



S.A.No.825 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.01.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.825 of 2023
and
C.M.P.No.26101 of 2023

K.Krishnamma Naidu (died)

1. K.Vengamma
2. T.Boopathy
3. K.Munirathinam
4. T.Bhuvaneswari
5. K.Munuswamy
6. K.Dhamu
7. Jyothi

... Appellants

Vs.

1. Savithriammal
2. Venkatesan
3. Vasanthamma
4. Prakash
5. Prabhu
6. Sujatha
7. Nagabushnam
8. Chakkravarthy
9. Padmanaban
10. Kannamma
11. Muniamma also known as Bujjamma
12. Sarasa

... Respondents

PRAYER: Second Appeal filed under Section 100 of C.P.C. to set



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aside the judgment and decree dated 06.01.2018 in A.S.No.7 of 2016 passed by the learned Subordinate Judge, Tiruttani, confirming the judgment and decree dated 19.01.2016 in O.S.No.111 of 2011 passed by the learned District Munsif, Tiruttani.

For appellants : Mr.D.Ashok Kumar

For respondents : No appearance

JUDGMENT

The unsuccessful plaintiffs before the Courts below are the appellants herein.

2. The facts necessary for deciding this second appeal are set out hereinbelow and the parties, for the ease of understanding, are referred to in the same ranking as before the Trial Court.

FACTS OF THE CASE:

2.1. The plaintiffs had filed a suit in O.S.No.111 of 2011 for declaring their right and title to the suit 'C' schedule property and



directing the defendants to put the plaintiffs in possession of the fourth item of the suit 'C' schedule property.

2.2. The case of the plaintiffs was that the 'A' schedule property was originally owned and possessed by Chellamma. The plaintiff's father died as early as in the year 1949 leaving behind him, his wife Chellamma and his sons Lokaiah, Govindappa Naidu and Krishnamma Naidu. The said Krishnamma Naidu is the plaintiff who died pending the suit and his legal heirs were subsequently brought on record as the plaintiffs 2 to 8.

2.3. The deceased plaintiff and his brothers had orally partitioned the joint family properties, including 'A' schedule property with the consent of their mother, into 3 equal shares with each sharers getting an extent of 0.42 cents. The three brothers have been in separate possession and enjoyment of their respective portion in accordance with their convenience from the year 1970. The elder brother of the plaintiff *viz.*, Lokaiah sold his 0.42 cents in the 'A' schedule property to



the first defendant in the year 1973 and put her in possession of the same. Therefore, the first defendant was enjoying a 2/3rd share i.e., 1/3rd share allotted to her husband viz., Govindappa Naidu and 1/3rd share sold by the plaintiff's elder brother. The plaintiff was in continuous possession of his 1/3rd share in the said property.

2.4. The plaintiff would submit that during survey and settlement under the updating scheme (UDR), the land in Survey No.156/10 was subdivided into Survey Nos.156/6, 156/17, 156/18, 156/19 and 156/21. The 2/3rd share of the first defendant was clubbed into Survey No.156/6. The three small portions of the plaintiff's land was subdivided into Survey Nos.156/17, 156/18 and 156/19. The fourth portion of the plaintiff's land was subdivided as Survey No.156/21. The said land of the plaintiff i.e., this extent in Survey No.156/21 was wrongly entered in the patta of the first defendant - patta no.215 instead of the plaintiff's patta - patta no.136. The defendants 1, 2 and 7 to 9 had attempted to obstruct and dispossess the plaintiff from the property on 15.04.2011 which was prevented successfully by the plaintiff. Hence



the plaintiff has come forward with the above suit.

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2.5. The 7th defendant had filed a written statement which was adopted by other defendants, in which, they had denied the partition in the year 1970. They would admit that the property belonged to Chellamma. The first defendant had purchased 0.42 cents from and out of this 1.26 acres in Survey No.156/10 from the said Chellamma under a registered sale deed dated 17.07.1978. From the date of purchase, the first defendant has been in exclusive possession and enjoyment of the same. The old Survey Nos.156/9, 156/10 and 156/11 were subdivided into Survey No.156/6. After the purchase of 0.42 cents by the first defendant, what remained with the joint family was only 0.84 cents. There was an oral partition amongst the brothers Lokaiah, Govindappa Naidu and the plaintiff viz., Krishnamma Naidu in the year 1980, each being entitled to 0.28 cents.

2.6. The first defendant had purchased the share of the said Lokaiah in the year 1981. Therefore, the first defendant had become the owner of the extent 0.60.0 ares. The first defendant's husband



Govindappa Naidu was allotted an extent of 0.13.0 ares in Survey No.156/21 which is the property described as 'C' schedule property in the oral partition between him and his brothers. On the death of Govindappa Naidu, the defendants are in possession and enjoyment of the above property described as fourth item of the 'C' schedule property. The defendants had also pleaded adverse possession and contended that the plaintiff had no right over the said property.

2.7. An additional written statement was also filed in which the first defendant would contend that the contention of the plaintiff that the defendants had trespassed in the suit 'C' schedule property after filing of the suit is absolutely false. Hence, they sought for the dismissal of the suit for declaration of title and recovery of possession.

TRIAL COURT:

3. The Trial Court had framed the following issues:

i) Whether the plaintiff's are entitled to declaration as sought for?



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ii) Whether the plaintiff's are entitled for recovery of possession of 'C' schedule property as sought for?

iii) To what relief, plaintiff's are entitled to?

4. The 4th plaintiff had examined himself as P.W.1 and one Balarama Naidu as P.W.2 and marked Exs.A1 to A10. The defendant had examined one Venkatarama Naidu as D.W.1 and Balaraman (9th defendant) as D.W.2 and marked Exs.B1 to B13. Through third parties, Exs.X1 and X2 were marked. Ultimately, the Trial Court, on considering the evidences had dismissed the suit.

5. The Trial Court had held that Ex.A1 which is the patta standing in the name of the deceased first plaintiff was only with reference to the first 3 items of the 'C' schedule property and the 4th item in Survey No.156/21 was not included in this patta. That apart, the patta which was produced has not been signed by the competent authority and therefore, cannot be relied upon as evidence of possession. Exs.A2 to A6 are only xerox copies and originals had not



been filed. Ex.A3 - adangal receipt is for the faslis 1370 to 1393 and this relates to Survey No.156/10 which stood in the name of Chellamma. The adangal receipt for faslis 1395 to 1418 was in respect of Survey No.156/21 and it stood in the name of the first defendant. This document has been obtained after the institution of the suit.

6. The Trial Court has also observed that P.W.3, who is the grandson of the Lokaiah, had adduced evidence contrary to the pleading. The Trial Court had observed that despite being suit for recovery of possession, the plaintiffs had failed to establish their title and ownership over the suit property and therefore, the plaintiffs are not entitled to relief claimed by them.

LOWER APPELLATE COURT:

7. This judgment and decree of the Trial Court was taken on appeal in A.S No.7 of 16 on the file of Sub Court, Tiruttani. The learned Sub Judge has concurred with the findings and judgment of the Trial Court and dismissed the appeal.



8. Challenging the same, the plaintiffs are before this court.

DISCUSSION:

9. The learned counsel appearing on behalf of the plaintiffs/appellants would make his submission relying upon the deposition made by P.W.3 with reference to the sale of the property by Chellamma in favour of the first defendant. He would submit that though the properties had been orally partitioned and each brother is entitled to 0.42 cents, since Lokaiah had no documents in his name, his mother had executed the sale deed in favour of the first defendant with reference to an extent of 0.42 cents. He would further submit that the oral partition has been proved by the plaintiffs and the Courts below have erred in coming to the conclusion that the plaintiffs are not entitled to the decree as prayed for. That apart, the first defendant who had purchased a lesser extent has obtained patta with reference to a larger extent.



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10. Heard the learned counsel appearing for the appellants and perused the materials available on record.

11. The plaintiffs have come to Court contending that they are entitled for declaration with reference to 'C' schedule property comprising of 46.94 cents in Survey Nos.156/17 and 156/18, 156/19 and 156/21. The plaintiffs would claim the right on the basis of an oral partition made in the year 1970. The deceased first plaintiff contended that the 'A' schedule property belonged to his mother Chellamma and in the year 1970, he and his brothers had orally partitioned the property with the consent of their mother. However, a perusal of Ex.B1 which is executed by Chellamma in favour of the first defendant on 17.07.1978 i.e., nearly 8 years after the alleged partition would clearly show that the property continued to be described as the exclusive property of Chellamma and there is no reference to the partition. Further, a perusal of the boundaries of the properties set out in the schedule also do not reflect the partition. The explanation given by the plaintiff for Chellamma having executed the sale deed for and on behalf



of Lokaiah appears to be an afterthought. The defendants have pleaded partition in the year 1980 in respect of remaining extent of 0.84 cents, in which, the plaintiffs would be entitled to an extent of 0.28 cents. However, the plaintiffs have not claimed the right to this extent. On the contrary, the plaintiffs would seek declaration to a larger extent. Though the plaintiffs had pleaded that under the oral partition of the year 1970, the extent of 0.42 cents each had been allotted to the 3 brothers, the 'C' schedule property shows an extent of 0.49½ cents. The plaintiffs had, therefore, not come to the Court with a definite case.

12. Both the Courts below have concurrently held that the plaintiffs had not proved their right to the 'C' schedule property. The documents which have been filed to show proof of possession are documents which cannot be relied upon. Though they claim to be in possession of 'C' schedule property since the year 1970, no document has been produced to prove the same. P.W.1 has admitted that the fourth item of the 'C' schedule property was being enjoyed by the first defendant for the last 2 years prior to the institution of the suit. The



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plaintiffs have not sought for the recovery of the same. Further, the third party witnesses have admitted that it is the first defendant who is in possession of the fourth item of the suit property. The plaintiffs are neither able to prove as to how these findings, on the basis of evidence, were wrong nor able to establish their claim. I, therefore, see no reason to overturn the concurrent judgment and decree of the Courts below.

Accordingly, this second appeal stands dismissed as it does not give rise to any substantial question of law. Consequently, connected C.M.P. stands closed. No costs.

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Index : Yes/No
Speaking order/non-speaking order
ssa

To

1. The Subordinate Judge, Tiruttani.
2. The District Munsif, Tiruttani.

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3. The Section Officer, V.R. Section, High Court, Madras.

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P.T.ASHA, J.,

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