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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.02.2022

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Second Appeal No.355 of 2015
and MP No.1 of 2015

1. C. Chindamani
2. C. Kaliyanrathanam
3. C.Sivaperumal
4. K.Sundararajan
5. S.Ambiga
6. S.Kaliannan
7. S.Siva Bharathi
8. S.Matheswari
9. C.Natarajan
10.P.Selvam @ Selvakumar ...Appellants/Respondents/Defendants

Vs.

1. Kaliyammal
2. C.Vanitha
3. C.Krishnan
4. C.Jothi
5. A.Kowsalya
6. C.Sumathi
7. C.Sakthivel
8. C.Paramasivam ...Respondents/Appellants/Plaintiffs

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree dated 27.09.2013 made in AS No.34 of 2011 on the file of the II Additional District Judge, Salem, reversing the judgment and decree dated 29.03.2010 made in OS No.89 of 2007 on the file of the Subordinate Court, Mettur.

For Appellants : Mr.C.Prabakaran

For Respondents : Mr.R.Srinivas, for R3, 6 and 7
No appearance R1, 2 4, 5 and 8
(notice served)

J U D G M E N T

The defendants are the appellants in the Second Appeal.



2. The respondents/plaintiffs filed a suit seeking for the relief of declaration of title, delivery of possession, mandatory injunction and permanent injunction.

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3. The case of the plaintiffs is that the suit property belongs to the father of the plaintiffs Chinnu Goundan by virtue of a registered Partition Deed dated 16.09.1950. According to the plaintiffs, the partition took place between the father of the plaintiffs and his brothers and the properties in question were the ancestral property and the father of the plaintiffs was allotted the 'C' Schedule property in the Partition Deed. The further case of the plaintiff is that their father Chinnu Goundan died intestate in the year 1970 and the property was taken care by the mother of the plaintiffs and the third plaintiff. It is stated that the third plaintiff had leased the suit property to one Chinnappan from the year 1979 to 1980 and in the year 1984 U.D.R Patta was also granted in the name of mother of the plaintiffs viz., Chinnappa.

4. The third plaintiff along with his mother had filed a suit in OS No.537 of 1996 against one Marakkal and others in which the tenth defendant in the present suit was also arrayed as the fourth defendant in that suit. After the demise of the mother of the plaintiffs in the year 2005, the plaintiffs came to know that the patta has been fabricated in the name of Chinnakali Goundan, who is the elder brother of the plaintiff's father. On further enquiry, the plaintiffs came to know that defendants 2 to 7 have executed a Sale Deed in respect of the suit property in favour of the tenth defendant with respect to Survey Nos.150/5B and 150/6B. In turn the tenth defendant executed a Sale Deed in favour of the ninth defendant and sold a portion of the property in both the survey numbers. On coming to know of all these facts, a petition was submitted before the RDO for transfer of patta and there was a cloud created against the title of the plaintiffs. In view of all these facts, the suit came to be filed against the defendants seeking for all the reliefs mentioned herein above.

5. The Trial Court on appreciation of the oral and documentary evidence and after considering the facts and circumstances of the case was pleased to dismiss the suit by judgment and decree dated 29.03.2011. Aggrieved by the same, the plaintiffs filed an Appeal before the II Additional District Judge in AS No.34 of 2011. The Lower Appellate Court on considering the facts and circumstances of the case and on reappreciating the oral and documentary evidence found that the



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finding of the Trial Court is unsustainable and accordingly allowed the Appeal through judgment and decree dated 27.09.2013 and decreed the suit for all the reliefs except the relief of permanent injunction. Aggrieved by the same, the defendants have filed this Second Appeal.

6. The learned counsel for the appellants submitted that the Lower Appellate Court erroneously interfered with the well considered judgment of the Trial Court. It was further submitted that the Lower Appellate Court completely disregarded Exs.B1 to B40 which would show that for the period from 1966 to 2006, the defendants were in absolute possession of the suit property and hence the defendants were entitled for a possessory title in the suit property. The learned counsel further submitted that the earlier suit filed by the mother of the plaintiffs had no bearing in the present suit since the defendants are not parties to the said proceedings and in any case, the earlier suit was only for the relief of bare injunction and for a pathway right. The learned counsel submitted that the patta that was granted in favour of the mother of the first plaintiff was cancelled and it was retransferred in the name of Chinnakali Gounder, who is the father of the defendants and that by itself would show that it is the defendants who are in possession and enjoyment of the property. In short, the learned counsel for the appellant submitted that the defendants are the absolute owners of the subject property and the property has been divided among themselves and thereafter, it was sold in favour of the ninth and tenth defendants. Hence the Lower Appellate Court was not right in declaring the title in favour of the plaintiffs and the findings of the Lower Appellate Court requires the interference of this Court.

7. This Court carefully heard the learned counsel appearing on either side and also perused the materials available on record and the findings rendered by both the Courts below.

8. The plaintiffs are specifically claiming their right and title over the suit property based on the registered Partition Deed dated 16.09.1950 which was marked as Ex.A1. By virtue of this Partition Deed, the 'C' Schedule property was allotted in favour of the father of the plaintiffs and there is no dispute with regard to this fact. This document has also not been put to challenge at any time. Therefore, the Lower Appellate Court based the entire judgment on this document. The Lower Appellate Court also rightly applied the principles of Section 90 of the Indian Evidence Act, since this Partition Deed



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is almost 60 years old and it is a registered document. The Lower Appellate Court thereafter has considered the patta that was issued in the name of the plaintiffs' father and has derived its finding at paragraph 18 to 20 of the judgment. Instead of stating about those findings, the findings itself can be extracted hereunder:

"18. The contention of the plaintiffs that the patta was issued in the name of plaintiff's father Chinnagoundan in respect of the suit property is to be accepted for the following facts.

Firstly, a perusal of Ex.B9 clearly shows the insertion "Chinna" but the said insertion of the word Chinna is not at all found in Ex.A.38 which is the extract of Ex.B9.

Secondly, patta was granted to Chinnaponnu after the demise of her husband Chinnugounder in patta No.315.

Thirdly, in pursuance of the granting of patta, the 3rd plaintiff herein has leased out the property in the year 1979 to one Chinnappan;

Fourthly, the contention of the defendants that the suit properties are the service inam lands and their father namely, Chinnakaligounder had obtained a title to the property by performing diety to the temple whereas the evidence of D.W.1 clearly shows that the suit property is shown as personal inam land and not a service inam lands.

19. A perusal of Ex.A38 clearly shows that the word, "Chinna" has been inserted before Kaliyappa gounder, S/o. Kaliyappa gounden. A careful perusal of the records of this case clearly shows that the father's name of the defendants 2 to 8 are Chinnakali gounder. Even if the name "Chinna" has been inserted to suit the name of the father of the defendants 2 to 8, the name should be found in Ex.A38 as Chinnakaligounder instead, it was found as Chinnakaliyappa gounder and it clearly shows that there was a clear insertion of "Chinna" in order to suit the title in the name of the father of the defendants 2 to 8 as Chinnakaligounder but they have failed in their attempt because the plaintiffs have produced the extract of the same that is Ex.A38 wherein the father of the defendants 2 to 8 does not found place because his name is Chinnakaligounder, as per the written statement and as per their own statements before this Court whereas in Ex.A38, it



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was found as Kaliyappa gounder. A careful perusal of Ex.B9, which was marked during the cross-examination of D.W.1 clearly shows the name, "Chinna" was inserted before Kaliyappa gounden. A careful perusal of Ex.B9 which was marked during the cross-examination of D.W.1 clearly shows the name, "Chinna" was inserted Kaliyappa gounden. Ex.A38, which was produced by the plaintiffs clearly shows that there was no such insertion before Kaliyappagoundan. There is an insertion of the word Chinna in Ex.B9, document and no such word could be seen in Ex.A38 which is nothing, but the extract of Ex.B9.

20. A perusal of Ex.A38 clearly shows that the suit survey number stands in the name of Kaliappagoundan, S/o.Kaliappagoundan who is the father of the plaintiffs and the defendants 2 to 8. In Ex.B9, the word "Chinna" has been inserted in the front as well as the back page of Form-5 whereas in Ex.A38, the same is not found. Hence, it cannot be construed that the patta in respect of the suit survey number was granted to the father of the defendants 2 to 8. The plaintiffs have produced documents even from the year 1944 and a careful perusal of the partition deed of the year 1950 goes to show that the property was allotted to the plaintiff's father as per the registered partition deed dated 16.9.1950 and the said document is a registered document and the said document which is 30 years old and as per Sec.90 of the evidence Act, it is produced from proper custody and since it is a registered document and therefore admissible in evidence."

9. It is clear from the above that the Lower Appellate Court has taken into consideration, the Partition Deed and read it along with the other exhibits and has rendered the above findings.

10. The Lower Appellate Court has further gone into the issue of the claim made by the defendants as if the suit property is a Minor Inam Land and that the Government had granted patta to Chinnakali Goundan in the year 1968. The findings of the Lower Appellate Court in this regard are extracted hereunder:

"26. The learned counsel for the defendant would submit that the suit property is a minor inam



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land and the Government has granted patta to Chinnakaligounder in 1968 and from that date he becomes the owner of the property. He would further submit that the father of the defendants namely, Chinnakaligounder did some services and as a result, of which the suit property was granted to him for the service rendered by Chinnakaligounder for which they did not place reliable evidence on record to show either the services rendered by the father of the defendants in getting the lands under service inam lands, whereas the plaintiffs have produced the reliable evidence on record to show that right from the year 1944 till the grant of patta No.315 in the name of the plaintiff's mother Chinnapappa which goes to show that the title stands in the name of the plaintiff's father through partition deed dated 16.09.1950 and subsequently on the basis of the partition the 3rd plaintiff Krishnan had leased out the property in the year 1979.

27. Furthermore patta has been granted to the plaintiff's mother Chinnapappa after the demise of Chinnagounder and the arguments advanced by the learned counsel for the defendants that the properties are minor inam lands and the defendant's father had been granted patta in respect of the suit property is not to be accepted and therefore, this courts holds that the plaintiffs are entitled to the declaration and delivery of possession and as far as the mandatory injunction is concerned, the 9th defendant who is the purchaser of the suit property is directed to remove the barbed wire fencing with stone pillars surrounding the suit property within 2 months from this date and as thus the point is answered accordingly."

11. The defendants have raised an alternate plea and had claimed title over the suit property through adverse possession. According to the defendants, they are in possession and enjoyment of the suit property for more than the statutory period as contemplated under Section 27 of the Limitation Act and hence, they have acquired title through adverse possession. The Lower Appellate Court once again discussed this issue in detail by relying upon various judgments and rendered its finding at paragraph 32 of the judgment and the same is extracted hereunder:



plaintiff. The plea of adverse possession is a double edged weapon. If such a plea is taken, then the party who takes such a plea has to necessarily accept the title of the other side failing which such a plea will pale into insignificance.

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13. All the above findings rendered by the Lower Appellate Court are on the basis of the appreciation of oral and documentary evidence. This Court does not find any perversity in those findings. It must be borne in mind that while exercising the jurisdiction under Section 100 of the Code of Civil Procedure, even if the High Court is able to come to a different finding on the evidence, that will not be a ground to interfere with the judgment of the Courts below. The interference of the High Court in the Second Appeal is confined to a pigeonhole which allows the High Court to only see if there is any perversity in the findings. The High Court cannot go beyond this scope. The Lower Appellate Court has also gone into the question of possession and it has found that the plaintiff is not entitled for the decree of permanent injunction. The Lower Appellate Court has taken each and every issue into consideration and has rendered its findings and this Court does not find any ground to interfere with the same. In any case, no substantial questions of law are involved in the Second Appeal.

14. In the result, the Second Appeal is dismissed. Considering the facts and circumstances of the case, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CCC)

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Sub-Assistant Registrar

jv

To

1. The II Additional District Judge,
Salem.

2. The Subordinate Judge
Mettur.



3. The Section Officer,
V.R.Section, High Court of Madras.

+2 Ccs to Mr.R.Srinivas, Advocate sr 10387
+1 CC to Mr.C.Prabakaran, Advocate sr 10397.

Second Appeal No.355 of 2015
and MP No.1 of 2015

SSD(CO)
SP(28/03/2022)