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S.A. No. 535 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.12.2024

CORAM

THE HONOURABLE Ms. JUSTICE R.N.MANJULA

S.A. No. 535 of 2014

K.Saravanan

...Appellant

Vs.

1.Kaliavaradan

2.Poovazhaki

... Respondents

PRAYER: Second Appeal is filed under section 100 of the Code of Civil Procedure, 1908, to set aside the judgment and decree dated 22.01.2014 made in A.S. No. 105 of 2011 on the file of the First Additional Subordinate Judge, Villupuram, confirming the judgment and decree dated 12.08.2011 made in O.S. No. 137 of 2009 on the file of the Additional District Munsif, Villupuram.

For Appellant : Mr.K.Chandrasekaran

For Respondents : Ms.Nilafer for M/s.R.Meenal

JUDGMENT

The appellant is the plaintiff, who has filed a suit against the defendants for the relief of declaration and for permanent injunction in respect of the suit property and got a decree before the Trial Court. An appeal has been preferred by the defendants before the First Appellate Court and it was allowed and the



judgment and decree of the Trial Court was set aside. Aggrieved over the same, the plaintiff has filed the Second Appeal.

2. The short facts of the plaint filed by the plaintiff in brief are as follows:-

The suit property belongs to the plaintiff by virtue of the purchase made by him through a registered Sale-deed dated 13.03.2008 from one Thangammal, wife of Venukrishnan. The suit property is in Natham Poramboke. In view of the continuous enjoyment of the suit property by the vendor of the plaintiff's husband, Venukrishnan for more than 20 years, Patta has been issued in his name by the Government. The said Venukrishnan and the first defendant are brothers. They had partitioned the family properties on 31.03.1994 through a registered Partition-deed and some properties have been allotted as the share of the said Venukrishnan. Since the suit property is the individual property of Venukrishnan in whose name Patta has been issued, the same was not included under the Partition-deed dated 31.03.1994. The said Venukrishnan



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had been in enjoyment of the suit property and later, he had settled the same in favour of his wife, viz., Thangammal through a Settlement-deed dated 26.02.2008. Thereafter, the said Thangammal has sold the suit property on 13.03.2008 and thereafter, the plaintiff has taken possession of the suit property and had constructed a shed for parking his four wheeler and he was paying the necessary tax to the Village Panchayat. The first defendant claims wrongful right over $\frac{1}{2}$ of the suit property. The first defendant had claimed that he had settled the said $\frac{1}{2}$ right in the suit property to the second defendant by virtue of a Settlement-deed and was threatening the plaintiff that he would dismantle the shed constructed by the plaintiff over the suit property. Hence, the plaintiff has filed the suit for declaration and permanent injunction.

3. The facts of the written statement filed by the defendants in brief are as follows:-

The suit items 1 and 2 are situated in Survey No. 89/6 measuring 0.0.3.0 ares – 00300 square meter equivalent to 0.07



½ cents. The above property was originally owned by one Periyanna Gounder and he was in enjoyment of the same till his life time. Subsequent to his death, his sons, viz., Natesa Gounder and Narayanasamy Gounder, had inherited the suit property and they were in joint enjoyment of the same. The said Natesa Gounder had died leaving behind his two sons, viz., Harikrishnan and Mayakrishnan, and the said Narayanasamy Gounder had also died leaving behind his sons, viz., Venukrishnan and Kaliavardan. Hence, Harikrishnan, Mayakrishnan, Venukrishnan and Kaliavaradan are entitled to an undivided 1/4th share each in the suit property and they divided the same among themselves. The said Thangammal is the first defendant's brother Venukrishnan's wife. Even though the suit property is the joint property of the sons of the Natesa Gounder and Narayanasamy Gounder, Venukrishnan had executed a Settlement-deed in favour of his wife, Thangammal, by including the shares of the other share-holders as well. The above Settlement-deed will not bind the first defendant's interest in the suit property. As the vendor of the plaintiff herself has got



only 1/4th share in the suit property, the plaintiff cannot claim the entire title over the suit property and the sale deed obtained in this regard will also not bind the defendants. The suit itself is barred by *res judicata* in view of the earlier suit filed in O.S. No. 252 of 2008 before the same Court seeking the same relief by the second defendant. The second defendant has already filed a suit in O.S. No. 252 of 2008 against the plaintiff and obtained an *exparte* decree for declaration and for permanent injunction. The interlocutory application filed by this plaintiff in I.A. No. 1461 of 2009 to set aside the *exparte* decree also got dismissed and the said decree also attained finality.

4. On the basis of the submission made, the trial Judge has framed the following issues:-

- “1. *Is the plaintiff entitled to the relief sought?*
2. *Whether the plaintiff is entitled to permanent trust relief sought ?*
3. *Whether the case is affected by pre-judgment bar?*
4. *What other relief is available to the plaintiff?*



5. On the side of the plaintiff, three witnesses were examined as PW1 to PW3 and Exs.A1 to A5 were marked and on the side of the defendants, three witnesses were examined as DW1 to DW3 and Exs.B1 to B4 were marked. On the side of the third parties, Exs.X1 to X7 were marked.

6. At the conclusion of the Trial and on appreciating the materials available on record, the Trial Court has chosen to decree the suit and the first appeal preferred by the defendants challenging the judgment and decree of the Trial Court before the First Appellate Court has been allowed by setting aside the judgment and decree of the Trial Court. Aggrieved over the same, the Second Appeal has been preferred.

7. The learned counsel for the appellant submitted that there is no dispute with regard to the Natham Poramboke and that in the year 1994, Patta has been issued in favour of the Harikrishnan, who is a cousin brother of the said Venukrishnan. Despite the defendants claimed that the property originally belonging to Natesa Gounder and Narayanasamy Gounder, the defendants did not substantiate the joint enjoyment over the suit property by producing any records.



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7.1. Knowingly, in the partition deed dated 31.03.1994, the suit property has not been included and it has been agreed between the family members that they do not have any joint interest thereafter, except the blood connection and hence, the right now claimed by the defendants over the suit property is not correct.

7.2. In fact, one Valliammal has filed a suit in O.S.No. 138 of 2001 for partition by impleading the defendants as parties to that suit. Even while contesting that suit, the defendants did not claim that the suit property is also a joint family property and the said property did not figure anywhere in the suit proceedings.

8. The learned counsel for the respondents/defendants submitted that PW1 himself has admitted in his evidence that Mayakrishnan has been in possession and enjoyment of the property for more than 20 years. No patta has also been produced to show that the patta for the suit property has been granted in the name of the said Venukrishnan and Ex.A5, Patta produced by the plaintiff does not relate to the suit property and hence, the plaintiff has



failed to prove his case, but the Trial Court had misplaced the burden on the part of the defendants. As the First Appellate Court has rightly appreciated the materials on record and has chosen to allow the appeal, no substantial question of law would arise as claimed.

9. Based on the above submissions of both side counsels and on perusal of records, the following substantial questions of law were seen to be arising in the Second Appeal:-

“1. Whether the judgment and decree of the learned Lower Appellate Court in reversing the judgment of the trial Court just because other possibilities is possible, is correct approach or not?

2. When the learned Lower Appellate Court committed wrong in reversing the judgment without taking into consideration of the nature of acquired property under the possessory right over the Government land converted into natham classification?

3. Whether or not the learned Lower Appellate Court committed error in discarding the earlier judgment arising on the very same subject matter in O.S. No. 252 of 2008 in between the parties just because the earlier judgment was exparte and on the rule of res judicata?”



10. The primary contention raised by the learned counsel for the appellant is that Patta for the suit property has been standing in the name of the husband of plaintiff's vendor, viz., Venukrishnan, and only in view of the individual interest over the suit property, the said property has not been included in the Partition-deed dated 31.03.1994.

11. When the defendants claim that the Patta in the name of the said Venukrishnan does not relate to the suit property, the plaintiff has an obligation to prove that the patta which has been marked as Ex.A5 relates to the suit property. As submitted by the learned counsel for the respondents, PW1 has stated in his evidence that he has not produced any documents to show that Venukrishnan has been in enjoyment of the suit property for more than 20 years.

12. On perusal of the Ex.A5, it is seen that it has been issued in respect of Survey No. 89/6 and Patta No.203. The extent of the property involved in the said patta is shown as 00300 sq. mts. The above Patta is seen to be standing in the names of Venukrishnan and his cousin brother Harikrishnan. The learned counsel for the respondents submitted that Survey No.89/6 is a larger extent



and the Ex.A5, Patta does not relate to the suit property.

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13. On perusal of the suit schedule also, it is seen that the appellant had shown the Survey No.89/6, but without specific boundaries and in two items the Patta does not have any correlation with the boundaries. No FMB sketch has been produced. No Revenue Authorities have been examined as witnesses on the side of the plaintiff, but the Deputy Tahsildar has been examined by the defendants as DW3. Even during the cross-examination, the plaintiff has not confronted DW3 with Ex.A5 in order to get any assertion from him that the said property relates to the suit property. However, DW3 himself has stated that Patta No.203 which relates to Ex.A5 stands in the name of Harikrishnan and Venukrishnan and that it is lying vacant. The particulars of the property seen in the Patta forms part of the Settlement-deed executed by Venukrishnan in favour of his wife, Thangammal and the Sale-deed executed by the Thangammal in favour of the plaintiff, but the difference is with regard to the specific boundaries for ½ of the suit property. Even though all the sons of Natesa Gounder and Narayanasamy Gounder claim right over the suit property, the Patta stands only in the names of Harikrishnan and Venukrishnan and not in the names of all the sons of Natesa Gounder and



Narayanasamy Gounder.

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14. As stated already there is no partition taken place among the family members in respect of the suit property. Even though there was a family partition that happened in the year 1994, the suit property had not been included in the same.

15. Since the property is only a Natham Poramboke and does not belong to any individual, the title cannot be passed in favour of his legal heirs by inheritance. There is no Patta shown to be standing in the name of the ancestors of Harikrishnan and Venukrishnan as claimed by the defendants. In other words, no Patta has been produced to show that it has been standing in the name of Periyanna Gounder and his sons, Natesa Gounder and Narayanasamy Gounder. So what can be presumed through Ex.A5 Patta which has been produced in respect of the Natham Poramboke is only in view of the continuable enjoyment of those persons over the properties involved in the Patta.



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16. The first defendant Kaliavardan, the brother of Venukrishnan has claimed that he is also having joint interest over $\frac{1}{4}$ share in the suit property and had executed the Settlement-deed in favour of the second defendant through Ex.B4. No partition seems to have taken place in the family in respect of suit property so as to allot two cents in favour of the first defendant. Unless the first defendant gets any title in respect of the said property, he cannot pass any title in favour of the second defendant.

17. As no other documents evidencing title in favour of any of the ancestors of the defendants except Ex.A5 Patta standing in the name of the Venukrishnan and Harikrishnan, the Lower Appellate Court had observed that the defendants have claimed that the suit property as a joint family property and the Pattas have been standing in the name of elder members of the family and hence, the plaintiff has got the burden to prove that the suit property is the individual property of Venukrishnan and Harikrishnan.

18. When the documents stand in the name of specific persons and if any one claims anything contrary to the contention of the documents by stating



that it is the joint family property and that the persons holding the Patta represent the whole of the family, it is for such family members to prove the contrary.

19. The Lower Appellate Court has wrongly shifted the burden once again on the plaintiff instead of shifting the burden to the defendants to establish that the property is a joint family property and that the Patta holders represent the whole of the family.

20. Whatever may be the nature of the property, the fact remains that the antecedents of the property as per the available record can only be derived from Ex.A5 and not from any other document.

21. Exs.X4 to X6 would also confirm the fact that Survey No.89/6 stands in the name of Harikrishnan and Venukrishnan and other Survey numbers alone are standing in the name of some other persons. So, even these documents are not helpful to the case of the defendants. As one of the joint owners, viz., Venukrishnan, has settled $\frac{1}{2}$ of the suit property in favour of his wife Thangammal by virtue of the Settlement-deed dated 26.02.2008, the plaintiff



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has derived title to the property which he obtained from Thangammal through Ex.A1-Sale-deed dated 31.03.1994. If at all any claim is made that Venukrishnan has settled more than $\frac{1}{2}$ share in favour of his wife Thangammal, that claim can be made only by other share-holder, viz., Harikrishnan, who is the joint Pattadhar and no one else, especially the defendants herein. Insofar as the defendants are concerned, the plaintiff has proved that the defendants do not have any title over the suit property and hence, I have no hesitation to answer all the three substantial questions of law in favour of the appellant /plaintiff.

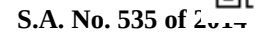
22. The Second Appeal is allowed the judgment and decree dated 22.01.2014 made in A.S. No. 105 of 2011 on the file of the I Additional Subordinate Court, Villupuram confirming the judgment and decree dated 12.08.2011 made in O.S. No. 137 of 2009 on the file of the Additional District Munsif, Villupuram is set aside. No costs.

16.12.2024

Index : Yes/No
Speaking order : Yes/No
NCC : Yes/No
Maya

To

14/16



2. The Judge,
Additional District Munsif,
Villupuram.
3. The Section Officer,
V.R. Section,
High Court, Madras.



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R.N.MANJULA, J.

Maya

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