



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 20.03.2024

Pronounced on: 05.04.2024

CORAM :

THE HONOURABLE MR. JUSTICE P.B.BALAJI

S.A.No.763 of 2018

Vasantha

...Appellant

Vs.

Selvaraj

...Respondent

PRAYER : Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the judgment dated 28.11.2017 made in A.S. No.18 of 2017 on the file of the III Additional District and Session Court, Gobichettipalayam and reversing the decree and judgment dated 18.03.2016 made in O.S. No.11 of 2013 on the file of the learned Subordinate Court, Sathyamangalam with costs.

For Appellants : Mr.R.Vijayan

For Respondent : Notice Served -No Appearance



JUDGMENT

The plaintiff who initially succeeded before the Trial Court and suffered reversal findings before the First Appellate Court, is the appellant.

2. The parties are described as per their litigative status before the Trial Court.

3. Brief facts that are necessary for adjudicating this Appeal are as hereunder:

3.1. The suit property was originally allotted to the father of the plaintiff and the defendant, Mr.Murugesan, who was a freedom fighter and who died on 03.11.1956. The plaintiff is the daughter and the defendant is the son of the said Murugesan. At the time of demise of the father, the plaintiff was a minor and patta was issued by the Government in the name of the minor son represented by her mother, Kaliasammal as guardian. It is the case of the plaintiff that the property was jointly enjoyed by the plaintiff, defendant and their mother Kaliasammal. The mother also died on 29.12.2008 and subsequent to the demise of the mother, the plaintiff demanded a



partition and separate possession of the suit property. However, the defendant refused to accede to the request of the plaintiff. The plaintiff was constrained to issue a lawyer's notice on 01.11.2012 seeking partition, which was replied to by the defendant with false and untenable allegations. The plaintiff was therefore constrained to file a suit for partition and separate possession of his 1/2 in the suit property.

3.2. The defendant filed a written statement contending that conditional patta was issued to the father Murugesan, who was a freedom fighter. The plaintiff was acquiesced of the ownership as well as enjoyment of the suit property by the defendant. The plaintiff had no right in the suit property, much less a right to seek partition.

4. The Trial Court, decreed the suit, accepting the case of the plaintiff and granted 1/2 share in the suit property by way of a preliminary decree in favour of the plaintiff.

5. Aggrieved by the judgement and decree of the Trial Court, the defendant preferred an Appeal in A.S.No.18 of 2017. The First Appellate



Court reversed the findings of the Trial Court and dismissed the suit.

Aggrieved by the reversal findings rendered by the First Appellate Court, the present Second Appeal has been preferred by the plaintiff.

6. On 10.12.2018, the above Second Appeal was admitted on the following substantial questions of law;

"1. On the available facts and circumstances of the case whether the Hon'ble Lower Appellate Court is right in allowing Appeal on the basis of the name change of the patta which was done without the Knowledge and consent of the other heirs of the deceased when the patta is not document of title?

2. Whether the Lower Appellate Court is right in coming to the conclusion that this Appellant has no right over the suit property without having any evidence about her ouster from her right over the suit property?

7. I have heard Mr R.Vijayan, learned counsel for the appellant. Despite service of notice on the respondent/defendant, there is no appearance on the side of the respondent. I have gone through the pleadings, oral and documentary evidence adduced by the parties before the Trial Court as well as the judgement and decree of the Trial Court as well as the First Appellate Court.



8. The learned counsel for the appellant would submit that patta is not a document of title and it would not establish an absolute right over the suit property, with the defendant. He would further submit that the property was admittedly allotted, free of cost to the father Murugesan, recognising his contribution to the freedom struggle of the country and therefore, the said property was the separate property of the father Murugesan and not joint family property. The learned counsel for the appellant would also state that there is no occasion for the appellant to seek partition, since after the demise of the father, the mother Kaliammal was managing the suit property till her demise in the year 2008 and till the time of the plaintiff's marriage in the year 1996, the plaintiff was only living in the suit property along with her mother and brother. Further he would contend that the defendant fraudulently changed the patta in his name only in the year 1980 without the consent and knowledge of the plaintiff and only after the demise of the mother Kaliammal in 2008, the plaintiff demanded for a partition and thereafter, in view of refusal of the defendant, the plaintiff was constrained to file a suit.

9. Admittedly the property was allotted to the father Murugesan who



died in the year 1956. Even according to the plaintiff, she attained the age of majority in the year 1968. She has not established the factum of being in joint possession and enjoyment of the suit property at any point of time, especially after the death of the mother Kaliasammal in the year 2008. The suit had also been filed in the year 2013 and not immediately after the death of the mother in the year 2008. Even according to the plaintiff, the patta was mutated in the name of the defendant even when he was minor and was represented by his mother, Kaliasammal as a guardian. It is also admitted by the plaintiff that after attaining majority, the defendant has also changed the patta in his individual name, though it is seen that the earlier patta was also in his name, however reflected as being represented by his guardian. The plaintiff has not chosen to take any steps whatsoever, right from the date on which patta was issued in the name of the minor defendant, represented by his mother Kaliasammal as a guardian, which was even prior to 1968. Even after the demise of her mother Kaliasammal, the plaintiff has not chosen to file a suit for partition till 2013.

10. The First Appellate Court has rightly considered the oral and



documentary evidence adduced by the parties and found that the plaintiff was not only acquiesced of the absolute enjoyment of the suit property by the defendant but has also held that the plaintiff's rights stood ousted. The Trial Court failed to see that the plaintiff has not chosen to substantiate her claim of joint possession and enjoyment of the suit property after the mutation of patta in the name of the defendant. Vide Exhibits B1 and B2, the defendant has also filed documents to evidence his absolute possession and enjoyment of the suit property in his individual capacity, absolutely by production of substantive documentary evidence.

11. The First Appellate Court has applied its mind judiciously to the oral and documentary evidence and also took note of the admission of the plaintiff that she never objected to the grant of patta in favour of the defendant. The First Appellate Court also rightly held that if the property was to be treated as joint property in the hands of the legal heirs of Murugesan, then the patta would have been issued in the name of his wife Kaliammal and not in the name of the defendant, who was in fact a minor at that relevant point of time. I do not find any illegality or perversity in the



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findings arrived by the First Appellate Court, in reversing the judgement and decree of the Trial Court. The substantial questions of law are therefore answered against the appellant. In fine, the Second Appeal is dismissed.

There shall be no order as to costs.

05.04.2024

Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No.
Speaking order/Non-speaking order
rkp
To

1. The III Additional District and Session Judge, Gobichettipalayam.
2. The Subordinate Court, Sathyamangalam.

P.B.BALAJI, J.



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Pre-delivery Judgment in

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