



S.A.(MD).No.594 of 2009

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.10.2024

CORAM:

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

S.A.(MD).No.594 of 2009

Ramapandi

... Appellant

/Vs./

1.The State of Tamil Nadu,
by its District Collector,
Ramanathapuram.

2.Balakrishnan

3.K.Kunjara Nachiyar

4.Muthu Nachiyar

5.R.Kunjara Nachiyar

6.Muniyasamy

...Respondents

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the Judgment and Decree dated 08.07.2008, made in A.S.No.16 of 2007 on the file of the Sub Court, Paramakudi, confirming the Judgment and Decree, dated 29.11.2006, made in O.S.No.48 of 2004 on the file of the District Munsif cum Judicial Magistrate Court, Kamuthi.

For Appellant

: Mr.S.Siva Thilakar

For R1

: Mr.M.Muthumanikkam

Government Advocate

For R2 to R6

: No appearance



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JUDGMENT

The present second appeal is preferred against the Judgment and Decree dated 08.07.2008, passed in A.S.No.16 of 2007 on the file of the Sub Court, Paramakudi, confirming the Judgment and Decree, dated 29.11.2006, passed in O.S.No.48 of 2004 on the file of the District Munsif cum Judicial Magistrate Court, Kamuthi.

2. The suit in O.S.No.48 of 2004 is filed to declare that the suit properties 1 to 3 belongs to the plaintiffs 1 to 2 and the 2nd defendant and consequential injunction restraining the 1st defendant from interfering in the peaceful enjoyment of the property. The second prayer is regarding items 4 and 5 of the schedule property and the same is for declaration and injunction. The 3rd prayer is regarding item Nos.6 and 7 for declaration it belongs to 5th plaintiff and consequential injunction.

3. The plaintiff has stated in the plaint is that the Survey Nos.226/3, 5 and 7 was in possession and enjoyment of one Varatharaj Thevar alias Periyasamy Thevar son of Muniyandy Thevar. After the demise of the said Periyasamy Thevar,



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his son namely, Natarajan and the 1st plaintiff Ramapandi are the legal heirs. The said Natarajan died and his heirs are the 2nd plaintiff and the 2nd defendant and they were in enjoyment of the suit property. After the demise of their ancestors, during the estate abolition, the patta was issued to the said Periyasamy Thevar in Patta No.10 and the item Nos.2 and 3 were also allotted in Patta No.5. Hence, the item Nos.1 to 3 are inherited by the plaintiffs 1 and 2 and the 2nd defendant as legal heirs. Likewise, the item Nos.4 to 7 were earlier in possession of one Muuthukaruppu Thevar @ Magalinga Thevar. He was in possession as ancestral property and his legal heirs are Ponnumuthunachiyar and Rakkammal. They divided the property among themselves, thereby, item Nos.4 and 5 were allotted to Rakkammal and item Nos.6 and 7 were allotted to Ponnumuthunachiyar. The said Rakkammal died leaving the legal heirs Kaleeswari and 3rd plaintiff namely, Kunjaranachiyar. The said Kaleeswari died and her son is the 4th plaintiff namely, Muthunachiyar. Hence, the item Nos.4 and 5 belongs to plaintiffs 3 and 4. The item Nos.6 and 7 were with one Ponnumuthunachiyar and her daughter Veeralakshmi inherited the property and subsequently, died. The said Veeralakshmi's daughter is the 5th plaintiff. The item Nos.6 and 7 were allotted to the 5th plaintiff. During the estate abolition, the item Nos.5 and 7 were wrongly



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allotted granted patta to Mohamed Kasim. But item Nos.4 and 5 were allotted to Magalinga Thevar under Patta No.5. Hence, the item Nos.1 to 7 are Rayathuvari punja belongs to the plaintiffs and the 2nd defendant. But the 1st defendant wrongly classified the Survey No.226 as Kanmoi. By the wrong classification, the long possession and enjoyment of the plaintiffs and the 2nd defendant was disturbed by the 1st defendant. Hence, the present suit is filed.

4. The suit was dismissed, against the same first appeal was filed and the same was dismissed. Aggrieved over the present second appeal is preferred by the plaintiff.

5. The second appeal is preferred by raising the following substantial questions of law:

“(A) Whether the courts below are correct in law in justifying the change of classification of the suit properties originally classified Rayotwari Punja absolutely belong to appellant and respondents 2 to 6 as Virathakulam Kanmai Ulvai' without issuing any notice to the appellant and respondents 2 to 6, when the revenue records marked as Ex A1 to A6 would clinchingly prove the long prior possession and enjoyment of the fore fathers appellant



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(B) Whether the courts below are correct in law in not appreciating the pleadings, evidence of PW1 and PW2 and documentary evidence marked as Ex A1 to Ex A6 which would clearly prove the case of the Appellant and respondents 2 to 6 herein, when the 1st respondent has failed to deny the genuineness the documents on the side of the Appellant and therefore 1st respondent is barred by the principle of estoppel as per Section 116 of the Indian Evidence Act?

(C) Whether the lower appellate court is correct in law in not determining the points for consideration as required under order 41 rule 31 of Civil Procedure Code?"

6. It is seen the defendants had filed the written statement stating that the said Survey No.226, was sub divided as 1 to 10. The Survey No.226/1 is classified as Virathakulam Kanmai. The Survey Nos.226/2 to 226/10 were classified as Virathakulam Kanmai Ulvai. Further, it is seen that the adjacent Survey No.225 and Survey No.227 are also classified as Virathakulam Kanmai / Virathakulam Kanmai Ulvai. The said documents were marked as Exhibit B1 to B4. On perusing the same it is seen the said survey numbers are classified as Virathakulam Kanmai.



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7. However, the plaintiff submitted that he was in possession for a lifetime and he has marked Exhibit A3 which is an Othi deed, dated 15.06.1938 and the registered copy of Othi deed, dated 09.09.1937 and the SLR copy of the District Register in Exhibit A6, another registration deed, dated 20.12.2004 as Exhibit A5.

8. The 1st substantial question of law is that the 1st defendant has wrongly classified the Survey No.226 as Virathakulam Kanmai. Previously, in the SLR register, the same is not shown as Virathakulam Kanmai. When there is a change of classification, the plaintiffs and the ancestors are entitled to notice. On perusing the SLR it is seen that the same is classified as Virathakulam Kanmai and hence the plea of the petitioner that during SLR it is not classified as Kanmai is incorrect. Therefore, this Court is of the considered opinion that even in the SLR it has been classified as Virathakulam Kanmai. It is seen that a larger extent in Survey No.226 is Virathakulam Kanmai but a smaller portion namely, Survey No. 226/1 is the exact Virathakulam Kanmai and from Survey Nos.226/2 to 226/10 it is Virathakulam Kanmai Ulvai which means that it is a space where water would be collected. If there is excess water in the Kanmai, the water would be allowed to stagnate in Survey Nos.226/2 to 226/10. Therefore, the space is only



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Virathakulam Kanmai / Virathakulam Kanmai Ulvai. Therefore, the 1st substantial question of law is answered in favour of the defendants.

9. All the other documentary evidences marked by the plaintiffs only shows long possession but it is not proving the title of the plaintiffs. Long possession cannot prove the title. More so, when it is classified as water body, the same ought to be retained as water body and there cannot be any change in classification. In fact, the Courts have taken a strong view that the water body cannot be changed from its original classification even by the Government. Therefore, the 2nd substantial question of law is also held against the plaintiffs.

10. When the substantial questions of law 1 and 2 are answered against the plaintiffs, the 3rd substantial question of law does not arise at all.

11. Hence, the second appeal is dismissed confirming the judgment and decree rendered by both the Courts. No costs.

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Index : Yes / No

NCC : Yes / No

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TO:

- 1.Sub Court, Paramakudi.
- 2.District Munsif cum Judicial Magistrate Court,
Kamuthi.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.
- 4.The District Collector,
Ramanathapuram.



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S.SRIMATHY, J.

Tmg

Judgment made in
S.A.(MD)No.594 of 2009

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