



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON :01.07.2021
PRONOUNCED ON :16.09.2021
CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

WEB COPY

SA(MD).No.122 of 2015
(Through Video Conferencing)

- 1.R.Chinthamony (died)
- 2.R.Thangamony (died)
- 3.Packiyamuthu
- 4.R.Sudalaimony (died)
- 5.R.Thavamony
- 6.T.Rajakrishnan
- 7.T.Anna Leela
- 8.T.Rajkumar
- 9.T.Annaselvam
- 10.S.Lakshmi
- 11.S.Nagachiththar
- 12.S.Maruthammal
- 13.C.Annamai

... Appellants/Appellants/Plaintiffs

(Appellants 6 to 9 brought on record the LRs of the deceased 2nd Appellant)

(Appellants 10 to 12 brought on record the LRs of the deceased 4th deceased 4th Appellant)

(13th Appellant brought on record the LRs of the deceased 1st Appellant)

Vs

1. P.Ramakrishnan (died)
- 2.The Tahsildar, Agasteeswaram Taluk, Nagercoil,
Kanyakumari District.
- 3.State of Tamil Nadu by rep.its Collector
Kanyakumari at Nagercoil
Kanyakumari District.

- 4.Rani
- 5.R.Balaji
- 6.R.Ragupathi

... Respondents

(Respondents 4 to 6 are brought on record as LRs of the deceased 1st Respondent)

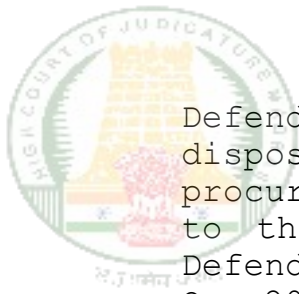
Prayer:- This Second Appeal has been filed, against the judgement and decree, dated, 05.12.014, passed in AS.No.10 of 2014, by the Principal Subordinate Judge, Nagercoil, confirming the judgement and decree, dated, 28.10.2013, passed in OS.No.248 of 2006, by the I Additional District Munsif, Nagercoil.



For Appellants : Mr.P.THAGARAJAN, Advocate
For Respondents : Mr.A.BASKARAN,
Government Advocate-RR2 and 3
Mr.K.P.NARAYANAKUMAR, Advocate
RR4 to 6

JUDGEMENT

- 1.This Second Appeal has been filed, against the judgement and decree, dated, 05.12.014, passed in AS.No.10 of 2014, by the Principal Subordinate Judge, Nagercoil, confirming the judgement and decree, dated, 28.10.2013, passed in OS.No.248 of 2006, by the I Additional District Munsif, Nagercoil.
- 2.Originally the Plaintiffs/Appellants 1 to 5 had filed this Second Appeal and since the Appellants 1, 2 and 4 died, during the pendency of the appeal, the Appellants 6 to 13 were brought on record as their legal heirs. The Defendants are the Respondents 1 to 3 herein and on the demise of the 1st Respondent during the pendency of the appeal, the Respondents 4 to 6 were brought on record as his legal heirs.
- 3.The case of the Plaintiffs, in a nutshell, as set out, in the plaint is as follows:-
 - a) The suit property originally belonged to one Samikutty Nadar. Samikutty Nadar has three sons, namely, Rajagopalan Nadar, Ramaiah Nadar and Rajakutty Nadar. The Plaintiffs are the legal heirs of Rajakutty Nadar. On 17.08.1107 M.E., Samikutty Nadar had executed a partition deed, in favour of his three sons and in the said partition, the suit property comprised in RS.No.501/9, corresponding to OS.No.1215, having an extent of 26 cents 844 sq.links was allotted to the share of the Rajakutty Nadar. The Southern half was allotted to Ramaiah Nadar, having an extent of 26 cents 844 sq.links. They were in joint possession of the property, comprised in OS.No.1215. Ramaiah Nadar had sold his share to one Viswasam Preena on 09.04.1956, who in turn, had sold the same to one Enakulamuthu Nadar, who is the grand father of the 1st Defendant, on 01.06.1962. The 1st Defendant is entitled to Southern one half of 26 cents 844 sq. links. Enakulamuthu Nadar had two sons, namely, Pauliah Nadar and Tharmalingam. Pauliah Nadar and the wife of Tharmalingam Nadar, namely Packialekshmi, had executed a Will on 27.03.1995. As per the said Will, 'C' Schedule in the Will deed was allotted to the 1st Defendant. On 12.10.1974, Packiamuthu Nadachi had executed a sale in favour of the 1st Defendant's father, Pauliah Nadar, over 15 cents in OS.No.1215. The Eastern property of Rajakutty Nadar and Ramaiya Nadar belonged to Packia Muthu Nadachi. The total area of OS.No.1215 is 1 acre 61 cents. Rajakutty Nadar died on 19.09.1990 and his properties were inherited by the Plaintiffs. The 1st Defendant has no title or interest over the suit property.
 - b) The taxes were being paid upto 1993 in the name of the predecessors of the Plaintiffs. When the Plaintiffs had approached the Taluk Office to pay the tax in 2004, they were informed that patta was already changed in the name of the 1st



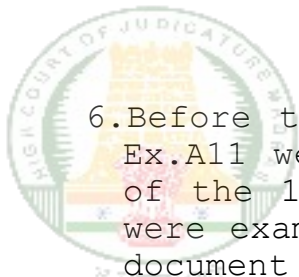
Defendant. The 1st Defendant with an ulterior motive dispossessed the Plaintiffs. The 2nd Defendant without procuring the prior title deeds and also without issuing notice to the Plaintiffs had issued patta in the name of the 1st Defendant and hence, issuance of such patta is null and void. On 20.09.2008, the Plaintiffs had applied for encumbrance certificate. The Plaintiffs are the owners of the property comprised in Re.S.No.501/9. In such circumstances, the suit has been filed, seeking declaration of title of the suit property in favour of the Plaintiffs and for recovery of possession of the same from the Defendants and for declaration that the patta issued for Northern 26 cents 844 sq. links in R.S.No.501/9 in the name of the 1st Defendant is null and void and for costs.

4.The case of the 1st Defendant, as set out in the written statement, filed by the 1st Defendant is as follows:-

a) The Old S.No.1215 was having a total area of 1 acre and 61 cents, which was divided into various resurvey numbers, while settlement register was finalised. Ramiah Nadar got possession under the partition deed in 1107 M.E. and he was in separate possession of his share having an extent of Southern 26 cents 844 sq.links in OS.No.1215 and it was in the sub division Re.S.No.501/9 in the revenue records. Ramiah Nadar had sold the property to Viswasam Preena and consequently, Viswasam Preena had sold the same to the grand father of the 1st Defendant, Enakulamuthu. Enakulamuthu had two sons, namely, Pauliah and Dharmalingam. After the death of Enakulamuthu, the deceased son Dharmalingam's wife Packialekshmi and Pauliah have executed a Will on 27.03.1995 allotting the 26.844 cents comprised in R.S.No.501/9 in favour of the 1st Defendant and the 1st Defendant got title and possession of the property from 14.06.1995 after the death of donors. The 1st Defendant had effected mutation of name in the revenue records. There was no fraud played as alleged by the Plaintiffs. The 1st Defendant is in possession and enjoyment of 26.844 cents in R.S.No.501/9 as title holder. The suit claim is barred by adverse possession. The Plaintiffs have no title in the 1st Defendant's 26.844 cents of property in R.S.No.501/9. In such circumstances, the suit is liable to be dismissed.

5.The case of the Defendants 2 and 3, in a nutshell, as set out in the written statement, filed by the 2nd Defendant and adopted by the 3rd Defendant, is as follows:-

a) As per the revenue records, an extent of 0.14.0 hectares of land in S.No.501/9, belonged to Rajakutty Nadar and Ramakrishnan. As per chitta, Ramakrishnan, S/o.Pauliah Nadar is also having joint right over the property in R.S.No.501/9, with an extent of 0.14.0 hectares. The 2nd Defendant has not committed any fault as alleged in the plaint. The patta issued by the revenue Department is correct and proper. The suit is bad for mis-joinder of necessary parties. In such



6. Before the Trial Court, on the side of the Plaintiffs, Ex.A1 to Ex.A11 were marked and PW.1 and PW.2 were examined. On the side of the 1st Defendant, Ex.B1 and Ex.B2 were marked and DW.1 was examined. On the side of the Defendants 2 and 3, neither any document was marked nor any witness was examined. CW.1 was examined as a court witness and Ex.C1 to C4 were marked. The Trial Court had dismissed the suit. On the appeal, before the lower appellate court, Ex.A12 to 14 were marked and the lower appellate court had also dismissed the appeal, confirming the judgement and decree of the Trial Court. Aggrieved against the same, this Second Appeal has been filed.

7. This Second Appeal was admitted, on the following substantial question of law:-

When the title of the Plaintiff to Northern 26.844 cents in Old Survey Number 1215 is not disputed by the Defendants, is the learned Subordinate Judge correct in dismissing the suit?

8. This Court heard the submissions of the learned counsel on either side and also their rival contentions on the substantial question of law framed as above.

9. The learned counsel for the Appellants has submitted that the lower appellate court having found that the Plaintiff is entitled to Northern 26.844 cents ought to have decreed the suit for declaration of title and that when the both the Plaintiffs and the 1st Defendant derived title only on the basis of partition deed, dated 17.08.1107 (ME) and when the 1st Defendant did not dispute the title of the Plaintiffs in respect of the suit property, the lower appellate court ought to have decreed the suit and that the difference in the extent cannot be a ground for dismissing the suit and that the reasons assigned by the lower appellate court are not sustainable and hence, the impugned judgements are liable to be set aside.

10. The learned Government Advocate for the Respondents 2 and 3 would submit that as per the revenue records, an extent of 0.14.0 hectares of land in S.No.501/9, belonged to Rajakutty Nadar and Ramakrishnan and that as per chitta, Ramakrishnan, S/o. Pauliah Nadar is also having joint right over the property in R.S.NO.501/9, with an extent of 0.14.0 hectares and that the patta issued by the revenue Department is correct and proper and that there is no cause of action against the Defendants 2 and 3 and that the suit is bad for misjoinder of necessary parties and that the impugned judgements of the courts below are correct and hence, the suit is liable to be dismissed.

11. The learned counsel for the Respondents 4 to 6 would submit that by virtue of the Will, dated 27.03.1995, allotting the 26.844 cents comprised in R.S.No.501/9 in favour of the 1st Defendant, the 1st Defendant got title and possession of the property from 14.06.1995 and that the 1st Defendant had also effected mutation of revenue records and that the 1st Defendant is in possession and enjoyment of 26.844 cents in R.S.No.501/9 as title holder and that

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Plaintiffs have no title in the 1st Defendant's 26.844 cents of property in R.S.No.501/9 and in such circumstances, the suit is liable to be dismissed.

12.This Court considered the rival submissions of the learned counsel on either side and also perused the materials available on record

13.Admitted facts are that Old Survey No.1215 is having a total area of 161 cents, out of which, Samikutty Nadar was having 53 cents in the said extent. As per Ex.A1, partition deed, Rajakutty Nadar was allotted 26.844 cents on the Northern side and Ramiah Nadar were allotted 26.844 cents on the Southern side. The Plaintiffs are the sons of Rajakutty Nadar. As per Ex.A4, the 1st Defendant has the share of Ramiah Nadar. As per the revenue records, RS.No.501/9 is having 0.14.0 hectares or 34.580 cents. The 1st Defendant is having possession of land to an extent of 26.844 cents in RS.No.501/9.

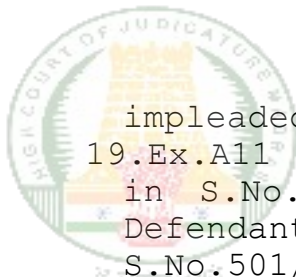
14.Both the Plaintiffs and the 1st Defendant are claiming right over the suit property by virtue of Ex.A1. As stated above, RS.No.501/9 is comprising an extent of 34.580 cents, but the Old S.No.1215 was having a total extent of 161 cents and the Old S.No.1215 might have been sub divided into more resurvey numbers. It is also not in dispute that both the Plaintiffs and the 1st Defendant each had 26.844 cents in Old S.No.1215. Even though RS.No.501/9 is having 34.580 cents, both the parties are each claiming 26.844 cents, which is more than its total extent.

15.When the Plaintiffs have sought the relief of declaration of title in RS.No.501/9 to an extent of 26.844 cents, in their favour, the burden of proof lies on them to prove their case by adducing valid evidence both oral and documentary.

16.Ex.A5 patta pass book and Ex.A7 tax receipts stand in the name of Rajakutty Nadar. Ex.A2, dated 20.10.1976, security bond given in OS.No.58 of 1972 by the Plaintiffs is relied on in support of their contention that the suit property is in their possession. In Ex.A2, in the Schedule of properties, the Southern half of 26.844 cents allotted to the Ramiah Nadar is not mentioned as a boundary and some other property is mentioned as located on the Southern side, for which, there was no explanation coming from the Appellants.

17.Ex.A4 is the Will dated 27.03.1995, as per which, an extent of 26 cents in S.No.501/9 was allotted to the 1st Defendant. It is also not in dispute that Ramaiah Nadar had sold his share to one Viswasam Preena under Ex.A6, sale deed dated, 09.04.1956, who in turn, had sold the same to one Enakulamuthu Nadar, who is the grand father of the 1st Defendant, on 01.06.1962. Thus, the 1st Defendant is entitled to Southern one half of 26 cents 844 sq. links.

18.When even in Ex.A1, which is relied on by the Plaintiffs, it is stated that an undivided extent of 56 $\frac{3}{4}$ cents belonged to Samikutty Nadar and his brother Subbiah Nadar and the total extent of 1.61 acre is not sub divided, the identity of the suit property is maintained. Further, the other adjacent owners were not



impleaded as parties to the suit.

19.Ex.A11 tax receipts shows that Rajakutty Nadar had 26.844 cents in S.No.501/9 and Ex.B1 patta pass book shows that the 1st Defendant is having 26.844 cents in the same survey number i.e. S.No.501/9. But, RS.No.501/9 is having 34.580 cents, which is more than extents claimed by the Plaintiffs and the 1st Defendant.

20.Further on a perusal of Ex.C1 to C4, it is observed that there are discrepancies and conflicts in favour of the identity of the properties and hence, they cannot be taken into consideration to resolve the issues.

21.The 4th Plaintiff in his oral evidence had deposed that the property in possession of the 1st Defendant was in possession of Ramiah Nadar. From the date of Ex.A1, for the past 70 years, the 1st Defendant and his predecessors had been in possession and enjoyment of the same. Further, the Plaintiff did not take any steps to measure the old survey number and sub divide the same.

22.In view of the above, though it is clear that both the Plaintiffs and the 1st Defendant have right to an extent of 26.844 cents each in Old S.No.1215, which had total extent of 161 cents, but it is not clear that the Plaintiff's share of 26.844 cents is comprised in RS.No.501/9 and in other words, the Plaintiffs have failed to prove their case that the suit property measuring an extent of 26.844 cents is available in RS.No.501/9, by adducing valid evidence. Only on the basis of Ex.A5 and Ex.A11, the declaratory relief as prayed for by the Plaintiffs cannot be granted and consequently, the relief of recovery of possession and declaratory relief against the Respondents also cannot be granted. Accordingly, the substantial question of law is answered.

23.In fine, this Second Appeal is dismissed. No costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

To

1.The Principal Subordinate Judge, Nagercoil

2.I Additional District Munsif, Nagercoil

3.The Record Keeper, VR Section,

Madurai Bench of Madras High Court, Madurai (2 Copies)

+1 cc to Mr.K.P.Narayanakumar, Advocate, SR.No.29656

+1 cc to Mr.P.Thiyagarajan, Advocate, SR.No.29397

Judgement in

SA(MD).No.122 of 2015

Date:16.09.2021

SA (28.02.2022) 6P 7c

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