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S.A.No.173 of 2017

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

**DATED : 10.11.2023**

**CORAM**

**THE HONOURABLE MR. JUSTICE S.SOUNTHAR**

**S.A.No.173 of 2017**  
**and C.M.P.No.3571 of 2017**

1.Duraisamy Gounder  
2.Subramani  
3.Gnanasekaran  
4.Venugopal  
5.Manoharan

...Appellants

Vs.

1.Kullammal  
2.Dhanammal  
3.Margadam  
4.Salammal  
5.Rosi ammal

...Respondents

**PRAYER :** Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 21.04.2016 made in A.S.No.61 of 2011, on the file of Sub Court, Gudiyattam, Vellore District confirming the judgment and decree dated 20.04.2011 made in O.S.No.563 of 1993 on the file of District Munsif Court, Gudiyattam, Vellore District.

For Appellants : Mr.T.Dhanyakumar  
For Respondents 1 to 5 : No appearance





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attempted to trespass and plough the suit property. Hence, the respondents/plaintiffs were constrained to file the suit for declaration and injunction.

3. The appellants herein filed the written statement and denied the title and possession of the respondents over the suit property. The allegation in the plaint as if there was a partition in the family of the plaintiffs on 29.12.1986 and the suit property was allotted to the share of deceased first plaintiff was specifically denied in the written statement. The appellants also denied the possession of the respondents over the suit property. Further, it was claimed by the appellants that the suit property originally belonged to first appellant's mother Chinna Kannammal. The appellants also claimed right over the suit property under a oral Partition Deed. It was asserted by the appellants that they were in possession of the suit property and hence, prayed for dismissal of the suit.

4. The Trial Court, on appreciation of oral and documentary evidence available on record came to the conclusion that the respondents/plaintiffs proved their title and possession over the suit property and consequently,



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granted a decree in their favour. Aggrieved by the same, the appellants preferred an appeal in A.S.No.61 of 2011 on the file of Sub Court, Gudiyattam, Vellore District. The First Appellate Court affirmed the findings of the Trial Court. Aggrieved by the same, the appellants have come by way of this second appeal.

5. This Court at the time of admission formulated the following substantial questions of law, vide order dated 09.04.2021 and the same reads as follows;

*"1. Whether the revenue records are substitution for title deed particularly when the title deeds produced by the plaintiffs under Ex.A14 Partition Deed through which the plaintiffs claim title to the suit property was disbelieved by the Courts below?"*

*2. Whether the decisions of the Courts below are vitiated in placing the onus on the defendants to prove that the plaintiffs are not the owners of the suit property rather than placing onus on the plaintiffs?"*

6. The learned counsel appearing for the appellants submitted that the Courts below erred in granting a decree for declaration based on relevant



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revenue documents produced by the respondents. The learned counsel further submitted that the Partition Deed relied on by the respondents was an unregistered document. Therefore, the same will not convey any exclusive title to the respondents. The learned counsel further submitted that in a suit for declaration, the plaintiff shall succeed by proving his own case and he cannot get a decree by picking holes in the defence.

7. Though the respondents are served and the learned counsel entered appearance, there is no representation for the respondents.

8. The respondents/plaintiffs claim that the suit property is an ancestral property and the same was allotted to the share of deceased first plaintiff Pachappa Gounder in the family partition dated 29.12.1986. It is their further case that after the death of Pachappa Gounder, they have been in possession and enjoyment of the suit property. Therefore, it is incumbent on them to prove partition and allotment of suit property to share of Pachappa Gounder. The Partition Deed dated 19.12.1986, was marked by the respondents as Ex.A14. A perusal of the said document would show that it is an unregistered, insufficiently stamped document. The recitals in the document would show that



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partition had taken place under the document. Therefore, it cannot be treated as a document evidencing past transaction of partition. In such circumstances, Ex.A14 cannot be relied to prove the factum of partition. In fact, the Courts below had not granted the decree for declaration based on Ex.A14 filed by the respondents.

9. The Courts below relied on the revenue documents like "A" Register Ex.A4, Patta in the name of Pachappa Gounder Ex.A1 and land tax receipts in the name of Pachappa Gounder Ex.A5 to A13. It is admitted case of the respondents that the suit property is an ancestral property, it was not the case that the suit property was self acquired property of deceased first appellant Pachappa Gounder. In such circumstances, merely because the revenue documents stand in the name of Pachappa Gounder, the respondents are not entitled to get a declaration, they have to prove the factum of partition and allotment of share in favour of Pachappa Gounder. As discussed earlier, Ex.A14 being an unregistered insufficiently stamped document cannot be relied on to prove partition between Pachappa Gounder and his sharers. If the respondents seek declaration based on mutation of revenue documents and long enjoyment of the suit property, the brothers of Pachappa Gounder should



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have been made as parties in the suit. In the absence of deceased first plaintiff Pachappa Gounder's sharers, the respondents are not entitled to seek declaration of exclusive title over the suit property when they are not able to prove the factum of partition and allotment of share in favour of Pachappa Gounder. Therefore, the Courts below committed an error in relying on revenue documents and declaring the title of respondents in the absence of brothers of Pachappa Gounder.

10. It is settled law that in a suit for declaration, the plaintiff shall succeed by proving his own case. The plaintiff is not entitled to rely on the weakness of the defence and get the decree. In the case on hand, the appellants in their pleadings claimed title over the suit property under first appellant's mother Chinna Kannammal. The appellants also failed to prove that the suit property was the property of Chinna Kannammal. Merely because the appellants failed to prove the title over the suit property, the respondents are not entitled to get a decree for declaration and injunction.

11. In view of the discussion made earlier, both the questions of law framed at the time of admission are answered in favour of the appellants.



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Hence, the second appeal stands allowed.

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a) by setting aside the judgment and decree dated 21.04.2016 made in A.S.No.61 of 2011, on the file of Sub Court, Gudiyattam, Vellore District confirming the judgment and decree dated 20.04.2011 made in O.S.No.563 of 1993 on the file of District Munsif Court, Gudiyattam, Vellore District.

b) In the above facts and circumstances of the case, there will be no order as to costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No  
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**To**

1. The Sub Court, Gudiyattam, Vellore District.
2. The District Munsif Court, Gudiyattam, Vellore District.



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**S.SOUNTHAR, J.**

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