



WEB COPY



1

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.09.2022

CORAM

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

Second Appeal No.1680 of 2001

1.Syed Ghouse Beeran
2.H.Syed Hazarath Beeran(died)
(2nd appellant name amended vide
order of this Court dated 01.07.2021
made in CMP No7312 of 2021
in SA.No.1680 of 2001 by AQJ)
3.Jainab bee
4.Tajunnisa
5.Noorunisa
6.M.S.Mohamed Azharudeen
7.Sabiya Banu
(appellants 3 to 7 brought on record
as Lrs of the deceased 2nd appellant
viz., Syed Hazarath Beeran vide
order of this Court dated 09.08.2021
made in CMP No.12377 of 2021 in
SA.No.1680 of 2001 by AQJ)

... Appellants

Vs.

1.Syed Akbar Hussain(died),
2.Mahabub Bi

1/27



3.Syed Jekangir Hussain

4.Syed Malik(died)

5.Syed Jakir Hussain

6.Noorul Hutha

7.Aasia

8.Farida

9.Noorjahan

10.Irshath Hussain

11.Shameer

12.Wahitha

... Respondents

(RR2 to 12 brought on record as Lrs of the

deceased first respondent viz.,

Syed Akbar Hussain, vide order

of this Court dated 17.02.2021 made

in CMP No.15379 of 2003 in

SA.No.1680 of 2001 by TKRJ)

Prayer:- This second appeal has been filed under Section 100 C.P.C., against the judgment and decree dated 28.04.2000 made in A.S.No.25 of 1998 on the file of the learned Subordinate Judge, Kallakurichi confirming the judgment and decree dated 12.02.1998 made in O.S.No.709 of 1995 on the file of the learned Principal District Munsif, Kallakurichi.

For Appellants : Mr.K.Muthukumarasamy

For Respondents : Mr.A.G.Rajan, for RR2, 6 to 8



WEB COPY

JUDGEMENT

This second appeal has been filed against the judgment and decree dated 28.04.2000 made in A.S.No.25 of 1998 on the file of the learned Subordinate Judge, Kallakurichi, confirming the judgment and decree dated 12.02.1998 made in O.S.No.709 of 1995 on the file of the learned Principal District Munsif, Kallakurichi.

2. The appellants are the defendants and the respondents are the plaintiffs. For the sake of convenience, the parties will be hereinafter referred to as per their nomenclature in the Original Suit.

3. The case of the plaintiffs is as follows:-

The deceased Plaintiff, namely, Syed Akbar Hussain, was the brother of the defendants. The suit property in the original plaint schedule is old R.S.No.304/1, New R.S.No.304/1D in Patta No.85 admeasuring Ac.0.23 ½ Cents situated in Prithivimangalam Madura Melpoondi Thakka Village, Kallakurichi Taluk. According to him, the property admeasuring



1 Acre 41 Cents in S. No.304/1 earlier belonged to the following 6 persons jointly:

(1) Syed Meer Sahib's share	0.23 ½ Cents
(2) Syed Rajali Sahib's share	0.23 ½ Cents
(3) Syed Khader Hussain Sahib's share	0.23 ½ Cents
(4) Syed Essac Sahib's share	0.23 ½ Cents
(5) Syed Yahooob Sahib's share	0.23 ½ Cents
(6) Syed Kabar Sahib's share	0.23 ½ Cents

Total: Ac. 1.41 Cents

4. The deceased plaintiff was the son of Thiru Syed Yahooob Sahib (Sl.No.5). By virtue of the Sale Deed dated 01.02.1956, the plaintiff purchased the suit property and in view of his possession and enjoyment by paying the Kist since the date of purchase and he perfected to title by adverse possession. The defendants are the grand sons of Mr.Syed Meer Sahib (Sl.No.1). The defendants are entitled to 0.23 ½ Cents by way of inheritance through their father's share. The defendants'



father Mr. Syed Hussain Beeran purchased the land measuring an extent of 0.23 ½ Cents from Mr. Syed Rajali Sahib (Sl.No.2) and another 0.23 ½ Cents from Mr.Syed Kabar Sahib (Sl.No.6) and hence, the defendants became the owners of Ac.0.70 ½ Cents in total, which is half share in the above said total Ac.1.41 cents. The defendants' land is situated on the southern side of suit property and they have no right over the suit property. During the UDR Scheme, the suit land was subdivided and a patta was given to the plaintiff in respect of the land i.e. S. No.304/1D-0.08.0 Ares (0.20 Cents) by mistake. Aggrieved by the same, a petition was filed by the plaintiff before the Taluk Office, Kallakurichi for cancellation of said Patta and taking advantage of the patta given for lesser extent of 0.20 Cents, the defendants were attempting to encroach the suit property. Hence the suit.

5. The case of the defendants is as follows:-

The defendants denied the entitlement of the plaintiffs for an extent of 0.23 ½ Cents in R.S. No.304/1D and that the defendants are entitled to 3/6th share by way of inheritance and by way of sale from the persons



mentioned at SI.Nos.(2) and (6) mentioned herein above. The suit village was an inam village and the Government of Tamil Nadu abolished the inam and took over the lands under the Tamil Nadu Minor Inam (Abolition and conversion into Ryotwari) Act, 1963 (Tamil Nadu Act No.30 of 1963) and conducted survey and settlement. From and out of the land situated in R.S.No.304/1, the Settlement Tahsildar, Thanjavur has allotted 0.13 Cents in R.S. No.304/16 as Burial Ground and also classified 0.08 Cents in R.S.No.304/15 as Nanja land. The Asst.Settlement Tahsildar, Thanjavur has granted patta for R.S.No. 304/1 for Ac.1.20 Cents in the name of Syed Husain Beeran Sahib and that the Tahsildar of Kallakurichi earlier granted joint patta No. 1192 for R.S. No. 304/1 for an extent of 1.20 Cents in the name of 1st defendant and 3 others. The Government subdivided R.S.No.304/1 – Ac.1.20 Cents into R.S. No.304/1A - 0.31 Cents, R.S.No.304/1B-0.20 Cents, R.S.No.304/1C - 0.20 Cents, R.S.No.304/1D – 0.20 Cents, R.S.No.304/1E - 0.29 Cents in the year 1975.

6. It is the further case of the defendants that the Government



granted patta to the defendants for R.S.No.304/1A - 0.31 Cents and R.S.No.304/1E - 0.29 Cents while the Government granted patta to the plaintiff for R.S.No.304/1D - 0.20 Cents. The sub division of R.S. No.304/1 took place during U.D.R. Scheme and the deceased plaintiff had been given patta for 0.20 Cents in R.S. No.304/1D by mistake as claimed by the plaintiff is not correct. The defendants houses are situated in R.S.No.304/1E. The Tahsildar Natham Survey, Kallakurichi has granted patta No. 498 for R.S.No.304/1E to the defendants. The defendants have been in possession and enjoyment of the houses more than the statutory period by paying house taxes for the same. Since the defendants' old thatched house has become dilapidated, the defendants have demolished the same as they want to construct a new terraced house in its place with R.S.No.304/1E. The defendants are not trying to trespass into R.S.No.304/1D from 5.7.1995 onwards and the cause of action alleged in the plaint is false. The description of the suit property given in the plaint is not correct. The plaintiff is in possession and enjoyment of 0.20 Cents in R.S.No.304/1D where the tiled house and cattle shed are



situated. The plaintiff is not entitled to the relief of declaration of title to the entire extent of 0.23 ½ cents in R.S.No.304/1D and consequently, the plaintiff is not entitled to the relief of permanent injunction.

7. After filing the Written Statement by the defendants, the plaintiff amended the plaint. In the amended plaint, paragraph no.5 in the original plaint is substituted by a new paragraph no.5, wherein, it is pleaded that the defendants put up a new case that there was a oral partition 20 years ago. According to the defendants, the plea about the oral partition and other averments made in paragraph no.5 in the amended plaint are not at all true. On the other hand, the plea made in paragraph no.5 in the amended plaint is contrary to the evidence of the plaintiff (PW1). Moreover, the description suit property is also changed in the amended plaint, whereunder, it is claimed that the suit property is 0.01.50 Ares out of 0.11.5 Ares, in old S.No.304/1, New S.No.304/1E-40 feet East to West and 40 Feet North to South. New boundaries are also given in respect of the suit property which are described in the plaint schedule.



Pursuant to the filing of the amended plaint, the defendants filed an additional written statement denying the averments made in the amended plaint.

8. The trial Court framed the following issues and the additional issues, viz.,

(i) Whether the plaintiff has got right to the suit property?

(ii) Whether the plaintiff is entitled to the relief of declaration of title?

(iii) Whether the suit property is valued for the pecuniary jurisdiction and for the Court fee?

(iv) To what relief the plaintiff is entitled to?

Additional Issues framed on 08.10.1996:

(i) Is it right to state that there was no oral partition 20 years ago is incorrect?

(ii) Is it correct to state that the defendant's house is in R.S.No.304/1E and the plaintiff is not in possession and not having possessory right?

9. On behalf of the plaintiff, the deceased plaintiff himself was



examined as PW1 and marked the documents Ex.A1 to A3. One Mr.Ahamed Hussain, who is the brother-in-law of the plaintiff's brother was examined as PW2. On behalf of the defendants, the first defendant was examined as DW1 and 15 documents were marked as Exs.B1 to B15.

10. The trial Court, on consideration of both oral and documentary evidence and after hearing both sides, has passed a judgment dated 12.02.1998, decreeing the suit in favour of the plaintiffs based on the Ex.A1 Sale Deed dated 01.02.1956, executed by the father of the plaintiff.

11. Aggrieved over by the said judgment and decree passed by the trial Court, the defendants herein filed first appeal in A.S.No.25 of 1998 on the file of the learned Subordinate Judge, Kallakurichi. The first appellate Court, vide its judgment and decree dated 28.04.2000, confirmed the judgment and decree dated 12.02.1998 made in

10/27



O.S.No.709 of 1995 by the trial Court.

WEB COPY

12. Aggrieved over the said judgment and decree passed by the first Appellate Court, the defendants preferred the present Second Appeal before this Court.

13. This Court has admitted the Second Appeal on 08.11.2001 and the following substantial questions of law have been formulated for consideration in this second appeal;

(i) Whether the Courts below is right in holding that the plaintiff is entitled to the relief for declaration and injunction as prayed for?

(ii) Whether the plaintiff has proved the partition of the property?

(iii) Whether the suit is barred by limitation?

14. The learned counsel for the defendants/appellants would submit that the suit was decreed by the trial Court based on Ex.A1 sale deed and



thereafter, it was also confirmed by the first Appellate Court based on the same sale deed, which does not establish the title particularly, the plea made by the plaintiff in paragraph no.5 of the amended plaint about the partition 20 that had taken place years ago was not proved. Further, he would contend that the deceased plaintiff purchased the property from his father, Syed Yahoob Sahib by virtue of Ex.A1 Sale Deed dated 01.02.1956 wherein, it has been clearly mentioned that only the plaintiff's father's undivided share was purchased and prior to the same, there was no partition as pleaded by the plaintiff.

15. The defendant also purchased two shares by virtue of Exs.B1 & B2, Sale Deeds dated 01.02.1954 and 01.02.1950 respectively. In the said Sale Deeds also, it has been mentioned that the defendant's father purchased two shares out of six shares i.e., undivided share. There was no partition even at the time of purchase of two shares out of six shares by the defendant's father. Further, he referred that even in the deposition of PW1, he has stated that there was a second partition in the year 1956-

12/27



1957, which shows that there was no certainty as regards the partition.

Further, in the amended plaint, which was filed in the year 1995, wherein, he stated in paragraph no.5 that there was a partition among the members 20 years back. Further, he would contend that there was no proper partition in respect of the properties that were enjoying temporarily without dividing the same by meets and bounds by all the shareholders.

16. In these circumstances, the Settlement Officer, Policy of the Inams, granted Ryotwari Patta for all the six shareholders by dividing the property equally at 20 cents each, based on their possession after conducting an enquiry in regard to possession of the property by the respective parties. Therefore, he contended that at the time of settlement proceedings, the deceased plaintiff possessed only 20 cents and that is the reason why, he was allotted 20 cents and the said land is sub-divided as S.No.304/1D and the patta was issued in the year 1977. After a period of 18 years, the deceased plaintiff filed the Original Suit, which is squarely barred by limitation. Though all these issues were addressed before both



the trial Court as well as Appellate Court, both the Courts below have failed to consider all these aspects and passed a decree in favour of the deceased plaintiff. Hence, since both the Courts below have failed to consider the vital aspects, the judgments rendered by both the Courts below are perverse and liable to be set aside. Further, it is the bounden duty of the plaintiff to prove the partition that had taken prior to 1956. The learned counsel pointed that even though the plaintiff pleaded three partitions, but none of the partitions has been proved by the plaintiff by adducing oral or documentary evidence in the manner known to law. Therefore, he prayed to set aside the concurrent judgments and decrees passed by the Courts below.

17. On the other hand, the learned counsel for the respondents would contend that the plaintiff purchased 23 ½ cents from his father by virtue of Ex.A1, Sale Deed and Ex.B1 & B2, Sale Deeds have been marked in order to prove the boundaries of the said sale deed Ex.A1,



wherein, it is shown the plaintiff's property. By relying the said sale deeds

and also Ex.A1, the learned counsel would submit that he purchased the

property from his father who had received it by virtue of oral partition

among his brothers. Further, he would contend that in a similar way, the

defendant's father purchased two shares viz., $23 \frac{1}{2}$ cents about 47 cents

($23 \frac{1}{2} + 23 \frac{1}{2}$), wherein, the boundaries have also been clearly mentioned.

He would further submit that out of the property purchased by the

defendants, a portion i.e., 13 cents were allotted for the burial ground and

8 cents were allotted for nursery and a patta was also issued for 8 cents in

favour of the defendant's father. He pointed out that as regards the

Ryotwari proceedings, the plaintiffs were not aware of the said

proceedings and in the said proceedings itself, it was recorded that no one

had participated on behalf of the plaintiff. So in the absence of the

plaintiff, proceedings were initiated and in respect of patta proceedings

also, no one had participated and the plaintiff was also not aware of the

sub division of the property. Hence, all these factors were considered in a

proper perspective by both the Courts below and rendered well



considered judgments which required no interference by this Court.

Hence, he pleaded to dismiss the Second Appeal.

18. Heard the learned counsel for the appellants and the learned counsel for the respondents and perused the materials available on record.

19. As regards the substantial question of law No.1 is concerned, it is the contention of the appellants/defendants that both the Courts below have erred in holding that the plaintiff is entitled to the suit property. The total extent of the property comprised in S.No.304/1 was Ac.1.41 Cents belonging to six persons mentioned above, viz., Syed Mir Sahib, Syed Rajali Sahib, etc., and the defendants' father purchased two shares from the persons at Sl.Nos.2 and 6. The suit village was an inam village and the Government of Tamil Nadu abolished the inam and took over the lands under Tamil Nadu Minor Inam (Abolition and Conversion into Ryotwari) Act, 1963 and during settlement proceedings, out of total extent, the Settlement Tahsildar, Thanjavur has allotted 0.13 cents in



R.S.No.304/16 for burial ground and also classified 0.08 cents in

R.S.No.304/15 as Nanja land and allotted the same for nursery and

thereby, the total extent of S.No.304/1 came to be reduced to Ac.1.20

cents. The dispute in the present case is with regard to the partition of the

property among the vendors of the plaintiff as well as the plaintiff's father

and the defendants. According to the plaintiff, there was a partition prior

to 1956, wherein, six persons were allotted an extent of 0.23 ½ cents each

and out of the six shares, the defendant's father was also allotted one

share and after his demise, the defendants got his share by virtue of

inheritance apart from two shares which were purchased by the

defendants' father and therefore, the defendants are entitled to 3 shares,

i.e. 0.70 ½ cents. On a perusal of Exs.B1 and Ex.B2, it would show that

the property was transferred with four boundaries, wherein, it was

categorically stated that it is their joint patta land and their shares only got

transferred but in the said sale deeds, nothing has been mentioned that

they have obtained the land by virtue of purchase. The plaintiff himself

admitted that there was a second partition during the year 1956-57 and



also third partition in the year 1975, which would ultimately show that the properties have not been partitioned until the proceedings were initiated under the Ryotwari Act. These aspects have not been considered by the Courts below in proper perspective. Another important aspect was that these lands are minor inam lands and by virtue of the settlement proceedings initiated in the year 1970 which culminated into the settlement order and subsequent to the sub-division of the properties, Ryotwari pattas were issued in favour of the deceased plaintiff as well as the defendants' father based on their respective possession and enjoyment over the property, viz., 20 cents each and the defendants were given patta for 0.31 cents in R.S.No.304/1A and 0.20 cents in R.S.No.304/1E. When the sub-division was made, normally the Revenue Officials would survey the properties and after conducting the enquiry as regards the possession of the property, they will issue pattas to the persons who are in actual possession and enjoyment of the property. Even subsequent to the issuance of patta to the defendants, an appeal was preferred and though the plaintiff pleaded that they were not aware of the patta proceedings for



a period of 18 years, it cannot be acceptable and further, the plaintiff has not at all proved even the partition which was said to have been taken place in the year 1975, but in the amended plaint which was filed in the year 1995, he has pleaded that there was a partition 20 years back, which mean that there would not have been any partition actually taken place in the year 1975 and as such, the plaintiff could not prove the same. Likewise, the first and the second partitions also have not been proved by the plaintiff. Unless and otherwise the plaintiff proved the said partitions by documentary evidence, it cannot be presumed that there were partitions as contended by the plaintiff. When Exs.A2, Ex.B1 and Ex.B2 would not establish the plea of partition, it is surprising to note that as to how could the plaintiff as PW.1 by way of oral evidence, prove the partition, while so, as rightly contended by the learned counsel for the appellants/defendants, both the Courts below are not right in coming to the conclusion that there was a oral partition. However, the fact remains is that before the Settlement Officer, the deceased plaintiff had not appeared and his land was sub-divided as S.No.304/1D for about 20 cents



and taking note of the fact that he was in possession and enjoyment of 20 cents, he was rightly issued the patta for 20 cents. Though the plaintiff raised the contention that it was not proved about the real allocation of the lands, but all the above narrated factors would prove that there was no partition in respect of the total extent of land measuring about Ac.1.20 cents and the Settlement Officer rightly issued pattas to all the persons based on their respective possession and enjoyment by allotting 20 cents each to all six shareholders. Further, it is not in dispute that in S.No.304/15, 8 cents were allotted to the nursery. The learned counsel would submit that the plaintiffs are also entitled to use the said land of 8 cents. Therefore, the Courts below have erred in relying upon Ex.A1 sale deed executed in favour of the plaintiff by his father by mentioning 23 ½ cents, whereas, it is pertinent to note that the plaintiff made claim only based on oral partition that had taken place 20 years back, which, as already discussed above, the plaintiff failed to prove the same.

20. According to the first defendant, the deceased plaintiff was in



possession of the land measuring only 20 cents. Therefore, the plaintiff virtually was not in possession of 23 ½ cents as claimed by him. In fact, the plaintiff had not adduced any evidence to prove that he had been in possession of 23 ½ cents and no plea was also made to appoint the Advocate Commissioner to prove the possession of 23 ½ cents and admittedly, the ryotwari patta was issued only for 20 cents and the same has not been challenged before any authorities. As regards the plaintiff's entitlement of 20 cents, already patta was issued in S.No.304/1D. All these aspects have not been considered in proper perspective by the Courts below.

21. The contention of the plaintiff that he is in possession of 23 ½ cents, the learned counsel for the first defendant submits that the plaintiff is entitled to share in nursery, thus, the plaintiff is entitled to 20 cents which are situated in one place and another 1.33 cents in nursery i.e. 1/6th share of 8 cents of nursery situated in another place. Both the plaintiff and respondents have been issued with patta for 20 cents each taking into their actual possession during ryotwari settlement proceedings. After



issuance of ryotwari patta, the plaintiff has not made any challenge. The said patta was issued during early 1975, whereas, the suit was filed in 1995, i.e. nearly after 20 years. The plaintiff has not proved to what exact extent of property he has been in possession. Both the Courts below have decreed suit filed by the plaintiff, against which, the first defendant filed the present Second Appeal. Out of total extent of Ac.1.41 cents of land, at the time of ryotwari settlement proceedings, 13 cents were allotted to burial ground and 8 cents were allotted to nursery. The burial ground allotted was in the property where the first defendant was in possession. He has purchased 47 cents by virtue of two sale deeds and another share of 23^{1/2} cent is concerned, he inherited the same from his father. Further, the Settlement Officer issued the patta for 20 cents each sharer, but the said patta was not challenged by the plaintiff. In these circumstances only both the Courts below came to the conclusion that the plaintiff is entitled to 23^{1/2} cents, without taking into consideration of ryotwari patta issued based on the possession of the parties in their respective properties. In order to give a quietus of the matter and also



taking note of the perversity of the judgments and decrees passed by the

Courts below and taking into consideration of various aspects as discussed above, this Court feels it appropriate to allow the plaintiff to enjoy whatever extent he is presently holding and in the event if he is holding anything over and above 20 cents, he may continue to hold the same. But in the event of the plaintiff holding lesser extent of 23 ½ cents, certainly, he is not entitled to claim anything further than what he is holding presently. In the event of holding 20 cents of land as per patta, he should continue to hold the same along with 1.33 cents in the nursery and if he is holding more than 20 cents and lesser than 21.33 cents, since he is entitled to have the same difference between 21.33 cents and the actual possession of 20 cents of land, in the nursery and in the event, he is holding 21.33 cents and not more than 23 ½ cents, this Court is of the view that since the plaintiff has constructed the house and is in possession and enjoyment of the same for more than 12 years, he shall continue the same without any disturbance. All these aspects were not considered in proper perspective by the Courts below. Therefore, the substantial



questions of law nos.1 and 2 are answered accordingly.

WEB COPY

22. As regards the substantial question of law no.3 is concerned, it is contended on behalf of the appellants/defendants that the suit is barred by limitation and not maintainable since the deceased plaintiff was granted patta to the extent of 0.20 cents in S.No.304/1D by the Settlement Officer after conducting the enquiry as regards possession of the property as early as in the year 1970 and all along, the deceased kept quite and only in the year 1995, filed the suit and hence, it is barred by limitation. However, it is not in dispute that the defendants were reconstructing their house as mentioned in their written statement and according to the plaintiff, the defendants were making attempts to encroach upon the suit property and interfering with his peaceful possession and enjoyment from 05.7.1995 onwards and therefore, since the cause of action arose in the year 1995, the plaintiff had filed the suit and hence, the suit is not barred by limitation. Accordingly, the substantial question of law no.3 is answered against the defendants.



WEB COPY

23. In the light of the above discussion, this Court is inclined to modify the judgment and decree passed by both the Courts below in the manner stated above.

24. Accordingly, the Second Appeal is partly allowed. Consequently, the judgment and decree dated 28.04.2000 made in A.S.No.25 of 1998 on the file of the learned Subordinate Judge, Kallakurichi as well as the judgment and decree dated 12.02.1998 made in O.S.No.709 of 1995 on the file of the learned Principal District Munsif, Kallakurichi, are hereby modified in the manner as stated above. The parties shall bear their own costs.

23.09.2022

dn

To

1.The Principal Subordinate Judge,

25/27



Kallakurichi

WEB COPY

2. The District Munsif,
Kallakurichi



WEB COPY



27

KRISHNAN RAMASAMY.J.,

dn

Second Appeal No.1680 of 2001

23.09.2022

27/27