



S.A.No.278 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.07.2024

CORAM:

THE HON'BLE MRS.JUSTICE.N.MALA

S.A.No.278 of 2021

1.Ellappan

2.Mani

3.Dhamodaran

4.Mariammal

... Appellants

Vs.

Elumalai

... Respondent

PRAYER:--

This Second Appeal is filed under Section 100 of the Civil Procedure Code, to allow the above second appeal and set aside the Judgment and Decree passed in A.S.No.50 of 2015 dated 11.12.2019 on the file of the Additional Subordinate Judge, Kancheepuram, confirming the Judgment and Decree passed in O.S.No.71 of 2012 dated 10.07.2015 on the file of the District Munsif cum Judicial Magistrate Court, Uthiramerur, as illegal and arbitrary and dismiss tha suit.



For Appellants : Mr.Adinarayana Rao

For Respondent : Mr.K.G.Senthilkumar

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J U D G M E N T

This Second Appeal is filed to allow the second appeal and set aside the Judgment and Decree passed in A.S.No.50 of 2015 dated 11.12.2019 on the file of the Additional Subordinate Judge, Kancheepuram, confirming the Judgment and Decree passed in O.S.No.71 of 2012 dated 10.07.2015 on the file of the District Munsif cum Judicial Magistrate Court, Uthiramerur.

2.The unsuccessful defendants are the appellants in the second appeal.

3.The suit was filed for the relief of permanent injunction against the defendants and their men from interfering with the plaintiff's peaceful possession and enjoyment of the suit "A" Schedule property and for permanent injunction restraining the defendants from any way preventing the plaintiff from using the "B" Schedule property as a common pathway.

4.The suit property is situated at Athiyur Melthuli Village, Uthiramerur Taluk.



S.A.No.278 of 2021

The suit property is classified as natham. The suit “A” Schedule property consists of two items. The plaintiff claims right, title interest, and possession of Item 1 of suit “A” Schedule property on the basis of Thuya chitta granted to him under the Natham Land Settlement Scheme. The plaintiff claims title to the second item of “A” Schedule property on the basis of a registered sale deed dated 27.03.2000 executed in his favour by Ammakannu Ammal Vagaiyara. The plaintiff therefore claims to be an absolute owner of the suit “A” schedule property. According to the plaintiff, the suit “B” Schedule properties was left to be commonly enjoyed by the plaintiff and his brothers at the time of oral partition of the suit “A” Schedule properties. The defendants tried to interfere with the plaintiff's possession of suit “A” and “B” Schedule properties and therefore, the plaintiff was constrained to file the suit for the aforesaid reliefs.

5.The 1st defendant in the written statement denied that the suit “A” Schedule property was an ancestral property. The 1st defendant denied that there was a oral partition and that “B” Schedule property was left to be enjoyed in common. The 1st defendant stated that the total extent of the suit property was 10 cents. The share of two brothers (i.e.) 5 cents was purchased by the 1st defendant. The 1st defendant claimed to have title to 0.0634 cents out of the entire extent of 10 cents.



S.A.No.278 of 2021

The 1st defendant claimed that the entire property of 10 cents was used only in east to west direction from the beginning and the contention of the plaintiff to the contrary was untenable. According to the 1st defendant, the plaintiff owned a meagre extent of ½ cent of vacant site out of 10 cents and therefore the suit was vexatious. The 1st defendant further stated that the suit was bad for non-joinder of necessary parties and also for joinder of unnecessary parties (i.e.) defendants 2 to 4. The 1st defendant further stated that the suit for bare injunction was not maintainable. The 1st defendant hence prayed for the dismissal of the suit.

6.Before the trial Court, the plaintiff examined himself as PW1 and marked Ex.A1 to Ex.A3. The first defendant examined himself as DW1 and marked Ex.B1 to Ex.B10.

7.The trial Court on an assessment of the entire evidence on record found that the suit was maintainable and that mere denial of the title by the 1st defendant without supporting documents to substantiate the same did not render the suit bad. The trial Court found that the plaintiff established his case on the basis of the documents and evidence filed by him, but the defendants failed to establish their case by filing relevant documents and therefore, the trial Court decreed the suit in favour of the



S.A.No.278 of 2021

plaintiff. Aggrieved by the Judgment and Decree of the trial Court, the defendants filed an appeal before the Additional Subordinate Judge, Kancheepuram. The lower appellate Court on an appreciation of the entire evidence on record found that the plea of the defendant that suit “A” Schedule property was used only in East to West direction and not South to North was not acceptable. The lower appellate Court also found that the plaintiff established his right and possession of “A” Schedule property and further established that the suit “B” Schedule property was earmarked for common usage. The lower appellate Court found that the defendant failed to prove that there was no oral partition and the “B” Schedule property was not a common passage and therefore, the lower appellate Court confirmed the Judgment and Decree of the trial Court. Aggrieved by the Judgment and Decree of the lower appellate Court, the defendants have filed the above second appeal.

8.At the time of admission, this Court framed the following substantial questions of law:

“1.Whether the plaintiff has come to Court with definite description of property in order to seek the decree for permanent injunction?

2.Whether the Courts below were right in decreeing the suit



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based on Patta and FMB sketch of Revenue authorities, which was the subject of entire dispute between the Appellants and the Respondent when admittedly there were registered sale deeds and settlement deeds in favour of First Appellant?

3. Whether the Courts below were right in granting permanent injunction when admittedly the suit was not having a prayer of declaration and when the Plaintiff had claimed easementary right alleging common Pathway on the northern side Running from east to west measuring 7ft. x 82 ft.?

4. Whether the Courts below were right in concluding that access to all share holders should be ensured when admittedly, the eastern boundary was the cement road having access to all the property by drawing adverse inference?"

9. The learned counsel for the appellants submitted that the Courts below failed to note that the suit property was not properly described and therefore ought not to have decreed the suit. The learned counsel further submitted that the Courts below erred in relying on the revenue records for decreeing the suit when admittedly there were documents of title produced by the defendants in the form of sale deeds and



S.A.No.278 of 2021

settlement deed. The learned counsel further submitted that the Courts below ought to have non-suited the plaintiff for failing to seek the relief of declaration as the defendant denied the title of the plaintiff. The learned counsel further submitted that the findings of the Courts below on common way were erroneous considering that all the sharers had access through a cement road on the eastern side.

10.The learned counsel for the respondent on the other hand submitted that the grounds raised in the second appeal were all factual and therefore in the absence of any substantial questions of law, the second appeal ought to be rejected. The learned counsel further submitted that the Courts below having rendered concurrent findings in favour of the plaintiff, this Court sitting in second appeal under Section 100 CPC should be loath to interfere with the same.

11.I have heard both the learned counsels and I have perused the materials placed on record.

12.The admitted facts are that the plaintiff is the brother of the 1st defendant, that the defendants 2 and 3 are the sons of the first defendant and the 4th defendant is the wife of the 1st defendant. The 1st defendant admits the title of the plaintiff with



S.A.No.278 of 2021

respect to item No.2 of the “A” Schedule property and the dispute is with regard to item No.1 of suit “A” Schedule property and suit “B” Schedule property. It is the case of the plaintiff that the 1st item of “A” Schedule property was an ancestral property and the same was divided orally 30 years back. After partition the plaintiff was alone in absolute possession and enjoyment of item 1 of “A” Schedule property and in recognition of the same, the Tahsildar, Uthiramerur, issued patta in favour of the plaintiff under Patta No.23. The plaintiff's further case was that the “B” Schedule property was ear marked for common enjoyment of all the co-sharers. As the defendant tried to interfere with the plaintiff's possession and enjoyment of the suit “A” and “B” Schedule properties, the plaintiff was constrained to file the suit for permanent injunction against the defendants.

13.The defendants denied that the suit item 1 of the “A” Schedule property was ancestral property and that there was oral partition of the same. The defendants denied that suit “B” Schedule property was reserved for common enjoyment as a common way. According to the defendants the suit property formed a part of larger extent of 10 cents of land, major portion of which belonged to the defendants family. The plaintiff who owned a meagre extent of $\frac{1}{2}$ cent filed the vexatious suit in order to harass the defendants. The defendants stated that the suit was bad for non-joinder of



S.A.No.278 of 2021

necessary parties and joinder of unnecessary parties as also for failure to seek declaration of title.

14.As stated above, there is no dispute as to item No.2 of “A” Schedule property, as the 1st defendant admits the plaintiff's title to the same under Ex.A2, the sale deed dated 27.03.2000 executed by Ammakannu Ammal Vagaiyara in favour of the plaintiff. Therefore the dispute in the suit is restricted to item 1 of the “A” Schedule property and “B” Schedule property i.e. common pathway.

15.1st Substantial Question of Law:

The Courts below found that neither the plaintiff's document nor the first defendant's document contained the linear measurements of the suit property. The plaintiff sought for the appointment of Advocate Commissioner to measure the suit property. The Advocate Commissioner based on the measurements as per the FMB Sketch submitted the report and plan under Ex.C1 and Ex.C2. The defendant in his evidence admitted that the measurements of suit “A” and “B” Schedule properties were correctly given and that they were in conformity with the measurements in the FMB sketch. The lower appellate Court found that from the Advocate Commissioner's report, plan and FMB sketch the suit properties existed on ground. In the absence of the linear measurements in the documents filed by the plaintiff and



S.A.No.278 of 2021

the first defendant there was nothing wrong in relying on the Advocate Commissioner's report, plan and FMB Sketch for identifying the property. It is trite that the Advocate Commissioner's report and plan which has evidentiary value can be used in evidence. Even the defendant in his evidence admitted that the measurements of the suit schedule properties were in conformity with the FMB sketch. Therefore, the first substantial question of law is answered against the defendant.

16.2nd Substantial question of law:

The plaintiff claimed the right and possession over the suit item 2 of “A” Schedule property on the basis of the natham settlement patta under Ex.A1 issued by the Tahsildar, Uthiramerur in his favour. It is well known that the natham lands are meant for habitation of the villagers. Natham patta is granted to regularize the occupation of the villagers in natham lands. The natham patta unlike the revenue patta need not be accompanied by document of title. It is settled law that the natham patta has more evidentiary value than the revenue patta. That the suit properties are ancestral properties and gramma natham lands is evident from first defendant's own documents. It was in recognition of the plaintiff's possession of the suit item 2 of “A” Schedule property that the natham patta was granted in his favour. I therefore find the Courts below were justified in placing reliance on the natham settlement patta issued



under the natham settlement scheme, for finding that the suit item 2 of “A” Schedule properties belonged to the plaintiff. The lower appellate Court on appreciation of the defendant's documents under Ex.B1, Ex.B2, Ex.B7, Ex.B8 and Ex.B9 concluded that the documents related to undivided property without any linear measurements and hence the same were not useful in establishing the defendant's right to the suit properties. The lower appellate Court on the basis of defendant's own documents found that the suit “A” Schedule property was ancestral property and that there was oral partition, as the defendant himself purchased the shares of his brothers under Ex.B8 and Ex.B9. I find no perversity in the finding of the lower appellate Court. Admittedly, the defendant's documents related to undivided property and so the lower appellate Court cannot be faulted for relying on Ex.A1, Ex.C1 and Ex.C2 and FMB sketch of the revenue authorities for finding favour with the plaintiff. Therefore, the second substantial question of law is answered against the first defendant.

17.3rd and 4th Substantial Questions of law:

The plaintiff claims that the suit “B” Schedule Property was earmarked for common enjoyment as common pathway at the time of oral partition between the brothers. The lower appellate Court on the basis of the first defendant's own documents found that the contention of the first defendant that no oral partition took



place and that “B” Schedule property was not common way could not be accepted.

The first defendant relied on Ex.B7 in support of his plea that the “B” Schedule property belonged to him. Ex.B7 settlement deed was executed by the first defendant's mother in his favour with respect to S.No.215/2019. According to the first defendant, the suit “B” Schedule property formed a part of S.No.215/19 which was settled by his mother in his favour under Ex.B7. In Ex.B7, the suit “B” schedule property was described as gramma natham land. But in the FMB sketch, S.No.215/19 was described as “Poromboke” land. Moreover, the eastern boundary of Ex.B1, Ex.B2, Ex.B7, Ex.B8 and Ex.B9 were shown as Street, but the same was not reflected in the FMB sketch. From the Advocate Commissioner's report, plan and FMB sketch, it is clear that the suit “B” Schedule property was located in S.No.215/19 and was a common pathway. The lower appellate Court therefore found that the reliance placed by the first defendant on Ex.B7 for claiming exclusive right to “B” Schedule property could not be accepted as the classification of land under Ex.B7 was inconsistent with the classification in the Adangal enclosed with Ex.C1 and Ex.C2. In the Adangal extract S.No.215/19 was classified as Government Natham Poromboke land and therefore the lower appellate Court was right in holding that suit “B” Schedule property was common way. Moreover from the defendant's own documents it is found that the suit “A” Schedule property was ancestral property and that there was



S.A.No.278 of 2021

oral partition of the ancestral properties. Therefore the contention of the plaintiff that in the oral partition suit “B” Schedule property was earmarked as common way for common enjoyment deserves merit, moreso, when the Advocate Commissioner's Report and Plan support the plaintiff's case that suit “B” Schedule property was earmarked as common way for all the co-sharers. In any event, the lower appellate Court having rendered factual findings on the basis of the evidence before it, I find no reason to interfere with the same as no perversity is established in the factual findings. Therefore, the substantial questions of law raised in the grounds 3 and 4 are rejected.

18.In fine, I find no merits in the second appeal and the second appeal is dismissed accordingly. However, there shall be no order as to costs.

23.07.2024

NCC : Yes /No

Index : Yes / No

Speaking Order/Non-speaking order

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To

1.The Additional Subordinate Judge,
Kancheepuram.

2.The District Munsif cum Judicial Magistrate Court,
Uthiramerur.



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S.A.No.278 of 2021

3.The Section Officer,
Vernacular Records,
High Court,
Madras.

N.MALA, J.

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S.A.No.278 of 2021



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S.A.No.278 of 2021

23.07.2024