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S.A.No.584 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.02.2024

PRONOUNCED ON : 18.04.2024

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.584 of 2021
and
C.M.P.No.12459 of 2021

Rajeswari

... Appellant

V.s

1.Bhuvaneswari

2.Ponnan

3.Kesavan

4.Ganesan

5.Valli

6.Samydurai

7.Kulanthaivel

... Respondents



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Prayer: Second Appeal is filed under Section 100 of C.P.C against the Judgement and the decree dated 03.12.2020 in AS.No.28/2019 on the file of the Principal Sub Court, Kallakurichi, reversing the Judgement and the decree dated 22.03.2019 in OS.No.366/2010 before the I Additional District Munsif Court, Kallakurichi.

For Appellants : M/s.Hema Sampath, Senior
Counsel for M/s.R.Meenal

For Respondents : M/s.P.Valliappan, Senior Counsel
for M/s.P.V.Law Associates [R.1]
: No appearance [R.2 to R.4, R.6
&.R.7]
: Given up [R.5]

JUDGEMENT

The 1st defendant is the appellant before this Court. This Second Appeal is filed challenging the judgment and decree that has been passed against the 1st defendant in A.S.No.28 / 2019 dated 03.12.2020 reversing the judgment and decree in suit O.S.No.366 of 2010 filed for declaring the plaintiff's tile to the suit property, to



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recover possession

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of the same and for damages from the date of the suit till the date of handing over possession. The facts are briefly set out herein below and the parties are referred to in the same ranking as before the Trial Court.

2. The suit property is an extent of 36 cents out of a total extent of 1.72 acres comprised in S.No.257/10, Vadathorasalur Village, Thiagadurgam, Kallakurichi. The suit property is stated to be bounded on the east by a channel and the plaintiff's land, South by a channel, north by Sukumar's land and west by defendant's land.

3. Originally when the suit was filed, the suit property was described as comprised in S.No.257/10. Later, an amendment was brought about to amend the survey number as 257/10E which was allowed.



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4. It is the case of the plaintiff that the property belonged to one Pitchan. On 11.08.1972, the said Pitchan had settled the property on his wife Ayammal and her sister's son, Kannan. After the settlement the said Ayammal and Kannan were jointly enjoying the property and after Ayammal's death, the said Kannan was enjoying it exclusively. On 08.07.1983, he had sold the property and other properties to the plaintiff who since then has been in possession and enjoyment of the same. The plaintiff has also obtained patta in respect of the suit schedule property.

5. The plaintiff would contend that defendants 2 to 6 who have no right in the suit property have been disturbing the plaintiff's possession. The defendants were taking advantage of the fact that when patta was granted the plaintiff was shown as possessing a lesser extent of 50 cents instead of 86 cents. The 1st defendant has therefore sold this 36 cents to defendants 2 to 6 and as they were interfering



with the plaintiff's possession and enjoyment of the property, the plaintiff had come forward with the suit in question for the reliefs stated supra.

6. The 1st defendant had filed a written statement which was adopted by the 7th defendant. The defendants denied the plaintiff's claim. It is their contention that the suit property has not been properly described. After the UDR scheme in 1984 S.No.257/10 has been subdivided as S.Nos.257/10A to 257/10G. The plaintiff has not been able to clearly described in which sub-division the suit property is situate. It is their contention that the plaintiff is in the enjoyment of an extent of 0.20.5 ares in S.No.257/10F. The lands comprised in S.No.257/10A to S.No.257/10E together with the half share in the well and pump set situate in S.No.257/10G belongs to the defendants. Originally these lands belonged to one Kaadayan and others from whom defendants had purchased the property. The defendants would further go on to state that on 22.02.2002 and 07.04.2002 the defendant had purchased



portions of the property from Kaadayan's legal heirs. Thereafter, under sale deeds dated 08.09.2000 and 27.09.2001 the other portion in S.No.257/10A to S.No.257/10E and half share in the well was purchased by one Sukumar from Kaadayan's legal heirs. This fact was also known to the plaintiff. On 14.05.2003, the 1st defendant purchased the property from Sukumar. The defendants would further submit that the genealogy of Kaadayan does not include the plaintiff's predecessors in title.

7. The defendants would submit that the plaintiff owns lands only in S.No.257/10F and nowhere else. It is false to state that under the deed of the year 1983, the plaintiff had purchased an extent of 86 cents out of 1.06 acres. Apart from the land in S.No.257/10F, the plaintiff also owns lands in two other survey numbers of the same village, namely, in S.No.256/1 measuring an extent of 27 cents and in S.No.278/9 measuring an extent of 40 cents. Therefore, it is the contention of the defendants that the plaintiff was in enjoyment of 1



acre and 17 cents. Though the plaintiff has purchased only 20 cents, the patta show the total extent of 40 cents. That apart, it is the contention of the defendants that the plaintiff has not produced any document to show how he has a right to the extent of 0.10.5 ares in S.No.256/1. In 2008, the plaintiff and her husband has applied for fixing the boundaries and the said request was rejected on 14.07.2010 stating that the property does not belong to the plaintiff and that she is not in possession of the same.

8. An Additional Written statement was filed by the 1st defendant which is adopted by the 7th defendant. In the additional written statement which has been filed after the plaint was amended by inserting S.No.257/10 in the schedule of property, the defendants would submit that though the amendment has been carried out there is no detail about the extent of land in S.No.257/10E. Further, the survey number of the defendants' property in the which is situate in the south was also not mentioned. Therefore, the defendants would submit that



there is no clarity regarding the suit property and prayed for the dismissal of the suit.

9. The Trial Court had framed the following issues:-

1. Whether the plaintiff is entitled for the suit property?

2. Whether the plaintiff is entitled for the relief of declaration and recovery of possession?

3. To what other relief, the plaintiff is entitled to?

10. The plaintiff's husband had examined himself as P.W.1 and 4 other witnesses as P.W.2 to P.W.5. Ex.A.1 to A.19 were marked. The 1st defendant's husband had examined himself as D.W.1 and the 6th defendant had examined himself as D.W.2. Ex.B.1 to B.7 were marked. Ex.X.1 and X.2 were marked through the Court witness.

11. The Trial Court had observed that in 1974, there was an oral



partition between Kaadayan and Pitchan. Therefore, there is presumption that the said Pitchan and Kaadayan had partitioned the property equally. The learned Judge also observed that from a perusal of Ex.A.13 and A.14 it could be inferred that S.No.257/10E which is the suit property is comprised of 50 cents and taking into consideration Ex.B.6, this 50 cents is totally in the possession of the 1st defendant. The plaintiff has produced Ex.A.2 patta which is in respect of S.No.257/10F and not with reference to S.No.257/10E. Ultimately, the Trial Court had come to the conclusion that the plaintiff has not proved her title to the suit property and dismissed the suit.

12. Aggrieved by the said judgement and decree the plaintiff had filed A.S.No.28 of 2019 on the file of the Sub Judge, Kallakurichi. The Lower Appellate Court on re-appreciating the evidence on record had decreed the suit. Challenging the same, the 1st defendant has preferred the above Second Appeal.



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13. The Second Appeal had been admitted on the following Substantial Questions of Law:-

"(i) Whether in law the lower appellate Court was right in holding that the subdivision of S.No.257/10 was not done following due procedure when for more than 35 years the first respondent had not attempted to rectify the records ?

(ii) Whether in law the lower appellate Court was not wrong in failing to see that official acts should have been presumed to have been done properly and that the subdivision of the survey number must have been done after due enquiry?

(iii) Whether in law the lower appellate court was right in failing to see that it was for the first respondent as plaintiff to prove her case as mandated in Section 101 of the evidence Act and not rely on the weakness in the



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defence raised by the appellant?

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14. M/s.Hema Sampath, learned Senior counsel appearing on behalf of the counsel for the 1st defendant/appellant would submit that under the UDR Scheme the property comprised in S.No.257/10 had been sub-divided into several portions, namely, S.No.257/10A to S.No.257/10G. The common well and Electricity Service Connection is situate in S.No.257/10G. She would submit that though the plaintiff had come to learn about the sub-divisions, no steps have been taken to question the sub-divisions and further the plaintiff has conveniently filed the suit originally only in respect of S.No.257/10 and later on after the written statement of the defendants was filed, the survey number of the suit property was amended as S.No.257/10E.

15. She would submit that the Lower Appellate Court has based its judgment only on presumptions. The Lower Appellate Court presumed that under the oral partition between the Pitchan and



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Kaadayan the properties were equally divided and therefore the plaintiff's claim to 86 cents in S.No.257/10 has been held to be in order. The Lower Appellate Court has proceeded to accept the case of the plaintiff about the date of knowledge about the sub-divisions. She would submit the Lower Appellate Court has failed to consider that the original Will of the Ayammal has not been produced. That apart, there is no concrete evidence to show the oral partition between the Pitchan and Kaadayan. She would submit that the Lower Appellate Court has further presumed that the enquiry held by the Revenue Authorities before the lands were sub-divided was not a proper enquiry. The learned Senior counsel would submit that the same has not been proved by the plaintiff. That apart, the suit is clearly barred by limitation since the plaintiff had come into the knowledge about the sub-divisions much earlier in point in time and not on 26.07.2010 as alleged. The learned Senior counsel would submit that it is the plaintiff who has to prove the case and not the defendants and the Lower Appellate Court has erred in shifting the onus on the



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defendants.

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16. Per contra, Mr.P.Valliappan, the learned Senior counsel appearing on behalf of the plaintiff/1st respondent would submit that all the deeds that have been produced would clearly show that the 86 cents was available to the plaintiff and D.W.1 has admitted to the same. He would submit that a perusal of Ex.A.5, Chitta would clearly show that the property was jointly enjoyed by both Kaadayan and Pitchan. Therefore, there is a presumption that both parties are jointly entitled to the land comprised in these Survey numbers as no evidence to the contrary has been produced by the defendants. In support of his argument, he would rely upon the judgement reported in **2011 (4) CTC page 74 – Ponniammal @ Ponnammal Vs.Kuppusamy and Others and (2016) 15 SCC 463 – Parvathamma and Others Vs. Venkatsivamma and Others.**

17. The learned Senior counsel would point out from the



evidence of P.W.1 that the plaintiff has challenged the wrong entry in the year 2004. This factum has also been admitted by the defendants in their written statement. That apart, he would submit that the defendants had not proved their right to the land in excess of what they are entitled to. He would therefore submit that the suit has been rightly decreed by the Lower Appellate Court.

18. Heard the counsels on either side.

19. From the narration of the case and a perusal of Ex.A.5, it appears that the properties were jointly enjoyed by Pitchan and Kaadayan. That they have been enjoying the properties in common is evident from the fact that there is no entry showing further subdivision in Ex.A.5. The total extent of land shown in S.No.257/10 is an extent of 1.72 acres and the chitta does not specify the extent each owner is enjoying. Therefore, the only conclusion that can be drawn is that both of them have an equal share in the said survey number. Therefore, Pitchan and Kaadayan would each be entitled to an extent



of 86 cents. It is this 86 cents that Pitchan has settled on his wife Ayammal and his wife's nephew Kannan under Ex.A.1 settlement deed on 11.08.1972. Thereafter, under Ex.A.2 this extent of 86 cents has been sold to the plaintiff by Kannan on 08.07.1983.

20. D.W.1 who is the 1st defendant's husband has admitted that Kaadayan had two sons, namely, Aalan and Kattaiyan, who have divided the property amongst themselves. Under Ex.A.2, one of the boundaries is shown as Aalan's land who is none else than the son of Kaadayan. This would also go to show that Kaadayan and Pitchan had partitioned the properties. The evidence of D.W.1 would further throw light on the fact that the defendants are unable to state as to who originally owned the suit survey number prior to the updating of the register in 1984. Another factor which has to be taken note of is that the plaintiff had clearly stated that she is entitled to 86 cents in S.No.278/10 and only 20 cents in S.No.278/9. However, in the UDR patta the plaintiff has been granted patta for 50 cents in S.No.278/10



and 40 cents in respect of S.No.278/9. The witness D.W.1 has clearly admitted that prior to the purchase they had examined the encumbrance certificate for 15 years and also the joint patta standing in the name of both Pitchan and Kaadayan. That being the case, there is no explanation as to how they have purchased the property without verifying as to whether a partition had taken place in respect of the property comprised in S.No.257/10. D.W.1 admits that the property was jointly owned by Pitchan and Kaadayan. The 6th defendant who is the nephew of Pitchan and the grandson of Kaadayan who was examined as D.W.2, admits to the fact that a joint patta had been issued in both their names. He also admits that he does not know in which sub-division the suit well is situate.

21. Further, even going by the documents of title produced by the defendants, it appears that 1 acre and 4 cents have been purchased under Ex.B.3, B.4 and B.5 along with an undivided interest in the well situate in S.No.257/10G. It is also an admitted case that



when the sub-divisions were made there has been no enquiry held by the Revenue Authorities. Though a right has been granted in the well, there is no sale in respect of the electric service connection which is stated to be situate in S.No.257/10G. The defendants have purchased the property from the branch of Kaadayan and the plaintiff has purchased the property from the legal heirs of Pitchan. Therefore, from the documents, it is clear that the plaintiff has purchased 86 cents falling to Pitchan's share from Kannan, the nephew of Pitchan.

22. The plaintiff's case is that she had come to know about the shortfall only on 26.07.2010 and immediately the suit has been filed. The patta that has been issued in favour of the defendants is after the filing of the suit. Although the defendants have themselves admitted that the plaintiff has been issued patta for an extent of 50 cents in S.No.257/10F, the patta issued to the 1st defendant under Ex.B.6 would indicate that the 1st defendant has been given patta for an extent of 1.16 acres. When under Ex.B.1 and B.2, Sukumar had



purchased an extent of 14 cents in S.No.257/10A and 15 cents in S.No.257/10B and 25 cents in S.No.257/10. These lands have been sold by Sukumar to the 1st defendant under Ex.B.3, Sale deed. Further, the denfendants 2 to 6 and their sons had sold 40 cents in S.No.257/10E to the 1st defendant under Ex.B..4 and Kulandaivel, the son of Kattaiyan had sold 10 cents to the 1st defendant under Ex.B.5. There is no document produced on the side of the defendants to show as to how they have obtained a right to the land comprised in S.No.257/10C measuring an extent of 0.6.00 ares. Therefore, the plaintiff has produced documents only for an extent of 1 acre and 4 cents.

23. The Lower Appellate Court has rightly come to the conclusion that the 50 cents in respect of which patta has been allotted can only refer to S.No.257/10F and the 36 cents in respect of which the suit is filed is available in S.No.257/10E which is the suit property. That apart, the defendants have not proved the partition



between the sons of Kaadayan and the extent of land that has been allotted to each of them.

24. In the judgement reported in *2011 (4) CTC page 74 – Ponniammal @ Ponnammal Vs. Kuppusamy*, this Court had observed that when 3 sons inherited the property, the normal presumption is that they have inherited the property equally and when any one of the sons plead that one son was given a larger extent than the others, it is for him to prove the same. In the instant case also the presumption is that the Pitchan and Kaadayan had divided their property equally each getting 86 cents. The defendants who plead otherwise have not let in any evidence whatsoever to show that due procedure has been followed before she was given a larger extent. The Advocate Commissioner's Report, Ex.C.1 would clearly indicate that there has been an encroachment and the encroachment has also been demarcated by the Advocate Commissioner.



25. The documents would clearly show that the sub-division has taken place without taking into consideration the documents of title particularly when under Ex.A.1 of the year 1972, the said Pitchan had settled his properties measuring 56 cents and there has also been a mortgage on 20.04.1981 by Pitchan's wife Ayammal and Kannan in favour of one Kudupee Ammal. Even in Ex.A.17 mortgage deed, the total extent has been shown as 86 cents being the eastern half of the extent of 1.72 acres together with the share in the well and motor pump set. Under Ex.A.18, Will dated 02.02.1983 Ayammal has bequeathed her share, namely, 43 cents in favour of Kannan and it is this 86 cents that has been conveyed to the plaintiff under Ex.A.2 dated 08.07.1983. The sale in favour of the defendants predecessors in title is of the year 08.09.2000, Ex.B.1 and 27.09.2001, Ex.B.2 which properties have been conveyed to the 1st defendant under Ex.B.3 on 14.05.2003. The other two sale deeds are dated 22.02.2002, Ex.B.4 and 07.04.2002, Ex.B.5. The defendants have not produced the kist receipt to show that their predecessors in title and they have been in



the enjoyment of over and above 86 cents in S.No.257/10. The fact that under Ex.A.2 the property of Aalan, who is the son of Kaadayan is shown as one of the boundaries and that coupled with the lack of evidence on the side of the defendants as to how the division has taken place between Pitchan and Kaadayan, the only conclusion that can be drawn is that the property has been divided equally between the two and therefore the plaintiff is entitled to an extent of 86 cents. The defendants have not produced any documents of title to show their possession of over and above 86 cents from the year 1984 which is the year under which the UDR patta is stated to have been granted. The Lower Appellate Court has rightly come to the conclusion that the defendants have not proved their possession and the documents showing possession are all post the filing of the suit.

26. The plaintiff has filed Ex.A.1 and A.2 which are the documents of title which clearly show that she is entitled to an extent of 86 cents particularly when it is the original owner Pitchan who has



executed the 1st document Ex.A.1 in respect of his share of 86 cents.

The revenue records cannot grant or remove title in respect of property over which the plaintiff has got a right under a document.

27. The narration above would clearly show that no procedure has been followed when the sub-division has been effected. The plaintiff has come to know about the sub-division only in the year 2010 and the suit has also been filed immediately. The defendants have not been able to rebut this claim of the plaintiff that she has come into knowledge about Ex.B.6, patta in the year 2010. Therefore, the Substantial Question of Law no.1 is answered in favour of the plaintiff.

28. The argument that the plaintiff has to prove the case and not rely on the weakness of the defence, would not apply to the facts of the case since the Lower Appellate Court has considered Ex.A.1 and A.2 and B.1 to B.5 to come to the conclusion that the plaintiff is



entitled to a declaration in respect of the property measuring an extent of 86 cents. The Lower Appellate Court has therefore not relied upon the weakness in the defence to allow the appeal. Therefore, the Substantial Question of Law no.3 is answered against the appellant/1st defendant.

29. The presumption about official acts being done properly would not apply in the instant case since the documents of the plaintiff clearly show that she has been put in possession of 86 cents. When there is a procedure contemplated the officials are duty bound to follow the procedure. In the case on hand, there is no evidence whatsoever produced on the side of the defendants to show that the revenue authorities had considered the document, conducted an enquiry and local inspection and thereafter sub-divided the S.No.257/10. None of these have been proved in the instant case. Therefore, the presumption that the official act has to be presumed to be correct cannot be countenanced. Therefore, the Substantial



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Question of Law No.2 is also answered against the appellant/1st defendant.

30. In fine, the Second Appeal is dismissed. No costs.

Consequently, the connected Miscellaneous Petition is closed.

18.04.2024

Index: Yes/No

Speaking order/non-speaking order

Neutral Citation :Yes/No

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To,

1. The Principal Sub Court, Kallakurichi.
2. The I Additional District Munsif Court, Kallakurichi.
3. The Section Officer,
V.R.Section, High Court, Madras.

P.T.ASHA, J.,

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