



S.A.No.665 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.03.2024

CORAM

THE HON'BLE MR. JUSTICE **G.ARUL MURUGAN**

S.A.No.665 of 2022

Natarajan ... Appellant

Vs.

Elangovan ... Respondent

PRAYER: Second Appeal filed under Section 100 of C.P.C. against the judgment and decree dated 30.03.2022 made in AS.No.56 of 2021 on the file of Additional District Judge, Krishnagiri, reversing the judgment and decree dated 06.09.2021 made in OS.No.163 of 2017 on the file of Subordinate Court, Uthangarai.

For Appellant : Mrs.Chitra Sampath Senior Counsel
for Mr.T.S.Baskaran

For Respondent : Mr.S.Mukunth, Senior Counsel for
Mr.K.Venkatasubban for
M/s.Sarvabhauman Associates

JUDGMENT

The defendant in the suit is the appellant before this Court on



S.A.No.665 of 2022

appeal. The Second Appeal is filed challenging the judgment and decree dated 30.03.2022 in AS.No.56 of 2021 on the file of Additional District Judge, Krishnagiri, reversing the judgment and decree dated 06.09.2021 in OS.No.163 of 2017 on the file of Subordinate Judge, Uthangarai.

2. For the sake of convenience, the parties are referred to as per the ranking before the Trial Court.

3. According to the plaintiff, the suit property along with other property are Government Tharisu lands. The plaintiff's grandfather Subramanya Gounder leveled the lands and carried on cultivation and had been in possession and enjoyment of the property. The plaintiff and his grandfather Subramanya Gounder without any intervention or disturbance of any of the parties had been carrying on cultivation. Subramanya Gounder had five sons namely Thandapani, Natarajan, Ravi, Rajendran and Pugalendhi apart from three daughters Chenammal, Sakunthala and Suseela.

4. According to the plaintiff, Subramanya Gounder by way of oral partition has given the properties to all his eight children. Through the



S.A.No.665 of 2022

oral partition, the suit property was allotted to the three female children i.e daughters as joint family property. From there on, three sisters had been in possession and enjoyment of the properties and based on which a joint patta had been issued in the name of three sisters in Ex.A.1. The plaintiff's mother Chenammal along with her two sisters executed the registered partition deed dated 23.11.2016 in Ex.A.2 in which the suit property was allotted as 'A' schedule property in favour of the plaintiff's mother. The plaintiff's mother had been in possession and enjoyment of the suit property and thereafter by a settlement deed dated 16.12.2016 had settled the suit property in favour of the plaintiff in Ex.A.3. The plaintiff had been in possession and enjoyment of the property. Since the defendant attempted to interfere with the possession of the suit property, he had issued a legal notice on 09.02.2017 and also had lodged a complaint to the Singarai Police Station on 21.06.2017 which was received in CSR.No.223 of 2017. Since the defendant continued to interfere with the enjoyment of the plaintiff, he had come up with the suit for declaration and for permanent injunction.

5. The defendant resisted the suit by filing the written statement



S.A.No.665 of 2022

denying that there was any oral partition as claimed by the plaintiff.

According to the defendant, he is in possession and enjoyment of the suit property and in fact, the major portion of the schedule property is used as cemetery and tomb of defendant's ancestors. The plaintiff's mother and her sisters, with an intention to grab the property, had executed a partition deed in Ex.A.2 without any right only to defeat the rights of the defendant and sought for dismissal of the suit.

6. During trial, the plaintiff examined himself as PW.1 and filed documents in Ex.A.1 to Ex.A.10. On the side of the defendant, the defendant examined himself as DW.1 and examined one Chinnasamy and Krishnamoorthy as DW.2 and DW.3 and marked Ex.B1 and B2.

7. The Trial court, after appreciating the evidence and documents by judgment and decree dated 06.09.2021 dismissed the suit. The Trial Court found that the plaintiff has not proved the oral partition and also found that the defendant is in possession and enjoyment of the suit property. Aggrieved by the same, the plaintiff filed appeal in AS.No.56 of 2021 on the file of Additional District Judge, Krishnagiri, and the Lower Appellate Court, after reappraising the evidence, allowed the appeal by



S.A.No.665 of 2022

decreeing the suit so far as the declaration is concerned but

WEB COPY



S.A.No.665 of 2022

however dismissed the suit as regards to possession finding that the defendant is in possession and enjoyment of the suit property.

8. The Lower Appellate Court mainly relied on the evidence of the defendant that one acre of land was allotted to him by his father and came to the conclusion that through that it can be presumed that there had been some allotment done by Subramanya gounder. Aggrieved by the judgment and decree of the Lower Appellate Court, the defendant is before this Court in the above appeal.

9. This Court, by order dated 22.08.2022, framed the following substantial questions of law.

“1. Whether the Court below was right in holding that the suit properties were the Joint Family Properties, when there was no such pleading by the plaintiff?

2. Whether the Court below was right in presuming oral allotment without any independent evidence on the side of the plaintiff and in total absence of pleading regarding the date, month and year of such allotment?

3. Whether the Court below was right in



WEB COPY



S.A.No.665 of 2022

decreeing the suit for declaration alone, when the plaintiff was held not entitled to the relief of injunction, contrary to Section 34 of Specific Relief Act?”

10. Mrs. Chitra Sampath, learned Senior Counsel appearing for the appellant argued that when the whole case of the plaintiff rests on the claim that they have got the suit property through the oral partition, the plaintiff has not established the fact that there was any such oral partition in the family. The learned Senior Counsel further argued that the revenue documents relied on by the plaintiff is only subsequent to the partition deed and settlement deed executed in Ex.A.2 and A.3 and the plaintiff was not able to prove the fact that there was a indeed a oral partition based on which the partition deed in Ex.A.2 was executed. The learned Senior Counsel further argued that when both the courts have rightly found that the defendant has been in possession and enjoyment of the property and dismissed the suit, the plaintiff has not filed any cross objection or any separate appeal in so far as the finding in respect of the possession is concerned.



S.A.No.665 of 2022

misreading the evidence and not based on the materials available on record and therefore it is perverse and sought for allowing this appeal.

13. Per contra, Mr.S.Mukunth, the learned Senior Counsel for the respondent argued that when the plaintiff has filed the suit based on the oral partition executed, there is no specific denial on the part of the defendant. The learned Senior Counsel further contended that the plaintiff, by filing the documents in Ex.A.2 and A.3, the partition deed and the settlement deed executed in favour of the plaintiff coupled with joint patta issued in the name of plaintiff's mother and sisters in Ex.A.1 has proved the title of the plaintiff to the suit property.

14. The learned Senior Counsel further contended that the plaintiff has also filed the revenue documents in Ex.A.4 to A.6, which are the 'A' register and the patta to the suit property and has established his title and possession over the suit property. The learned Senior Counsel further contended that even according to the defendant, one acre of land was allotted to him by his father Subramanyaa gounder and the very statement of the defendant would go to show that his father has allotted separate extent of land to his children and as such the case of the plaintiff that the



15. The learned Senior counsel also contended that when admittedly the joint patta in the name of the plaintiff's mother and other two sisters were issued, the defendant or the other brothers had not challenged the joint patta which shows that the claim of oral partition is correct and based on which the documents in Ex.A.2 and A.3 have been executed and the plaintiff is the owner of the suit property.

16. The learned Senior Counsel further contended that the Lower Appellate Court has arrived at a finding of fact based on the evidence given by the first defendant and the finding arrived may not be disturbed as it is only based on the available material and therefore this Court having a limited jurisdiction only on the question of law in second appeal filed under Section 100 CPC, need not interfere with the finding of fact arrived at by the Lower Appellate Court and sought for dismissal of the appeal.



S.A.No.665 of 2022

WEB COPY

17. Heard the learned Senior counsel on either side and perused the material available on record.

18. Admittedly, the suit properties and several other extent of land belonged to one Subramanya Gounder. Even though it was originally a Government Tharisu land, the plaintiff's grandfather Subramanya Gounder had leveled the land and made it fit for cultivation and had been in enjoyment of the properties by carrying on cultivation. Admittedly, Subramanya Gounder had 8 children, 5 sons and 3 daughters. It is the claim of the plaintiff that there was a oral partition in the family and through the oral partition, the suit property was allotted to share of 3 daughters of Subramanya Gounder. As three daughters had been in possession and enjoyment of the suit properties, they executed the registered partition deed dated 22.11.2016 in Ex.A.2, whereby the suit property was allotted to the plaintiff's mother Chenammal as 'A' Schedule property in the partition deed. It is the case of the plaintiff that based on the joint possession of the plaintiff's mother and her two sisters, joint patta has been issued in their favour in Ex.A.1. The plaintiff's mother also executed the settlement deed on 16.12.2016 in favour of the plaintiff in



S.A.No.665 of 2022

Ex.A.3. By placing reliance on document in Ex.A.1 to A.3, the plaintiff claims title over the suit properties. The defendant disputes the fact that there was any oral partition in the family and also asserts that he is in possession and enjoyment of the suit property.

19. As the plaintiff has come forward with the suit for declaration of title and injunction, onus is on the plaintiff to plead and prove the title in respect of the suit property. When it is the case of the plaintiff that the property came to the share of the plaintiff's mother through oral partition as averred in the plaint, the perusal of the registered partition deed in Ex.A.2 shows that the plaintiff's mother and sisters while executing the deed has not averred anything about the oral partition in the family. The plaintiff has not produced any materials before this Court to establish the fact that there was any oral partition in the family and even the document filed in Ex.A.2 partition deed does not reflect the fact that there was any oral partition. The plaintiff, when admittedly his mother was alive did not choose to examine his mother in the suit, who would have been in a better person to give the details of any oral partition that had been executed in the family and also the plaintiff did not make any attempt to examine his



S.A.No.665 of 2022

uncles who are the other sons of Subramanya Gounder to prove that there was any oral partition in the family. The plaintiff mainly relied on the statement of the defendant that he was allotted one acre by his father Subramanya Gounder. The plaintiff has to succeed on his one strength and cannot merely rely on the weakness of the defence of the defendant. As such from the material available it could be seen that the plaintiff has failed to prove that there was any oral partition in the family and in the oral partition, the suit property was allotted to the daughters of Subramanya Gounder based on which Ex.A2 and Ex.A3 was executed.

20. The Lower Appellate Court has mainly relied on the evidence of DW.1 where he has stated that an extent of one acre of land was allotted in his favour by his father Subramanya Gounder. The Lower Appellate Court came to the conclusion that since the defendant himself has stated that one acre of land was allotted to him separately, it could be presumed that the lands were allotted by Subramanya Gounder in favour of his children and whereby, the plaintiff's mother and her two sisters were allotted to specific share.

21. The statement of the defendant that one acre of land was



S.A.No.665 of 2022

allotted to him by his father Subramanya Gounder cannot in any way lead to the presumption that there was a oral partition in the family. This statement made by the defendant will not bind the other legal heirs of the Subramanya Gounder and it will not give any separate right in favour of the defendant. When the other legal heirs of the Subramanya Gounder are not a party to the suit, when no documents were filed to establish any partition in the family, naturally all the legal heirs are having a right in the properties of Subramanya Gounder and even though the defendant claims to be an exclusive owner and is in the possession of the suit property unless his exclusive ownership is proved, his possession can be construed only as possession of all the co-shares of the properties. The defendant has not filed any suit claiming any exclusive right wherein he had taken the stand that the land was allotted separately by his father. As such, the finding of the Lower Appellate Court reversing the judgment by mainly placing reliance on the statement of the defendant that one acre of land was allotted to him separately which leads to the presumption that there was a oral partition in the family whereby, the suit property was allotted to the plaintiff's mother is only by misreading of the evidence and the finding is not based on the materials available on record and therefore is perverse.



S.A.No.665 of 2022

WEB COPY

22. Further, when the suit filed by the plaintiff in respect of injunction has been dismissed by both the courts below, the plaintiff has not chosen to file any cross objection or appeal in respect of the finding that the defendant is in possession and enjoyment of the suit property. When the Lower Appellate Court has confirmed the decree of the Trial Court in respect of the relief of injunction and dismissed the suit holding that the defendant is in the possession of the property, the decree granted by the Lower Appellate Court only by declaring the title of the suit property in favour of the plaintiff while denying the relief of possession is not sustainable.

23. In view of the above finding, the substantial questions of law are answered in favour of the appellant and against the respondent.

24. As such, the second appeal stands allowed and the Judgment and Decree of the Lower Appellate Court is set aside. However there is no order as to costs.

06.03.2024

drl

Index : Yes / No



S.A.No.665 of 2022

Neutral Citation : Yes / No

WEB COPY

To

- 1.The Additional District Judge, Krishnagiri,
- 2.The Subordinate Court, Uthangarai.



WEB COPY



S.A.No.665 of 2022

G.ARUL MURUGAN.,J.

drl

S.A.No.665 of 2022



WEB COPY



S.A.No.665 of 2022

06.03.2024