



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.10.2022

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THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

Second Appeal No.252 of 2004

- 1.Selvaraj(died)
- 2.Devarajan
- 3.Chandra
- 4.Ventherthiruchezhiyan
- Ammani Ammal(died)
- 5.T.Kathayee
- 6.Inmozhi

... Appellants

(The appellants 3 and 4 brought on record as Lrs of A1 vide order of this Court dated 06.07.2022 and appellants 5 and 6 were substituted in the place of Ammani Ammal as A5 and A6 in CMP No.10020 of 2022 in S.A.No.252 of 2004)

Vs.

- 1.Thangavel Adhikari(died)
- 2.Murugesan
- 3.T.Govindasamy
- 4.Muthammal
- 5.Mani



6.Saroja

7.Kannammal

... Respondents

(RR2 to 7 brought on record as Lrs of the
deceased R1 vide order of this Court
dated 06.07.2022 made in
CMP Nos.23,24 & 25 of 2014 in
SA.No.252 of 2004 by CVKJ)

Prayer:- This second appeal has been filed under Section 100 C.P.C.,
against the judgement and decree dated 25.09.2003 made in A.S.No.148
of 2002 on the file of the learned Additional District -cum-Sessions
Judge-Fast Track Court at Kallakurichi reversing the judgement and
decree dated 28.08.2000 made in O.S.No.149 of 1995 on the file of the
learned I Additional District Munsif, Kallakurichi.

For Appellants : Ms.S.Janani for
M/s.Sai Associates

For Respondents : Mr.No appearance

JUDGEMENT

This second appeal has been filed as against the judgement and
decree dated 25.09.2003 made in A.S.No.148 of 2002 on the file of the
learned Additional District-cum-Sessions Judge/Fast Track Court at



Kallakurichi reversing the judgment and decree dated 28.08.2000 made in O.S.No.149 of 1995 on the file of the learned I Additional District Munsif, Kallakurichi.

2. One Thiru Thangavel Adhikari as the plaintiff, filed the above said suit in O.S.No.149 of 1995 against the defendants, Thiru Selvaraj and Thiru Devarajan for declaration and permanent injunction in respect of suit properties. The defendants are the appellants herein. During the pendency of the present appeal, the plaintiff and the first defendant, Selvaraj had passed away and their legal heirs came on record.

3. For the sake of convenience, the parties are hereinafter referred to as per their nomenclature before the trial Court, viz., 'the plaintiff and 'the defendants'.

4. The case of the plaintiff is that the suit properties and other properties were owned by the Joint family consisting of the plaintiff and



his late brother Ramasamy Adhikari; while so, by utilizing the income derived from the joint family properties and by sale of the above properties, new properties were purchased in the name of Ramasamy Adhikari as the Manager of the family; during 1968-1969 the plaintiff and his brother, Ramasamy Adhikari partitioned the above properties orally and in such oral partition, the suit properties were allotted to the share of the plaintiff and from the date of oral partition, the plaintiff has been paying kist for the suit properties and he has also perfected title by long possession; since the defendants are interfering with the peaceful possession and enjoyment of the plaintiff over the suit properties, the plaintiff has filed the suit.

5.The suit was resisted by the 1st Defendant, by filing a written statement, inter alia, while denying the plaint averments including the alleged existence of the joint family properties and the alleged oral partition, it is stated that taking advantage of the UDR Scheme, the plaintiff has clandestinely obtained patta, which subsequently came to be



cancelled by the District Revenue Officer, Villupuram vide order dated 27.01.1995. There were no ancestral properties as the father of the Plaintiff Chinna Adhikari had already alienated the properties which he had at Maravanatham Village. Item No. 25 of suit schedule was belonging to Junior Grand Father Sadayan who died without any heirs and lived with the defendants and left his property to the defendants. Some properties were purchased in the names of their father Ramasamy Adhikari and the plaintiff Individually as their exclusive properties. According to the defendant, they have been in possession of the suit properties and not the plaintiff and hence, it is prayed that the suit may be dismissed.

6. Based on the pleadings, the trial Court framed the following issues for consideration:

1. Whether the plaintiff is entitled to permanent injunction in respect of suit properties?
2. Whether the plaintiff is entitled to the relief of declaration of title



as prayed for?

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3. Whether is it correct to say that the suit properties do not belong to plaintiff and Ramasamy?
4. Whether oral partition took place in the year 1968-69?
5. Whether is it correct to say that the defendants' father Ramasamy Adhikari is the brother of the plaintiff and there are no ancestral properties?
6. Whether after demise of Ramasamy Adhikari, is it correct to say that possession of the suit properties could be transferred to the defendants by way of inheritance?
7. To what relief?

7. On behalf of the plaintiffs, PW1 and 2 were examined and Ex.A1 to Ex.A26 were marked and on behalf of the defendants, DW1 and 2 were examined, Ex.B1 to Ex.B91 were marked.



8. On consideration of both oral and documentary evidence, the trial Court has come to the conclusion that there were no ancestral properties and no documents were produced by the plaintiff to show the existence of ancestral properties. PW1 in his evidence also had admitted that there were no ancestral properties. The trial Court also found that there were no pleadings as regards particulars and details of the ancestral properties viz., their Survey Numbers and extents and as to how much extent was sold to whom. Further, no evidence was produced by the Plaintiff to prove the alleged oral partition during 1968-1969 and even presuming the alleged oral partition was taken place, then in the year 1968 itself, the Patta, Chitta and Adangal would have been transferred in the name of the Plaintiff. The UDR patta in the name of the Plaintiff came into existence only in the year 1986. Therefore, no scope for the oral partition as claimed by Plaintiff. The trial Court also observed that through Exs-B1 to B3 and B5 to B10, the late Ramasamy Adhikari purchased properties in his individual name and also sold individually and that properties were purchased by the Plaintiff in Ex-



B87 which he settled to his son by way of Ex-B88. The Patta was granted in the name of Ramasamy Adhikari in Ex-B11, 12, 15, 16 and 17 and the kist receipts in Ex-B15 to B86 were produced in support of the same. The joint patta in Ex-A1 was obtained by the Plaintiff in a fraudulent manner and on the application of the Defendants, the DRO cancelled the same in Ex-B14. All the documents produced by the Plaintiff were subsequent to Ex-A1 which itself has been cancelled and therefore no credence can be given to the Plaintiff's documents. The trial Court also found that no reliable document has been produced to show that the Plaintiff is in possession of the suit properties and therefore, the suit was dismissed.

9.As against the said judgment, the plaintiff has preferred an appeal in A.S.No.148 of 2002.

10.On consideration of the findings of the trial Court and on hearing both sides, the lower appellate Court has observed that both the



Plaintiff and the 1st Defendant have jointly sold properties in Ex. A17,

19, 20 and 21 which shows that there were common properties and only after those Sale Deeds, Ramasamy Adhikari purchased properties through Ex. B1, 2, 3, 5 and 6. Therefore, the lower appellate Court has drawn presumption that being the elder member and manager of the family, the properties were purchased in the name of Ramasamy Adhikari and as such, there was no need for the payment of kist by the Plaintiff to the properties purchased by Ramasamy Adhikari and for the same Patta Numbers both sides had paid kist whereby an oral partition is to be presumed. It has been further observed that vide Ex-A18 the properties were partitioned between Ramasamy Adhikari and defendants during the year 1976 and all the properties purchased through Ex-B1 to B6 are not forming part of the partition and only an undivided share in each of the Survey Numbers has been divided thereby leading to the presumption that properties allotted to the plaintiff in the oral partition are left out. With these observations, the lower appellate Court has allowed the appeal.



WEB COPY 11. Aggrieved over the judgment and decree of the lower appellate Court, the dependents preferred the present second appeal, and this Court has admitted the second appeal and the following substantial questions of law have been formulated for consideration:

(i) Whether in the absence of documents to prove title it would be open to confer title on the plaintiff on the basis of assumptions and presumptions without any valid proof?

(ii) Whether the Appellate Court was justified in holding that the suit properties were joint family properties when they had been individually purchased by the father of the defendants out of his own income and in the absence of any evidence to the contra?

(iii) Whether the Appellate Court was justified in granting a decree for permanent injunction when the plaintiff had failed to prove his alleged possession over the suit schedule properties and the available evidence only proved the possession of the defendants over the suit properties?

(iv) Whether the Appellate Court was justified



in ignoring the proceedings of the District Revenue Officer under Ex.B14 being the cancellation of patta granted in favour of the plaintiff and could give a finding contrary to the same when the plaintiff had suppressed about the same and had not admittedly taken up further proceedings as against the said order as contemplated by law?

(v) Could joint execution of some sale deeds alongwith others alone would prove nature of properties as joint family properties and that properties purchased by an individual were out of the sale proceeds of such joint family properties in the absence of any such recitals or pointers in the documents and in the absence of any other proof?

12. Notice was issued to the respondents, who are the legal heirs of the plaintiff and pursuant to the same, a learned counsel also entered appearance. However, when the matter was listed on 07.09.2022, 04.09.2022 and 09.09.2022, all these occasions, none appeared on behalf of the respondents. On 21.09.2022, the learned counsel appearing for the appellants/defendants made his submissions and for



submissions on behalf of the respondents, the matter was adjourned to 30.09.2022, but on that date also, none appeared on behalf of the respondents to make their submissions. Therefore, this Court proceeded with the case to dispose of the same on merits.

13. According to the plaintiff, the suit properties and other properties were owned by the joint family, consisting of the plaintiff and his late brother Ramasamy Adhikari and there was an oral partition in the year 1968-1969 and as per the oral partition, the plaintiff is entitled to the suit schedule properties which are in the possession of the defendants. On the other hand, the case of the defendant is that the father of the defendants, viz., Ramasamy Athikari and the plaintiff are the brothers and there was no evidence with regard to the alleged oral partition of the suit properties and all these properties were purchased in the name of defendant's father and there was a partition in the year 1976 and by virtue of Ex.A18 partition deed, the suit schedule properties have been partitioned between the defendants and their father, who is none



other than the brother of the plaintiff. Therefore, the plaintiff is not at all entitled to any right over the suit properties. Taking into consideration of all these aspects, the trial Court has rightly dismissed the case of the plaintiffs. However, the Appellate Court on the basis of the assumptions and presumptions, came to the conclusion that whatever purchased out of the joint family income in the capacity as "Karthi" by the defendant's father and as such, the suit properties are joint family properties and accordingly, reversed the judgment and decree passed by the trial Court.

14. The learned counsel appearing for the appellants/defendants would contend that no iota of evidence was produced to prove that the suit schedule properties are joint family properties and also there is also no evidence adduced with regard to the oral partition which was said to have been taken place during the year 1968-1969. He pointed out that the first appellate Court has failed to give weightage to Ex.A18 partition deed through which the suit schedule mentioned properties were partitioned between the defendants and their father and the plaintiff was



aware of all these aspects including enjoyment of the suit properties by the defendants. He would submit that though all these aspects are brought to the knowledge of the first Appellate Court by way of oral and documentary evidence, but based on assumptions and presumptions, it has reversed the judgment of the trial Court and decreed the suit in favour of the plaintiff. The learned counsel would submit that the findings of the lower appellate Court are not sustainable both on law and on facts and hence, he seeks interference of this Court.

15.As regards substantial questions of law Nos.1, 2 and 4 are concerned, the learned counsel for the appellants/defendants would submit that the lower appellate Court is not justified in holding that the suit properties were joint family properties based on by assumptions and presumptions in the absence of direct evidence and in this regard and it also erred in holding that joint execution of some sale deeds along with others proved that the suit properties were joint family properties by ignoring the fact that there were no recitals in any of the sale deeds that



the properties were purchased for joint family purpose.

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16. On going through the entire evidence both oral and documentary adduced by the plaintiff, this Court finds that absolutely there is no evidence to establish the fact that the suit properties are joint family properties as there was no existence of ancestral nucleus and that there was oral partition taken place during 1968-69 between the plaintiff and his brother, Ramasamy Adhikari. If at all there was a partition as claimed by the plaintiff, then in the year 1969 itself, patta, chitta and adangal, etc., would have been transferred in the name of the plaintiff. A perusal of Exs.B1 to B3 and B5 to B10, it is clearly established that the late brother of the plaintiff, Ramasamy Adhikari purchased the properties in his individual name and in fact, he sold one of the properties to the plaintiff by way of sale deed Ex.B87 and in turn, he settled the same in favour of his son by way of settlement deed Ex.B88. Further, as rightly pointed out by the learned counsel for the appellants/defendants, the plaintiff has not specifically pleaded or



mentioned in the plaint regarding the suit properties as ancestral and owned by joint family and there was a oral partition. Admittedly, no evidence was adduced by the plaintiff to prove that he had been in possession of the suit schedule properties. The lower appellate Court has relied upon Exs.A8 to A16 which are kist receipts only which would not prove the title of the plaintiff over the suit properties, which the plaintiff claimed that he got the same after the alleged partition. But it is pertinent to note that in all the sale deeds, viz., Exs.B1 to B3, B5 and B6 by which, the brother of the plaintiff, Ramasamy Adhikari purchased the properties exclusively in his name and there were no recitals in the said documents to the effect that the properties were purchased in the name of Ramasamy Adhikari as Manager (Karthi) of the family and for joint family purpose. On behalf of the defendants, Ex.B7 was produced which shows that the item No.12 of the suit schedule properties was independent property of the plaintiff, while so, the assumption drawn by the lower appellate Court that the suit properties are joint family properties and purchased in the name of the brother of the plaintiff,



Ramasamy Adhikari, cannot be sustained. The plaintiff has produced all kist receipts only pertaining to item No.12 of the suit schedule property, while the lower appellate Court has erred in holding that the plaintiff has paid kist in respect of all suit properties. Therefore, absolutely, there is no document produced by the plaintiff to prove his title or possession over the suit schedule properties. A perusal of Ex.B90 would show that the plaintiff purchased the property, wherein, the boundaries have been specifically mentioned the properties owned by the defendants and Ramasamy Adhikari independently and it is admitted by the plaintiff as PW.1 also. In fact, by virtue of Ex.A18 partial partition that had taken place between the father of the defendants, Ramasamy Adhikari and the defendants, settling some properties among themselves and some properties were omitted to be partitioned and retained them in common which does not in any way confer title in favour of the plaintiff over the suit properties more particularly, in the absence of any documentary evidence to prove the title and possession over the suit properties. Therefore, the findings of the lower appellate Court based on



assumptions and presumptions, cannot be sustained and accordingly, the substantial questions of law 1, 2 and 4 are answered in favour of the appellants.

17.As regards the substantial question of law 3 is concerned, it is contended by the learned counsel for the defendants/appellants that the plaintiff primarily based his claim on Ex.A1, dated 03.03.1986 UDR patta, which was clandestinely obtained by him in the year 1986, but the said patta came to be cancelled by proceedings dated 27.01.1995 Ex.B14 by the District Revenue Officer, Villupuram. However, by suppressing the cancellation of the patta, the plaintiff filed the suit, which fact was considered by the lower appellate Court. A perusal of the patta cancellation proceedings, viz., Ex.B14, dated 27.01.1995, it reveals that the UDR patta granted in favour of the plaintiff in the year 1986, came be to cancelled. As against the patta cancellation proceedings, the plaintiff has not pursued any proceedings by way of appeal. Admittedly, this fact was not mentioned in the plaint and the



lower appellate Court has also not considered. When such being the case, the claim of the plaintiff made based on Ex.A1 UDR patta cannot be sustained since all the documents produced by the plaintiff are subsequent to Ex.A1 and thereby, this Court is of the view that the plaintiff has not produced any reliable document to prove the alleged oral partition said to have been taken place during 1968-69 *vis-a-vis* to prove his title and possession over the suit properties which aspect was also not considered by the Ist Appellate Court in proper perspective and not justified in grant of the judgment and decree in favour of the plaintiff. Accordingly, this substantial question of law is also answered in favour of the defendants/appellants.

18.In the light of the above discussion and since all the substantial questions of law are answered in favour of the defendants/appellants, the judgment and decree rendered by the lower appellate are liable to be set aside.



19. Accordingly, this Second Appeal is allowed and the judgement and decree dated 25.09.2003 made in A.S.No.148 of 2002 on the file of the learned Additional District -cum-Sessions Judge-Fast Track Court at Kallakurichi is set aside and the judgement and decree dated 28.08.2000 made in O.S.No.149 of 1995 on the file of the learned I Additional District Munsif, Kallakurichi is confirmed. No costs.

12.10.2022

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To

- 1.The Additional District-cum-Sessions Judge-Fast Track Court at Kallakurichi
- 2.The I Additional District Munsif, Kallakurichi

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KRISHNAN RAMASAMY.J.,

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