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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2022

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

S.A.No.231 of 2012

Veerapathiran ... Appellant/Appellant/Plaintiff

Vs.

1. Parasuraman
2. Indirani
3. Gantha
4. Valli
5. Elumalai
6. Malar
7. Kumar

... Respondents/Respondents/Defendants

PRAYER: Second Appeal filed under Section 100 of C.P.C., against the Judgment and Decree dated 22.08.2006 in A.S.No.60 of 2005 on the file of the Principal Subordinate Court, Tiruvannamalai, confirming the Judgment and Decree dated 27.04.2005 in O.S.No.1029 of 1996 on the file of the Additional District Munsif Court, Chengam.

For Appellant : Mr.S.Elangovan  
for M.S.Elangovan Law Associates

For Respondents: Mr.R.Rajarajan for R1, 3 to 7  
R2 - Died

JUDGMENT

The plaintiff is the appellant in the second appeal.

2. The case of the plaintiff is that the schedule mentioned property was purchased by his father by virtue of a registered sale deed dated 12.12.1921 and he succeeded to his father after his demise as the sole legal heir and he is in possession and enjoyment of the property. The further case of the plaintiff is that his paternal grandfather Gundu Gounder had five sons and he did not have any ancestral family property and the suit property is the exclusive property of his father.



3. The grievance of the plaintiff is that the defendants, who had no right or title in the suit property, attempted to trespass into the property and inspite of resistance, a portion of the property marked as G, B, D, J in the plaint rough plan was also encroached. Hence, the plaintiff filed a suit seeking for declaration of title over the property, i.e., the property marked as F, G, B and I, J, D in the plaint rough plan and for mandatory injunction to remove the construction put up in the encroached portion marked as G, B, D, J and for permanent injunction restraining the defendants from in any manner interfering with the suit property.

4. The defendants filed a written statement and took the defence that the entire property was an ancestral property, which was in possession and enjoyment of Gundu Gounder and his five sons. On the demise of the said Gundu Gounder, his sons were in possession and enjoyment of the property jointly. Their specific case is that there was an oral partition among the sons of Gundu Gounder and each of them were allotted their respective shares and had been enjoying the shares for more than 40 years. That apart, certain portions of the property were also dealt with by the grandson of Gundu Gounder namely Govindasamy Gounder who sold his share of the property through a registered sale deed dated 19.11.1973 and in turn that property was sold in favour of the second defendant through a registered sale deed dated 22.04.1994.

5. According to the defendants, each sharer / purchaser was in possession and enjoyment of their respective properties and the plaintiff is in possession and enjoyment of the property that was allotted in favour of his father during the oral partition and there is no question of any encroachment in the portion belonging to the plaintiff. The defendants, therefore, sought for the dismissal of the suit.

6. The Trial Court, on considering the oral and documentary evidence, dismissed the suit by Judgment and Decree dated 27.04.2005. Aggrieved by the same, the plaintiff filed an appeal in A.S.No.60 of 2005 before the Principal Sub Court, Tiruvannamalai. The learned Principal Sub Judge, after analysing the oral and documentary evidence and after considering the findings of the Trial Court, dismissed the appeal by Judgment and Decree dated 22.08.2006 and thereby confirmed the Judgment and Decree of the Trial Court. Aggrieved by the same, the plaintiff has filed the present second appeal.



law :-

7. This Court framed the following substantial questions of

- a) Where the property in question stands in the individual name of the plaintiff's father who had entered into an agreement of sale with the defendant, whether the Courts below were right in construing the property to be a HUF property only based on oral evidence contrary to the terms of Ex.A1?
- b) Whether the suit property can be construed to be HUF property only based on the fact that patta was given to the other properties which were HUF properties and the suit property was actually standing in the name of the individual?
- c) Whether the findings of the Courts below can be termed as perverse owing to improper appreciation of oral and documentary evidence?

8. The learned counsel for the appellant submitted that both the Courts below failed to note the fact that Ex.A1 was a registered sale deed that stood in the name of the father of the appellant and it was his exclusive property. The learned counsel further submitted that it is the defendants, who claimed that the property formed part of the joint family property and hence the burden of proof is upon them to prove that the property also forms part of the joint family property. The learned counsel further submitted that the defendants failed to prove the so called oral partition and the evidence that was considered by both the Courts below was running contrary to the terms of the registered sale deed marked as Ex.A1. Hence, the learned counsel sought for inference of the findings of both the Courts below.

9. Per contra, the learned counsel for the respondents 1, 3 to 7 submitted that the appellant came to the Court with a false case. The learned counsel submitted that the appellant projected a case, as if there were no joint family properties and that the suit property was the exclusive property of his father. Whereas, in the course of evidence, the falsity of the case of the appellant got exposed and both the Courts below categorically found that there were joint family properties through Gundu Gounder and it was orally partitioned among his sons and they were in possession and enjoyment of their



respective shares and even the revenue records marked as Ex.B1 stood in the name of all the five sons of Gundu Gounder, which also included the plaintiff's father's name. The learned counsel submitted that both the Courts below have appreciated the materials available on record and rendered the findings and therefore, there is no scope for any interference in the present second appeal.

10. This Court carefully considered the submissions made on either side and the materials available on record.

11. The thrust of the contention of the learned counsel for the appellant is that the property was purchased by the father of the appellant through Ex.A1 in his name and after his demise, the appellant as his son is the exclusive owner of the property. Whereas, the case of the defendants is that the suit property originally was part of the larger extent of the joint family properties and there was an oral partition whereby the sons of Gundu Gounder divided the properties among themselves and they are in possession and enjoyment of their respective shares. Therefore, the defendants are categorically denying the very claim made by the plaintiff is if the suit property is the exclusive property of the father of the plaintiff.

12. The specific stand in the plaint by the appellant is that there were no ancestral Joint Hindu Family property through his paternal grandfather Gundu Gounder. This stand taken by the plaintiff was completely exposed in the course of trial and the Courts below found that Ex.B1, which was the Patta Pass Book, was issued in the name of all the sons of Gundu Gounder for the total property measuring 5.35 acres. In the said Patta Pass Book, the name of the father of the plaintiff was also mentioned. This document by itself shows that the specific stand taken by the plaintiff in the pleadings is false.

13. The Courts below also took into consideration, Ex.B8 wherein the property, which originally fell in the share of one Muniya Gounder, was dealt with by one of his son Govinda Gounder, who had alienated his half share in the property in favour of one Govindasamy Gounder. In turn, the said Govindasamy Gounder alienated the property in favour of the second defendant by virtue of a registered sale deed dated 22.04.1991, marked as Ex.B10. The Courts below took into consideration the fact that Exs.B8 and Ex.B10, were much prior to the filing of the present suit.



14. Both the Courts below also took into consideration, the entries that were made in the revenue records. The patta that was marked as Ex.B2 stood in the name of Govindasamy. That apart, the patta marked as Ex.B9 stood in the name of the first defendant. When all these pattas were issued, the plaintiff never raised any objections, if really the plaintiff was aggrieved by the same. During the course of evidence, the plaintiff himself comes up with a categorical statement that there were properties in and around the property in possession and enjoyment of the parties and he admitted the respective shares that were enjoyed by other sharers. Both the Courts below on appreciating the evidence of the plaintiff came to a categorical conclusion that the plaintiff intentionally was trying to conceal the possession of the second defendant of the property that was sold in his favour.

15. The over all findings of both the Courts below clearly substantiate the case of the defendants and the plaintiff got exposed during the course of evidence when the nature of the property got revealed and when the plaintiff himself admitted the availability of the joint family properties. The Courts below also took into consideration the discrepancy in the survey number. The survey number that was found in Ex.A1 was the old survey number and this was shown as the survey number in the plaint. Whereas, the plaintiff had marked Exs. A6 & A7, which is the patta that was issued in favour of the plaintiff and it showed survey Nos.223/6 & 223/7. This was in variance with the survey number shown in the suit, which is survey No.162/1. This was probably done by the plaintiff only to conceal the subsequent partition among the parties and the division of shares and the sub-division of the survey numbers.

16. In view of the above, even though Ex.A1 stood in the name of the father of the plaintiff, it was sufficiently proved before the Courts below that it formed part of the joint family property and the properties were orally partitioned among the sons of Gundu Gounder and each one was enjoying their respective share that was allotted. Hence, there is no perversity in the findings of both the Courts below that the property was part of the HUF property. The substantial questions of law framed by this Court are answered against the appellant. This Court does not find any ground to interfere with the judgments of both the Courts below.



17. In the result, the Second Appeal is dismissed. Considering the facts and circumstances of the case, the parties shall bear their own costs.

SD/-  
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

Lpp

To

1. The Principal Subordinate Judge,  
Tiruvannamalai
2. The Additional District Munsif Judge,  
Chengam.
3. The Section Officer,  
VR Section, High Court, Madras.

+2cc to Mr.S.Elangovan, Advocate Sr.12241  
+1cc to Mr.G.Rajan, Advocate Sr.12588

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srg 30/03/2022