



S.A. No.865 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

DATED :03.12.2024

CORAM

THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

S.A.No.865 of 2024

Kumarasamy

... Appellant

Vs

- 1.Manjappan
- 2.Kullaputti @ Subramanian
- 3.Mudukattan @ Arumugam (died)
4. Sagunthala
- 5.Devakrishnan
- 6.Pandiyan
- 7.Natarajan
- 8.Mahalakshmi
- 9.Asaithambi
- 10.Pandian
- 11.Annamalai
- 12.Cholan

... Respondents

R3 died. RR9 to 12 are brought on record as LR's of the deceased R3 vide Court order dated 05.09.2024 made in CMP.Nos.16732, 16748 & 16749 of 2024 in S.A.No.29432 / 2023 (TVTSJ).

PRAYER : Second Appeal is filed under Section 100 of the Code of Civil Procedure, prayed to set aside the Judgment and Decree dated 23.11.2021 passed in A.S.No.52 of 2018 on the file of Additional Subordinate Judge, Vridhachalam confirming the judgment and decree dated 11.10.2018 passed in O.S.NO.241 of 2009 on the file of Principal District Munsif Court,



S.A. No.865 of 2024

WEB COPY

For Appellant : Mr.D.Bharathy
For R1,2,4,7 & 8 : Mr.J.Antony Jesus

JUDGEMENT

The appellant has filed this Second Appeal against the Judgment and decree dated 23.11.2021 passed in A.S.No.52 of 2018 on the file of Additional Subordinate Court, Vridhachalam confirming the judgment and decree dated 11.10.2018 passed in O.S.NO.241 of 2009 on the file of Principal District Munsif Court, Vridhachalam.

2. For the purpose of convenience, the parties herein are referred to as they are ranked in the suit.

3. Challenging the concurrent findings of the courts below, the plaintiff has preferred this appeal. Before the trial court, the plaintiff/appellant filed a suit against nine defendants, seeking a declaration that he is the absolute owner of the property and a permanent injunction.



S.A. No.865 of 2024

4. The case of the plaintiff is that the suit property originally belonged to her paternal grandfather, Thambi Padayachi, who gifted it to his mother, Kathayee, at the time of her marriage in 1926. Thereafter, Kathayee enjoyed the property as its absolute owner and begotten the children, including the plaintiff, who is her only son and took care of her. Following her demise, the plaintiff claimed to have inherited the property and enjoyed it, obtaining a patta and paying taxes from 1997 onwards.

5. The plaintiff contended that there was a family arrangement on 15.06.1976, in which the suit property was excluded as it solely belonged to his mother. However, the defendants allegedly created certain documents to interfere with the property, prompting the plaintiff to file this suit. The defendants, particularly D1 and D2, denied all allegations except for the fact that the suit property originally belonged to Thambi Padayatchi, the plaintiff's grandfather. They asserted that their grandfather, Nadaraja Udaya's brother's son, Duraisamy, filed a suit O.S. No. 422 of 1939 and obtained a money decree. To execute the decree, the property belonging to the plaintiff's father was brought to auction, where Duraisamy himself



S.A. No.865 of 2024

purchased it through court proceedings. Since then, Duraisamy and his descendants have enjoyed the property as absolute owners. The defendants relied on the delivery receipt issued by the court, as well as the suit register extract and subsequent patta transfer proceedings, to substantiate their claim.

6. Both parties presented evidence before the trial court, which framed several issues, including the validity of the alleged oral gift deed in favour of the plaintiff's mother, the possession of the suit property, and the defendants' claim of ownership through Court action. Upon examining the evidence, the trial court concluded that the alleged oral gift made by the plaintiff's grandfather to her mother in 1926 was not proven. The plaintiff failed to produce any documents to establish possession of the property by her mother from 1926 onwards. The only evidence submitted by the plaintiff was Exhibit A3 (Adangal extract with Patta No. 154), which related to the period 1998–2002. However, Kathayee had passed away much earlier, in 1995. Consequently, the trial court found the plaintiff's evidence insufficient to establish the oral gift or her mother's possession of the suit property.



S.A. No.865 of 2024

7. On the other hand, the defendants produced Ex.B1 (a certified copy of the delivery receipt issued to decree-holder Duraisamy in O.S. No. 422 of 1939 and Ex.B2, a suit register extract. These documents demonstrated that the suit property had been auctioned in court and purchased by the defendants' grandfather, Duraisamy.

8. Furthermore, the delivery records showed that an extent of 2.56 acres in Survey No. 81/1 was delivered, with the plaintiff's father signing as one of the witnesses to the delivery. Exhibit B3 (tax receipts) further indicated that Duraisamy's wife, Neelambal, paid taxes for the property. Upon her death without issue, the defendants, as her husband's brother's legal heirs, claimed possession of the property.

9. The trial court held that the patta in Kathayee's name alone was insufficient to prove the plaintiff's title to the suit property. It relied on the precedent established in **2018(2) MWN Civil 66, Ramalingam (Deceased) Vs.Renu Gounder**, ruling that the plaintiff failed to establish his right and title to the suit property through his mother. It also concluded that the property was delivered to Duraisamy as evidenced by Ex.B1. Consequently,



S.A. No.865 of 2024

the suit was dismissed.

WEB COPY

10. Thereby, held that the plaintiff failed to prove the right and title over the suit property. On the other hand, defendants' father's, brother's son, Duraisamy, took the suit property through court, proved the same through Exhibit B1-Certificate copy of the delivery receipt, while delivery was effected in EA.No.624 of 41, the available portion of the court record shows that an extent of 2.56 acre in Survey No. 81/1 was delivered in which the plaintiff's father was signed as one of the witnesses for that delivery.

11. Challenging these findings, the plaintiff preferred Appeal A.S.No. 52 of 2018. The learned first appellate judge independently analyzed the evidence and concluded that the plaintiff, despite claiming rights through his mother, failed to establish the alleged oral gift with credible evidence. The patta alone was deemed insufficient to establish title dating back to 1926. The appellate court upheld the trial court's findings, ruling that the plaintiff had not proven that his mother enjoyed possession of the suit property with sufficient evidence.



S.A. No.865 of 2024

WEB COPY

12. As per Exhibit B3, tax receipts, Duraisamy, wife of Neelambal, paid tax. Suit Survey No. 86/1, as she died, issueless defendants who are the legal heirs, husband's brother's legal heirs, claimed that they are in possession of the property. But trial court not accepted their possession but finally held that plaintiff failed to prove her title of her mother as well as the possession and enjoyment of the suit property at the time of the suit even before the death of his mother and also held that suit property was delivered to Duraisamy Udayar as per Exhibit B1 delivery receipt. Accordingly, suit was dismissed. Challenging the said findings, the Appeal A.S. No. 15/82 was preferred by the plaintiff, where the learned first appellate judge independently analyzed entire evidence on record. Finally held that, the plaintiff, though claimed right through her mother Kathayee who got the property through oral gift not been established the same with material evidence, and the patta relied by her alone is not sufficient to conclude the title from 1926 onwards. Plaintiff's mother enjoyed the suit property not being proved with sufficient evidence.



S.A. No.865 of 2024

13. In O.S.No. 422 of 1939, the defendant's uncle, Duraisamy, filed a suit against the plaintiff's father, which led to the suit property being auctioned for execution of the decree. Duraisamy himself purchased the property in the auction, thereby proving that the property belonged to the defendant's family. This confirmed the findings of the learned trial judge, and the appeal was dismissed as devoid of merit.

14. Challenging these findings, the plaintiff preferred this appeal on the following grounds:

i. The judgement and decree of the courts below is highly illegal, unjustifiable and in excess of jurisdiction vested in them.

ii. The Courts below ought to have seen that the Trial Court has failed to appreciate the oral and documentary cogent evidence of the appellant/plaintiff and his witnesses. It ought have disbelieved the documentary and interestedness witnesses of the defendants and have to decreed the suit.

Iii. The Courts below ought to have seen that the trial Court ought to have decreed the suit since the defendants misrepresented about the Exhibit



S.A. No.865 of 2024

B-2.

WEB COPY

iv. The Courts below ought to have seen that the trial Court miserably came to conclusion that the mother of appellant have not any document at the time of oral gift in the year 1926. Since the plea was taken by the plaintiff as oral gift the document for same not producing is does not arise.

v. The Courts below ought to have seen that the trial Court has committed grave error without considering the exhibits A1 to A3 was showed the possession and enjoyment of the predecessor /mother Kathayee of the plaintiff at the time of filing the suit.

vi. The Courts below ought to have seen that the trial Court miserably taken into account of the Ex.B-2 which was not included the suit property but the defendants taken their defense as the suit property was included as Serial No.14 of Exhibit B-2.

vii. The Courts below ought to have seen that in any event, the judgment and decree passed by the Courts below are liable to be set aside by this Hon'ble Court

15. By submitting the above grounds, the learned counsel submits that



S.A. No.865 of 2024

a substantial question of law is involved in this appeal and prays for its admission.

"a) Whether the Learned Judge is right in no considering the Exhibits A-1 to A-3 which is in favour of the appellant to prove the claim for declaration.

b) Whether the Learned Judge erred in considering the substantial materials put in Ex.B-2 as if the defendants have rights over the said property without any valid title deeds.

c) Whether the judgment of the lower Appellate Court is sustainable in law and on facts."

16. The plaintiff has challenged the concurrent findings of the courts below. Before the trial court, the plaintiff claimed an absolute right and title over the suit property, which measures 58 cents in Survey No. 81/1A. She contended that the property originally belonged to her mother through an oral gift made by her paternal grandfather, Thambi Padayachi. According to the plaintiff, Thambi Padayachi had a son, Periyasamy, who married



S.A. No.865 of 2024

Kathayee (the plaintiff's mother). The plaintiff claimed that at the time of their marriage, her grandfather orally gifted the suit property to her mother, Kathayee. She further asserted that her mother had been in possession and enjoyment of the property since 1960 until her demise.

17. The plaintiff argued that he was the sole caretaker of his mother during her last days and, thus, the property exclusively belonged to him. Alleging interference by the defendants, he filed a suit seeking declaration and possession.

18. The defendants, however, denied the plaintiff's claims and challenged both her mother's and her own rights and title to the property. They contended that the property had already been auctioned in 1941 following a decree in O.S. No. 422 of 1939, filed by Duraisami Udayar against the plaintiff's father, Periyasamy. The defendants produced a delivery certificate and suit register extract as evidence, which confirmed that the property had been auctioned in court and purchased by the defendant's grandfather. They argued that the plaintiff's father was one of



S.A. No.865 of 2024

the witnesses to this auction, and therefore, the defendant's family had a stronger title to the property.

19. The learned counsel for the appellant (plaintiff) submitted that the patta standing in the name of the plaintiff's mother, Kathayee, was not properly appreciated by the courts below.

20. Upon examining the findings of the courts below, it was noted that the learned trial judge had extensively discussed the patta in the name of the plaintiff's mother. However, the court held that a patta is not a document of title, and a declaration of ownership requires stronger documentary evidence. The plaintiff failed to produce any relevant material, apart from the patta, to establish her mother's possession and enjoyment of the property based on the alleged oral gift from 1926 onwards.

21. In contrast, the delivery receipts (marked as Exhibits B1 and B2) revealed that the suit property had already been sold in a court auction. Furthermore, the family arrangement made in 1976, as claimed by the



S.A. No.865 of 2024

plaintiff, did not include the suit property. These facts were rightly appreciated by the trial court and the first appellate court, leaving no ground for interference.

22. The court concluded that no substantial question of law was involved in this second appeal. Accordingly, this second appeal was dismissed as devoid of merit.

03.12.2024

Index : Yes/No

Neutral Citation : Yes/No

Speaking/Non Speaking order

rri

To

1. The Additional Subordinate Judge, Vridhachalam.
2. The Principal District Munsif, Vridhachalam.
3. The Section Officer, VR Section, High Court of Madras.

13\15



WEB COPY



S.A. No.865 of 2024

T.V.THAMILSELVI, J.

ri



WEB COPY



S.A. No.865 of 2024

S.A.No.865 of 2024

03.12.2024