



S.A.No.339 of 2000

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE **S.SOUNTHAR**

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- 1.Chidambaram (Died)
- 2.Thambusamy
- 3.Nithiyanandham

...Appellants

-Vs-

- 1.Nagalakshmi (Died)
- 2.Perumal (Died)
- 3.Kanakambal
- 4.Loganathan
- 5.Thiruchelvam
- 6.Susila
- 7.Saravanamuthu
- 8.Kumaravel
- 9.Muthuvijayan
- 10.Dharman
- 11.Natarajan

... Respondents

(Appellants 2 and 3 were brought on record as legal heirs of the deceased sole appellant vide order of this Court, dated 01.03.2016 in M.P(MD)Nos.1 to 5 of 2013)

(Respondents 3 to 6 were brought on record as legal heirs of the deceased second respondent, vide order of this Court, dated 11.12.2024 made in M.P.(MD)Nos.2 and 3 of 2014)

(R7 to R11 were brought on record as legal heirs of the deceased first respondent vide order of this Court, dated 25.02.2022 in C.M.P.(MD)Nos.12162 to 12164 of 2019)



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PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree, dated 16.03.1999 passed in A.S.No.14 of 1998 on the file of the Additional District Judge-cum-Judicial Magistrate Court, Pudukottai passed in A.S.No.14 of 1998, dated 16.03.1999 confirming the decree and judgment of the Additional District Munsif Court, Pudukottai passed in O.S.No.1677 of 1989, dated 18.10.1996.

For Appellants	: Mr.Balakrishnan
R1 and R2	:Died
For R3 to R6	:No appearance
For R7 to R10	:Dispensed
For R11	:Mr.C.Maniyarasu

JUDGMENT

The plaintiff in the suit is the appellant herein. The suit filed by the plaintiff for declaration of title and for injunction was dismissed by the trial Court and the findings of the trial Court were affirmed by the first appellate Court. Aggrieved by the concurrent findings of the Courts below, the plaintiff is before this Court.



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2. Pending the Second Appeal, the sole appellant died and his legal heirs were brought on record as Appellants 2 and 3. Likewise, pending the Second Appeal, the Respondents 1 and 2 died and their legal heirs were brought on record as Respondents 3 to 11.

3. For the sake of convenience, the parties are referred to as per their ranking in the suit.

4. According to the plaintiff, the suit property in S.Nos.253/3B and 253/3C in Kothamangalam Village, Alangudi Taluk, Pudukottai District was his ancestral property and he got it by inheritance. It was also claimed that the plaintiff and his father Muthu Karuppan had been in possession and enjoyment of the suit property for the past 50 years. The first defendant, Nagalakshmi claimed right over the suit property on the ground that her husband, Duraisamy Servai purchased portion of the suit property from one Megavarnam. The first defendant also sold portion of the suit property to the second defendant. It was also claimed by the plaintiff that the aforesaid Megavarnam had no right over the suit property and the defendants claimed right over the suit property under fraudulent sale deeds. The



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plaintiff further contended that the defendants, by taking advantage of order passed in their favour by the revenue authorities, attempted to interfere with the possession of the plaintiff and hence, he was constrained to file a suit for declaration of title and for injunction.

5.The defendants filed a written statement and had resisted the suit property on the ground that the total extent in S.No.253/3 was 6 acres 17 cents and the same was originally belonged to plaintiff's father, Muthu Karuppan and his brothers, Megavarnam @ Baskaran son of Solaimalai and Chinniah son of Rengan. It was also claimed that Megavarnam @ Baskaran sold 1 acre 67 cents of lands on the southern side of the aforesaid survey number in favour of the first defendant's husband, Duraisamy Servai and handed over the possession. It was also claimed that in earlier litigation in O.S.No.207 of 1974, there was a finding that the suit property belonged to the plaintiff's father Muthu Karuppan, Megavarnam and Chinniah and the said finding was affirmed by the first appellate Court in A.S.No.18 of 1976. Therefore, claiming that the plaintiff had no exclusive right over the suit property, the defendants sought for dismissal of the suit.



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6.The defendants also filed additional written statement and raised a plea that there was a partition between Muthu Karuppan and his brothers and the suit property was allotted to the share of Solaimalai, father of Megavarnam. It was further pleaded that one of the sons of Soalaimalai, namely, Thangasamy, renounced the world and his other son Megavarnam @ Baskaran got the property absolutely and sold the same to the husband of the first defendant.

7.Before the trial Court, the plaintiff was examined PW-1 and the son of Megavarnam @ Baskaran was examined as PW-2 and on behalf of the plaintiff, 21 documents were marked as Ex-A1 to Ex-A21. The second defendant was examined as DW-1 and five other witnesses were examined on behalf of defendants as DW-2 to DW-6. On behalf of the defendants, 18 documents were marked as Ex-B1 to Ex-B18.

8.On appreciation of oral and documentary evidence available on record, the trial Court came to the conclusion that the plaintiff failed to prove his exclusive title over the suit property and consequently, dismissed the suit.



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Aggrieved by the same, he filed a first appeal in A.S.No.14 of 1998 on the file of the Additional District Court-cum-Chief Judicial Magistrate, Pudukottai, in which, the findings of the trial Court were affirmed by the first appellate Court. Aggrieved by concurrent findings, the appellant/plaintiff is before this Court.

9.The learned Counsel for the appellants by drawing the attention of this Court to the judgment rendered in the earlier litigation in O.S.No.207 of 1974 submitted that in the earlier litigation, the Court found that the sale in favour of the first defendant's husband, Duraisamy Servai was not valid and therefore, the right claimed by the defendants over the suit property under the sale deed executed by Megavarnam in favour of Duraisamy Servai cannot be pressed into service. The learned Counsel further submitted that the plaintiff proved his title to the suit property through the evidence of DW-2 and DW-3, who admitted the possession of the plaintiff over the suit property. In support of his contention, the learned Counsel relied on the judgment of this Court in *Mohammed Sulaiman Nachi and others vs Chena Ena Mohideen Thambi and another*, reported in **84 LW 252** for the proposition that even though the title of the plaintiff is not proved, if he is able to prove his possession, declaration of his possessory title could be



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granted.

10.As per the plaint pleadings, the plaintiff claimed right over the property in S.Nos.253/3B and 253/3C by inheritance and the the plaintiff and his father, Muthu Karuppan had been in possession and enjoyment of the suit property for the past fifty years. In support of the said plea, the plaintiff marked joint pattas in the name of Muthu Karuppan and others as Ex-A10 and Ex-A11. He also marked kist receipts in the name of his father, Muthu Karuppan, as Ex-A3 and Ex-A4. The plaintiff also marked patta in his name as Ex-A1.

11.The Courts below rejected Ex-A1, patta in the name of the plaintiff on the ground that the same was cancelled by the proceedings of Tahsildar, which was marked as Ex-B2. Now, we have to see whether the plaintiff proved his right and exclusive possession over the suit property by virtue of other documents marked on his side. Ex-A10 and Ex-A11 are joint patta in the name of the plaintiff's father, Muthu Karuppan and his siblings. In fact, under Ex-A6, the judgment in O.S.No.207 of 1974, the Court found that the suit property was separate suit property of Muthu Karuppan and his brothers, Megavarnam @



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Baskaran and Chinniah. The pattas filed by the plaintiff as Ex-A10 and Ex-A-11 are not the exclusive pattas in the name of the plaintiff's father, Muthu Karuppan, but however, the same stand in the name of Muthu Karuppan and his siblings. Therefore, the exclusive title and possession of plaintiff's father, Muthu Karuppan cannot be inferred by relying the pattas issued in the name of Muthu Karuppan and others.

12.The learned Counsel vehemently contended that Ex-A3 and Ex-A4, kist receipts, in the name of Muthu Karuppan, would prove his exclusive right over the suit property. As mentioned earlier, the plaintiff produced the joint patta in the name of Muthu Karuppan and his siblings. Since Muthu Karuppan name is found as first name in the joint patta, kist receipts could have been issued in the name of Muthu Karuppan and therefore, no significance can be attached to the kist receipts issued in the name of Muthu Karuppan. Further, the Courts below pointed out that the appellant/plaintiff during his cross examination clearly admitted that he failed to plead that the suit property was allotted to the share of his father and he did not know about the partition and allotment of suit property to his father.



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13. In the earlier litigation to which the plaintiff and the defendants were party, it was found by the Court that the suit property belonged to plaintiff's father Muthu Karuppan and his siblings. There is no plea or evidence available on record to show that when the suit property was partitioned and exclusively allotted to the share of the plaintiff's father, Muthu Karuppan. In such circumstances, the suit for declaration of exclusive title of the plaintiff is not maintainable. The Courts below have rightly come to the conclusion that the plaintiff failed to prove the allotment of the suit property exclusively to his father and hence, he was not entitled to declaration of title and consequential relief.

14. The learned Counsel for the appellants relying on the judgment of this Court in *Mohammed Sulaiman Nachi and others vs Chena Ena Mohideen Thambi and another*, reported in **84 LW 252** for the proposition that declaration of possessory title can be granted, if the exclusive possession of the plaintiff is proved. As mentioned earlier, in the case on hand, the pattas filed by the plaintiff, Ex-A10 and Ex-A11, are the joint pattas stand in the name of the plaintiff's father Muthu Karuppan and his siblings and in such circumstances, there is no evidence available on record to establish the exclusive possession of the plaintiff over the



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suit property. Though DW-3 in his evidence mentioned about the enjoyment of the portion of the suit property by the plaintiff by rearing coconut trees, the same is not sufficient to come to the conclusion that the plaintiff proved his exclusive possession over the entire extent of the suit property. Further, in earlier litigation, the Court found that suit property belonged to the plaintiff's father, Muthu Karuppan and his siblings. The defendants are claiming right under Muthu Karuppan's one of the brother, Megavarnam @ Baskaran. It is settled law that co-owner's possession is not only for himself and also for the benefit of other co-owners. Therefore, the judgment relied on by the learned Counsel for the appellants is not applicable to the facts of the present case, when exclusive possession of the plaintiff is not proved.

15. In such circumstances, I do not find anything to interfere with the concurrent findings rendered by the Courts below and accordingly, the Second Appeal stands dismissed. It is always open to the plaintiff to file a suit for partition, if so advised. No costs.

10.04.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

1.The Additional District Judge-cum-Judicial Magistrate,
Pudukottai.

2.The Additional District Munsif, Pudukottai.

3.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SOUNTHAR, J.

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