



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.03.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

S.A(MD).No.795 of 2021
C.M.P(MD).No.10955 of 2021

K.Thiruselvam

... Petitioner

Vs.

1.N.Pushpamala

2.V.Megala

3.M.Jayalakshmi

... Respondents

Second Appeal filed under Section 100 of Civil Procedure Code to set aside the judgment and decree passed in A.S.No.7 of 2018 dated 30.08.2019 on the file of the Sub-Judge, Pattukottai, by confirming the judgment and decree passed in O.S.No.103 of 2014 dated 21.12.2017 on the file of the Principal District Munsif Court, Pattukottai.

For Petitioner : Mr.M.Suresh
for Mr.J.Jeyakumaran

For Respondents : Mr.D.R.Murugesan

O R D E R

This Second Appeal has been instituted under Section 100 of C.P.C, questioning the concurrent judgment and decree passed by the trial Court and the First Appellate Court.

2. The plaintiff is the appellant in the second appeal. The suit was instituted for permanent injunction.

3. The case of the plaintiff is that the suit property is situated at Thamarankottai North, Sengapaduthankadu Village in Survey No.455/3C2 measuring to an extent of 41 ½ cents, out of total extent of 0.30.0 Ares. In an oral partition occurred between the plaintiff's father namely Kumarasamy and his brother namely Mani, the suit property and an extent of 0.17.5 ares in Survey No.455/3C1 were allotted as share to the plaintiff's father as manicut lands. After the said oral partition, the plaintiff's father, during his life time, constructed a tiled house in one portion and a thatched



house in another portion and enjoyed the same without any disturbance from anybody. However, he died intestate on 27.10.2006. After the demise of the plaintiff's father, the suit property was jointly enjoyed by the plaintiff with his brothers and sister along with his mother. The plaintiff, his brothers, sister and mother had partitioned the property left by the deceased Kumarasamy. Each sharer was allotted with 56 Kuzhi and they started enjoying their respective property by constructing house in their share. There is a borewell in the property allotted to the share of the plaintiff. The property allotted to the share of the plaintiff's mother was enjoyed by her and the same was given to the plaintiff by way of Inam Settlement Deed dated 13.12.2013. The plaintiff is enjoying his share, the share settled by his mother and 12 kuzhi of land given by his sister as total 124 kuzhi of land. The property enjoyed by the plaintiff is sub-divided as survey No.455/3C/2B and a patta has been issued to the plaintiff. The defendants have no right over the suit property. The suit property is in the lawful possession of the plaintiff. The defendants 1 and 2 are the wife of his brothers. The third defendant is the plaintiff's step mother. The first defendant's husband was allotted share on the southern side of the suit property and the second defendant's husband was allotted share on the northern side of the suit property. The property found on the western side of the suit property belongs to the third defendant. The defendants, without having any right over the suit property, is trying to disturb the peaceful possession and enjoyment of the plaintiff on 29.03.2014.

4. The brief facts of the written statement filed by the defendant is that the plaintiff's father died on 27.10.2006. After two years from the date of death, the plaintiff and his brothers partitioned the properties orally. In the said partition, no share was allotted to the plaintiff's mother and his sister namely Akilandeswari. The plaintiff's mother is living with his daughter Akilandeswari and not with the plaintiff as alleged by him. During the partition happened between the said Kumarasamy and his brother Mani, in Survey No.455/3C2, land measuring 14 Kuzhi was allotted for pathway and the remaining extent was partitioned by the plaintiff and his three brothers. The contention that the plaintiff's property has been sub-divided as survey No.455/3C/2B and separate patta has been given to the plaintiff is not true. The sub-division did not bind the defendants. No property was allotted to the second defendant's husband on the northern side of the plaintiff's land. The property situated on the northern side of the plaintiff's property was allotted to one Saminathan and he constructed a house in the said property and now he is residing in the said house. On the eastern side to S.No.455/3, there is a road running from South to North. After the demise of Kumarasamy, his four sons partitioned the property orally by leaving pathway. During partition, 81 kuzhi



of land situated on the southern side of the pathway was allotted to one Natarajan and 80 kuzhi of land situated on the northern side of the pathway was allotted to the plaintiff. The next northern portion of 80 kuzhi was allotted to Saminathan and the subsequent northern portion of 82 Kuzhi was allotted to Viswanathan. All the sharers are enjoying their portion of the land by constructing houses. The plaintiff is having right only in 80 Kuzhi of land and he has no right over any excess land other than 80 Kuzhi. In fact, the pathway available in land is necessary for the sharers to reach their respective property and it is easement of necessity for Mani Pillai. In Survey No.455/3C, the plaintiff and his three brothers got shares. Further, either the mother of the plaintiff or the sister of the plaintiff was not allotted with any share in the above said property. So, the mother of the plaintiff has no right to execute Inam Settlement Deed in favour of the plaintiff and the said Inam Settlement Deed would not bind the defendants. The said Inam Settlement Deed does not come into existence. While the brothers and the husband of the defendant Nos.1 and 2 are alive, without including them as party, the plaintiff has filed the suit by arraying the defendants 1 and 2 as parties which is not at all maintainable. The property to an extent of 42 ½ cents was not situated with separate boundaries in Survey No.455/3C. The defendants filed a petition before the Revenue Divisional Officer, Pattukottai for cancellation of sub-division as 455/3C/2B and the same is pending for enquiry. Thus, the plaintiff is not entitled to get any relief as claimed by him in the plaint.

5. The trial Court and the First Appellate Court considered the documents elaborately and made a finding that in Survey No.455/3C, 0.17.5 ares are being house sites which were allotted to the plaintiff's father. In similar way, in Survey No.455/3C2, 0.30.0 ares was allotted as share to the plaintiff's father. There is no dispute about the family partition between the said Kumarasamy and Mani. It is the specific case of the plaintiff that after the demise of his father, all the legal heirs were given each 56 kuzhi of manicut land and the sharers constructed house in their respective portions. If that being so, having contrary to his own pleadings and the alleged oral partition, the plaintiff got Inam Settlement Deed vide Ex.A1 from his mother on 13.12.2013 to an extent of 124 ½ Kuzhi which is equal to 41 ½ cents out of 30 Ares.

6. In Ex.A1 Inam Settlement Deed, it has been mentioned that the Executrix namely Valliyammai, who is the mother of the plaintiff, has conveyed her share of 124.5 Kuzhi in S.No.455/3C2 in favour of the plaintiff. The extent mentioned in Ex.A1 is not in consonance with the admitted case of the plaintiff about the oral partition. The Sub-ordinate Courts below have considered the Ex.A1 elaborately. On perusal of the averments made in the plaint and Ex.A1, it reveals that the Executrix of Ex.A1 is not having any interest or title over the extent of land as mentioned in the said



Inam Settlement Deed. Thus, the Courts formed an opinion that the said Vailliyammai had no right to convey the title to the plaintiff vide Ex.A1. The plaintiff has failed to file any valid evidence with regard to the alleged oral partition and the title of his mother over the suit property, prior to 13.12.2013. Further, Ex.A1 does not confer any right or title on the plaintiff in respect of the suit property and it appears as sham and nominal deed.

7. The case of the plaintiff is that he is owning and enjoying 12 Kuzhi of land allotted to his sister namely Akilandeswari. The plaintiff failed to produce any scrap of paper to substantiate the alienation by Akilandeswari in favour of plaintiff. Thus, the pleading in respect of the said alienation appears to be untenable and far from the truth. The entire case of the plaintiff is rest on Exs.A1 to A3. In Ex.A2, it is mentioned that Patta was muted on the plaintiff's name based on the sale deed stands in his name. The said findings of the Tahsildar appears to be mindless and liable to be ignored. Thus, nothing referred in Exs.A2 and A3 would go to support the case of the plaintiff, since the contents of both documents are erroneous. Accordingly, those documents were dis-credited by the Sub-ordinate Courts. The Courts have clearly made a finding that the plaintiff had not approached the Court with clean hands as he has suppressed the material facts relating to the vesting of the suit land on the sharers during oral partition. The plaintiff failed to substantiate the golden principles of injunction i.e., existence of possession on the date of suit, balance of convenience and irreparable loss and injury, in the absence of granting of relief.

8. Both the Courts have concurrently formed an opinion that the plaintiff has not filed any document to establish his case and he has approached the Court with unclean hands. Therefore, the concurrent findings of the Sub-ordinate Courts with reference to the facts based on the documents cannot be interfered with by the High Court in the Second Appeal. Coming to the first substantial question of law raised, this Court is of the opinion that whether the Courts below is right in disbelieving the EX.A1/Inam Settlement Deed is relatable to the facts and the Sub-ordinate Courts have elaborately made a finding in respect of trustworthiness of the documents marked in Ex.A1. Another question of law is relatable to Ex.A2/Patta which was also considered by the Sub-ordinate Courts as the Tahsildar has given the patta without proper verification and without notice to the persons, who are connected with the property. Therefore, the patta was dis-credited by the Sub-ordinate Courts. When the substantial questions of law as raised in the second appeal are relatable to the facts which were already adjudicated by the Subordinate Courts and the concurrent finding was arrived that the appellant has not approached the Court with clean hands and further, the documents filed are not trustworthiness, this Court is of the considered opinion that there is no reason whatsoever to interfere with the findings of the Sub-ordinate Courts.



9. Accordingly, the judgment and decree passed by the learned Sub-Judge, Pattukottai in A.S.No.7 of 2018 on 30.08.2019 confirming the judgment and decree passed in O.S.No.103 of 2014 dated 21.12.2017 by the Principal District Munsif Court, Pattukottai is confirmed and consequently, the Second Appeal stands dismissed. No costs. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS II)

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Sub Assistant Registrar(CS)

ssb

To

1. The Sub-Judge, Pattukottai

2. The Principal District Munsif Court, Pattukottai.

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Madurai Bench of Madras High Court, Madurai(+2 copies)

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+1 CC to M/s.D.R.MURUGESAN, Advocate (SR-15291[F] dated 30/03/2022)

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MGJ(11.04.2022) 5P 7C