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SA(MD)No.311 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

|                    |            |
|--------------------|------------|
| Date of Reserved   | 02/08/2024 |
| Date of Pronounced | 17/10/2024 |

**CORAM**

The Hon'ble Mr.Justice **G.ILANGOVAR**

**SA(MD)No.311 of 2021**

**and**

**CMP(MD)No.4198 of 2021**

Jeyakumar (Died)

1.Saroja

2.Rajasingh

3.Mary

4.Pricela

: Appellants/Respondents/  
Defendants 1 to 5

Vs.

Indira

: Respondents/Appellant/  
Plaintiff

**PRAYER:** Second Appeal is filed under Section 100 of the Civil Procedure Code, to set aside the decree and judgment dated 11/02/2020 passed in AS No.1 of 2017 on the file of the Principal District Court, Tirunelveli reversing the decree and judgment, dated 18/10/2016 in OS No.425 of 2010 on the file of the Principal Subordinate Court, Tirunelveli.

For Appellant : Mr.Y.Prakash

For Respondent : Mr.M.P.Senthil

**J U D G M E N T**

This second appeal is filed against the decree and judgment dated 11/02/2020 passed in AS No.1 of 2017 by the Principal District Court, Tirunelveli reversing the decree and judgment, dated 18/10/2016 in OS No.425 of



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2010 passed by the Principal Subordinate Court,  
Tiruneveli.

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**2.Plaint averments in brief:-**

The property originally belonged to three persons namely Muthusami, Shanmugam @ Samuvel and Sankan @ Solomon. On 01/07/1930, there was a partition between Seenii, S/o.Muthusamy, Shanmugam @ Samuvel, Sankan @ Solomon and first wife's children. The first defendant is the son of Muthusamy. The first defendant has no right in respect of the 4<sup>th</sup> schedule. As mentioned above, Seenii was allotted to the first schedule, but in the patta, her name is wrongly mentioned. One of the children of Solomon by name Sornam, died unmarried. There was a oral partition in 1970 between Perinbam, Pitchaikari and Mariammal. In the oral partition, the 4<sup>th</sup> schedule which form part of the third schedule was allotted to the Mariammal in survey No.598/1A. Mariammal died intestate leaving behind Samathanam and Ponmani. In 1985, there was an oral partition between Ponmani and Samathanam. In the oral partition, the 4<sup>th</sup> schedule and other properties were allotted to Samathanam. So Samathanam was in possession of the 4<sup>th</sup> schedule as title owner. Later Samathanam settled the property in favour of her daughter namely Indira on 24/02/2009. Indira is the plaintiff



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herein. She accepted the gift and put in possession. By mistake, the first defendant's father's name and one Packiyam's name were wrongly included in the patta. Taking advantage of the patta, the first defendant is disturbing the possession of the plaintiff. So the suit is laid for declaration that the 4<sup>th</sup> schedule belongs to the plaintiff and for consequential injunctions, costs.

**3.Written statement:-** The suit property situated in survey No.598, originally covered in the settlement register in the name of the first defendant. After the death of the first defendant's father the defendants came into possession, inherited the property. Later on 08/04/2009, the defendants executed a settlement deed in favour of the second defendant namely Saroja, who is his wife. Saroja is in possession and enjoyment of the property as rightful owner. The partition deed, dated 01/07/1930 and subsequent partition entered into by the plaintiff are denied as false, so also the settlement deed dated 24/02/2009.

4.On the basis of the pleadings of both sides, the following issues were framed by the trial court:-

(1)Whether the plaintiff is entitled for declaration that IV schedule property belongs to her?



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(2)Whether the plaintiff is entitled to get the relief of permanent injunction restraining the defendants from disturbing the plaintiff's peaceful possession and enjoyment of IV schedule property?

(3).Whether the plaintiff is not in possession and enjoyment of the 4<sup>th</sup> schedule property is true?

(4).To what other relief, the plaintiff is entitled to?

5.Before the trial court, on the side of the plaintiff 3 witnesses were examined and 8 documents were marked. On the side of the defendants, 3 witnesses were examined and 6 documents were marked.

6.At the conclusion of the trial process, the trial court dismissed the suit without any cost. Against which, the plaintiff filed AS No.1 of 2017 before the Principal District Judge, Tirunelveli. The appeal was allowed by setting aside the judgment and decree of the trial court and the plaintiff was declared that she is the owner of the 4<sup>th</sup> schedule of the property and permanent injunction was granted.

7.Against which, the second appeal is preferred by the deceased second defendant Saroja. The first defendant



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namely Jeyakumar died. So, the legal heirs were brought on record.

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8. At the time of admission, the following substantial questions of law were framed.

*(1) Whether the first appellant court erred in shifting the burden on the defendants in a suit for declaration of title holding that the defendants have failed to establish their right over the Plaintiff 4<sup>th</sup> Schedule Property?*

*(2) Whether the first appellant court should have seen that in a suit for declaration and injunction it is for the plaintiff to prove the case by establishing title and possession?*

9. Heard both sides.

10. The rival claim over the suit property which is mentioned as 4<sup>th</sup> schedule is the disputed property now.

11. It is a case of reversal, we will go to the findings recorded by the trial court.



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12.The deceased first defendant namely Jeyakumar claims right over the property by virtue of registered settlement. The plaintiff claims title over the property by tracing the same to the partition deed dated 01/07/1930. But in the plaint, the plaintiff has stated that the first defendant namely Jeyakumar is the one of the sons of Muthusamy. Muthusamy's father's name is Seeni. Seeni was allotted the first schedule in the partition deed, dated 01/07/1930.

13.We will straight away go to the relationship between the parties. Because there is some confusion in the relationship. Before we go into the oral evidence of the parties, let me briefly narrate the relationship by taking into account the recitals made in Ex.A1, the basic document, which is relied by the plaintiff. It is partition deed in the year 1930 between the persons as mentioned in the plaint. As per the understanding of this court, from the averments, I am narrating the relationship.

14.One Madan, was having a son by name Muthusamy. Muthusamy's son name is Seeni. Seeni has a son called Muthusamy and the first defendant Jayakumar is the son of Muthusamy. Muthusamy's brothers are called Shanmugam @



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Samuvel and Sankaran @ Solomon. I am stating that Shanmugam @ Samuvel and Sankaran @ Solomon are the children of Madan. Since it has been specifically stated that Shanmugam @ Samuvel and Sankaran @ solomon are the sons of Madan. Muthusamy's initial is also stated as Madan. So probably Muthusamy and above said two persons would have been brothers. Now we will stop here for a moment and go to the evidence of DW1 on this aspect. He admits that his father Muthusamy is son of Seeni. To that extend he admits the relationship. But, with regard to his relationship with Shanmugam @ Samuvel and Sankaran @ solomon, he says that he has no knowledge. According to the plaintiff, Muthusamy had three children namely Seeni, Shanmugam @ Samuvel and Sankaran @ Solomon. So his evidence is doubtful to arrive at the correct finding with regard to the relationship between Seeni, Shanmugam @ Samuvel and Sankaran @ Solomon.

15. Now we will go to the evidence of PW2. Even though he was aged about 60 at the time of examination, he has not spoken about the above said relationship. So his evidence is also not helpful to the court. Now we will go to the evidence of PW1. But he told a different story. According to her, the suit property originally belongs to Muthusamy, Shanmugam @ Samuvel and Sankaran @



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Solomon. Further according to her, Shanmugam @ Samuvel and Sankaran @ Solomon and Muthusamy entered into partition deed dated 01.07.1930. So she is also not clear with regard to the relationship. Similarly she is not aware the state of affairs on the date of Ex.A1. Similarly, PW2 is also not spoken about the relationship. So we need not trouble much upon the relationship, because it is not clearly established on either side before the trial Court through evidence. Now suffice to say that the property is the subject matter of the above said partition deed namely Ex.A1.

16. So in the light of the above said, now we will go further. The short point which arises for consideration is whether the suit property was allotted to the share of the plaintiff's predecessor in title or the plaintiff's ancestor in title. The plaintiff says that for better understanding for further discussion in the partition deed the third schedule was allotted to the first wife's children of Shankaran @ Solomon. Second wife's children were Sornam and Mariammal, Perinbam, Kovilpillai and Pichaikari. So among the children of second wife, according to the plaintiff, Sornam died without marriage. There was oral partition between Perinbam, Kovilpillai, Pichaikari and Mariammal and in the oral partition, the



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fourth schedule, which is the subject matter of the suit namely S.No.598/1A was allotted to Mariammal. Mariammal died intestate leaving behind Samathanam and one Ponmani. Again there was oral partition between Ponmani and Samathanam, in which, the fourth schedule and other properties were allotted to Samathanam. Later Samathanam executed the settlement deed, dated 24.02.2009, in favour of the plaintiff, who is the daughter of the Samathanam. This is tracing of title of the plaintiff to the suit property over her right. So according to her, the fourth schedule is form part of the third schedule allotted to the Sankaran @ Solomon's children through Ex.A1.

17.The trial Court admits that the first defendant's grandfather namely Seeni was not allotted with this property, since he claim right over the property only on the basis of the settlement 'A' Register. So that will not bind or create or divert or extinguish the right of the parties, when title documents are available. But, recorded a finding that the plaintiff failed to prove whether the disputed fourth schedule was allotted to her predecessor or ancestor in title since no 'A' register copy was produced showing the subdivisions.

18.Now we will go to the finding of the appellate



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Court. During the appeal proceedings through Ex.A9 Field Map for Survey No.598/A, copy of the 'A' Register were produced as additional evidence. That was admitted by the appellate Court and those documents were marked. Now we will straight away go to the finding. According to the appellate Court, in S.No.598/1A, the middle portion 34 cents was allotted to the branch called Shanmugam @ Samuvel. The eastern portion of 30 cents on the west of Shanmugam @ Samuvel was allotted to Muthusamy in the first schedule. Muthusamy is the grandfather of the first defendant. So the properties, which are allotted to Muthusamy in first schedule lies only on the west of second schedule. The third schedule was allotted to the heirs of Sankaran @ Solomon, 6 cents on the west and 35 cents on the far-east. So from the above said property 16 cents are carried out and subdivided as 598/1A and that the property claimed by the plaintiff. Now the fourth schedule is S.No.598/1A3. This finding of the appellate Court is further confirmed by referring to the field map. So according to the appellate Court, the original survey No.598/1A was further subdivided into 1A1A, 1A1B, 1A1C, 1A2A, 1A2B, 1A3 and 1A4.

19. According to the respondent, the west portion which is now subdivided as 1A1A belongs to the first



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defendant and 1A3 belongs to the plaintiff. So as per the field map survey number 1A1A is on the west 1A3 and 1A4 are far east. So this is correlated to Ex.A1 partition deed, wherein, the third schedule survey No. 598/1A was on the for-east. So the appellate court has recorded a finding of fact that the suit property only lies in 1A3, in which, the first defendant cannot have any right, even though patta was issued in the name of his ancestors, but of course without any right of title.

20. So reading of the above said judgment of the appellate court shows that a clear discussion is made with reference to the lie of the properties and the portion, which was allotted to the plaintiff's ancestors and the present position. This finding is supported by the oral evidence of revenue official who was examined on the side of the plaintiff as PW4. So no exception can be taken by the first defendant with regard to the title of the property of the plaintiff's ancestors. Even on perusal of records and evidence of PW4 under Ex.A1 I fully concurred with the judgment of the appellate Court, on that finding. During the course of second appeal no argument was advanced by the appellant with regard to the specific finding of the appellate Court. So it is final. It requires no reconsideration at all.



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21.Now comes the main issue, it is settled principle of law that revenue records, whatever time, it covers will not over ride the title documents. Now the title document of plaintiff's predecessors title is Ex.A1, which is also having ancestral character. None is available now to speak about the recitals made in the document. But subsequently, records have indicated as relied upon by the appellate Court shows that the plaintiff was successful in tracing the title of their predecessor in title through Ex.A1. So the SLR copy which relied upon by the first defendant is not valid at all and it will not have any effect.

22.Now the learned counsel for the appellant at the time of argument would submit that notwithstanding the failure on the part of the defendant to establish the title, the plaintiff cannot be permitted to take advantage of the weakness. The plaintiff has to establish her right on her own strength and not on the weakness of the defendant. So according to him, the alleged oral partition between her ancestors were not properly established.

23.As stated in the plaint, two oral partitions were pleaded. One that took place in 1970 between Perinbam,



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Kovilpillai, Pichakari on one side and Mariammal on the other side and second oral partition was in 1985 between Ponmani and Samathanam. As mentioned above, Samathanam is the father of the plaintiff, wherein, Samathanam was allotted with the present subject matter of the property. So the plaintiff submitted that both the oral partitions were established by the plaintiff. PW2 was examined on the side of the plaintiff to prove the oral partition took place between ponmani and samathanam as mentioned above, she was aged about 60 at the time of examination. According to him, she was also present at the time and in their presence the property was orally divided and Samathanam was conferred with the property. PW2 during the course of cross examination has submitted that her daughter was married to the plaintiff's brother. So it is seen that he is clear. Even though he is related nothing was brought on record to discredit his evidence regarding the oral partition between Samathanam and Ponmani. PW2 has also signed as a witness in Ex.A2, settlement deed standing in the name of the plaintiff. As mentioned above, he has spoken about the earlier partition also. So enough materials were placed on record by the plaintiff to prove the title.



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24. Against the title document of the plaintiff, the first defendant has not brought on record any convincing evidence. So the settlement deed executed by him in favour of the second defendant's wife has no validity under law. On the basis of the above said document, the second defendant cannot claim any right.

25. To show the possession, the plaintiff has produced revenue records, kist receipts as pointed out by the appellate Court. So the finding of the appellate Court that the plaintiff has established her title over the property is fully supported by evidence and requires no interference. So the substantial question of law is answered that the appellate court has not decided the case in favour of the plaintiff on the weakness of the defendant's side, but on the strength of their own evidence, the title was established.

26. So the substantial question of law is answered that the appellate court has rightly decided the issue.

27. In the result this second appeal fails and the same is **dismissed** with costs. The Judgment and decree passed by the appellate court is confirmed. Consequently,



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connected Miscellaneous Petition is closed.

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Index:Yes/No

Internet:Yes/No

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To

1.The Principal District Judge, Tirunelveli.

2.The Principal Sub Judge, Tirunelveli.

3.The Section Officer,  
E.R.Section/V.R.Section,  
Madurai Bench of Madras High Court, Madurai.



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**G.ILANGOVAN, J.,**

er/TM

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