



S.A.No.1827 of 2003

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.04.2024

CORAM

THE HONOURABLE Mr. JUSTICE **C.KUMARAPPAN**

S.A.No.1827 of 2003

1.Sappai Gounder
2.Kanniappan
3.Munuswami

... Appellants

vs.

1.Dorai Swami (died)
2.Raman
3.Manoharan

...Respondents

(Respondents 2 and 3 were brought on record as LR's of deceased R1 vide order dated 23.07.2019 in C.M.P.Nos.5556 to 5558 of 2016)

Prayer:- Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 26.06.2002 in A.S.No.52 of 2000 passed by the learned Additional District and Sessions Judge, Fast Track Court -II, Tindivanam, confirming the judgment and decree dated 24.12.1999 in O.S.No.266 of 1991 passed by the learned District Munsif, Gingee.

For appellants : Mr.V.V.Giridhar

For respondent 1 : Died



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S.A.No.1827 of 2003

For respondents 2 & 3 : Mr.V.T.Narendiran

J U D G M E N T

The instant appeal has been filed at the instance of the defendants.

The respondent herein is the plaintiff before the Trial Court.

2. For the sake of convenience, the parties will be referred to according to their litigative status as before the Trial Court.

The brief facts, which gave rise to this Second Appeal, are as follows:

3. According to the plaintiff, the suit property was purchased jointly by the plaintiff and the first defendant vide sale deed dated 23.06.1949. It is further stated that though the suit property was jointly purchased, the first defendant, being the eldest member of the family, the sale deed was obtained in the name of the first defendant. While so, about 15 years back from the date of filing of this suit, there was an oral partition between the plaintiff and the first defendant, and an extent of 0.12 cents in S.F.No.41/5 and half share in the well were allotted to the plaintiff. In the said oral partition, the remaining 0.20 cents and another



S.A.No.1827 of 2003

half share in the well were allotted to the first defendant. It is the submission of the plaintiff that the first defendant was interfering with the possession and enjoyment of the plaintiff's right over the suit property. Hence, he came forward with the suit for declaration and permanent injunction.

4. The said suit was resisted by the first defendant by contending that the entire extent of the property qua 0.34 cents is the absolute property of the first defendant, and that even prior to the purchase of this property, there was an oral partition among the family members. Therefore, the question of oral partition, as claimed by the plaintiff, does not arise.

5. It is the further submission of this defendant that since he had moved from the village, he had leased out the property to one Thamanoor Kanna Gounder. When such factum was known to the plaintiff, the plaintiff requested to lease out the property to him. Hence, since 1985, the entire extent of 0.34 cents was leased out to the plaintiff. Taking advantage of the absence of this defendant and taking advantage



S.A.No.1827 of 2003

of the enjoyment of the property as lessee, the plaintiff fabricated the documents and obtained patta in his name. It is the submission of the defendant that the patta will not confer title on the plaintiff. Therefore, it is the submission of the first defendant that the suit property is his absolute property and hence, prayed to dismiss the suit.

Evidence and documents:

6. Before the Trial Court, on behalf of the plaintiff, the plaintiff was examined as P.W.1 and three more witnesses viz., Manickam, Kannan and Thirumal were examined as P.W.2 to P.W.4, respectively and 43 documents were marked as Exs.A1 to A43. On behalf of the defendants, the first defendant was examined as D.W.1 and four more witnesses viz., Perumal, Velayutham, Rajendiran and Kuppu were examined as D.W.2 to D.W.5, respectively and 7 documents were marked as Exs.B1 to B7.

Findings of the Courts below:

7. The Trial Court, after having considered the pleadings, evidence and documents, has decreed the suit as prayed for. Aggrieved



S.A.No.1827 of 2003

by the same, the defendants preferred an appeal. The First Appellate Court has also concurred with the finding of the Trial Court and dismissed the appeal.

8. Not satisfied with the judgment of the First Appellate Court, the defendants have approached this Court by way of this Second Appeal.

Substantial questions of law:

9. At the time of admission of this Second Appeal on 27.11.2003, this Court has formulated the following substantial questions of law:

“1. Whether the Courts below could draw an adverse inference contrary to Section 92 of the Evidence Act, when admittedly Ex.B1, the sale deed dated 23.06.1949 was obtained in the name of the first appellant Sappai Gounder?

2. When the plaintiff admits to be a lessee under the first appellant, can he claim independent title over the suit property?”



S.A.No.1827 of 2003

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Submission on both sides:

10. The learned counsel for the appellants/defendants would vehemently submit that the Trial Court, as well as the First Appellate Court has wrongly cast the burden upon the defendants. It is the further contention of the learned counsel for the defendants that when the plaintiff himself admits that the suit property was purchased in the name of the first defendant, the burden is upon him to establish that it was a joint family property. The learned counsel would further contend that there is no shred of proof filed by the plaintiff to show that there was a joint purchase of the property. The learned counsel would further argue that it was illogical to contend about the oral partition. Hence, prayed to allow this appeal.

11. In order to buttress the appellant's contention, the learned counsel has relied upon the following judgments:

1. *Vasuki Selvam and others vs. Vetrivel and others* reported in **2023 (6) CTC 805**;
2. *Union of India and others vs. Vasavi Cooperative Housing*



S.A.No.1827 of 2003

Society Limited and others reported in (2014) 2 Supreme Court Cases 269;

3. *P.Kishore Kumar vs. Vittal K.Palkar* reported in (2024) 1 BLJ(SC) 37;

12. Per contra, the learned counsel for the respondent/plaintiff would submit that the Trial Court as well as the First Appellate Court, by relying upon the Revenue records, has believed the oral partition and that if really, the first defendant was the owner of the suit property, he would have taken effective steps to cancel the patta, stands in the name of the plaintiff. Therefore, the very conduct of the first defendant would establish that there was a joint purchase and that there was an oral partition. Hence, he would contend that there are no grounds to interfere with the order of the both Courts below in this Second Appeal.

13. I have given my anxious consideration on the submissions made on both sides.

Analysis of the submissions:

14. The main plank of the argument of the learned counsel for



S.A.No.1827 of 2003

the appellants/defendants is that the Trial Court has wrongly cast the burden upon the defendants.

15. But, while perusing the judgment of the Trial Court as well as the First Appellate Court, both the Courts have taken into consideration the sale deed in the name of the first defendant, however, have believed the case of the plaintiff qua the oral partition by relying upon the Revenue records. No doubt, the Revenue records are not the documents of title. But, the payment of kist and mutation are relevant fact to correlate the case of the plaintiff.

16. In this regard, it is appropriate to discuss the arguments put forth by the learned counsel for the appellants. According to the learned counsel for the appellants, there was an oral partition, prior to the purchase of the suit property, during 1947 and therefore, there would not have been any oral partition subsequent to the family partition. To contradict such argument, the learned counsel for the respondent relied upon Ex.A43, wherein, even after the oral partition, there was a joint purchase among the family members. Therefore, the Trial Court as well



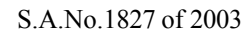
S.A.No.1827 of 2003

WEB COPY

as the First Appellate Court believed the case of the plaintiff and relied upon the Revenue records in support of their case. As a matter of fact, from 1966 onwards, the plaintiff has been paying kist, and the patta was also issued in the name of the plaintiff. Therefore, only in view of the above consistent payment of kist, and in view of issuance of patta, the Trial Court believed the case of oral partition.

17. As rightly observed by the Trial Court as well as the First Appellate Court that, if there had been any semblance of right to the first defendant over the suit property, his natural propensity would have been to file an appeal against the patta proceedings. However, no appeal has been filed by the defendants till date to cancel the patta. This also become one more circumstance for the Trial Court as well as the First Appellate Court to believe the case of the plaintiff to decree the suit.

18. Therefore, the question of wrong casting of burden upon the defendant does not arise. Only based upon the acceptable evidence, the Trial Court as well as the First Appellate Court has believed the case of the plaintiff and decreed the suit. It is a well settled principle of law that



19. In the result, this Second Appeal is dismissed. There shall be order as to costs.

Internet : Yes
Index : Yes/No
Speaking order/Non-speaking order
apd

1. The Additional District and Sessions Judge, Fast Track Court -II, Tindivanam.
2. The District Munsif, Gingee.
3. The Section Officer, V.R. Section, High Court, Madras.



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S.A.No.1827 of 2003

C.KUMARAPPAN,J.

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S.A.No.1827 of 2003

02.04.2024