



S.A.No.1826 of 2003

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.10.2023

CORAM:

THE HONOURABLE MRS.JUSTICE KALAIMATHI

S.A.No.1826 of 2003

Annamalaichamy (died)

2.P.P.A.Periyasamy

3.P.P.A.Murugesan

4.P.P.A.Ramaraj

5.D.K.Rajaguru

6.D.Mariyammal

7.R.Backiyalakshmi

8.J.AAthilakshmi

9.B.Selvalakshmi

10.R.Periyanayaki

Appellants 2 to 10 are brought on record as LR's. of the deceased sole appellant vide Court order dated 06.01.2023 made in C.M.P.(MD).Nos.3335 to 3337 of 2022 in S.A.No.1826 of 2003.

... Appellants

-Vs-



S.A.No.1826 of 2003

WEB COPY

- 1.Sangiah Konar (died)
- 2.Ramiah Nadar @ Kasirajan
- 3.S.Marichamy
- 4.S.Ramar
- 5.S.Thiruppathi
- 6.S.Senthil

respondents 3 to 6 are brought on record as LR's of the deceased 1st respondent vide Court order dated 27.07.2023 made in C.M.P.(MD).Nos.2901 and 2902 of 2023 in S.A.No1826 of 2003.

... Respondents

PRAYER: The Second Appeal is filed under Section 100 of the Civil Procedure Code, against the decree and judgment dated 30.06.2003 rendered in A.S.No.30 of 2000 on the file of the Subordinate Judge, Srivilliputhur, reversing the decree and judgment dated 27.07.2000 rendered in O.S.No.426 of 1998 on the file of the Additional District Munsif, Srivilliputhur.

For Appellants : Mrs.P.Jesi Jeeva Priya

For R2 : No appearance

For R3 & R4 : Mr.A.Arumugam



S.A.No.1826 of 2003

WEB COPY

J U D G M E N T

Being aggrieved by the judgment and decree passed by the first appellate Court in A.S.No.30 of 2000 on the file of Sub Court, Srivilliputhur dated 30.06.2003, the sole plaintiff has preferred the present second appeal. During the pendency of this appeal, due to the death of the sole appellant, his legal heirs viz., the appellants 2 to 10 were brought on record.

2. The sole plaintiff viz., Annamalaichamy, S/o.Periyasamy Nadar had filed a suit against his brothers Ramiah Nadar @ Kasirajan and one Sangiah Konar for the relief as follows:

to declare the sale deed dated 12.12.1985, executed in favour of the second defendant by one Ramasamy Nadar is not binding on the plaintiff and the first defendant and for consequential permanent injunction not to disturb the peaceful possession and enjoyment of the suit property, to order for preliminary decree for partition of $\frac{1}{2}$ share in the suit property and for costs.



S.A.No.1826 of 2003

WEB COPY

3. The trial Court viz., the Additional District Munsif Court, Srivilliputhur in O.S.No.426 of 1998, dated 27.07.2000, granted all the three reliefs as prayed for in favour of the plaintiff. Aggrieved, the second defendant viz., Sangiah Konar preferred an appeal in A.S.No.30 of 2000 on the file of Sub Court, Srivilliputhur. The first appellate Court concluded that the suit property does not belong to the plaintiff and allowed the appeal by reversing the judgment of the trial Court. Against which, the present appeal was filed by the plaintiff herein.

4. According to the plaintiff, the suit property is situated at Vadugapatti Village of Vathirairuppu Sub Registrar Range, Virudhunagar District in S.No.176/1, 51 cents and in S.No.176/5, 9 cents with the following boundaries:

to the West of graveyard, to the East of Palanichamy Nadar land, to the North of Stream, to the South of Vathirairuppu Road.



S.A.No.1826 of 2003

WEB COPY

5. This property along with the other properties originally belonged to the plaintiff's father Periyasamy Nadar. It is his ancestral property. The plaintiff and the first defendant had been enjoying the properties of Periyasamy Nadar in common and pursuant to the death of Periyasamy Nadar, except the suit property, all other properties were divided among themselves and they have been in possession and enjoyment. It is the further claim of the plaintiff that the suit property is being enjoyed as a thrashing yard and to keep the haystack. It is further claimed that in the suit property, in a part thrashing yard is there and in another part, Babul trees are grown up. As it is the ancestral property of their father, they do not have any document for the suit property. As it is a dry land, no tax was levied from them. As the second defendant is claiming right and title in the suit property, he tried to cut and remove the Prosopis Juliflora trees. The plaintiff after lodging a complaint before Nathampatti Police Station and after issuance of legal notice, the suit was filed for the above said relieves.



S.A.No.1826 of 2003

WEB COPY

6. Despite the receipt of notice, the first defendant neither appeared nor engaged Counsel.

7. Per contra, counteracting the above said details, apart from denying the entire plaint details, the second defendant claims to have purchased the suit property on 12.12.1985, through registered sale deed from Ramiah Nadar, S/o. Senthiyappa Nadar and since then he has been in possession and enjoyment of the property by obtaining patta and by paying kist. The second defendant further claims that the suit property was in possession of Ramiah Nadar and after the above said sale, he has been in possession and enjoyment of the suit property by obtaining patta.

8. On the rival contentions, the following issues were framed by the trial Court:

1. Whether the suit property is the ancestral property of the plaintiff?

2. Whether the suit property is the ancestral property of Ramasamy Nadar?



S.A.No.1826 of 2003

WEB COPY

3. Whether the sale deed dated 12.12.1985 affect the rights of the plaintiff?

4. Whether the plaintiff is entitled to claim the relief of declaration and permanent injunction?

5. Whether the plaintiff is entitled to get the relief of partition as prayed for?

6. To what other relief the plaintiff is entitled to?

9. At trial, the plaintiff examined himself as P.W.1. One Muthu P.W.2 has been examined to speak about the possession and enjoyment of the suit property by the plaintiff herein. Exs.A1 to A9 were marked. Exs.A1 to A4 are the Adangal extracts for the years 1973, 1974, 1975 and 1976 standing in the name of Periyasamy Nadar. On the second defendant side, the second defendant examined himself as D.W.1 and one Hari Narayanan was examined as D.W.2. Exs.B1 to B14 were marked. The sale deed executed by one Ramasamy Nadar in favour of Sangiah dated 12.12.1985 is Ex.B1 (certified copy of the sale deed / Ex.A7). Patta stands in the name of Ramiah Nadar is Ex.B3. Patta stands



S.A.No.1826 of 2003

in the name of second defendant is Ex.B4. Adangal extracts for the years 1990, 1991, 1992, 1993, 1994 and 1995 are Exs.B5 to B10. 'A' Register in respect of suit Survey Number is Ex.B14.

10. Candid case of the plaintiff is that the suit property is the ancestral property of his father Periyasamy Nadar and except the suit property, in respect of other properties, the plaintiff along with his brother Ramiah Nadar @ Kasirajan have effected partition and they are in possession and enjoyment of their respective shares and the major relief sought for is partition of $\frac{1}{2}$ share and yet another prayer is also found in the plaint that the sale deed executed in favour of Sangiah Nadar on 12.12.1985, in respect of the suit property is not binding on the plaintiff as well as the first defendant. Therefore, the second plaintiff Sangiah Nadar claims onus by way of relying upon Ex.B2.

11. The following substantial questions of law arise for consideration:



S.A.No.1826 of 2003

WEB COPY

(i) When both the parties lead evidence on the subject matter of the suit, whether the question of discharging the burden of proof which lies on the plaintiff assumes any importance.

(ii) When from the revenue records it was found that the name of the father of the plaintiff was noticed is not the presumption be drawn that the suit property belongs to the plaintiff.

12. The garden principles of law is that as per Section 101 of the Indian Evidence Act, one who pleads has to prove. The heavy burden lies on the plaintiff to prove that the suit property is the ancestral property of his father. The plaintiff has claimed that though the suit property is the ancestral property of his father, he has no documents for the said property. To prove that the suit property is the ancestral property of the plaintiff's father, Adangal extracts obtained for the years 1973 to 1976 in the name of Periyasamy Nadar are marked as Exs.A1 to A4.



S.A.No.1826 of 2003

WEB COPY

13. The learned counsel for the second respondent would draw the attention of this Court that when the plaintiff claims that the suit property is the ancestral property of his father, though the name of Periyasamy Nadar is found, neither initial nor the father's name is found missing in the Adangal, which has to be taken note of, while deciding the major issue in this appeal.

14. On the contrary, the second defendant claims to have purchased the property by way of registered sale deed from one Ramiah Nadar, S/o. Senthiyappa Nadar, on 12.12.1985. Patta and Adangal in the name of Ramiah Nadar are Exs.B3 and B5. A deep analysis of Ex.B2 would depict that the second defendant has purchased the property from Ramasamy Nadar, S/o. Senthiyappa Nadar. The name of the purchaser of second defendant do not tally with the written statement of D2 in this aspect.



S.A.No.1826 of 2003

WEB COPY

15. When the plaintiff is burdened to prove that the suit property belongs to his father ancestrally and when the second defendant stoutly refuted the plaintiff's claim, it is for the plaintiff to produce positive evidence to dispel the second defendant's claim. The pivot questions are whether the Adangals/ Exs.A1 to A4 can be relied upon for the purpose of granting the relief to the plaintiff.

16. Long before, the law is well settled that the revenue documents such as Patta, Chitta and Adangal are not documents of title. At the best, they can be taken into consideration for the purpose of deciding about the possession.

17. The learned counsel for the respondents would refer to the decision of the Hon'ble Supreme Court in the case of ***Union of India and others vs. Vasavi Co-op. Housing Society Limited and others*** reported in **2014 (4) CTC 471**. The Hon'ble Supreme Court held that the legal position, therefore, is clear that the plaintiff in a suit for declaration of title and possession could succeed only on the strength of its own title and



S.A.No.1826 of 2003

that could be done only by adducing sufficient evidence to discharge the onus on it, irrespective of the question whether the defendants have proved their case or not. We are of the view that even if the title set up of the defendants is found against, in the absence of establishment of plaintiff's own title, plaintiff must be non-suited.

18. Here is the case where the plaintiff claims that the suit property is the ancestral property of his father and they have been in possession and enjoyment of the suit property. The second defendant claims rival title. Onus lies upon the plaintiff to show that primarily the property belongs to his father. Admittedly, no document of title was marked in respect of the suit property at least to consider the prime prayer of the plaintiff. Well established principle of law is that the plaintiff cannot find loopholes in the defendant case and try to succeed. Henceforth, based upon the pleadings, the plaintiff is supposed to have filed positive proof in respect of the suit property. In the absence of the same, this Court is left with no option except to non-suit the plaintiff, as the plaintiff has utterly failed to mark a document of title that the suit property is the ancestral



S.A.No.1826 of 2003

property of his father and the suit necessarily would fail. Substantial question of law are answered against the appellants.

19. In the result, the Second Appeal stands dismissed and the judgment and decree of the first appellate Court stands confirmed. Suit in O.S.No.426 of 1998 stands dismissed. There is no order as to costs.

19.10.2023

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

akv

To

- 1.The Subordinate Judge,
Srivilliputhur.
- 2.The Additional District Munsif,
Srivilliputhur.
- 3.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



S.A.No.1826 of 2003

R.KALAIMATHI,J.

akv

S.A.No.1826 of 2003

19.10.2023