



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 21.12.2021

DELIVERED ON : 18.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

S.A(MD)No.296 of 2005

WEB COPY

1.Ram Monohar (Died)

2.A.Ram Mohan (Died)

... Appellants/
Appellants/ Defendants

3.A.Ravindran

4.A.Anantha Rajan

5.Pichipoo Ammal (Died)

6.Manimegalai

7.Abinaya

8.Minor Vimala

9.Minor Divyadharshini

10.Chandra

11.Arun Siva

12.Bhuvaneshwari

13.Manju

14.Ranitha

... Proposed Appellants

(Appellants 3 & 4 are recorded and appellants 6 to 14 impleaded as legal heirs of deceased 5th appellant vide Court, order dated 01.08.2016 made in C.M.P(MD)No.4112 of 2016 in S.A(MD)No.296 of 2005)

(Minor Petitioners 8 & 9 represented through their mother & guardian, the 6th petitioner)

(Appellants 6 to 9 are brought on record as legal heirs of the deceased 2nd appellant vide order, dated 19.07.2010 and made in M.P.No.1 of 2010 in S.A(MD)No.296 of 2005)

(Appellants 10 to 14 are brought on record as legal heirs of deceased first appellant vide order, dated 01.08.2016 made in C.M.P (MD)Nos.4109 to 4111 of 2016 in S.A(MD)No.296 of 2005)

Vs

1.S.Rajakani Ammal

2.S.Jeyalakshmi

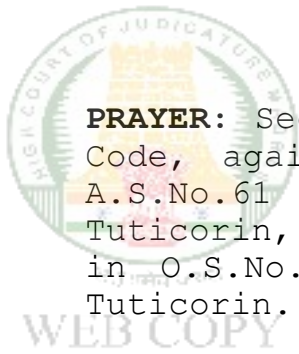
3.S.Thanalakshmi

4.Gopalakrishnan

5.S.Vijayalakshmi

6.S.Mahalakshmi

... Respondents/
Respondents/Plaintiffs



PRAYER: Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree, dated 30.06.2003 made in A.S.No.61 of 2000 on the file of the Principal District Judge, Tuticorin, confirming the judgment and decree, dated 10.02.2000 made in O.S.No.17 of 1998 on the file of Principal District Munsif, Tuticorin.

For Appellants : Mr.M.Ajmal Khan
Senior Counsel
for M/s.Ajmal Associates

For Respondents : Mr.S.Kadarkarai
for R1 to R6

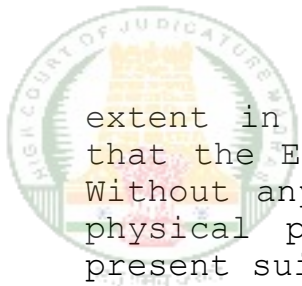
JUDGMENT

The defendants are the appellants herein.

2. The plaintiffs filed O.S.No.17 of 1998 before the Principal District Munsif, Tuticorin, for declaration of title and consequential permanent injunction. The plaintiffs have shown 1.48 acres in Survey No.154/1A in Agaram Village as first schedule property and another extent of 74 cents in the same survey number as second schedule property. The suit was decreed by the trial Court. The defendants filed A.S.No.61 of 2000 before the Principal District Court, Tuticorin. The learned District Judge was pleased to dismiss the appeal. As against the concurrent findings, the defendants have filed the above Second Appeal.

3. The plaintiffs have contended that the suit first schedule property is the ancestral property of one Sudalaimani Nadar who is the husband of the first plaintiff and father of plaintiffs 2 to 6. According to the plaintiffs, the first schedule property is the ancestral property and the plaintiffs are in possession and enjoyment of the said property. The plaintiffs further contended that the second schedule property was purchased by Sudalaimani Nadar under Exhibit A1, dated 28.02.1979 from one Bagavath Singh Nadar. The plaintiffs contended that the said Sudalaimani Nadar had died intestate and the plaintiffs are the legal heirs and they are in physical possession and enjoyment of the suit schedule properties. They further claimed title by adverse possession.

4. According to the plaintiffs, Survey No.154/1 is having a total extent of 8.88 acres and the plaint schedule properties are lying on the western extremity of the said survey number. Though the sale deed under Exhibit A1 mentions that there was a partition between the vendor, Bagavath Singh and his brother Rajasekaran, in the schedule of property, it has been mistakenly mentioned as an undivided extent. According to the plaintiffs they are in specific



extent in the western extremity. The plaintiffs further contended that the Eastern extent of 8.88 acres is held by some third party. Without any right or title they are attempting to interfere in the physical possession and enjoyment of the plaintiffs. Hence, the present suit.

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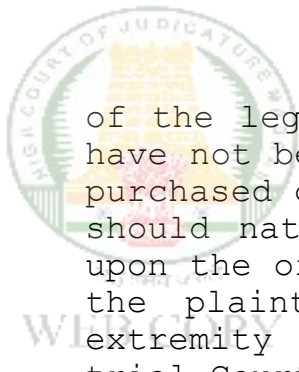
5. The defendants filed a written statement disputing the title of the plaintiffs over the first schedule property. They further disputed the very existence of Survey No.154/1A. According to the defendants, Survey No.154/1A is a subject matter of a joint patta in which the defendants father's name is also present. The defendants further contended that the four boundaries and survey number for the second schedule property are erroneous. The defendant also disputed the title and possession of Sudalaimani Nadar for the second schedule property.

6. According to the defendants, Survey No.154/1 is having a total extent of 8.88 acres. The said survey number has been sub-divided into various sub-divisions ranging from 154/1A to 154/1E. According to the defendants, their property having an extent of 2.25 acres has been separately sub-divided and it has been assigned survey number of 154/1A1A. The defendants further contended that West of S.No.154/1A 1A, defendants are having property in S.No.147/3. Both the survey numbers have been fenced together and enjoyed by the defendants. According to the defendants, these properties are owned by Arunachala Nadar ancestrally as well as by way of purchased under various sale deeds.

7. The defendants further disputed the recital in Exhibit A1 sale deed with regard to the oral partition between the Bagavath Singh and his brother Rajasekaran. The defendants also claimed that their property having an extent of 2.25 acres is on the Western side of S.No.154/1. According to the defendants, the plaintiffs have no right title or possession over S.No.154/1A1A, having an extent of 2.25 acres.

8. The trial Court after consideration of the oral and documentary evidence, based upon Exhibits A1 and A2 documents, arrived at a conclusion that the plaintiffs have established their title over the suit schedule properties. Though the trial Court arrived at a finding that the plaintiff as well as the defendants name are found in joint patta, and both the parties are entitled to some extent in the total extent of 8.88 acres, proceeded to grant a decree in favour of the plaintiffs. The trial Court also relied upon Exhibit A14 partition deed which was entered into between the legal heirs of Ramaiah Nadar namely Chellam Nadar @ Thanga Sami Nadar, Arunachala Nadar (Ancestor in title of defendants) and Ambala Mani Nadar. According to the trial Court, there is no reference under Exhibit A14 partition deed that the suit schedule properties were allotted to the share of the defendants' father Arunachala Nadar.

<https://hccerestcourt.gov.in/cases/cases/> also found that the sale deeds standing in the name



of the legal heirs of Arunachala Nadar namely, Exhibits B24 to B27 have not been objected by the plaintiffs. Since, the defendants have purchased only 1.32 acres under Exhibits B4 to B27, the rest of that should naturally belong to the plaintiffs. The trial Court relied upon the oral evidence of the plaintiffs to arrive at a finding that the plaint schedule property should be located on the western extremity of Survey No.154/1A. Based upon the said findings, the trial Court decreed the suit as prayed for.

9. The First Appellate Court relied upon the deposition of D.W.1 in his cross-examination and based upon certain discrepancies and admissions in the said deposition, concurred with the findings of the trial Court and dismissed the suit. As against the concurrent findings, the defendants have filed the above Second Appeal.

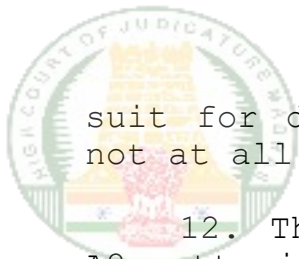
10. The Second Appeal has been admitted on the following substantial questions of law:

"(i)Whether Courts below are right in decreeing the suit completely shifting the burden of proof on the appellants/defendants in a suit filed by the respondents/plaintiffs for declaration and for injunction in the alternative for recovery of possession?

(ii)Whether the Courts below are correct in decreeing the suit as prayed for holding that the respondents/plaintiffs prescribed the title over and above the statutory period in the absence of any pleadings as to the date on which the plaintiffs entered into the properties and the date on which they prescribed title by adverse possession and whether such possession is with the knowledge of the real owners?

(iii) Whether the Courts below are right in decreeing the suit holding that the defendants/appellants have not sufficiently proved their title under Section 102 of the Indian Evidence Act that if either party failed to adduce evidence satisfactorily, the case of the plaintiffs will fail?"

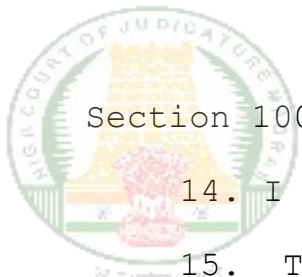
11. The learned Senior Counsel appearing for the appellants/plaintiffs contended that the plaintiffs have filed Exhibit A1 sale deed, dated 28.02.1979 said to have been executed by one Bagavath Singh Nadar in favour of Sudalaimani Nadar who is the father of the plaintiffs 2 to 4. It has been specifically mentioned in the said sale deed only an un-divided 1/4 share for an extent of 74 cents in Survey No.154/1 is conveyed. This property is not shown as the second schedule property in the suit. According to the defendants, what has been purchased by the plaintiffs' ancestors under Exhibit A1 is only an un-divided share and hence, the present



suit for declaration of title for the second schedule property is not at all maintainable.

12. The learned Senior Counsel further contended that Exhibit A2 patta is a joint patta in which, not only the plaintiffs' father name but also the defendants' fathers name is also found. The joint patta under Exhibit A2 will only indicate the fact that both the parties are having right, title and possession to some extent of property in Survey No.154/1. The learned Senior Counsel also pointed out that the trial Court has arrived at a finding that both the parties are having title to some extent of the land in Survey No.154/1, having a total extent of 8.88 acres. Though the plaintiffs have contended that the first schedule property is their ancestral property, not a single revenue record or any other document has been produced on their side to establish their title and possession over the first schedule property. The learned Senior Counsel further contended that the Courts below have erred in granting a decree for declaration of title in favour of the plaintiff relying upon certain discrepancies in the deposition of D.W.1. The plaintiff is entitled to a decree for declaration only on proving his case through oral and documentary evidence and not by picking up holes in the case projected by the defendants. He further contended that when Exhibit A1 sale deed clearly points out that what has been conveyed is only an un-divided interest, a decree for declaration cannot be granted. He further pointed out that the trial Court has given a specific finding that the plaintiffs have not disputed Exhibits B24 to B27 documents which are standing in the name of the defendants. Of course, under Exhibits B24 and B26 an un-divided interest has been purchased by the defendants also in the suit survey number. Hence, he contended that the Courts below have erred in granting a decree for declaration of title and permanent injunction in favour of the plaintiff.

13. Per contra, the learned Counsel for the respondents contended that under Exhibit A1 sale deed, a specific extent of 74 cents has been purchased by the plaintiffs' father Sudalaimani Nadar, but, by mistake it is shown as an un-divided interest in the schedule of property. That apart, there is a specific recital under Exhibit A1 sale deed that the vendor Bagavath Singh and his brother Rajasekaran have orally partitioned the properties. In fact, from the said Rajasekaran, the defendants have also purchased under Exhibit B26 an un-divided extent of 63 cents. Exhibit A1 sale deed is prior in point of time than Exhibit B26 sale deed. He further contended that the Exhibit A2 patta and the kist receipts filed under Exhibits A3 to A12 will clearly show that the plaintiffs are in exclusive enjoyment of the first schedule properties. He further contended that the trial Court as well as the appellate Court on analyzing of the oral and documentary evidence have arrived at a factual finding that the plaintiffs have established their title and possession over both the schedule of properties. Hence, the



Section 100 of the Civil Procedure Code.

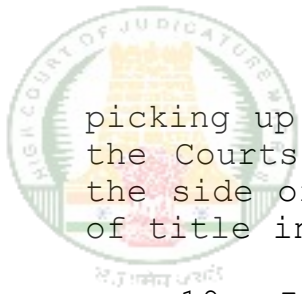
14. I have carefully considered the submissions on either side.

15. The plaintiffs have specifically contended that first schedule property having an extent of 1.48 acres in Survey No.154/1A is their ancestral property. No revenue records have been produced to show that it is the exclusive property of Sudalaimani Nadar. There are no documents to show that the said extent of 1.48 acres has been dealt with by Sudalaimani Nadar as his individual/separate property. The plaintiffs have heavily relied upon Exhibit A2 patta. A perusal of the said patta shows that it is a joint patta standing in the name of 11 persons. The plaintiffs' father's name is shown in Serial No.2 and the defendants' father's name is shown in Serial No.6. The said document refers the patta number as 484 in Survey No.154/1A. Exhibit A2 Will clearly show that the patta is not the exclusive patta of the plaintiffs' father but a joint patta which includes the name of the defendants' father. When the patta is a joint patta, kist can be paid by any one of the them, whose name is found in the joint patta. Hence, the kist receipts relied upon by the plaintiffs under Exhibits A3 to A12 cannot be considered to be a proof of title or possession over the plaint schedule properties.

16. The defendants have specifically contended that Survey No.154/1 has been sub-divided ranging from S.No.154/1A to 154/1E. The plaintiffs have not filed any reply statement or produced any FMB sketch to prove the fact that S.No.154/1A continues with the same extent even after several sub-divisions.

17. The defendants have produced 4 sale deeds, Exhibits B24 to B27 under which, some extent of the property in Survey No.154/1 has been sold by various persons in favour of the defendants' family. The joint patta under Exhibit A2 coupled with Exhibits B4 to B27 will prove that both the plaintiffs as well as the defendants have purchased some extent of the property in the same survey number namely, S.No.154/1. In fact, Exhibits A1, B24 and B26 clearly reveal that an un-divided extent has been dealt with in favour of the plaintiffs as well as the defendants. The sale deeds in favour of the plaintiffs and the defendants in the same survey number with un-divided interest and a joint patta under Exhibit A2 will clearly establish the fact that plaintiffs are not entitled to a decree for declaration of title and permanent injunction. The plaintiffs have miserably failed to establish their exclusive title and possession over the suit schedule properties.

18. The Courts below have relied upon some stray answers in the cross-examination of the defendants and granted a decree in favour of the plaintiffs. It is a settled position of law that the plaintiffs will be entitled to a decree for declaration of title only on the basis of the documentary evidence produced from their side and not based upon the weakness of the defendants' case or by



picking up holes in the case of the defendant. In the present case, the Courts below have chosen to rely upon the alleged weakness on the side of the defendants and has granted a decree for declaration of title in favour of the plaintiffs.

19. In view of the above said discussion, the substantial questions of law are answered as follows:

(i) The Courts below have erred in shifting the burden of proof on the defendants in a suit for declaration of title and permanent injunction.

(ii) The plea of adverse possession in the plaint is bereft of any details with regard to the commencement of the date of possession. That apart, the documents filed by the defendants coupled with Exhibit A2 reflect a joint possession of the plaintiffs and the defendants over the suit schedule properties. Hence, the Courts below were not right in holding that the plaintiffs have prescribed title by adverse possession.

(iii) The Courts below have erred in granting a decree for declaration of title in favour of the plaintiffs when Exhibit A1 sale deed reflects sale of un-divided share and Exhibit A2 patta reflects joint possession. Hence, the plaintiffs have not proved their title and over the plaint schedule properties.

20. In view of the above discussion, all the substantial questions of law are answered in favour of the appellants. The judgment and decree of the Courts below are set aside. Therefore, the Second Appeal stands allowed. No costs.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

btr

Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.



To

1.The Principal District Judge,
Tuticorin.

2.The Principal District Munsif,
Tuticorin.

3.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

+1 CC to M/s.S.KADARKARAI, Advocate (SR-6985[F] dated 18/02/2022)

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-7062[F] dated 18/02/2022)

S.A(MD)No.296 of 2005

18.02.2022

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