents 1 to 8 would contend that the documents filed on the side of the plaintiffs would clearly show that the plaintiffs 1 to 3 were born to Kali @ Kailammal and the defendants have failed to prove the fact that Kali @ Kailammal was not born to Kuthiri Pakadai. Besides, no evidence whatsoever has been filed by the defendants to show that there is an exclusive possession of the property excluding the plaintiffs. The oral evidence on the side of P.W.2 and P.W.3 also proved this relationship. Hence, he submitted that the trial Court has appreciated the evidence properly and granted decree in favour of them. Hence, he prayed for dismissal of the suit.

9. Now the points arose for consideration are as follows:-

"(i). Whether the plaintiffs are the legal heirs of the deceased Kuthiri Pagadai?

(ii). Whether the defendants have perfected their title by adverse possession?

(iii). To what other relief, the plaintiffs are entitled?"



10. The plaint has been laid for claiming partition on the ground that the plaintiffs are also the legal heirs of Kuthiri Pagadai. The specific case of the plaintiffs is that the said Kuthiri Pakadai had one daughter, namely, Kali @ Kaliammal and one son namely Kali. The plaintiff Nos.1 to 3 are the daughters of the deceased Kali @ kaliammal. The defendant Nos.1 to 8, who are the legal heirs of Kuthiri Pagadai, born through his son viz., Kali.

11. The specific contention of the defendants is that the said Kuthiri Pakadai had no daughter namely Kali @ Kaliammal.

12. The evidence of P.W.1 to P.W.3 would categorically state that the above said Kuthiri Pagadai was working in Mandapam in the Government Department, where, one Karuppi was also working and the said Kuthiri Pagadi married Karuppi and out of their wedlock one Kali @ Kaliammal was born to them. Originally, they were residing in the Mandapam Camp. The evidence of P.W.2 and P.W.3 would clearly show that the above said Kuthiri Pagadi had one son and one daughter. P.W.2 also supported the version of P.W.1. His evidence has also not been shattered in the cross examination. Be that as it may, the documents which were filed by the plaintiffs, particularly, in Ex.A.2-PassPort of Kali @ Kaliammal, the name of her daughter viz., Lakshmi and her son viz, Ramalingam were mentioned and her father's name was mentioned as Kuthiri. After the death of the above said Kuthiri Pakadai, pension has also been received by his wife Karuppi. Ex.A.5 to Ex.A.13 makes it very clear that pension was sent to Karuppi, the wife of Kuthiri Pagadai. These documents have not even been denied specifically, except in the pleading and the written statement. Even in the pleading and the written statement, it was denied only in evasive manner. From the documents, particularly, Ex.A.2-Pass Port, issued in the name of Kali @ Kaliammal, it is seen that her father's name was mentioned as Kuthiri in the pass port.

13. In Ex.A.4-Citizen Certificate, the declaration signed by the wife of Kuthiri Pagadai indicates that Karuppi was shown as the wife of Kuthiri Pakadai. Similarly, Ex.A.5-the evidence given by the daughter of Kuthiri Pagadai before the authorities and Ex.A.6-the proceedings of the Accountant General of Tamil Nadu makes it very clear that Kaliammal @ Kali, the mother of the plaintiffs has received pension.

14. Based on the above evidences and materials, the enquiry has been conducted by the Village Administrative Officer and it shows that Kali @ Kaliammal, was the daughter of Kuthiri Pakadai and this document established that Kuthiri Pakadai had a daughter namely Kali @ Kaliammal and these documents have not been



seriously challenged and disputed by the defendants. When the documents and evidences were adduced by the plaintiffs to prove their case, on the other contention that the defendants perfected title by adverse possession, no iota of evidence is available.

15. Therefore, this Court is of the view that having pleaded the adverse possession, the defendants in fact admitted the fact that the plaintiffs have title over the suit property. Further there is no pleading in the written statement whatsoever as to the character and to the nature of the possession when their possession become adverse to the plaintiffs. Therefore, mere pleadings itself are not sufficient to prove that they have perfected the title by adverse possession. The plaintiffs, being the legal heirs through the daughter of Kuthiri Pakadai and being co-sharers, are deemed to be in joint possession. Therefore, this Court do not find any infirmity in the judgment passed by the Court below. Accordingly, points are answered.

16.In the result, the judgment and decree passed by the learned Principal District Judge, Ramanathapuram made in O.S.No.7 of 2016 stands confirmed and the appeal suit stands dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (T&P)

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/ /2021

Sub Assistant Registrar (CS)

tsg

To

The Principal District Judge,
Ramanathapuram.

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V.R.Section,
Madurai Bench of Madras High Court, Madurai.

+1 CC to Mr.S.SRINIVASA RAGHAVAN, Advocate (SR-1282[F] dated 20/01/2021)

+1 CC to Mr.P.PRANTHAMAN, Advocate (SR-1332[F] dated 20/01/2021)

**Judgment made in
A.S. (MD)No.158 of 2019
Dated:19.01.2021**

KM (04.03.2021) 5P 6C

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