



S.A.No.1938 of 1999

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.No.1938 of 1999

- 1.Palaniappan
- 2.Periyamangudi
- 3.Nalliah
- 4.Mayandi
- 5.Kulanthian
- 6.Murugan

...Appellants

-Vs-

- 1.Mayandi
- 2.Sathaiah (died)
- 3.Selvi
- 4.M.Parkavi
- 5.Suganya
- 6.Shanthi

(Respondents 3 to 6 are brought on record as LR's of the deceased second respondent vide Court order dated 03.11.2017 made in M.P(MD) Nos.1 to 3 of 2012)

... Respondents



S.A.No.1938 of 1999

WEB COPY

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree made in A.S.No.83 of 1998 on the file of the Additional District Judge cum Chief Judicial Magistrate at Pudukkottai, dated 15.07.1998 confirming the judgment and decree made in O.S.No.100 of 1989 on the file of the District Munsif Court, at Aranthangi, dated 12.08.1993.

For Appellants : Mr.K.Baalasundharam
For R1 : Mr.V.K.Vijaya Raghavan
For R3 to R6 : Mr.G.Thandayuthapani

JUDGMENT

The defendants 1 to 5 and 7 are the appellants. The first respondent/plaintiff filed a suit for declaration and injunction. The suit was decreed by the Trial Court and the first appeal filed by the appellants was also dismissed and hence, the second appeal.

2. According to the first respondent/plaintiff, the suit property is a natham land adjacent to his house. It was averred in the plaint that the suit property had been in possession and enjoyment of the first respondent's family for



S.A.No.1938 of 1999

WEB COPY

a quiet long time and in recognition of their possession, the Government granted patta in the name of the first respondent's brother, Sathan in the year 1976. It was also further averred that there was a oral partition in the family of first respondent eight years prior to the filing of the suit and whereunder the suit property was allotted to the share of the first respondent. Therefore, it was the case of the first respondent that he had been in possession and enjoyment of the suit property treating it as a backyard of his house right from the oral partition. It was further averred in the plaint that the appellants/defendants, who owned property on the southern side of the suit property, tried to put up a fence on the northern extremity of the suit property and tried to annex the suit property along with their property and hence, the first respondent was constrained to file a suit for declaration and injunction.

3. The appellants herein filed a written statement denying the claim of the first respondent that the suit property had been in possession and enjoyment of their family for a long time and in recognition of their possession, patta was granted in favour of the first respondent's brother. The appellants in the written statement claimed title and possession over the suit property. It was further



S.A.No.1938 of 1999

WEB COPY

averred by the appellants that 3½ cents in the suit property was purchased by the first appellant Palaniappan under Ex.B.1, dated 20.09.1960 and the remaining three cents was purchased by him under Ex.B.2 dated 25.01.1967. It was also averred by the appellants that in the sale deed executed in favour of one Sathaiah by Udaiyal Aarichi, dated 19.03.1983, while giving description of property covered under the sale deed, the suit property was shown to be the property of the first appellant.

4. On these pleadings, the parties went to the trial and before the Trial Court, the first respondent/plaintiff was examined as P.W.1 and he marked four documents as Ex.A.1 to Ex.A.4. On behalf of the appellants, the first appellant was examined as D.W.1 and one Sathaiah was examined as D.W.2 and an independent witness Muthaiah was examined as D.W.3. The appellants marked six documents in their favour as Ex.B.1 to Ex.B.6. The Advocate Commissioner's report and plan were marked as Ex.C.1 and Ex.C.2 and FMB plan for the suit survey number was marked as Ex.X.1.



S.A.No.1938 of 1999

WEB COPY

5. On appreciation of oral and documentary evidences available on record, the trial Court came to the conclusion that the first respondent/plaintiff proved his title as well as possession over the suit property and granted a decree for declaration and injunction as prayed for. Aggrieved by the same, the appellants had filed the first appeal in A.S.No.83 of 1998 on the file of the learned Additional District Court Judge cum Chief Judicial Magistrate, at Pudukottail and the same was dismissed. Challenging the same, the appellants are before this Court.

6. The learned counsel appearing for the appellants submitted that the first respondent/plaintiff, who had claimed title to the suit property by virtue of oral partition between him and his brother, failed to lead any evidence in support of the said plea. In the absence of any evidence to prove oral partition whereunder the suit property was allegedly allotted to the share of the first respondent, the Courts below ought not to have granted a decree declaring the title of the first respondent. The learned counsel further submitted that the first respondent failed to lead any evidence to prove his exclusive possession over the suit property and hence, the finding rendered by the Courts below that the first



S.A.No.1938 of 1999

WEB COPY

respondent proved his possession is nothing, but a perverse finding.

7. On the basis of the contentions raised by the learned counsel for the appellants, this Court formulates the following substantial question of law, which is arising for consideration:-

“1. Whether the judgments and decrees of the Courts below are sustainable in law, when the first respondent failed to prove the alleged oral partition in respect of the suit property in a manner known to law or by producing any acceptable evidence to substantiate the same?”

8. Mr.V.K.Vijaya Raghavan, learned counsel appearing for the first respondent answering the substantial question of law formulated by this Court submitted that the appellants, who are strangers to the family, are not entitled to question the partition between the first respondent and his brother. It is the submission of the learned counsel that if at all, it is for the brother of the first respondent to question the partition and the appellants have got no *locus standi* to question the partition in the family of the first respondent. In support of the said contention, the learned counsel relied on the following judgments:-



S.A.No.1938 of 1999

WEB COPY

- (i) 1964 AIR (All) 381 in the case of Jai Sihng Rajs vs Harnam Das.
- (ii) 2009 (2) LW 636 in the case of S.Ganesan Vs. S.Kuppuswamy and another.
- (iii) 2003 (1) LW 304 in the case of Baldev Singh Vs Surinder Mohan Sharma and Ors.

9. The learned counsel for the first respondent further submitted that under Section 14 of Patta Pass Book Act, 1983 (Tamil Nadu Act 4 of 1986), if any person is aggrieved by the entry made under Patta Pass Book Act, it is for him to file a separate suit for establishing his right over the property in respect of which any entry is made adverse to his interest. In support of the said contention, the learned counsel relied on the judgment of this Court reported in **2014 (4) LW 145** in the case of ***Thuravi. Govinda Kummaaran, etc Vs The District Revenue Officer, Tirunelveli and others.***

10. Thirdly, the learned counsel submitted that both the Courts below have given a concurrent finding of fact that the first respondent proved his



S.A.No.1938 of 1999

WEB COPY

possession over the suit property. In that case, even assuming that the first respondent failed to prove his title over the suit property, he is entitled to succeed in respect of his second prayer, namely, the relief of injunction. In support of the said contention the learned counsel relied on the judgment of Hon'ble Apex Court reported in *AIR 1972 Supreme Court 2299* in the case of *M.Kallappa Setty Vs M.V.Lakshminarayana Rao*.

11. Heard the arguments of the learned counsel for the appellants and the respondents and perused the typed set of papers.

12. As far as the first contention raised by the learned counsel for the first respondent that the third party cannot question the partition between the first respondent and his brother is concerned, this is not the case where the appellants challenge the partition between the first respondent and his brother. The first respondent filed a suit seeking declaration of his title based on the alleged oral partition in his family. Unless he proves the alleged oral partition under which the suit property was allotted to him, he is not entitled to succeed in respect of the prayer for declaration of his exclusive title. It is settled law that in a suit for



S.A.No.1938 of 1999

WEB COPY

declaration, the plaintiff shall win or loose on his own strength and he cannot rely on the weakness of the defence. Though both the Courts below have given a concurrent finding that the appellants/defendants failed to prove the right over the suit property, merely, because the defendants in the suit failed to prove their case, the first respondent / plaintiff is not entitled to succeed, unless he proves his case independently. In the case on hand, absolutely there is no evidence available on record to prove the alleged oral partition between the first respondent and his brother, except the interested testimony of the first respondent as P.W.1. Therefore, in the absence of any acceptable evidence to prove the oral partition under which the suit property was allegedly allotted to the first respondent, the first respondent is not entitled to get any declaration of title in his favour.

13. As far as the second contention raised by the learned counsel for the first respondent based on Section 14 of Patta Pass Book Act is concerned, the said Act is applicable only to the agricultural lands. In the case on hand, even as per the averments found in the plaint, the suit property is a natham land. Therefore, the provisions of Patta Pass Book Act cannot be pressed into service in this case. Even otherwise, the appellants have not approached the Court seeking



S.A.No.1938 of 1999

any relief, it is the first respondent, who filed the suit seeking declaration of his title. Therefore, by relying on Section 14 of the Patta Pass Book Act, the first respondent cannot say that it is for the appellants to file a separate suit to establish their right over the suit property. The first respondent seeks declaration of his title based on patta issued in favour of his brother on the ground only in recognition of long possession of his family patta was granted in his brother's name. The said question cannot be decided in the absence of first respondent's brother.

14. As far as the third contention made by the learned counsel that both the Courts below concurrently found that the first respondent proved his exclusive possession over the suit property and hence, he is entitled to succeed in respect of his second prayer for injunction is concerned, the first respondent filed a suit seeking declaration of his title and for a consequential relief of injunction. When he failed to prove his title, it is not open to him to succeed in the consequential prayer for injunction. Further, admittedly, as described in the plaint, the suit property is a vacant site. Unless the title of vacant site is decided, it would be very difficult to presume the possession in the absence of any



S.A.No.1938 of 1999

WEB COPY

independent evidence in support of the first respondent's claim for possession.

The learned counsel by taking this Court to the findings of the Trial Court as well as the first Appellate Court submitted that both the Courts below have given a concurrent finding with regard to the possession of the first respondent. The first respondent marked four documents on his side. Ex.A.1 is the patta issued to his brother, namely, Sathan. Ex.A.2 is an adangal extract in respect of the suit property, which stands in the name of his brother Sathan. Ex.A3 is the FMB for the suit survey number. Ex.A.4 is a sale deed executed by Meenakshi and two others in favour of Sathaiah. None of these documents would be useful to prove the fact of possession of the first respondent over the suit property. The Courts below while coming to the conclusion that the first respondent proved his exclusive possession over the suit property, observed that the first respondent is the owner of the adjacent property and hence, his possession over the suit property shall be presumed. Both the Courts below failed to see that even as per the admitted case of the first respondent and also the report and plan submitted by the Advocate Commissioner, the appellants/defendants also owns the property on the south of the suit property. Therefore, both the appellants and the first respondent are owners of the adjacent properties. In these circumstances, the



S.A.No.1938 of 1999

WEB COPY

presumption applied by the Courts below in favour of the first respondent is equally applicable to the appellants also. In the absence of any evidence to prove exclusive possession of the first respondent over the suit property except the interested testimony of P.W.1, the findings rendered by both the Courts below that the first respondent succeeded in proving his exclusive possession is vitiated by perversity and hence, it is liable to be set aside.

15. In view of the discussion made earlier, the first respondent/plaintiff is not entitled to declaration of title as he failed to prove oral partition under which he claimed title and also injunction as he failed to prove his exclusive possession over suit property. Hence, the substantial question of law framed in the second appeal is answered in favour of the appellants and the concurrent judgments and decrees passed by the Courts below are set aside and the second appeal stands allowed.

16. In fine,

(i) The Second appeal is allowed by setting aside the judgment and



S.A.No.1938 of 1999

WEB COPY

decree made in A.S.No.83 of 1998 on the file of the learned Additional District Judge cum Chief Judicial Magistrate at Pudukkottai, dated 15.07.1998, confirming the judgment and decree made in O.S.No.100 of 1989, on the file of the learned District Munsif, at Aranthangi, dated 12.08.1993; and

(ii) In the facts and circumstances of the case, there will be no order as to costs.

04.01.2023

NCC : Yes/ No
Index : Yes / No
Internet : Yes / No
cp

To

1. The Additional District Judge cum Chief Judicial Magistrate,
at Pudukkottai.
2. The District Munsif Court, at Aranthangi,
3. The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

13/14



WEB COPY



S.A.No.1938 of 1999

S.SOUNTHAR, J.

CP

S.A.No.1938 of 1999

04.01.2023