



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

JUDGMENT RESERVED ON : 17.12.2021

JUDGMENT PRONOUNDED ON : 05.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

S.A(MD).No.153 of 2005

WEB COPY

Karuthammal

...Appellant/Respondent/Defendant

Vs.

Sivanammal

....Respondent/Appellant/Plaintiff

PRAYER : Second Appeal is filed under Section 100 of C.P.C, against the judgment and decree dated 30.07.2004 in A.S.No.176 of 2002 on the file of the Principal Sub Court, Madurai reversing the judgment and decree dated 19.10.2001 in O.S.No.140 of 1998 on the file of the District Munsif Court, Tirumangalam.

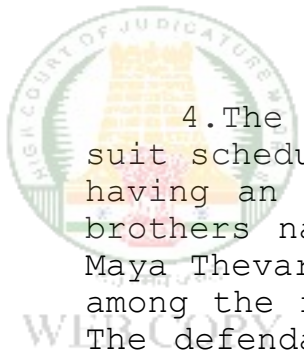
For Appellant	: Mr.M.Saravanan Advocate For Mr.R.Subramanian
For Respondent	: Mr.AN.Ramanathan Advocate For Mr.Pala.Ramasamy

JUDGMENT

The defendant is the appellant herein.

2.The plaintiff filed O.S.No.140 of 1998 before the District Munsif Court, Tirumangalam for declaration of title and permanent injunction. The trial Court partly decreed the suit. As against the same, the plaintiff filed an appeal. The First Appellate Court reversed the judgment and decree of the trial Court and decreed the suit in entirety. As against the same, the present second appeal has been filed by the defendant.

3.The plaintiff had contended that the suit schedule property having an extent of 2.32 acres in Survey No.25/1A2 belongs to the family of the plaintiff absolutely. According to the plaintiff, it was originally enjoyed by her father and thereafter, she is in possession and enjoyment of the same. The plaintiff further contended that she was granted patta in the year 1977 and again in the year 1988 during UDR proceedings. The plaintiff further contended that she is in possession and enjoyment of the entire suit schedule property for more than the statutory period and thus, she has acquired title by adverse possession. The plaintiff further contended that the defendant has no manner of title or possession over the suit schedule property and she is unnecessarily disturbing her possession.

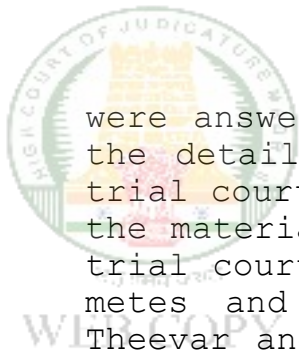


4.The defendant filed a written statement contending that the suit schedule property along with other properties in Survey No.25/1 having an total extent of 6.44 acres was originally owned by four brothers namely Ulaga Thevar, Naga Thevar, Samiyar Maya Thevar and Maya Thevar. According to the defendant, there was an oral partition among the four brothers, in which, each was allotted to 1.61 acres. The defendant further contended that the southern most portion was allotted to Ulaga Thevar, next northern portion was allotted to Naga Thevar, next northern portion was allotted to Samiyar Maya Thevar and the northern most portion was allotted to the share of Maya Thevar. The defendant further contended that on the east of survey No.25/1, there was road which was extended and all the brothers lost an extent of around 11 cents each and thus, all the brothers are entitled to each 1.50 acres only.

5.The defendant further contended that the elder brother Ulaga Thevar had sold 74 cents out of 1.61 acres on 11.10.1976 in faovur of one Mokkachamy Devar in Survey No.25/1A1. The defendant further contended that the said Samiyar Maya Thevar had executed a registered mortgage deed on 19.06.1942 in favour of one Mayandi Devar and later redeemed it on 06.06.1993. In the said mortgage deed, an extent of 1.55 acres was dealt with in Survey No.25/1. The defendant further contended that after the death of Samiyar Maya Thevar, his wife Veerammal has executed a sale deed on 12.12.1953 in favour of one Mokkachamy Thevar for an extent of 1.11 acres in Survey No.25/1. He further contended that after the death of said Mokkachamy Thevar, his legal heirs namely Rajendran and Jeyaraj have executed a registered sale deed in favour of defendant's husband namely Ponnusamy for an extent of 1.46 acres in Survey No.25/1A2. After the death of Ponnusamy, his four sons were each entitled to 35 cents. The defendant further contended that one of the sons by name Karuppiyah had executed a registered sale deed on 28.05.1997 in favour of one Andisamy in Survey No.25/1A3 for an extent of 10 cents. According to the defendant, the plaintiff is not entitled to a total extent in Survey 25/1A2 to the family of Naga Thevar, but also to the family of Samiyar Maya Thevar. According to the plaintiff, the recital in the sale deed executed by the family of Samiyar Maya Thevar will clearly indicate that untitled have been dealt in all the documents.

6.The defendant further contended that the revenue records standing in the name of the plaintiff under exhibits A1 and A13 will not confer title upon the plaintiff for a total extent of 2.32 acres when her grandfather Naga Thevar was entitled to only 1.61 acres which later got reduced into 1.51 acres.

7.The Trial court considered the boundary recitals under Exhibits B2, B3, B4, B5, B8 and B9 and came to the conclusion that the case of the defendant is believable. The trial Court also found that the plaintiff during his examination has simply stated that she is the daughter of the defendant's father and the relatives of her parents. Most of the questions



were answered by the plaintiff by stating that she is not aware of the details. Based upon the said deposition of the plaintiff, the trial court came to the conclusion that the plaintiff is suppressing the material facts relating to the relationship of the parties. The trial court also arrived at a finding that there is no partition by metes and bounds among the family members of the Samiyar Maya Thevar and Naga Thevar. The trial court also found that the total extent of 6.44 acres as per the registered documents, each one of the four brothers is entitled to only 1.61 acres. The plaintiff has not explained how her grandfather Naga Thevar alone was entitled to a larger extent of 2.32 acres. The plaintiff has not established her title and possession over the suit schedule property. In trial Court, an alternative decree was granted to the effect that the plaintiff would be entitled to a decree for declaration only to an extent of the share of her grandfather Naga Thevar and not beyond that. The trial Court further held that the plaintiff has to resort to a suit for partition in order to get her property divided by metes and bounds and dismissed the prayer for permanent injunction.

8.The First Appellate Court mostly relied upon the documents filed on the side of the defendant to arrive at a conclusion that the defendant has not proved her title or possession over the suit schedule property. The First Appellate Court also found that the plaintiff has established her possession over the suit schedule property on basis of Exhibits A1 and A13 patta. According to the First Appellate Court, the plaintiff is in possession for more than the statutory period and hence, she has prescribed title by adverse possession. The First Appellate Court also found that the defendant has not proved the genealogy or possession of the property. Based upon the said findings, the First Appellate Court reversed the judgment and decree of the trial Court and decreed the suit filed by the plaintiff as prayed for. As against the same, the present second appeal has been filed by the defendant.

9.The second appeal has been admitted on the following substantial questions of law.

a)whether in law are not the decree and judgment of the lower appellate Court vitiated in discussing the defendant's title and deciding the plaintiff's title?

b)whether in law is not the lower appellate Court in holding that the plaintiff has title prescribed title by adverse possession in the absence of necessary pleadings like animus etc?

c)was not the lower appellate court failed to see that when the plaintiff seeks title, he is estopped from claiming adverse possession as in the letter the plaintiff admits the title of the other person?

c)whether in law has not the lower appellants Court overlooked that in the absence of any material showing



partition among the plaintiff's father and his brothers in a suit for declaration of undivided share maintainable?"

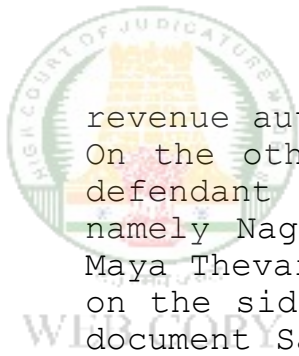
10.The learned counsel for the appellant had contended that the First Appellate Court has erred in discussing the title of the defendant and arrived at a conclusion that the defendant has not proved her title and possession to the suit schedule property. The First Appellate Court has relied upon some lacuna or weakness in the case of the defendant to grant a decree in favour of the plaintiff. The learned counsel further contended that when the plaintiff has not given proper particulars with regard to the acquisition of title by adverse possession, the First Appellate Court erred in granting a decree for declaration of title on the basis of adverse possession. The learned counsel further contended that when the plaintiff completely suppressed the relationship of her grandfather and other brothers in the plaint and has not proved any partition among the brothers, she ought not to have been granted a decree for declaration of title. The appellant further contended that the First Appellate Court has erred in granting a decree in favour of the plaintiff on the basis of adverse possession.

11.The learned counsel for the appellant further contended that when no material has been placed before the Court by the plaintiff to establish the partition among the brothers, the Court ought not to have granted a decree for declaration of title and permanent injunction.

12.Per contra, the learned counsel for the respondent contended that the plaintiff has established her title and possession by filing Exhibits A1 to A13. Being ancestral property, there is no possibility of producing any registered document and only patta can be produced by the plaintiff. The plaintiff has filed Exhibit A1 patta of the year 1977 for an entire extent of 2.32 acres in Survey No.25/1A2. The plaintiff has also produced Exhibit A13 patta granted in the year 1988 in favour of the plaintiff's property during UDR proceedings. On the other hand, the defendant has not produced any revenue records to establish her possession even though she has filed registered documents under Exhibits B1 to B9. The learned counsel for the respondent further contended that the plaintiff is in possession of the suit schedule property and she has been regularly paying kist to the suit schedule property under exhibits A3 to A12 and A17 to A30.

13.I have carefully considered the submissions on either side.

14.It is the specific case of the plaintiff that the suit schedule properties are ancestral properties of the plaintiff's family. In the plaint, she has not even averred who is the original owner of the suit schedule property. The plaintiff has not mentioned the name of her father or grandfather in the plaint. The plaintiff has simply relied upon Exhibits A1 and A13 patta granted by the

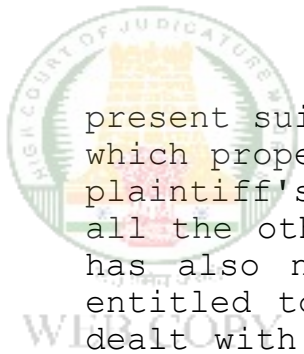


revenue authorities for an extent of 2.32 acres in Survey No.25/1A2. On the other hand, a registered document filed on the side of the defendant will clearly establish that the plaintiff's grandfather namely Naga Thevar had three brothers namely Ulaga Thevar, Samiyar Maya Thevar and Maya Thevar. Exhibit B2 is the oldest document filed on the side of the plaintiff which is dated 19.06.1942. In the said document Samiyar Maya Thevar has executed a registered odhi deed in favour of one Mayandi Thevar for an extent of 1.65 acres in Survey No.25/1. In the said document, the share of Samiyar Maya Thevar is indicated to be on the south of Maya Thevar, thereby confirming the pleadings of the defendant about the allotment of shares. The said odhi deed has been redeemed under Exhibit B4. The wife of Samiyar Maya Thevar has executed a registered sale deed in favour of one Mokkachamy Thevar under Exhibit B3. The recital in the said document will indicate that the sale deed is for an extent of 1.55 acres in Survey No.25/1. However, it does not reflect the family members in the boundary recital.

15.The legal heirs of the purchaser under Exhibit B3 namely one Rajendran and Jeyaraj have executed a registered sale deed in Exhibit B5 on 18.06.1981 in favour of husband of the defendant namely Ponnusamy Thevar.

16.A perusal of the document indicates that an extent of 1.46 acres has been dealt with in Survey No.25/1A2. The boundary recital in Exhibit B5 will indicate that the said 1.46 acres is located on the northern side of the plaintiff's property. One of the legal heirs of the said Ponnusamy Devar namely Karupiah has executed a sale deed in favour of one Andisamy for an extent of 10 cents in Survey No.25/1A3. A perusal of Exhibit C3 plan filed by the Advocate Commissioner will clearly indicate that Survey No.25/1A is located in the southern most portion and Survey No.25/1A2 is in the middle portion and Survey No.25/1A3 is located in the northern most portion.

17.A perusal of Exhibits B2 to B5 and B7 will clearly indicate that the legal heirs of Samiyar Maya Thevar were dealing not only their properties but also the property belonging to other brother namely Maya Thevar. A perusal of Exhibit B9 will indicate that the Ulaga Thevar has dealt with southern most portion of Survey No.25/1A1 only. Hence, a combined operative reading of all the document will only strengthen the case of the defendant that the southern most portion was allotted to Ulaga Thevar and further northern in favour of Naga Thevar and the adjacent north in favour of Samiyar Maya Thevar and the northern most portion was allotted in favour of Maya Thevar. A perusal of Exhibit B5 will clearly indicate that Survey No.25/1A2 is having a total extent of 2.32 acres and out of the said extent 1.46 acres has been dealt with under Exhibit B5. Hence, there cannot be any dispute that Survey No.25/1A2 is having an extent of 2.32 acres but whether the plaintiff will be solely entitled to the entire extent of 2.32 acres is the question in the



present suit. The relationship of the parties and the document under which properties have been dealt with will clearly indicate that the plaintiff's grandfather cannot have an extent of 2.32 acres. When all the other brothers were allotted a lesser extent, the plaintiff has also not explained how her father and grandfather alone were entitled to 2.32 acres when other brothers of her grandfather have dealt with only an extent of 1.61 acres. The plaintiff based upon Exhibits A1 and A13 patta is attempting to make a claim in survey No.25/1A2 without any title. The appropriate remedy for the plaintiff is to file a suit for partition to establish her share and get the property divided by metes and bounds. Hence, the plaintiff is not entitled to a decree for declaration of title and the consequential relief.

18.The First Appellate Court has erroneously considered B series documents and arrived at a finding that the defendant has not proved her case. It is settled position of law that the plaintiff has to establish her case and she cannot rely upon the weakness on the side of the defendant. The First Appellate Court has also not considered the fact that other than the revenue records, the plaintiff has not filed any document to establish her title to the suit schedule property. The First Appellate Court has also not properly appreciated the deposition of DW1 who has gone to the extent of denying everything including the relationship of her grandfather and his brothers.

19.In view of the above said findings, this Court comes to a conclusion that the judgment and decree of the First Appellate Court is liable to be set aside. All the substantial questions of law are answered in favour of the appellant. The second appeal stands allowed and the suit in O.S.No.140 of 1998 on the file of the District Munsif Court, Tirumangalam is dismissed. However, the plaintiff is at liberty to work out her remedy by filing a suit for partition. No costs.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

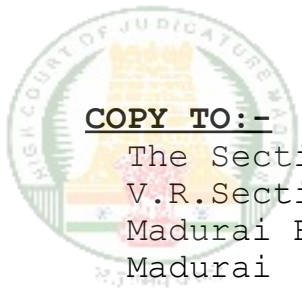
msa

To

1.The Principal Sub Judge,
Madurai

2.The District Munsif,

<https://hcservices.tn.gov.in/hcservices/>



COPY TO:-

The Section Officer
V.R.Section
Madurai Bench of Madras High Court
Madurai (2 Copies)

+1 CC to M/s.R.SUBRAMANIAN, Advocate (SR-283[F] dated 05/01/2022)

+1 CC to M/s.PALA RAMASAMY, Advocate (SR-525[F] dated 06/01/2022)

Judgment made in

S.A(MD).No.153 of 2005

05.01.2022

VR (CO)

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