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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 28.01.2022

Judgment Pronounced on : 31.01.2022

CORAM: JUSTICE N.SESHASAYEE

S.A.No.381 of 2005
and CMP.No.10328 of 2005

1.Ganesa Naicker
2.Ranganatha Naicker
3.Vedachala Naicker ... Appellants 1 to 3/Defendants 4,5 & 6

4.V.Rajendran
5.V.Lakshmanan
6.V.Haridhas
7.Manimegalai
8.Vijaya
... Appellants 4 to 8 /not parties/
L.Rs of deceased I Appellant/

9.R.Selvamani
10.R.Mari
11.R.Kali
12.R.Anbu
... Appellants 9 to 12/ not parties /
Lrs of deceased II Appellant

Vs

1.Periasamy Naicker
2.Bhoopathy Naicker
3.Nithiyanandam
4.Srinivasan ... Respondents 1 to 4/Plaintiffs 2 to 5

5.Saravana Naicker ...5th Respondent/ 2nd Defendant

6.Chinnakulandai Ammal
..... 6th Respondent /7th Defendant

Prayer :- Second Appeal filed under Section 100 of CPC, against the decree and Judgment passed in A.S.No.31 of 1995 on the file of the Additional Sub Court at Chengalpattu dt.28.11.2002



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confirming the Judgment and Decree of the Trial Court in O.S.No.411 of 1984 on the file of the District Munsif Court of Chengalpattu dt.6.7.1995.

For Appellant : Mr.K.Hariharan

For R1 to R5 : No appearance

For R6 : Not ready in Notice

JUDGMENT

1.1 The defendants in O.S.No.411 of 1984 on the file of the District Munsif Court, Chengalpattu are the appellants herein.

1.2 The plaintiff has filed the suit for declaration of title and for bare injunction with an alternate prayer for recovery of property if the possession was found to be with the defendants and the appellants as defendants. The defendants have lost successively both before the trial court as well as before the first Appellate Court. The parties would be referred to by their rank before the trial Court.

2.The case of the plaintiff may be summarized as below;

- The suit property is described as a wet agricultural land measuring 20 cents comprised in Sy.No.252/4 of Thiruvidadanthai Village correlated to Paimash No.1105.
- This property originally belong to a certain Govindaswamy Naicker. On 12.07.1955 vide Ext.A.2 settlement deed, he settled the same in favour of his wife Chinnakolandai Ammal.
- On 06.10.1959, under Ext.A.1, sale deed, Chinnakolandai Ammal had sold the same to Vadivambal. In this sale deed, the property was described inter alia by its four boundaries. In stating the extent covered within the boundaries, it is given as only 16 cents instead of 20 cents. This was a mistake.
- The property is part of a zamin Village, and under the Ryotwari Settlement that took place under Act 26 of 1948, patta came to be issued in the name of Vadivambal in Patta No.611. The patta granted to Vadivambal has become final.
- She died in 1982 leaving her husband, the plaintiff herein and their four sons. The plaintiff and his four sons thus constitute a joint family property. The plaintiff herein is the husband of Vadivambal.
- On the demise of Vadivambal, in continuation of her possession and enjoyment of the suit property, the plaintiff has been enjoying the same.



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- Govindaswamy Naicker, under whom the plaintiff now claims title, had a brother Duraiswamy Naicker. The defendants are the sons of this Duraiswamy Naicker.
- The first and third defendants claim that they have purchased 0.04 cents in southern portion of the property, and they removed the ridge on the southern portion, and attempted to trespass into the southern 4 cents of the plaintiff's property with a view to establish their title over it. It is in these circumstances, the suit came to be laid.

3. In the written statement filed by the first defendant and adopted by the other defendants it is alleged as below;

- The property covered under paimash No.1105 had an extent of 28.75 cents, approximately 29 cents. This entire extent of 29 cents lie as two plots; one a bigger plot of 20 cents and another a smaller plot of 9 cents. It originally belonged to a certain Elumalai Naicker. He was enjoying it under patta no.58.
- Elumalai Naicker had three sons. Vendravasi Naicker, Gengappa Naicker and Duraiswamy Naicker. Govindaswamy Naicker, under whom the plaintiff now seeks right is the son of Vendravasi Naicker, whereas, the defendants are the sons of Duraiswamy Naicker. The other son Gengappa Naicker had two sons Kistappa Naicker and Dhanusu Naicker. Elumalai Naicker was the kartha of the Hindu Joint Family comprising of above said members.
- On the demise of Elumalai Naicker, his eldest son Vendravasi Naicker became the kartha, and the patta came to be transferred in his name under Patta No.58.
- While so, there was an oral partition among the sons of Elumalai Naicker. In this partition, Vendravasi Naicker was represented by his son Govindaswamy Naicker. In this, Govindaswamy Naicker as representing Vendravasi Naicker's branch was allotted 9.25 cents, Gengappa Naicker was allotted 8.25 cents and Duraiswamy Naicker was allotted 11.25 cents. As earlier stated the entire 29 cents was spread over a bigger plot of 20 cents and a smaller plot of 9 cents. In the partition stated above, shares were allotted to all the three branches in each of the two plots.
- Notwithstanding the above partition, patta for the property continued to be in the name of Vendravasi Naicker as stated above, and on his demise, it continued in the name of Govindaswamy Naicker.
- Ever since the said oral partition, each of the parties to the partition began to enjoy the separate plots allotted to them under the partition. Indeed, Duraiswamy Naicker, the father of these defendants had executed a mortgage deed of his share allotted to him under Ext.B.1, dated 27.08.1949 in favour of Kistappa Naicker.



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- So far as survey and correlation goes, as stated earlier, the entire extent of about 29 cents in Pimash No.1105 lie as two plots of 20 cents and 9 cents. During survey, the bigger plot of 20 cents was assigned Survey No.252/4 and the smaller plot of 9 cents was given Sy.No.252/5.
- Under Ext.A.2, Settlement Deed Govindaswamy Naicker had settled his 9.25 cents that he had obtained under the oral Partition in favour of his wife Chinnakolandai Ammal. Indeed, it was shown in the settlement deed as constituting 6.5 cents in the bigger plot, and 3 cents in the smaller plot.
- The settlee under Ext.A.2, settlement deed was in enjoyment of only 9.25 cents. While so, this settlee Chinnakolandai Ammal had laid O.S.No.279 of 1957 against Duraiswamy Naicker and others, wherein, she had claimed title only for 9.25 cents in Paimash No. 1105. Therefore, Chinnakolandai Ammal cannot validly transfer anything more than her 9.25 cents.
- So far as plaintiff's title goes, under Ext.A.1 sale deed Chinnakolandai Ammal had sold only her 6.5 cents in the bigger plot in Sy.No.252/4 to plaintiff's wife Vadivambal. And she had sold the remaining 3 cents in the smaller plot in Sy.No.252/5 to the third defendant Rajagopal Naicker in 1979.
- The description of the property sold under Ext.A.1 sale deed having 16 cents itself is a misdescription, and the said mistake has arisen owing to old system of measurements. Indeed, this mistake has arisen even in the settlement deed (Ext.A.2) in favour of Vadivambal's predecessor in title. It is evident that the error in the extent of property as stated in Ext.A.2 has been carried forward to Ext.A.1, sale deed.
- While so, the third defendant Rajagopal Naicker had purchased 6.5 cents of Gengappa's branch from his son Dhanusu Naicker under Ext.B.7, sale deed dated 22.10.1979. Since this purchase, the defendants branch became entitled to 13 cents in the bigger plot of 20 cents. So far as payment of land tax is concerned, the plaintiff has been paying only for 6.5. cents, and the defendants are paying for remaining 13 cents. These defendants have been in continuous physical possession of the property for well over the statutory period for prescribing title by adverse possession also. So far as grant of patta to plaintiff's wife Vadivambal is concerned, these defendants were not given any notice about it, and were not party to the patta proceedings. Indeed, Patta No.611 deals with other items of properties and it is possible that the plaintiff might have paid kist for those items. The other revenue records too will not assist the plaintiff as they are manufactured by the plaintiff with the help of the lower rank Revenue



Officials. The suit is bad for non-joinder of necessary parties since all the other legal heirs of Vadivambal were not made parties to the suit.

5.1 The dispute went for trial and the trial Court had framed as many as 14 issues. On the side of the plaintiff, two witnesses were examined as P.W.1 and P.W.2 and Exts. A1 to A-32 were marked. For the defendants, first defendant examined himself as D.W.1 and they have produced Exts.B1 to B9. The trial Court decreed the suit and declared the title of the plaintiff to the suit property and also had granted a further decree of prohibitory injunction. Its line of reasoning was: (a) that the defendants have not proved the oral partition as was pleaded in the written statement; (b) that the patta was issued pursuant to abolition of zamindari land, and settlement patta was given in 1962 to Vadivambal. So far as the issue of oral partition is concerned, it is however held that that going by Ext.B.1, mortgage deed, there ought to have been a oral partition but still it proceeded hold that except the oral statement of defendants, there is nothing on record to indicate that the defendants are entitled to anything in Sy.No.252/4; (c) So far as the enjoyment of the property is concerned, while the plaintiff has produced the kist receipt from about 1961 to till before the institution of the suit, the defendants have produced three tax receipts for the years 1971, 1972 and 1979.

5.2 Challenging the said decree of the trial Court, the defendants preferred A.S.No.31 of 1995 before the Additional Sub Court, Chengalpattu. The Appellate Court on a reappraisal of the evidence, concurred with the findings of the trial Court and dismissed the same. Its fundamental line of reasoning was pivoted in Ext.A-2 compromise decree dated 09-10-1958 in O.S.279 of 1957 between the plaintiff and Chinnakolandai Ammal (from whom the plaintiff's wife Vadivambal claims right under Ext.A-1) in which the decree property covered by paimash number 1105 (same as the suit property) is the 15th item of property and that the title to the same has been declared in favour of Chinnakolandai Ammal (under whom plaintiff's wife Vadivambal claim title under Ext.A-1) Therefore, the Court held that Duraisamy Naicker had no title in the property in paimash No:1105.

6.The Second Appeal has been admitted to consider the following substantial questions of law:

"1.The Lower Appellate Court having believed that there was a partition between the brothers Vendarasi Naicker and the others should have also proceeded to find that the 20 cents of thalai in S.No.252/4 was divided into 3 parts, each of 6-1/2 cents belonging to each brother and in such a case,



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is it open to the Lower Appellate Court to find any title for 20 cents of land in suit survey No.252/4 especially in the absence of any specific conveyance or parent document confer any right, title to Govindasamy Naicker for the entire extent of 20 cents?

2.Is it open to the Lower Appellate Court to hold that patta No.677 is a document of title and is it legal and correct to hold that mere patta granted either by the settlement Authorities or Revenue Authorities without any due notice or due enquiry to all the persons interested admittedly to the appellant, can it be regarded as a document of title or title deed and can declaration of title be granted based on the same patta?

3.Is the Lower Appellate Court right in rejecting Ex.B5 and B7 which are Sale Deeds establishing the purchase of one share from the others and are they not public documents entitled for presumption regarding genuineness u/s 74 of the Evidence Act and are the documents not proved themselves by virtue of its antiquity and old documents can the principal that the persons connected with the documents have to be examined be applied in the case of litigation between inter se parties which is otherwise relevant under the chapter of Relevancy of Facts and are straight away admissible under the provisions of the Evidence Act as relevant documents?"

7.1 Of the three questions raised above, the second question is easily resolvable. Admittedly, the property originally belonged to Elumalai Naicker and he held it in patta No:58. The plaintiff is merely a purchaser from the branch of one of the heirs of Elumalai Naicker. But his pleadings states that the property was a zamin property, that when patta was granted post settlement under Act Estates Abolition Act,1948 (Act 26/48) it was granted for 20 cents. However, she had produced Ext.A-4 patta merely, which bears the date in 1994 and to back it she has produced Ext.A-3 notice issued to her under Sec.9 of the Survey and Boundaries Act, 1923. Neither of them can aid the plaintiff. See: Srinivasan & 6 others Vs. Sri Madhyarjuneswaraswami, Pattavaithalai, Tiruchirapalli District by its Executive Officer at Pettavaithalai Devasthanam & 5 others [1998 (II) MLJ 722 (FB)]

7.2 Turning to the other two questions, no questions however seem framed vis-a-vis, the effect of Ext.A2, compromise decree



As per Ext.A5 produced by plaintiff :

১. এম. এ. ও. এ. স্নাতক প্রার্থীরা
 ২. এম. এ. ও. এ. স্নাতক প্রার্থীরা
 ৩. এম. এ. ও. এ. স্নাতক প্রার্থীরা

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15) பித்தாசு பைமாஷ் 1185 - 0-3-8-iv.0-1-2
ஆதார மொகி ராய்ச்சிஸ் ரிவர்ட்டிங் வடக்கு, கிழக்கு, அத்துடன் கிழக்கு
பெற்றது, இதுவே பத்திரியின் ஆணை 1.

வே. சிவசுந்தர மொகி ராய்ச்சிஸ் ரிவர்ட்டிங் பெற்றது, கி. சத்யநாயக ராய்ச்சிஸ்
ரிவர்ட்டிங் கிழக்கு ரிவர்ட்டிங் வடக்கு, கி. சிவசுந்தர மொகி ராய்ச்சிஸ் ரிவர்ட்டிங்,
கிழக்கு, கி. சத்யநாயக ராய்ச்சிஸ் ரிவர்ட்டிங் பெற்றது, இதுவே பத்திரியின் ஆணை 1.

7.4 This is an obvious fraud on the Court and apparently has been made with a view to gain an unfair advantage by misusing the judicial process. When fraud steps in and detected, it has the effect of vitiating all. Necessarily, the decree of the first appellate Court requires to be interfered with.

7.5 Turning to the very title of Vadivambal that she had obtained in the property which her vendor Chinnakolandai Ammal obtained under Ext.A2. Ext.A5 deals several items of properties, of which the property in Paimash No.1105 is one and it says that only 1/3rd right of Govindaswamy Naicker was settled in favour of his wife Chinnakulandai Ammal. Even in Ext.A1, title deed under which Vadivambal has purchased the properties, the property in paimash No.1105 is described as Item No.15. It merely says one plot and not the whole of it. This implies Chinnakolandai Ammal has obtained only 1/3rd share and she is incompetent to transfer anything more than that, and even Ext.A1 indicates only a portion of Paimash No.1105, within the specific boundaries has been allotted to her.

7.6 Inasmuch as the Court has found Ext.A5, the certified copy of the decree in O.S.No.279 of 1957 is a fraudulent document, since the paimash number in Item No.15 is deliberately corrected, it vitiates all, and as already outlined, Chinnakolandai Ammal had derived only 1/3rd share in Paimash No.1185 with specific boundaries and hence, the plaintiff cannot claim title for 20 cents.

8. In conclusion, the appeal is allowed with costs and the decree of the Courts below in A.S.No.31 of 1995 on the file of the Additional Sub Court at Chengalpattu dated 28.11.2002 and in O.S.No.411 of 1984 on the file of the District Munsif Court of Chengalpattu dated 6.7.1995 are hereby set aside and the suit shall stand dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

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To:

1. The Additional Sub Judge
Chengalpattu.

2. The District Munsif
Chengalpattu.

+1cc to Mr.K.Hari Haran, Advocate, S.R.No.6098

S.A.No.381 of 2005

RSI (CO)
SB(22/04/2022)