



S.A.No.519 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 08.01.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.519 of 2021
and
C.M.P.No.10507 of 2021

Natesa Mudaliyar (Deceased)

- 1.N.Lakshmidevi
- 2.N.Lalithabai
- 3.N.Chandrasekaran
- 4.N.Santhakumar
- 5.R.Poogothai
- 6.N.Sivakumar

... Appellants

Vs.

1.Thiru Thasildar,
Natham Nilavari Thittam,
Arani,
Thiruvannamalai District.

2.Thiru Thasildar
Taluk Office
Arani
Thiruvannamalai District.

3.Thiru District Collector
Thiruvannamalai District, Thiruvannamalai.



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4.Thiru Deputy Firka Surveyor
Taluk Office
Arani
Thiruvannamalai District.

5.Thiru Town Surveyor
Municipal Office
Arani
Thiruvannamalai District.

6.K.Nagarajan

... Respondents

Prayer:- Second Appeal is filed under Section 100 of C.P.C to set aside the Judgement and Decree in AS No.36/2018 on 01.11.2019 passed by the Hon'ble Additional District Court, Judge at Arani, Thiruvannamalai by modifying the Judgement and decree in OS No.58/2009 dt. 23.07.2018 passed by the Hon'ble Sub Judge at Arani, Thiruvannamalai District.

For Appellants : M/s.R.Lakshmi Narasimhan for
Mr.L.Ramu.

For Respondents : Dr.S.Suriya, AGP for R.1 to R.5
Mr.V.Raghavachari, Senior Counsel
for M/s.S.Velmurugam,
Caveator counsel, for R.6.



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JUDGEMENT

WEB COPY The plaintiffs have filed the above Second Appeal challenging the judgement and decree in A.S.No.36 of 2018 on the file of the Additional District Court, Judge at Arani, Thiruvannamalai in and by which the learned Judge had modified the judgement and decree of the learned Sub Judge at Arani, Thiruvannamalai District in O.S.No.58 of 2009. The facts which have given rise to the above Second Appeal is herein below set out and the parties are referred to in the same ranking as before the Trial Court.

2. The suit O.S.No.58 of 2009 was instituted by the plaintiff on the file of the Sub Judge, Arani for a relief of declaration that the order passed by the 1st respondent dated 30.01.2009 in R.C.No.12 of 2009 is invalid and for an injunction restraining the defendants from surveying and sub-dividing the suit schedule properties on the basis of this invalid order of the 1st respondent.



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3. The suit was initially instituted only against respondents 1 to 5 who are public officials. Thereafter, the 6th defendant had been impleaded by order of the Trial Court dated 08.03.2010 in I.A.No.33 of 2010.

4. It is the case of the plaintiff that the suit schedule properties belonged to one Rajagopal Chettiyar and after his demise the property devolved on his daughter Sakkubai and she has been in possession and enjoyment of the same. Under a sale deed dated 21.01.1977, the plaintiff had purchased the property from Sakkubai. It is his contention that Sakkubai had earlier mortgaged the property under a mortgage deed dated 01.03.1971 which was redeemed later.

5. It is the further case of the plaintiff that after his purchase, the revenue records have been mutated in his name and he has been in enjoyment of the said property since the date of his purchase. While so, by proceedings dated 30.01.2009 in R.P.No.12 of 2009, the 1st



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defendant had included the name of one Nagarajan in the individual patta which was standing in the name of the plaintiff without giving notice to the plaintiff nor holding an enquiry. Therefore, it is the contention of the plaintiff that the said order of the 1st defendant is invalid.

6. Meanwhile, Nagarajan had impleaded himself as the 6th defendant in the suit by filing an implead petition. It is the contention of the plaintiff that the said Nagarajan was taking steps to measure the property on the basis of the order passed by the 1st defendant. The plaintiff had objected to the measuring of the suit properties. Meanwhile, the plaintiff had died and his legal heirs were brought on record as plaintiffs 2 to 7. The 6th defendant who had kept quiet for some time had once again renewed his efforts to measure the property and therefore the plaintiffs have come forward with this suit for the relief stated supra.



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7. The 1st defendant had filed a written statement contending that after the filing of the suit, the plaintiff on 29.05.2009 had filed a petition before the District Collector, Thiruvannamalai to cancel the order passed in R.P.No.12 of 2009. The District Collector had directed the R.D.O and the Deputy Firka Surveyor to conduct an enquiry and following the enquiry had called both the parties for hearing on 09.07.2009 and ultimately by order dated 16.07.2009 had set aside the order dated 30.01.2009 passed in R.P.No.12 of 2009. Therefore, the relief sought for against the defendants 1 to 5 no longer exists and therefore the 1st defendant prayed for the dismissal of the suit.

8. The 6th defendant had filed a written statement denying the allegations made in the plaint that the property belonged exclusively to Rajagopal Chettiyar. The 6th defendant would contend that the suit properties were purchased by one Chinnasamy Chettiyar on 17.07.1936 from Sigamani Pandidhar, Rathinammal and Manickammal. Thereafter, Chinnasamy Chettiyar and Rajagopal Chettiyar were jointly



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enjoying the properties as joint family properties. On 11.07.1937, the properties were partitioned and in this partition 1.95 cents of the suit properties were allotted to the share of Chinnaasamy Chettiyar and the remaining 1.94 cents was allotted to Rajagopal Chettiyar. The suit properties totally measures 3.89 cents. On the death of Rajagopal Chettiyar his daughter Sakkubai had inherited the said extent of 1.94 acres.

9. The 6th defendant's father Kesava Chettiyar succeeded to the share of his father Chinnaasamy Chettiyar and on the demise of Kesava Chettiyar his wife Radhabai and the 6th defendant succeeded to the property. It is the contention of the 6th defendant that from the date of partition both the parties have been enjoying their respective shares continuously, openly and without the interference of others. The 6th defendant in the meanwhile had gone to Chennai in relation to his employment and taking advantage of his absence Sakkubai and the plaintiff had colluded together to cheat the 6th defendant of his share



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and therefore they had entered into a sale agreement and created a mortgage deed in favour of the plaintiff. The defendant would submit that the plaintiff is only in possession of the property that has fallen to the share of his vendor under the partition and he had no right to claim his right over the entire extent. Therefore, he prayed for the dismissal of the suit.

10. The Trial Court had framed the following issues

1. Whether the suit properties belong to the plaintiff?

2. Whether the proceeding of the 1st defendant R.P.12/2009, dated 30.01.2009 is invalid?

3. Whether the plaintiff is entitled for permanent injunction as prayed for based on the proceeding R.P.12/2009, dated 30.01.2009?



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11. On the side of the plaintiffs, the 7th plaintiff was examined as P.W.1 and one Ravi Kumar was examined as P.W.2 and Ex.A.1 to A.18 were marked. On the side of the defendants, the 6th defendant had examined himself as D.W.1 and one K.Kuppusamy was examined as D.W.2 and Ex.B.1 to B.8 were marked.

12. On hearing the arguments on both sides and perusing the records the learned Sub Judge, Arani had decreed the suit. Aggrieved by the same, the 6th defendant had filed A.S.No.36 of 2018 on the file of the Additional District Judge, Arani. The learned Appellate Judge by his judgement and decree dated 01.11.2019 had partly allowed the appeal by modifying the judgement and decree of the Sub Judge, Arani in O.S.No.58 of 2009 dated 23.07.2018.

13. The learned Appellate Judge had held that the plaintiffs were entitled to a declaration of title of their half share in the suit schedule properties as per the terms of the registered partition deed Ex.B.1



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entered into between the plaintiffs vendor's father and the 6th defendant's grandfather. The Appellate Court had also declared that the 6th defendant was entitled to a half share in the suit properties. Aggrieved by this judgement and decree, the legal representatives of the sole plaintiff have preferred the above Second Appeal.

14. This Second Appeal has not been admitted and the 6th defendant had entered a caveat in the matter. The matter was being continuously adjourned only at the behest of the appellants from 26.07.2021.

15. From the arguments of the learned counsel for the appellants, the following points appears to be his grounds for challenging the judgement and decree of the Lower Appellate Court.

a) The 6th defendant has not filed any document whatsoever to prove that he is the grandson of Chinansamy Chettiyar.

b) The 6th defendant has not been able to establish their



continuous possession of the suit properties from the year 1936.

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c) The partition deed Ex.B.1 is illegible and there is no clarity as to which property has been allotted to the plaintiffs vendor's father and which property is allotted to the 6th defendant's grandfather.

d) The Lower Appellate Court has not taken into account the fact that under Ex.B.1 several properties have been partitioned and the document does not clearly show as to which property has been allotted to him.

e) The Lower Appellate Court has not given any reasons as to why it has not agreed with the findings of the Trial Court that Ex.B.1 and B.2 are illegible.

f) The 6th defendant has not proved possession.

16. To a specific question put by this Court as to the basis on which the Rajagopal Chettiyar had claimed a right to the suit schedule properties, the answer by the learned counsel for the appellant was that the claim was being made on the basis of Ex.B.1, partition deed. The



learned counsel would also rely upon the judgement reported in **(2019)**

11 SCC 309 - Poona Ram Vs. Moti Ram (dead) through legal

representatives and Others to support his argument that a person who claims a possessory title to a property has to prove the possession.

17. Per contra, the learned Senior counsel appearing on behalf of the 6th defendant would submit that the 6th defendant also traces title to the suit properties on the basis of Ex.B.1, partition deed. The plaintiff's contention that the 6th defendant's grandfather did not have a share in the property has to necessarily be rejected. Further, Ex.B.1 and Ex.B.2 have not been denied by the plaintiff. Under the partition in the year 1937, the suit properties have been divided between Rajagopal Chettiyar and his cousin Chinnaasamy Chettiyar. The plaintiff's claim under Rajagopal Chettiyar and the 6th defendant claim under Chinnaasamy Chettiyar. The Lower Appellate Court on perusing Ex.B.1 has come to the conclusion that the suit schedule properties have been partitioned amongst the aforesaid two persons and therefore, the



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plaintiff cannot seek title to the entirety. The learned Senior counsel would submit that the appellants/plaintiffs have not made out any case for interfering with the judgement and decree of the Lower Appellate Court.

18. Heard the counsels on both sides and perused the records.

19. At the outset, it is seen that none of the arguments that have been now put forward by the plaintiffs' counsel finds place in the memorandum of grounds of appeal here before this Court. The argument that the document is illegible has to necessarily be cast aside in the light of the observation in the judgement of the Appellate Court in Paragraph No.12 which reads as follows:

"The Rajagopal Chettiyar and the Chinnasamy Chettiyar are brothers who had entered into the partition deed in the year 1937. On perusal of the partition deed Ex.B.1 out of the total extent of 3 acres 29



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cents, 1 acre and 94 cents on the western side was allotted to the Rajagopal Chettiyar the father of the Jakkubai who is the plaintiff's vendor and 1 acre 95 cents on the eastern side was allotted to Chinnasamy Chettiyar who is the grand father of the 6th defendant. Hence as per the registered partition deed the Jakkubai has got right and title only to half of the suit properties and remaining half belongs to the 6th defendant/appellant."

20. Therefore a reading of this would clearly show that the Appellate Court has perused the document and after deciphering its contents has returned such a finding. The argument that the 6th defendant has not proved that he is the legal heir of the Chinnasamy Chettiyar cannot be countenanced for the simple fact that the plaintiffs have nowhere either in the form of a reply statement or while cross examining the 6th defendant raised any doubt as to the fact that the 6th



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defendant was the legal heir of the deceased Chiannsamay Chettiyar.

Since the plaintiffs have not entertained any doubt about the aforesaid fact, the 6th defendant has not set out to prove the same. The plaintiffs cannot now at the stage of Second Appeal question the right of the 6th defendant as the heir of Chianasamy Chettiyar. Therefore, this argument also has to be rejected.

21. The learned counsel has placed great reliance upon the signature of the 6th defendant in Ex.A.2 sale deed. This signature has been clearly and categorically denied by the 6th defendant during his cross examination and steps have not been taken to have the same verified. Considering the fact that both the parties trace their title to the partition deed between Chainnasamy Chettiyar and Rajagopal Chettiyar, the plaintiff cannot claim a right over and above what has been granted to his vendor's father. The 2nd and the 3rd reliefs ceased to exist in the light of the contents of the written statement of the 1st defendant wherein it has been stated that the order dated 30.01.2009, in



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R.P.No.12 of 2009 has been set aside. Once the aforesaid two reliefs become infructuous, the suit is one simplicitor for a declaration.

22. The plaintiffs have not been able to prove their right over the entire extent of the suit properties and in the light of Ex.B.1 and Ex.B.2, the judgement and decree passed by the Lower Appellate Court is in order and no exception can be taken to the same. Further, no substantial question of law has been made out by the plaintiffs/appellants. Accordingly, the Second Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

08.01.2024

Index: Yes/No
Speaking order/non-speaking order
Neutral Citation: Yes/No
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To

1. The Additional District Court, Judge at Arani, Thiruvannamalai.

2. The Sub Judge at Arani, Thiruvannamalai District.

3. The Section Officer,
V.R.Section,
High Court, Madras.

4.The Thasildar,
Natham Nilavari Thittam,
Arani,
Thiruvannamalai District.

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P.T.ASHA, J.,

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