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S.A.No.332 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.01.2024

PRONOUNCED ON : 12.04.2024

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.332 of 2023

and

C.M.P.No.9938 of 2023

Egavalli (Died)

Saroja (Died)

1.Ranganathan

2.Karunakaran

Vijaya (died)

3.N.Doss

4.N.Kalairasi

5.E.Ezhilarasi

6.N.Murugan

7.N.Pughazharasi

8.Muthu

9.Dinakaran

10.K.Manimekalai

11.K.Bothraj

12.K.Latha

13.Wilson

14.Lawrance

15.Epse

... Appellants

V.s

Jaya (died)



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1.Kanchana

2.Sumathi

3.Augustin

4.Subramani

Mariappan (died)

5.Chengalvarayan

6.Lakshmi

7.Annammal

8.Anbu

9.Velayudam

10. Sundari

Pappammal (died)

J.John D'Selva (died)

11.J.Paulraj

12.D'Cruz

13.Carline

14.S.Julee



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Kala Nagalingam (died)

15.Sumathi

16.Prakasam

Munusamy (died)

17.Deivanai Selvam

18. Sivagami

19. Nagalingam

20. Samundeeswari

21. Jagadeeswari

22.N.Madhan

23.Amul

24.Uma Maheswari

25.Amulrajan

26.Mithilli

27. Selvi

28.Janani

29.Nivetha

... Respondents



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Prayer: Second Appeal is filed under Section 100 of C.P.C to set aside the judgement and decree dated 09.11.2022 made in A.S.No.36 of 2021 on the file of the Ld.Sub Court, Alandur confirming the judgement and decree dated 21.01.2002 made in O.S.No.90 of 1997 on the file of the Ld. District Munsif Cum Judicial Magistrate, Alandur.

For Appellants : M/s.V.Raghavachari, Senior
Counsel for Mr.C.Arun Kumar

For Respondents : M/s.R.Arvind for M/s.G.Daisy
John [R.1 to R.3 and R.11 to R.14]
: M/s.T.N.Rjagopalan, Caveator
Counsel [R.5]

JUDGEMENT

The plaintiffs are the appellants before this Court. They are the legal representatives of the original plaintiff, Ganesan. The facts are set out herein below briefly with the parties being referred to in the same ranking as before the Trial Court, namely, the District Munsif Cum Judicial Magistrate, Alandur in O.S.No.90 of 1997.



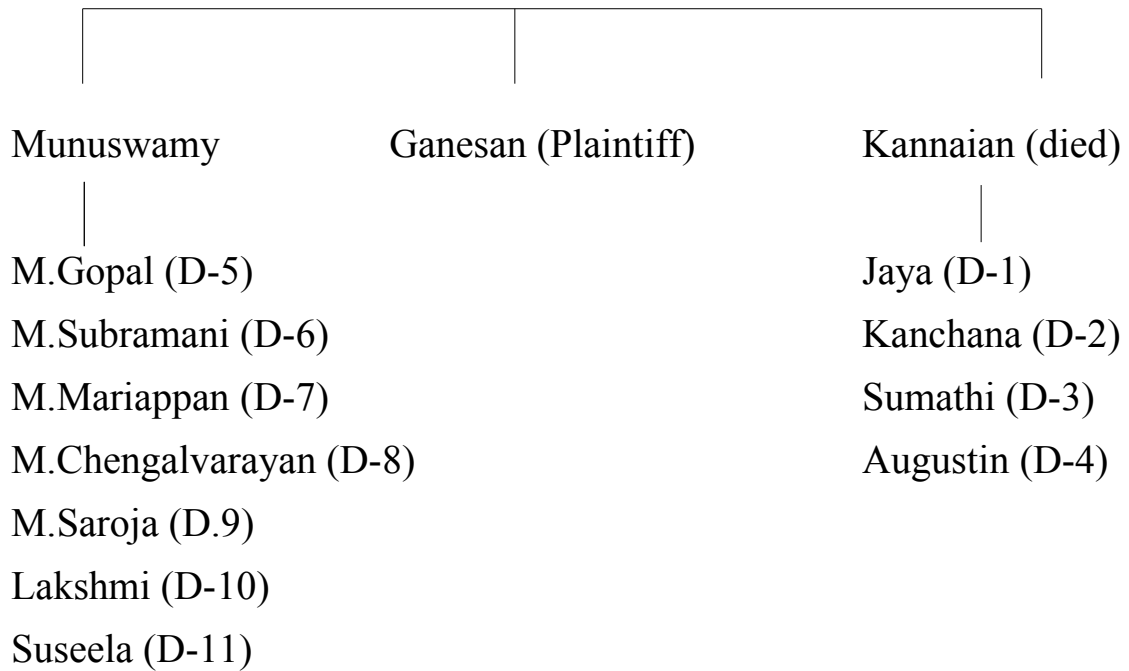
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2. The suit has been filed by the deceased plaintiff Ganesan for a partition of his 1/3rd share in the E schedule property which forms part of the A schedule property.

3. The Genealogy of the deceased 1st plaintiff and the defendants are set out herein below:-

Narayanan (died)





Plaintiffs' Case:-

4. It is the case of the plaintiffs that the A schedule property is the joint property of the 1st plaintiff, Ganesan, his elder brother Munuswamy and younger brother Kannaian. The plaintiffs would further submit that the properties were purchased out of the joint efforts of all the three brothers in the name of Munuswamy, the eldest. Thereafter, the A schedule property was divided between the 1st plaintiff and the said Kannaian and Munuswamy (both of whom were not alive at the time of the institution of the suit).

5. The A schedule property was divided into 4 parts B, C, D and E schedule properties. The B schedule property was allotted to the share of the heirs of Munuswamy, the C schedule property was allotted to the 1st plaintiff and the D schedule property was allotted to the share of the late Kannaian and the E schedule property which was the house was kept undivided. The 1st plaintiff and the said Munuswamy and



Kannaian were all entitled to a $1/3^{\text{rd}}$ share each in the E schedule property.

6. The deceased 1st plaintiff would submit that he had called upon the defendants to divide the E schedule property and allot his $1/3^{\text{rd}}$ share. However, the defendants were evading this request. This constrained the deceased 1st plaintiff to issue a legal notice dated 20.12.1982 calling upon the defendants to divide and allot his $1/3^{\text{rd}}$ share. However, there was no response to the request and therefore he had come forward with the suit for the reliefs claimed supra.

7. The plaintiffs would submit that pending the suit the 1st plaintiff, Ganesan had passed away and his legal heirs were brought on record. The 5th defendant had also died and his legal heirs were brought on record as defendants 12 to 15. Likewise, the 16th defendant was also subsequently added. The suit schedule properties consisted of 5 schedules and the relief was restricted only to the E schedule.



Defendant's Case:-

8. The 2nd defendant had filed a written statement which was adopted by defendants 1, 3 and 4. These defendants support the case of the plaintiffs. In addition to that they had contended that their father Kannaian had not converted into Christianity and the allegations to the contrary were false. They would submit that they are entitled to a 1/3rd share in the suit schedule property.

9. The 7th defendant had filed a written statement which was adopted by defendants 6 and 8 to 11 wherein they had contended that the suit property is the self-acquired property of their father Munuswamy who had purchased the same under a registered sale deed dated 22.02.1932. When the said Munuswamy had purchased the property, the property was a vacant site and thereafter a superstructure came to be put up on the site.

10. The defendants would submit that the other two brothers have



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not contributed in any fashion to the purchase of the land or the superstructure. The defendants would further submit that as a brother, Munuswamy, the father of these defendants had permitted the plaintiffs' father to put up a thatched house in the suit premises as the property in which they had been residing was a Poramboke. These lands was taken over by the Government to put up the Adambakkam Police Station. Taking advantage of the same, the plaintiffs are now attempting to squat on the property. Neither the plaintiffs' father nor Kannaian had any right in the suit schedule property and the plaintiffs are not entitled to the decree for partition.

11. The 8th defendant had filed an additional written statement interalia contending that he is one of the sons of Munuswamy. He would also submit that Munuswamy alone had contributed for the purchase of the A schedule property and the plaintiffs' father had been permitted to reside in the premises as his hut was being removed for putting up the Adambakkam police station. The 8th defendant would



further go on to state that Kannaian, the other brother had converted into Christianity after he had married the 16th defendant who is a Christian and therefore he is not entitled to any share, if any, in the suit schedule property. The 16th defendant would submit that she being the legally wedded wife of Kannaian, she is entitled to a share in the property.

Trial Court:-

12. The Trial Court on considering the evidence had originally proceeded to dismiss the suit as against which the plaintiffs had filed A.S.No.78 of 2002, on the file of the Additional Sub Judge, Chengalpattu. The appeal was also dismissed as against which the plaintiffs had preferred S.A.No.167 of 2005 on the file of this Court. This Court by order dated 27.04.2005 had allowed the Second Appeal, set aside the judgment and decree in A.S.No.78 of 2002 and remanded the matter back to the Lower Appellate Court for fresh consideration in accordance with law. The learned Judge had also permitted the parties



to let in evidence both oral and documentary with regard to the patta granted under Ex.A.2. The reason as to why this Court had remanded the matter back has been set out in paragraph no.7 of the said judgement as follows:-

“There have been proceedings subsequent to Ex.A.2 and it is not possible for this Court sitting in second appeal to consider the evidence as to whether the patta has been cancelled or the order dated 29.09.2003 has been passed only on the objections of the contesting respondents, viz, the sons of Munuswamy; at the same time, I cannot ignore Ex.A.2. So the conclusion of the courts below that the brothers of Munuswamy are not entitled to any right in the suit property is not sustainable.”

13. Thereafter, a Review Application was filed by the defendants since the Court had in the judgement in S.A.No.167 of 2005 observed



that the patta granted by the authorities under Section 8 of Act XXX of 1963 is virtually a document of title. The Review Petitioners were aggrieved by this statement. They had submitted that this observation runs contrary to the judgment of the full bench of this Court reported in ***1998 1 CTC page 630 - Srinivisan Vs. Sri Madhyarjuneswaraswamy, Pattaviathalai*** wherein, a Full Bench of this Court had held that the Court may entertain a suit for declaration of title and injunction and it is not barred by grant of patta etc.

14. In the litigation post the remand, the Appellate Court to which the remand had been made had framed the following points for consideration:-

"1) Whether the plaintiff is entitled to a 1/3rd share in the E schedule property?

2) Whether the plaintiff is entitled to the relief of preliminary decree for partition?

3) Whether the judgement and decree of the Trial Court is liable to be set aside?"



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15. On the side of the plaintiffs, prior to the remand one Ranganathan had examined as P.W.1 and two others as P.W.2 and P.W.3 and marked Ex.A.1 to A.16. The defendant had examined himself as D.W.1 and 6 other witnesses as DW.2 to D.W.7 and marked Ex. B.1 to B.29. After remand P.W.1, Ranganathan had filed n additional proof affidavit with 9 documents which were marked as Ex.A.17 to Ex.A.26. C.W.1 Deputy Tahsildar was examined and Ex.X,1 and Ex.X.2 were marked. D.W.1, Chengalvarayan was examined and Ex.B.30 and B.21 were marked. The appellants had also filed an amended memorandum of grounds of 1st Appeal. The Appeal which was renumbered as A.S.No.36 of 2021 on the file of the Sub Court, Alandur.

16. The learned Sub Judge proceeded to confirm the judgement and decree of the Trial Court in O.S.No.90 of 1997 by the District Munsif Cum Judicial Magistrate, Alandur. The learned Judge observed that the plaintiffs had failed to prove that the A schedule property had



been jointly purchased by Munuswamy, Ganesan and Kannian. The learned Judge also observed that the plaintiffs had failed to prove Ex.A.2 and Ex.A.3, though they had filed additional documents post the remand the learned Judge observed that Ex.A.2 did not appear to be a genuine document, especially in the light of the evidence of C.W.1. The learned Judge also observed that the recitals in Ex.B.1 would also confirm the fact that the A schedule property absolutely belonged to the said Munuswamy. The Appellate Court proceeded to dismiss the appeal. Challenging the same the plaintiffs are before this Court. The above appeal has not been admitted and the parties were referred to mediation. However, no consensus would be arrived at and the matter has been sent back to the Court.

Submission:-

17. Mr.V.Raghavachari, learned Senior Counsel appearing on behalf of the counsel for the appellants would submit that an oral partition had taken place between the said Munuswamy, Ganesan and



Kannaian prior to the year 1970. After the oral partition, the parties are in occupation of their respective shares wherein they have put up superstructures and which fact has been admitted by D.W.1.

18. The learned Senior Counsel would submit that though the property was purchased in the name of Munuswamy, the same was enjoyed in common by all the brothers. In fact, the said Munuswamy had mortgaged the property and it was the plaintiff, Ganesan who had discharged the loan and taken possession of the original documents of title. He was accompanied by Gopal, the son of Kannaian when he had gone to the mortgagee, Balakrishnan for redeeming the mortgage. He would further submit that the factum of the oral partition has been admitted by D.W.1 who would submit that in the suit property there are five houses. The old building is situate in the north and the other houses had been put up by their respective owners. The witness has admitted to the fact that the deceased plaintiff's house is also situate in the said property. The learned Senior counsel would therefore submit



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that the oral partition pleaded has been given effect to.

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19. Further, the superstructures were all assessed separately to tax which would also go a long way to prove the partition. The witness has also admitted that there was no objection to the constructions being put up. That the parties are enjoying the property separately has also been admitted by D.W.2 in his cross examination. During his cross examination, D.W.2 would submit that the plaintiff has put up a house and was residing near the property allotted to Munuswamy. The witness would also submit that between the properties given to Munuswamy and Ganesan the property of Kannaian which is now enjoyed by Gopal is situate. The learned counsel would therefore submit that these admissions would clearly show that there has been an oral partition and parties have been enjoying their respective shares. He would also draw the attention of the court to the Substantial Questions of Law that had been framed in the earlier Second Appeal No.157 of 2005. Substantial Questions of Law Nos. 2 and 3 were as follows:-



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(2) Whether the lower appellate Judge is correct in holding that the Settlement Patta, Ex.A.3 granted to all the three brothers, Munuswamy, Ganesan and Kanniah under the provisions of the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963 was cancelled merely on the basis of the show cause notice dated 09.03.1990 (Ex.B.8) without appreciating that no final orders in the said proceedings had been passed in the matter?

(3) Whether the lower apvellate Judge is entitled to deny the appellants the rights which accrued to them under the joint patta, Ex.A.3 granted to them under the provisions of the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963 without any of the parties thereto filing an appeal under the said Act against the said grant?”



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These issues have been answered in para nos.6 and 7 where this Court had held that the argument that the other brothers had not contributed for the purchase is rather unacceptable since even the younger brothers could have worked and contributed their shares to the purchase as it is very common in agricultural families for small children to also work. The learned Judge had further observed that Ex.A.2 proves the joint enjoyment and unless the same is set aside. The presumption is that it is the property of all the brothers and therefore Ex.A.2 cannot be ignored.

20. In his cross examination after the remand, P.W.1 would submit that from 1962 each brothers have been living separately. In his cross examination P.W.1 deposed to the fact that each persons are enjoying their respective shares and this evidence has not been rebutted in cross also. He would further submit that the recitals contained in Ex.B.1 may not be given much importance since the oral partition has taken place subsequently. That the parties had jointly enjoyed the properties is evident from the fact that the mortgage had been



discharged by the plaintiff, Ganesan and further the original documents was with him all these years. He would submit that the redemption of a mortgage by a co-owner was also a valid redemption. He would therefore submit that the appeal be allowed.

21. Per contra, Mr.T.N.Ragopalan appearing on behalf of the caveator, namely, respondent 5 would submit that the case of the plaintiffs is that Munuswamy and his two brothers had purchased the property out of the joint efforts of all the three in the name of Munuswamy. However, the plaint does not contain any details as to when the said property was purchased and the respective age of the parties at that relevant point in time. In paragraph nos.4 and 5 of the plaint, the plaintiffs have pleaded about the purchase of the A schedule property which is the larger extent and about the partition of the property into 4 parts leaving one portion in common and dividing the remaining amongst the 3 brothers. He would submit that in the chief examination of the 4th plaintiff he has deposed that the property was



purchased in the year 1933 by all the brothers in the name of Munuswamy and since the properties stands in the name of all the 3 brothers the patta has been granted under Ex.A.2. The learned counsel would point out that the suit had been filed in the year 1985 whereas Ex.A.2 patta is said to be granted in the year 1988.

22. He would further submit that the documents filed on the side of the plaintiffs to show possession are documents procured after the filing of the suit. The learned counsel would further submit that it is not the case of the plaintiffs that there was an ancestral nucleus from out of which the suit property has been purchased. On the contrary, it is the contention of the plaintiffs that the property was purchased from out of the joint exertion of all the 3 brothers. However, since Munuswamy was the eldest member of the family it was purchased in his name. However, the plaintiffs have not proved the contribution of Ganesan and Kannian for the purchase. On the contrary, a perusal of Ex.B.1 dated 20.07.1955 which is the mortgage deed under which the A



schedule property has been mortgaged to Balakrishnan, the recitals therein clearly shows that the same has been purchased from out of the self-acquired funds of the said Munuswamy. He would further contend that till the lifetime of Munusamy no claim was staked on the property. The recitals of Ex.B.1 would clearly indicate that the same was purchased from out of the exclusive exertion of the said Munuswamy.

23. He would further submit that a perusal of the recitals of Ex.B.1, mortgage deed would indicate that the said loan was being borrowed to settle the amounts due under a decree and also to settle the loan borrowed by the executant, namely, Munuswamy for conducting the marriage of his eldest daughter. He would further submit that a reading of this recital would clearly emphasize the fact that the property in question is the exclusive property of the said Munuswamy. That apart, Ex.B.1 mortgage deed has not been signed by the deceased 1st plaintiff and Kannian and neither have they questioned the borrowal.



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24. He would further submit that even in Ex.B.3 which is a letter written by the deceased Munuswamy to the village elders (Panchayatdars) on 21.07.1978 he has reiterated the contention that the property has been purchased by him exclusively. The plaintiffs and the other defendants are unable to substantiate with documents to prove as to how the other two brothers, namely, Ganesan and Kannaian had contributed for the purchase of the property. The plaintiff has produced Ex.A.16 a wage bill, however, the same is of the year 1982 whereas the property has been purchased 50 years prior to that in the year 1932. He would further submit that though the plaintiffs had contended that each of the shares are being assessed separately to tax, no document has been produced to prove the same particularly when they have pleaded that the partition has taken place even prior to 1975.

25. The learned counsel also drew the attention of the Court to Ex.A.22 dated 28.02.2011 which is the order of the Commissioner of Land Administration which is marked subsequent to the remand which



is an order under which Ex.A.2 has been set aside and once Ex.A.2 goes there is no other document to prove the joint purchase. It would clearly show that the plea of the plaintiffs that each sharers are in enjoyment of their respective shares is unbelievable since Kannaian who was in the Police Service is not residing in the suit property. Similarly, Ganesan, the deceased 1st plaintiff had also joined the Army. That apart, P.W.1 in cross examination had admitted that the properties are only in the possession of the children of Munuswamy. He would also submit that the oral evidence of D.W.3 is totally unbelievable as it is full of contradictions. He would submit that the matter had been remanded only for the purpose of examining the authenticity of Ex.A.2. He would draw the attention of the Court to Paragraph No.7 of the judgement in S.A.No.157 of 2005 wherein the learned Judge had observed as follows:-

“There have been proceedings subsequent to Ex.A.2 and it is not possible for this Court sitting in second appeal to consider the evidence as to whether the



patta has been cancelled or the order dated 29.09.2003 has been passed only on the objections of the contesting respondents, viz, the sons of Munuswamy; at the same time, I cannot ignore Ex.A.2. So the conclusion of the courts below that the brothers of Munuswamy are not entitled to any right in the suit property is not sustainable. The judgment and decree of the first appellate court rendered in A.S.No.78of 2002 is, therefore, set aside and the matter is remanded back to the Additional Subordinate Court, Poonamallee for fresh consideration in accordance with law. It is open to both the parties to let in evidence both oral and documentary, with regard to the patta granted under Ex.A.2. ”

26. He would submit that the Lower Appellate Court has totally lost sight of the scope of the remand and has proceeded to once again re examine the evidence. He would draw the attention of the Court to



the evidence of C.W.1 after remand through whom Ex.X.2 settlement register had been marked. The witness has clearly admitted that he has not produced A-Register prior to 1974 and Ex.A.2 is found only in the A-Register maintained by them post 1991.

27. He would also submit that there is no proof whatsoever to show the age of Ganesan and Kannayan on the date on which the property has been purchased under Ex.A.1. He would further submit that the plaintiffs have pleaded an oral partition of the year 1962. However, not a single piece of evidence has been filed by them to show that the properties have been enjoyed separately by the parties from the year 1962 barring the E schedule property. Even the documents that have been filed by plaintiffs are all after the filing of the suit. Therefore, he would submit that the Courts below have rightly come to the conclusion that the plaintiffs have not proved their case.

28. The other respondents, namely, respondents 1 to 3 and 11 to



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14 herein have filed written arguments in which they have more or less adopted the arguments made by the plaintiffs. The respondents had contended that the Courts below have committed an error in conducting a de novo trial and receiving the evidence which was not the language of the order of the remand made by this Court. They would further submit that the A schedule property right from the inception of its purchase on 22.12.1932 has been in the joint possession of all the 3 brothers. They would further contend that Ex.A.24, order of the Settlement Officer, Chepauk dated 30.03.2012 confirms Inam patta Ex.A.3 issued in the joint names of the 3 brothers. Therefore, the property is the joint property and each brothers being entitled to a 1/3rd shares in the E schedule property. They would further submit that the Courts below ought to have held that the possession of the property by the eldest brother Munuswamy was only for the benefit of the other brothers and not for his exclusive enjoyment. They would therefore submit that the judgement and decree of the Courts below is erroneous and therefore has to be set aside.



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29. Heard the counsels on either side and perused the records.

30. The plaintiffs have come to Court with a specific pleading that the A schedule property from out of which the suit property, namely, the E schedule property has been carved out had been purchased from out of the joint exertions and income of the deceased 1st plaintiff, Ganesan, his brothers, Kannaian and Munuswamy but in the name of Munuswamy, he being the eldest member of the family.

31. It is also their case that till the life time of Munuswamy the A schedule property was being jointly enjoyed by all the 3 brothers. It is their further contention that after the demise of the said Munuswamy (though not in so many words) the A schedule property came to be divided into 4 parts, namely, B, C, D and E. The B schedule property was allotted to the share of the legal heirs of Munuswamy, the C schedule was allotted to the 1st plaintiff, Ganesan, the D schedule was



allotted to Kannaian (who thereafter died) and E schedule property with the old house which was kept undivided is the subject matter of this suit. It is also the contention of the plaintiffs that they are in possession of the same along with the other defendants.

32. The contesting defendants, namely defendants 5 to 11 are the legal heirs of Munuswamy, the purchaser of the property. They would contend that the A schedule property had been purchased by Munuswamy from his self earnings and that the 1st plaintiff, Ganesan had been permitted to reside in the suit schedule property as the house in which he was living which was situate on a poromboke and the same was to be taken over by the Government for putting up the Adambakkam Police Station. Having entered possession of the property with the express permission of Munuswamy, the plaintiffs are now trying to assert an independent right to the same. They would submit that the suit has to necessarily be dismissed.



33. Both the Courts below have concurrently held that the plaintiffs had not proved their right to the suit property and had dismissed the suit. In the initial round of litigation, the legal representative of the plaintiffs had filed S.A.No.167 of 2005 on the file of this Court and by a judgement and decree dated 27.04.2006 this Court was pleased to remand the matter back for fresh consideration since there were proceedings subsequent to Ex.A.2 under which the patta was granted to Munuswamy, Kannaian and Ganesan. The learned Judge took a view that the Court sitting in Second Appeal cannot re appreciate the evidence as to whether the patta had been cancelled and therefore for this limited purpose for considering the evidence post Ex.A.2, the learned Judge had remanded the matter back for fresh consideration.

34. After remand and in keeping with the orders of remand, the plaintiffs had examined C.W.1, The Deputy Tahsildar, Guduvanchery to adduce evidence with respect to the A-Register in respect of the suit



property of the year 1974 which is prior to the filing of the suit in the year 1985. Through the Court witness Ex.X.1 and X.2 were marked. The plaintiff had marked Ex.A.17 to A.25 after remand and the defendants had marked Ex.B.30 and B.31.

35. P.W.1 in his evidence post the remand has not been able to adduce satisfactory evidence with regard to the contribution made by his father, Ganesan and his paternal uncle, Kannaian for the purchase of the A schedule property. He has also admitted that there is no document to show that either the 1st plaintiff or Kannaian have contributed towards the purchase of the property, its up-keep or the payment of tax. Till the death of Munuswamy in the year 1979 no claim has been made for partitioning the property by his brothers.

36. Further, P.W.1 in his cross examination had contended that it is in the year 1962 that the properties had been partitioned amongst the brothers and each of them have been enjoying their respective shares



and it is his contention that prior to 1962 they have been jointly enjoying the property. However, the very same witness would submit that even in the year 1988 a joint patta had been issued to all the brothers under Ex.A.2. The witness has contradicted his own evidence that in the year 1962 there has been an oral partition amongst the brothers. Further, in 1985 the 1st plaintiff, Ganesan had instituted the suit whereas the joint patta, Ex.A.2 had been issued in the year 1988 pending the suit. Ex.A.2 appears to be a document which has been created post the filing of the suit.

37. The plaintiffs/appellants had contended that in 1962 the suit property had been partitioned amongst the brothers and each of them are in possession and enjoyment of their separate shares and that they are paying taxes in respect of their respective shares. However, Ex.A.2 is a joint patta issued with reference to the A schedule property i.e; the entire property. This clearly belies the claim of partition in the year 1962 and the separate assessment of tax. The said Munuswamy had



died in the year 1979, however, his name has been included in Ex.A.2 and A.3. A closer look at Ex.A.3 would also indicate that patta no.795 has been issued to Kannaian, Ganesan and Murugesan and the name Murugesan had been corrected as Munuswamy. The property documents stands only in the name of Munuswamy and it is not known as to how his name, wrongly described as Murugesan, had been shown as the 3rd name and as to how the document had been corrected.

38. Post the remand, Ex.A.19 order of the Special Commissioner of Land Administration, has been issued only to the plaintiffs and not to the defendants. It appears that this order has been passed without notice and without holding any enquiry. It is also seen from the evidence of C.W.1 that Ex.A.24 order has also been passed without notice to the legal representatives of Munuswamy or Kannaian. A perusal of Ex.A.24, Order of the Settlement Officer dated 30.03.2012 would clearly show that the order has been passed without enquiry. The plaintiffs have filed a petition on 28.03.2012 to issue a joint patta to



them and order has been passed on 30.03.2012. Therefore, no credence can be given to this document. The official witness who has been examined as C.W.1 in his cross examination has produced the A-Register extracts. However, he would fairly admit that the description of the office of the Assistant Tahsildar in Ex.A.2 gives rise to doubt about the authenticity of the document.

39. Further, the witness as C.W.1 has clearly admitted that the A-Register of the year 1974 has not been produced and it is only the 'A' Register post 1991 that has been produced. Therefore, except for Ex.A.2 and A.3 there is no document whatsoever to show that the property stood in the name of all the 3 brothers. Ex.A.2 has been set aside in Ex.A.22. That apart, Ex.A.1 sale deed very clearly stands in the name of Munuswamy and he in the year 1955 while mortgaging the property has clearly described it as his self acquired property. The plaintiffs who claim to be in possession of the property since the year 1962 after the alleged oral partition had taken place has not filed a



shred of evidence to show their possession of the property from the year 1962 onwards. The documents showing possession are all post the filing of the suit and that too after the year 1988. It is not the case of the plaintiffs that there was ancestral nucleus which was utilised by Munuswamy to purchase the property so as to give it a colour of a ancestral property. The suit property stands in the name of Munuswamy and evidence also indicates that it is only the legal heirs of the said Munuswamy who are in possession of the suit property. Ex.A.22 also read that the property is in the possession of the legal heirs of Munuswamy. The defendants had clearly stated that the plaintiffs are only in possession of the portion of the A schedule property with the express permission of late Munuswamy. Therefore, even if they are in possession of the property it is only in the nature of a permissive occupant as they have not let in any evidence to prove their right to the suit 'A' schedule property and the alleged oral partition in the year 1962.



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40. Therefore, though the matter has been remitted back to enable the plaintiffs to show their right to the property post Ex.A.2 and A.3, no documents has been produced to prove their right to the property. On the contrary, it is seen that the joint patta which was originally granted in the year 1988 has been cancelled under Ex.A.22 and there is no other document that would lend credence to Ex.A.2, patta. The Courts below have rightly assessed the evidence and the Appellate Court after remand has also considered the facts post the application taken out for cancelling joint patta. I see no reason to interfere with the same. Further, the appellants have not made out any Substantial Question of Law inviting the attention of this Court and therefore the Second Appeal stands dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

12.04.2024

Index: Yes/No
Speaking order/non-speaking order
Neutral Citation :Yes/No
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35/37



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To,

1. The Sub Court, Alandur.
2. The District Munsif Cum Judicial Magistrate, Alandur.
3. The Section Officer,
V.R.Section,
High Court, Madras.



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shr

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and
C.M.P.No.9938 of 2023

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