



S.A.No.1009 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.11.2024

CORAM:

THE HONOURABLE Ms.JUSTICE R.N.MANJULA

S.A.No.1009 of 2016

Duraisamy Gounder

...

Appellant

Vs.

Ponnusamy (died)

Kanniyammal (died)

1.Chinnappan

2.Chinnapappammal

3.Rajendran

4.Anandhan

5.Settammal

6.Muniyammal

7.Salammal

8.Somu

9.Gopi

10.Jothi

11.Chandran

Rajammal (died)

12. Kullammal

13.Dhanammal

14.Margandam

15.Salammal



S.A.No.1009 of 2016

- 16.Rosi
- 17.Mangammal
- 18.Murali
- 19.Muniraj
- 20.Amul
- 21.Minor Velu @ Velmurugan
- 22.Chinnapappammal
- 23.Chinnaponnu @ Kamala
- 24.Nandhagopal
- 25.Jaishankar
- 26.Moorthi
- 27.Palani
- 28.Govindammal
- 29.Nadhiya

...

Respondents

PRAYER: Second Appeal is filed under Section 100 of C.P.C against the Judgement and Decree dated 15.04.2016 made in A.S.No.12 of 2012 on the file of the Sub Court, Gudiyattam, Vellore District in confirming the Judgement and Decree dated 31.01.2012 made in O.S.No.577 of 1995 on the file of the District Munsif Court, Gudiyattam, Vellore District.

For Appellant	: Mr.T.Dhanyakumar
For Respondents	: No appearance
	for RR1,4,6 to 11,17 to 29
	: Refused for RR2 to 5
	:Mr.L.Ramu for RR12 to 16



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S.A.No.1009 of 2016

JUDGEMENT

This Second Appeal has been preferred against the judgement and decree passed in A.S.No.12 of 2012, on the file of the Sub Court, Gudiyattam, Vellore District, dated 15.04.2016 in confirming the judgement and decree dated 31.01.2012 made in O.S.No. 577 of 1995, on the file of the District Munsif Court, Gudiyattam, Vellore District.

2. The plaintiff is the appellant and he has filed the suit for partition of 1/4th share in the suit property and the suit has been dismissed. The Appeal preferred by the plaintiff was also dismissed and hence he has filed this second appeal.

3. The short facts pleaded in the plaint of the 1st plaintiff runs as under:

The deceased 2nd plaintiff is the mother of the 1st plaintiff. The suit property originally belonged to one Oratakai Gounder, who is the paternal grandfather of the 1st plaintiff and he died intestate by leaving his four sons. One of the sons of the deceased Oratakai Gounder is the plaintiff's father, Govinda Gounder. Hence the plaintiff's father has got 1/4 share in the suit



S.A.No.1009 of 2016

property, and he was in enjoyment of the same along with his other three brothers. One of the brothers by name Muruga Gounder also died intestate by leaving the defendants 1 to 3. The plaintiff's father also died intestate, leaving the plaintiff and his mother as his legal heirs. The 4th and 5th defendants are the legal heirs of the yet another son by name Mahadevan Gounder. The 6th and 8th defendants are the legal heirs of the 4th son of the Oratakai Gounder by name Appayee Gounder. As the defendants are not amenable to partition the plaintiff's 1/4th share, he has filed the suit for partition and permanent injunction.

4.The defendants have resisted the claim of the plaintiff by making the following avernments in their statements:

The suit properties are not the properties that belonged to the 1st plaintiff's paternal grandfather, Oratakai Gounder. The plaintiffs are the 3rd parties to the suit properties, and hence they do not have 1/4th share in the suit as claimed. The suit property and other properties are 'tharkaths' lands, and Muruga Gounder was in possession of the same by encroaching it along with the other properties. As he was in enjoyment for more than 60 years, he has got a patta from the government in his name. Muruga Gounder had died by leaving,



S.A.No.1009 of 2016

defendants 1 to 3 as his legal heirs. The defendants 1 to 3 have entered into an oral partition subsequent to the death of their father, Muruga Gounder. In the said oral partition developed in the suit property comprising 4 acres and 27 cents has been partitioned and an extent of 1 acre and 98 cents have been allotted to defendants 2 and 3. The rest of the properties have been allotted to the 1st defendant. As the plaintiff did not have any right over the suit property, the plaintiffs cannot claim any right over the same. In fact, in the earlier suits filed by the plaintiffs in OS.Nos.164/1993 and 157/1993 also, the plaintiffs admitted the possession and enjoyment of the 1st defendant over 1 acre and 98 cents in the suit property. The suit is bad for no joinder of necessary parties. The plaintiff has got a sister by name Rajammal and she has not been impleaded as a party, though she is a necessary party. As the 1st defendant had never been in possession and enjoyment of the suit property along with the plaintiff, the plaintiff is not entitled to the relief as prayed. The written statement of the 1st defendant is adopted by the defendants 2 and 3 by denying the entitlement of the plaintiff to claim the relief of partition.

5. During the course of trial, on the side of the plaintiff, three witnesses have been examined as P.Ws.1 to 3 and Exs.A1 to A3 were marked. On the side



S.A.No.1009 of 2016

of the defendants, one witness has been examined as DW.1 and Exs.B1 to B4 were marked.

6. After the conclusion of the trial, the Trial Court has dismissed the suit. The First Appeal filed by the plaintiff also confirmed the judgment of the trial Court and dismissed the First Appeal. Now the Second Appeal has been filed and it has been admitted on the following substantial questions of law:

"1.Whether the decisions of the Courts below are vitiated in holding that the contesting defendants have proved their title and exclusive possession without filing any title and exclusive possession without filing any title documents or revenue records except Exs.B1 to B4.?"

2.Whether the admission made in Exs.B1 to B4 is binding on the plaintiff and further on the basis of the admission, the title of the contesting defendants can be declared?"

3.Whether the Courts below have committed an error in not applying the discretion under Section 58 of the Indian



S.A.No.1009 of 2016

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Evidence Act by directing the contesting defendants to prove the facts otherwise than by admission covered under Exs.B1 to B4.?"

7. The learned counsel for the appellant submitted that the Courts below have not appreciated the evidence of Ex.B1 to Ex.B4 that they would bind the defendants and the contents in Ex.B1 to Ex.B4 would amount to admission made by the defendants. It is further submitted that the Courts below did not appreciate the admitted facts in light of Section 58 of the Indian Evidence Act and hence the judgment of the First Appellate Court is liable to be reversed.

8. The very contention of the appellant is that the suit property originally belonged to his paternal grandfather by name Oratakai Gounder. According to the appellant/plaintiff, the suit property is *poramboke* land, under which Oratakai Gounder was in enjoyment for a very long period and in view of that, he was given a patta by the government.

9. It is claimed that plaintiff's father is entitled to 1/2 share in the suit



S.A.No.1009 of 2016

property as he is one of the sons of the deceased Oratakai Gounder. As the appellants/plaintiffs had tried to trace title only from his paternal grandfather, Oratakai Gounder, the plaintiffs ought to have produced some documents to show that Oratakai Gounder had been in an enjoyment as alleged by the appellant and the patta was also standing in his name.

10. The appellant did not claim that he had produced any documents showing the alleged interest of his grandfather, Oratakai Gounder. The plaintiff has produced only three documents, as Exs.A1 to A3. Ex. A1 is a patta which is standing in the name of his mother and Ex.A2 is a tax receipt in the name of his mother and Ex.A3 is a tax receipt which is standing in the name of one Duraisamy Gounder and the relevancy of which is not known.

11. In fact, the 1st plaintiff has already filed a suit in OS.No. 164/1993, claiming the relief of permanent injunction against one Pachiyappa Gounder and the subject matter of the said suit would be 1 acre 98 cents in S.F.No.292/4 which is part of the whole of the suit property measuring 4 acre 71 cents. In the written statement filed by the defendant in the said suit, it is stated that the property belongs to them situate on the western side of the property involved in



S.A.No.1009 of 2016

OS.No.157/1993.

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12. Having admitted that the property of the plaintiff is situated on the western side of 1 acre 98 cents in S.F.No.292/4, the pleadings filed in OS.No.157/1993 the plaintiff has claimed his right to lay pipelines on the eastern side of 1 acre 98 cents, belonging to the 1st defendant. Having taken such a plead in the earlier suit, the appellant is estopped to claim the whole of 4 acre 78 cents in S.F.No.292/4 by stating that it belonged to Oratakai Gounder.

13. The trial court has made a specific observation that the UDR patta for S.F. No. 292/4 stood in the name of Muruga Gounder and Pachaiyappa Gounder. Even according to the plaintiff, Muruga Gounder is the father of defendants 1 to 3, and Pachaiyappa Gounder is the 1st defendant. So the patta for the property stood in the name of 1st defendant and Muruga Gounder. In the above suit, the 1st defendant, Pachaiappa Gounder [who is also 1st defendant in this suit], has stated that the whole of 4 acres 78 cents in S.F.No.292/4 belonged to his father, Muruga Gounder and the plaintiff got 1 acre 98 cents out of the same towards his share.



S.A.No.1009 of 2016

14. In fact, the 1st defendant has also already filed another suit in OS.No.292/2002 and O.S.No.157/1993 against the plaintiff for seeking some relief. Having filed a written statement in O.S.No.157/1993 by admitting the title of the 1st defendant to the extent of 1 acre 98 cents, the appellant/1st plaintiff has taken a contrary stand. Hence, the Trial Court has rightly applied the principle of estoppel against the appellant.

15. As the plaintiff has admitted the above facts in the earlier proceedings, the learned Trial Judge has rendered a finding that the defendants did not have any obligation to prove the admitted facts. The Appellate Court also rightly appreciated the application of the principle of estoppel as prescribed under Section 115 of the Indian Evidence Act against the appellant/1st plaintiff and confirmed the judgment of the Trial Court. As the plaintiff has not proved the foundational fact that the property belonged to his paternal grandfather and that his father had 1/4 share after the demise of the grandfather, the Courts below cannot be found fault in their findings rendered against the appellant/plaintiff.

16. So far as the Ex.B1 to B4 are concerned, those documents stand



S.A.No.1009 of 2016

against the appellants/plaintiffs as they are the judgments and decree passed in the earlier proceedings where the appellant/plaintiff was also a party. As it

is right for the courts below to accept the same as admission against the appellant/1st plaintiff, I don't find any perversity or illegality in the appreciation.

17. In the result, this second Appeal stands **dismissed** and the Judgement and Decree of the Sub Court, Gudiyattam, Vellore District, dated 15.04.2016 made in A.S.No.12 of 2012 is confirmed. No costs. consequently, the connected miscellaneous petition is closed, if any.

04.11.2024

Index : Yes/No
Speaking/ Non-Speaking
Internet: Yes/No
Neutral: Yes/No
jrs

To,

1. The Sub Court, Gudiyattam, Vellore District
2. The District Munsif Court, Gudiyattam, Vellore District.
3. The Section Officer, V.R.Section, High Court, Madras.



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S.A.No.1009 of 2016

R.N.MANJULA, J.

jrs

S.A.No.1009 of 2016

04.11.2024