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S.A.No.783 of 2023

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED: 01.11.2023

CORAM

**THE HONOURABLE Ms. JUSTICE P.T. ASHA**

**S.A.No.783 of 2023**  
**and**  
**C.M.P.No.24726 of 2023**

Rathinam (died)

1. Chinnathai
2. Utthara
3. Perumalsamy
4. Annadurai
5. Rajadurai

....Appellants

Vs.

1. Chinnakulanthai
2. Ramasamy
3. Chandira
4. Kantha
5. Malliga
6. Selvam
7. Ajayammal
8. Jayapal
9. Prabhu
- 10.Sathiya

... Respondents



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**PRAYER:** Second Appeal filed under section 100 of the Civil Procedure Code against the judgment and decree passed in A.S.No.20 of 2016 by the Sub Court, Vaniyambadi dated 13.12.2019 confirming the judgment and decree passed in O.S.No.180 of 2009 on the file of the District Munsif Court, Vaniyambadi dated 08.10.2015.

For Appellants : Mr. P.Satheesh Kumar

### **JUDGMENT**

The plaintiffs who have concurrently lost in both the Courts below are the appellants before this Court challenging the judgment and decree passed by the learned Subordinate Judge, Vaniyambadi, Vellore in A.S.No.20 of 2016 confirming the judgment and passed by the learned Additional District Munsif, Vaniyambadi in O.S.No.180 of 2009.

2. The facts which are required for disposing of the above second appeal are herein below set out and the parties are referred to in the same ranking as before the trial Court for ease of understanding.



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3. The plaintiff had filed the aforesaid suit for declaration of their right, title and interest over the suit property with the consequential injunction restraining the defendants from interfering with their peaceful possession and enjoyment of the suit schedule property. The suit schedule property has been described as an extent of 3.79 cents of punja land comprised in S.No.26/23 of Koothandakuppam Village, Kethandapatti Post, which the plaintiff would submit is bounded on the South by Jadaian's land, East by Mallakonda Village limit, North by Mattu Ooni and West by Kuttai Poramboke together with a regular right of pathway.

4.It is the case of the plaintiff that he has been in possession and enjoyment of the property and by reason of this, he had been granted patta by the Government as early as in the year 1973. The plaintiff has been cultivating the said lands since then. The plaintiff would further submit that the first defendant is his cousin sister and the third defendant is his father's younger brother. The second defendant is the



son of the third defendant. The plaintiff had borrowed a sum of Rs.3,000/- from the first defendant to meet certain urgent expenses and to discharge his sundry amounts. He had executed a mortgage deed dated 09.04.1975 hypothecating the lands in suit schedule property in favour of the first defendant. The plaintiff had promised to discharge the loan amount with interest @ 12% per annum within a period of 3 years. The plaintiff would submit that he had also discharged the loan to the first respondent as promised, but he had not obtained the cancellation of the mortgage deed from the first defendant as he was not aware about the same. Subsequently, the plaintiff had lost the original mortgage deed that had been executed by him.

5.Meanwhile, since the plaintiff had got a job opportunity in a rubber plantation at Malaysia, he had left for Malaysia and was working there. He had therefore requested his cousin, the second defendant to take care of his lands during his absence. The plaintiff's wife had died long back. Thereafter, he returned to India and settled down in his village to look after his lands for his livelihood. The



plaintiff's sons had left him and did not take care of him. Therefore, he married for the second time. His second wife, Chinnathai Ammal was from Chennai and therefore, he started living at Chennai. He was also having a residence at Kollakottai in his lands in Koothanda Kuppam Village. During the cultivation season, he would live in the hut situate in the midst of these lands. The plaintiff would state that he had been cultivating only dry crops in his lands, like groundnut and cereals and had obtained chitta and adangal with reference to that. However, the defendants, who had no right, title and interest to the property, had been threatening and trespassing into the same from the month of July 2009 and added to that they are also claiming an independent right to the property stating that the plaintiff had sold the same to the first defendant. The defendants, who are close relatives, are attempting to grab the plaintiff's property and therefore, he had come forward with the suit in question.

6. Pending the suit, the sole plaintiff had died and his legal representatives were brought on record as plaintiffs 2 to 8.



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7. The defendants on entering appearance had filed a written statement *inter-alia*, denying the contents of the plaint. The relationship between the parties were admitted as also the mortgage deed dated 09.04.1975. The defendants would contend that the suit property and other properties were ancestral properties standing in the name of the plaintiff's father, while some properties stood in the name of the mother. Apart from the plaintiff, his parents had four sons and one daughter, namely, Rathinam, Chinnaraji, Rajagopal, Jeyaraman and Padavettal. The plaintiff's father had died about 40 years ago and therefore, the patta was granted in the name of the plaintiff, he being the eldest member of the family. The plaintiff had also mortgaged the property with the first defendant. Thereafter, there was a partition in the family of the plaintiff where under certain properties that belonged to the mother were allotted to the plaintiff, Rajagopal and Jeyaraman and the father's properties was allotted to Chinnaraji and padavettal. The suit property fell into the share of Chinnaraji.



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8. The trial court had framed the following issues:

- 1. Whether the plaintiffs are entitled for declaration of title over the suit properties?*
- 2. Whether the plaintiffs are entitled for permanent injunction as prayed for?*
- 3. Is it true that the suit property belonged to the first defendant and she is in possession from 28.02.1983?*
- 4. To what other relief the plaintiffs are entitled?*

9. The 5<sup>th</sup> plaintiff was examined as P.W.1, one Padavettal as P.W2 and the Village Administrative Officer, Sadasivam as P.W3. Exs. A1 to A7 were marked on their side. The defendant had examined herself as D.W.1, one Krishnan as D.W2 and one Rajamanickam as D.W3 and marked Ex.B1 to B17. Through P.W3, Ex.X1 was marked.



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10. The Trial Court, after considering the pleadings, arguments and evidence on record, dismissed the suit. Aggrieved by which, the plaintiffs have preferred an appeal in A.S.No.20 of 2016 on the file of the Subordinate Court, Vaniyambadi, Vellore. The learned Subordinate Judge had also confirmed the judgment and decree of the trial Court and had dismissed the appeal. Aggrieved by which, the plaintiffs are before this Court.

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

12. The case of the deceased plaintiff was that the property had been in his possession and cultivation, as a result of which he had been issued with the patta. He had also been cultivating the same and as the owner of the property, he had also mortgaged the property to the first defendant and executed a simple mortgage dated 09.04.1975. It is his case that he left for Malaysia to eke out his livelihood. He had



entrusted his lands to his cousin brother, the second respondent, to look after the same for and on behalf of the plaintiff. Subsequently, on his return from Malaysia, he had settled down in Chennai and had been visiting the suit schedule property often.

13. The first defendant in his written statement had contradicted the claim of the plaintiff that he is the owner of the property. The first defendant would contend that the property belonged to his brother, Chinnaraji, under a partition that had taken place between the plaintiff and siblings. Thereafter, it is the case of the first defendant that the said Chinnaraji had executed a Sale Deed in favour of the first defendant on 28.02.1983. Though no documentary evidence has been filed to prove the said partition, however P.W1 who is the son of the deceased sole plaintiff, has, in his evidence, had submitted that his father did not obtain any share in the ancestral property since he had received an assignment patta in his name. However, the Court below, on examining Ex.A1-Patta, has clearly stated that there are three properties that are comprised in the said patta and there is nothing to



show why only one of the properties comprised in Ex.A1-Patta has been allotted to the deceased plaintiff. P.W1, during his cross examination, would also state that the lands in S.Nos.26/5 and 26/8 did not belong to his father but belonged to his uncle in the partition. He has also admitted that he has not referred to the partition in his plaint. P.W2, who is none other than the daughter of the deceased plaintiff, would state that the properties were all along in the enjoyment of the said Chinnaraji, who has sold the property to the first defendant. The plaintiff, who had pleaded that he had discharged the mortgage and that he had lost the original mortgage deed, has been proved wrong as the original mortgage deed had been produced on the side of the first defendant which would only go to show that the plaintiff was not in possession and enjoyment of the property. Therefore, it is clear that the contention of the plaintiff that the mortgage had been discharged by him appears to be a false statement. Further, the documents that had been filed on the side of the plaintiff to prove his possession are all prior to 1982 and there is no document filed thereafter to show his possession. This, coupled with the admission of P.W2 that the property



was being cultivated by Chinnaraji for the last 50 years, only goes to show that the property under the partition has been allotted to the share of the said Chinnaraji, the father of the first defendant. The fact that the patta stands in the name of the deceased does not clothe him with any right since the patta has been granted in his name as he is the eldest member of the family. The property comprised in Ex.A1 has thereafter been partitioned, which was also admitted by P.W1. Therefore, the Courts below have rightly rejected the contention of the plaintiff and concurrently dismissed the suit. I see no reason to interfere with the same. Further, there is no substantial question of law has been made out by the appellants. Accordingly, the second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

**01.11.2023**

Index : Yes/No

Speaking order/non-speaking order

srn

To

1. The Sub Court, Vaniyambadi
2. The District Munsif Court, Vaniyambadi.

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

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**P.T.ASHA, J.,**

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