



S.A.(MD).No.1109 of 2006

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

S.A.(MD).No.1109 of 2006

Narashimalu Naidu

... Appellant

Vs.

- 1.Raju (died)
- 2.Packirisamy (died)
- 3.Keerthi
- 4.R.Gopi

R4 is brought on record as LR of the deceased R1
vide Court order dated 22.01.2021 made in
C.M.P.(MD).Nos.5113, 5115 and 5116 of 2020
in S.A.(MD).No.1109 of 2006.

- 5.Pappa
 - 6.Ayyappan
- RR5 and 6 are brought on record as LRs of the deceased
R2 vide Court order dated 22.01.2021 made in
C.M.P.(MD).Nos.5113, 5115 and 5116 of 2020 in
S.A.(MD).No.1109 of 2006.

... Respondents

PRAYER: The Second Appeal is filed under Section 100 of the Civil Procedure Code, against the decree and judgment passed in A.S.No.65 of 2006, dated 25.09.2006 on the file of Principal District Court, Thanjavur reversing the decree



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and judgment of the District Munsif Court, Thanjavur in O.S.No.191 of 1999, dated 22.02.2005.

For Appellant : Mr.V.K.Vijayaragavan

For Respondents : Mr.S.Rajesh Kanna

Amicus Curiae

J U D G M E N T

The Second Appeal has been filed against the decree and judgment passed by the Principal District Judge, Thanjavur in A.S.No.65 of 2006, dated 25.09.2006, reversing the decree and judgment passed by the District Munsif, Thanjavur in O.S.No.191 of 1999, dated 22.02.2005.

2. The appellant herein is the plaintiff and he has filed the suit in O.S.No.191 of 1999 before the District Munsif Court, Thanjavur for permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the suit property.

3. The contention of the plaintiff before the trial Court is that the suit schedule property was allotted by virtue of the oral partition in the year 1974.



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Thereafter, the said oral partition was reduced into writing in the year 1976 and the same was marked as Ex.A4. Before the partition, a joint patta was issued for the property in the name of all the four brothers of the plaintiff. The plaintiff has two sisters and no property has been provided for them. At the time of marriage, they have been settled by providing Sridhanas. Therefore, they have also not made any objection for the partition till date. Under such circumstances, the third defendant, who is the son of the first defendant interfering with the peaceful possession of the plaintiff. Hence, the present suit came to be filed by the plaintiff.

4. On the other hand, the defendants have filed a written statement stating that the suit property is not a joint family property and disputed the partition deed/Ex.A4 and other documents filed by the plaintiff. The defendants further stated that they have purchased the suit property subsequent to the filing of the suit under Ex.B12, dated 25.10.1999, from the first defendant's father's brother son, who is the second defendant. According to them, the joint family property is the ancestral property. Therefore, no partition has been effected. Hence, the plaintiff is not entitled for any relief as sought for in the plaint.



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5. Before the trial Court, on behalf of the plaintiff, P.Ws.1 and 2 were examined and Exs.A1 to A31 were marked and on behalf of the defendants, D.Ws.1 to 3 were examined and Exs.B1 to B24 were marked.

6. After analysing the oral and documentary evidence, the trial Court came to the conclusion that the plaintiff is entitled for the relief as sought for in the plaint and accordingly, decreed the suit in favour of the plaintiff.

7. Aggrieved over the said judgment and decree, the defendants have preferred an appeal before the Principal District Court, Thanjavur in A.S.No.65 of 2006. After hearing both the parties, the first appellate Court came to the conclusion that the suit property is a joint family property and though the oral partition was made among the four brothers, two sisters were left out. That apart, the oral partition was reduced into writing in the year of 1976. Though the deposition of P.W.1 that the oral partition was made before the Panchayatar in the year 1974, no details with regard to the time and place have been mentioned in Ex.A4/the partition deed. Therefore, for these reasons, the first appellate Court



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came to the conclusion that the relief sought for by the plaintiff cannot be granted and set aside the judgment and decree passed by the trial Court, by virtue of the judgment and decree dated 25.09.2006. Aggrieved over the said judgment and decree, the appellant/plaintiff has filed the present appeal before this Court.

8. When this appeal came up for admission on 16.11.2006, this Court has framed the following substantial question of law:

When the appellant has proved his exclusive possession of suit property on the basis of Exs.A2 to A13, was the dismissal of suit filed by him for the relief of injunction by the Lower Appellate Court, sustainable in law?

9. Heard the learned counsel for the appellant and on behalf of the respondents, though notice has been served none appeared. Since only the substantial question of law framed by this Court has to be answered legally, this Court, in order to protect the interest of the respondents, appointed Mr.S.Rajesh Kanna, learned counsel as Amicus Curiae to assist the Court on behalf of the respondents, on the aspect of the substantial question of law framed by this Court and this Court also heard the submissions.



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10. In the present case, the suit was filed by the appellant in the year 1999, for the purpose of permanent injunction and the contention was that based on the oral partition in the year of 1974, the suit property was allotted to him and he has been enjoying the same. Subsequently, the said oral partition was reduced into writing on 09.07.1976, in which all the four brothers had signed along with the mother. The said document was marked as Ex.A4. Subsequent to Ex.A4 document, the plaintiff has mortgaged the suit property to the third party and the said document was also marked as Ex.A2. Before the partition, a joint patta was issued in the name of all the four brothers consisting of all the properties, which are the subject properties of Ex.A4 document. The said joint patta was issued in the year 1970. Subsequent to the partition, the plaintiff has also obtained a separate patta, by virtue of Ex.A5, for his entitlement of 69 cents in the year 1982. He has also marked the patta passbook as Ex.A7. Exs.A8, A9 and A10 are the kist receipts, which were filed in the year 1996, 1999 and 2004 respectively and chita and adangal were marked as Exs.A11 and A12. In the 'A' Register, the name of the plaintiff also entered. Therefore, the said 'A' Register also marked as Ex.A13. Subsequent to the partition, 31 cents were allotted for the allotment portion of the



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first defendant and he has obtained independent patta in his name. The said patta was marked as Ex.A31. In such circumstances, the learned counsel for the appellant submitted that considering the Exs.A8 to A11, A13 and A31, the trial Court given a finding that the possession is with the plaintiff and granted injunction. However, the first appellate Court has failed to consider all these documents and wrongly come to the conclusion that there was no oral partition and held that it is only a joint family property and suspected about the partition, due to the reason that the sisters were not included and the date, time and place of the Panchayat are not mentioned. Therefore, the learned counsel for the appellant would submit that in the absence of consideration, the first appellate Court came to a wrong conclusion. Hence, the same has to be reversed.

11. On the other hand, Mr.S.Rajesh Kanna, Amicus Curiae would submit that the first appellate Court has gone through the partition deed/Ex.A4. Since no date and place about the oral partition made among the brothers have been mentioned and no reason has been provided in the partition deed for non-inclusion of the sisters, the first appellate Court has rightly come to the conclusion that it is the joint family property. Therefore, it is a well considered



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judgment and it need not be interfered with. In support of his contentions, he has relied on the following judgments of this Court with regard to (i) patta is not a document of the title, (ii) no injunction can be granted against the joint owner and (iii) unregistered document is not a valid document.

(i) In the case of **Kammavar Sangam v. Mani Janagarajan** reported in **1999 (3) L.W. 727**;

(ii) In the case of **Govindammal v. Murugesan** reported in **2011 (2) MWN (Civil) 817**;

(iii) In the case of **S.Venkatesh Babu vs. Ms.Swetha** reported in **2010 (3) L.W. 33**;

(iv) In the case of **R.Deivanai Ammal (died) and another v. G.Meenakshi Ammal and others** reported in **2005 (1) L.W. 343**;

12. On perusal of the documents, it appears that the trial Court has decreed the suit in favour of the plaintiff and on the other hand, the first appellate Court has reversed the finding of the trial Court on the ground that the suit property is a joint family property and they have doubted about the oral partition made among the brothers. The plaintiff has filed as many as 31 documents. The trial Court has gone into all the documents and the oral evidences. The plea of the plaintiff is that there was an oral partition among the brothers in the year 1974



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and the same was reduced into writing in the year 1976 under Ex.A4 document.

Thereafter, in his oral evidence also he has stated that there was a oral partition in the year 1974. But against the said statement, though the respondents have cross-examined, nothing has been disproved by the defendants and the Court should have accepted the oral evidence. That apart, the oral partition, which was reduced into writing in the year 1976 has also been acted upon. For the portion mentioned in Ex.A4, the plaintiff has obtained separate patta by virtue of Ex.A5 document and as far as the first defendant, he has also obtained separate patta by virtue of Ex.A31. These facts have not been denied by the appellant. In such circumstances, when the first defendant has obtained separate patta for his land obtained through Ex.A4, this Court is of the considered view that he has no *locus standi* to come and say before this Court that there was no partition and he is not at all a party to that, when he has already signed.

13. With regard to the finding of the first appellate Court that the partition deed was not a registered one is concerned, in the present case, the partition was made orally before the Panchayator in the year 1974 and subsequently, it was reduced into writing in the year 1976, for the purpose of



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convenience with regard to identification of the allotment of land to the respective parties. It is not that the partition made in writing and the same has not been registered. In the present case, as stated above, by virtue of the oral and documentary evidence, the plaintiff has proved that there was an oral partition made among the brothers and the same was reduced in the form of writing. Subsequent to the same, the oral partition has been acted upon and the plaintiff has obtained patta for the share of the property independently and the first respondent has also obtained patta for the share of the property.

14. With regard to the finding of the first appellate Court that the suit property is a joint family property is concerned, the first appellate Court should have considered the partition deed/Ex.A4 document in a proper perspective. That apart, a joint patta was issued in the year 1970 and the same had been filed as Ex.A1, which shows that they have acquired the property from the father by virtue of joint patta. In the event, if there is any issue of ancestral property from any other branch, it is for them to initiate appropriate proceedings, in the manner known to law.



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15. When the case of the plaintiff is that these are all the properties are their branch and they have been allotted by virtue of Ex.A4 document and prior to that, a joint patta was issued in the name of all the brothers by virtue of Ex.A1, it is for the Court to look into the aspect whether the possession is with the plaintiff and to substantiate his possession, not only he has established but also he has proved his possession by virtue of Exs.A8, A9 and A10 / kist receipts and also Exs.A11 and 12 / chita and adangal, which shows that the plaintiff is in possession of the property. That apart, 'A' Register also filed in which the name of the plaintiff has been shown as the owner of the property and all these aspects of those documents have not been taken into consideration by the first appellate Court while reversing the judgment and decree passed by the trial Court. In such circumstances, this Court is of the considered view that while perusing all these documents, it is ultimately proved that the plaintiff is in possession of the property. Accordingly, the substantial question of law framed by this Court is answered and the judgments relied on by the Amicus Curiae are not applicable to the facts of the present case.



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16. In this matter, though Mr.S.Rajesh Kanna was appointed as Amicus Curiae, he has extensively carried out his research and assisted this Court and the contribution made by the Amicus Curiae is appreciable. Accordingly, this Court appreciated the assistance provided by the *Amicus Curiae* in this matter.

17. In the result, the Second Appeal is allowed and the judgment and decree passed by the first appellate Court is set aside and the judgment and decree passed by the trial Court is restored. No costs.

08.08.2023

akv

To

- 1.The Principal District Court,
Thanjavur.
- 2.The District Munsif Court,
Thanjavur.
- 3.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

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