



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2024

CORAM :

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

S.A.No.26 of 2013
& M.P. No.1 of 2013

N.Palanivel

... Appellant

Vs.

1.Murugan
2.Venkatesan

3.The Superintendent Engineer,
TNEB, Vengikkal,
Tiruvannamalai Town,
Tiruvannamalai District.

4.Mrs.Senthamil Selvi
5.Aravind(minor)
6.Shalini(minor)
7.Kasiammal

... Defendants

(RR4 to 7 bring on record as the Lrs of
the deceased R1 viz.,Murugan vide
order of this Court dated 25.01.2013
made in MP.No.2 of 2013 in SA No.26
of 2013, TKRJ)



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Prayer:- This Second Appeal has been filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 05.09.2012 in A.S.No.44 of 2011 on the file of the learned Principal Subordinate Judge at Tiruvannamalai confirming the judgment and decree dated 24.06.2011 passed in O.S.No.500 of 2005 on the file of the Court of the Additional District Munsif at Tiruvannamalai.

For Appellant	: Mr.V.Ayyadurai, SC for Mr.J.Manogar
For Respondents	: Mr.R.Rajarajan for RR2, 4 & 7 Ms.Hemalatha Gajapathy for R3

JUDGMENT

This Second Appeal has been preferred against the Judgment and decree dated 05.09.2012 in A.S.No.44 of 2011 passed by the learned Principal Subordinate Judge, Tiruvannamalai confirming the judgment and decree dated 24.06.2011 passed in O.S.No.500 of 2005 by the learned Additional District Munsif, Tiruvannamalai.

2. The plaintiff in O.S.No.500 of 2005 is the appellant before me.



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He had presented the suit for declaration of his right over "A" schedule mentioned property and also for mandatory injunction to evict and deliver the vacant possession of "B" schedule mentioned property to the plaintiff and further mandatory injunction to direct the Tamil Nadu Electricity Board, Thiruvannamalai to disconnect the electricity service connection bearing no.1187 at Vedanthavadi village, Tiruvannamalai Taluk situated in B schedule property in the name of 1st defendant.

3. After trial, the suit came to be dismissed by the learned District Munsif in and by way of judgment dated 24.06.2011 which came to be confirmed in Appeal in A.S.No.44 of 2011 by the learned Subordinate Judge, Tiruvannamalai in and by way of judgment dated 05.09.2012.

4. The case of the plaintiff is that the suit A schedule properties are ancestral joint family properties belonging to his grandfather, one Ramasamy Gounder. The said Ramasamy Gounder had 4 sons, namely Vellaiya Gounder, Narayanasamy Gounder (plaintiff's father), Samiyar Gounder and Govinda Gounder. The said Govinda Gounder had married



his first wife and through her, he had begotten one female child namely Rathinammal. After the demise of first wife, Govinda Gounder married one Pattuammal and through whom he had begotten a female child namely, Kasi Ammal. The defendants 1 & 2 are the sons of Kasi Ammal.

5.The plaintiff further pleaded that in the partition among three brothers, the suit schedule mentioned property fell to the second son of Narayanasamy and on the death of Narayanasamy, his 3 sons namely Murugesan, Kuppusamy and N.Palanivel (plaintiff) partitioned the properties among themselves. According to the plaintiff, the suit property fell to his share and he has been in possession and enjoyment of the property. After the demise of Govinda Gounder, his 2nd wife remarried one Govindasamy gounder and the defendants 1 and 2 who are the sons of 2nd daughter of Govinda Gounder have no right or title over the suit schedule property.

6. The case of the defendant is that the suit properties belong to one Ramasamy Gounder and during partition, the suit schedule



mentioned property fell to the share jointly to Rathina Ammal and Kasi Ammal. The latter had further divided the property among themselves and the suit property was taken exclusively by Kasi Ammal.

7. At the time of admission, the following substantial questions of law were framed:

(i) Whether the Courts below have committed an error in not considering the contention of the appellant/plaintiff that the patta issued under Tamil Nadu Act 4 of 1986 was the *prima facie* evidence of title regarding gramamatham occupied by him?

(ii) Whether the finding of the Courts below that the partition among the surviving sons of the common ancestors Ramasamy Gounder pleaded by the appellant/Plaintiff was not substantiated is perverse?"

8. Heard Mr.V.Ayyadurai, learned Senior Counsel appearing for Mr.J.Manogar and Mr.R.Rajarajan, learned counsel appearing for the respondents 2, 4 & 7 and Ms.Hemalatha Gajapathy, learned counsel appearing for the third respondent.



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9. I have taken note of the fact that though Kasi Ammal was alive on the date of the presentation of the plaint, she was not made as a party to the suit. The defendants Murugan and Venkatesan claimed the suit property only through Kasi Ammal and as long as their mother is alive, they did not get any right, title or interest over the property other than *spes successionis*.

10. The plaintiff, when he claims title over the suit property, ought to have impleaded the person who actually has rival claim over the same. In this particular case, it is not the sons of Kasi Ammal, who have rival claim over the suit property but Kasi Ammal herself, who should have been impleaded as a party to the suit.

11. As per Order I, Rule 13 of CPC, an objection to non-joinder of necessary parties should have taken at the earliest available opportunity. A perusal of the written statement, particularly paragraph no.5, would show that the defendants 1 & 2, who are the respondents before me have



specifically pleaded that insofar as the suit properties are concerned, Kasi Ammal is the absolute owner and non-impleading her is fatal to the suit. At least after this defence had been taken, the plaintiff should have impleaded Kasi Ammal as a party to the suit. Unfortunately, he has not done so and therefore, it is fatal to the suit and apart from this objection on the basis of Order I Rule 13 of CPC.

12. Two other aspects are writ large. First one, being that apart from PW1's *ipse dixit* no evidence had been let in by the plaintiff in order to prove that the property fell to the share of his father, Narayanasamy Gounder. Unless and until it is proved that the properties of Ramasamy Gounder fell to the share of Narayanasamy Gounder, the plaintiff cannot claim right and title over the suit properties. The evidence to that effect let in by the plaintiff, is lacking in the present case. Even on merits of the matter, I am not in agreement with the version of the plaintiff/appellant.

13. Mr.V.Ayyadurai, learned Senior counsel for the appellant would vehemently contend that by virtue of Ex.A2, patta had been granted in



favour of Narayanasamy who is the father of the plaintiff and therefore, he is entitled for the decree as prayed for.

14. A perusal of Ex.A2 would go to show that it is Manavari Thoraya Patta. There is no evidence that the said patta was issued after the enquiry that had been conducted by the Revenue authorities, in which Kasiammal or the defendants had participated in the enquiry in respect of suit properties for title. It is trite that revenue records are not documents of title and such records neither create nor extinguish the title of ownership. Taking note of the possession over the property, revenue documents are issued for the purpose of collection of Governmental dues from a person whose name is found in the said document. Therefore, merely relying upon Ex.A2 patta, the plaintiff cannot claim right or title over the suit schedule property.

15. This deals with the first substantial question of law as to whether the suit has to be decreed on the basis of the patta granted to the plaintiff. Insofar as the second substantial question of law is concerned, I



have already found that apart from *ipse dixit* of PW1, no evidence had been let in by the plaintiff to prove the partition in respect of suit property. Therefore, I am constrained to answer both the questions of law against the appellant and in favour of the defendants.

16. Accordingly, the Second Appeal fails and it is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

03.01.2024

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To

- 1.The Principal Subordinate Judge at Tiruvannamalai
- 2.The Additional District Munsif, Tiruvannamalai



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V.LAKSHMINARAYANAN.J.

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