



S.A.No.223 of 2019 and C.M.P. No.3581 of 2019

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	15.07.2025
Pronounced on	02.09.2025

CORAM

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

S.A.No.223 of 2019 and C.M.P. No.3581 of 2019

K. Radha

...Appellant

Vs.

1. Subrayan (died)
2. Annakili
3. Indira Gandhi
4. Senthilkumar
5. Sangeetha
6. Minor S. Vignesh
7. Minor S. Sanjay
8. Minor S. Sarmila

Minor respondents 6 to 8 are represented by their mother and natural guardian Mrs. Sangeetha.

RR2 to 8 brought on record as LR's of the deceased sole respondent viz., Subrayan vide court order dated 06.09.2021 made in CMP No.13138/2021.

... Respondents



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Prayer : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 26.07.2018 made in A.S. No.02 of 2015 on the file of the Principal District and Sessions Court, Ariyalur, confirming the judgment and decree dated 27.04.2015 made in O.S. No.70 of 2011 on the file of the Additional Sub Court, Ariyalur.

For Appellant : Ms. K.Vijayalakshmi
for M/s. Dass & Viswa Associates
For Respondents : Mr. P. Valliappan, Senior Advocate
for Mr. K.M. Hareesh
for M/s. P.V. Law Associates
for R2 to R8.

JUDGMENT

This appeal is directed against the judgment and decree dated 26.07.2018 made in A.S. No.2/2015 on the file of the Principal District and Sessions Court, Ariyalur, confirming the judgment and decree dated 27.04.2015 made in O.S. No.70/2011 on the file of the Additional Subcourt, Ariyalur.

2. The appellant is the 2nd defendant in O.S. No.70/2011. The deceased 1st respondent as plaintiff filed the above suit in O.S.



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WEB COPY No.70/2011 for partition.

3. The case of the plaintiff is that the suit property measuring 0.04.0 ares (10 cents) originally comprised in S.F.No.134/12B. The said property jointly owned by the plaintiff and the 1st defendant and a joint patta was issued in their name in S.F. No.134/12B. Since the said land was unfit for cultivation, the plaintiff and the 1st defendant's predecessors used the land for grazing cattle. While so, the government acquired the northern 0.05 cents of land in the said property for formation of road. Hence, the plaintiff and the 1st defendant jointly executed a sale deed on 13.01.2005 to the government and the compensation amount was equally shared by the plaintiff and the 1st defendant. Thereafter, the acquired land was subdivided as 134/12B1 and the remaining land was subdivided as 134/12B2. It is the suit property. However, a joint patta was not issued in favour of the plaintiff and the 1st defendant in respect of S.No.134/12B2. While so, the 1st defendant has fabricated document in favour of the 2nd defendant in respect of the said property. The 2nd defendant also obtained patta in his name. The 1st defendant has no right whatsoever to create any



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document in respect of the suit property in favour of the 2nd defendant.

The 2nd defendant has no independent right over the suit property. Therefore, on 18.07.2011 the plaintiff sent a legal notice (Ex.A4) to the defendants. The 2nd defendant sent a reply notice (Ex.A5) dated 25.07.2011 with false averments. Hence, the plaintiff was constrained to file the above suit for partition.

4. The 2nd defendant in his written statement has resisted the claim of the plaintiff by stating that the plaintiff has no right over the suit property. The plaintiff and the 1st defendant are not brothers and therefore, the plaintiff is not entitled to any share in the suit property. It is further submitted that the 0.5 cents of land situated on the north of the suit property was acquired by the government for formation of road. Since joint patta was in the name of the plaintiff and the 1st defendant in S.F. No.134/12B, the 1st defendant had to sign jointly along with the plaintiff at the time of receiving the compensation. But, in fact, the plaintiff alone took the compensation amount. The brother of the plaintiff, namely Munusamy, was aware of this fact, who was alive at that



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point of time. The southern 0.5 cents of land in S.No.134/12B2 absolutely belong to the 1st defendant. The suit property is the ancestral property of the 1st defendant and the same was allotted to him in the family partition. On 25.01.2011, the 1st defendant executed a settlement deed in favour of his son, namely the 2nd defendant, and the same has been acted upon. The plaintiff is aware of the above facts. Taking advantage of the joint patta, the plaintiff has come out with the above vexatious suit. Hence the suit is liable to be dismissed.

5. The trial court decreed the above suit in favour of the plaintiff against which the 2nd defendant filed the appeal suit in A.S. No.2/2015 on the file of Principal District Court, Ariyalur. The first appellate court dismissed the appeal suit confirming the judgment and decree of the trial court. Aggrieved by this the present appeal is preferred by the 2nd defendant.

6. The following substantial questions of law are raised by the appellant in the memorandum of the appeal.



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- a) Whether the courts below committed an error in deciding that mere joint patta bearing Patta No.627 standing in the name of the appellant's father and the respondent and the appellant's father's inaction to cancel the same confirms that both are joint owners and hence the respondent is entitled to half share over the suit property?
- b) Whether the courts below are correct in holding that the suit is not hit by non-joinder of necessary parties?
- c) Whether the courts below are right in holding that the kist receipts produced by the appellant are not sufficient to prove the claim of adverse possession of the appellant?
- d) Whether the courts below erred in decreeing the suit though the respondent has not produced any independent witnesses to substantiate his claim?

7. The learned counsel for the appellant submits that the respondent/plaintiff failed to prove that he had received only half of the compensation amount given at the time of acquisition, though the same



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was given by way of cheque. The respondent/plaintiff himself admitted that the total compensation given was only Rs.2,927/- and only one cheque was received. In spite of a specific stand taken by the 1st defendant that he signed the sale deed dated 13.01.2005 for name sake since patta jointly stood in the name of the plaintiff and the 1st defendant. The 2nd defendant/appellant has marked Ex.B1 to B4 to prove that he has perfected title by adverse possession. He would further contend that the categorical admissions made by P.W.1 in cross examination would amply prove that the suit property belongs to the 1st defendant. However, the courts below failed to take note of the above documents. Hence, the judgment and decree passed by the courts below are liable to be set aside.

8. On the other hand, the learned counsel for the respondent/plaintiff would submit that the suit property jointly owned by the plaintiff and the 1st defendant and hence joint patta was issued in their name. The fact that the plaintiff and the 1st defendant jointly executed the sale deed in favour of the Government in respect of northern 5 cents in the suit survey number, would clearly establish that the suit property



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is jointly owned by the plaintiff and the 1st defendant. The compensation amount was jointly received by the plaintiff and the 1st defendant. While so, the 1st defendant fraudulently executed a settlement deed in favour of his son, the 2nd defendant. Hence, the plaintiff was constrained to file the above suit for partition. The courts below rightly decreed the suit in favour of the plaintiff which calls for any interference by this court.

9. Heard on both sides. Records perused.

10. It is not in dispute that a joint patta stood in the name of the plaintiff and the 1st defendant in respect of land in S.No.134/12B to an extent of 10 cents. It is the specific case of the plaintiff that since the property was jointly owned by the plaintiff and the 1st defendant, joint patta was issued in the name of the plaintiff and the 1st defendant. Whereas, the contention of the 2nd defendant is that, though joint patta was issued in the name of the plaintiff and the 1st defendant for 10 cents in S.No.134/12B, the entire 10 cents was not owned jointly by the plaintiff and the 1st defendant. The plaintiff owned only the northern 5



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cents of land in the said survey number and that, the said land was acquired by the government for formation of road. Since, there was a joint patta, the 1st defendant signed the sale deed executed in favour of the government in respect of the northern 5 cents along with the plaintiff and that the entire compensation amount was received only by the plaintiff. The suit property is the ancestral property of the 1st defendant and therefore, he executed a settlement deed in favour of the 2nd defendant. The plaintiff has no right over the suit property and that the suit is vexatious.

11. No doubt, the plaintiff has to prove his case and cannot pick up holes in the defendants' case. The joint patta in this case is marked as Ex.A1 which stands in the name of the plaintiff and the 1st defendant. Though the 1st defendant contends that the same has been mistakenly issued by the revenue authorities, till date he has not taken any steps to correct the said mistake. Moreover, the plaintiff and the 1st defendant jointly executed Ex.A2 sale deed in favour of the Government during acquisition process. The recitals in Ex.A2 runs as follows:



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“கிராம கணக்குகளான “அ” பதிவேடு மற்றும் 10(1) பதிவேட்டில் 627 என்ற பட்டாவில் தாக்கல் ஆகி நாளது தேதி வரை நாங்கள் பொதுவாக ஆண்டு அனுபவித்து வருகின்ற சொத்தை” என்று கண்டுள்ளது.

Therefore, from the above recitals, it is clear that the joint patta 627 was issued in favour of the plaintiff and the 1st defendant recognising their joint possession and enjoyment in the said land. Therefore, the contention made by the 1st defendant that the patta was mistakenly issued in the name of the plaintiff and the 1st defendant cannot be accepted. Moreover, Section 91 and 92 of the Evidence Act contemplates that, where there is an express document, it is not open to the parties to lead oral evidence to the contrary. Hence, the defendants are not entitled to deny Ex.A2 sale deed based on the admission made by the plaintiff. Moreover, in Ex.A3 settlement deed executed by the 1st defendant in favour of the 2nd defendant, it is mentioned that the suit property is the ancestral property of the 1st defendant for which there is no iota of

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evidence. Even in Ex.A3 settlement deed, the existence of joint patta is mentioned. If really the suit property is the exclusive property of the defendants, steps would have been taken to remove the name of the plaintiff from the joint patta before the revenue authorities. When no such steps had been taken by the defendants, it goes to show that the suit property is jointly owned by the plaintiff and the 1st defendant. The documents filed on the side of the defendants do not support their contention. Ex.B1 to Ex.B4 documents do not establish the exclusive title of the defendants in the suit properties. The above documents are not sufficient to prove even the claim of adverse possession by the defendants. Since the joint patta bearing patta No.627 is in the name of the plaintiff and the 1st defendant and the inaction on the part of the 1st defendant to cancel the same, confirms that both the plaintiff and the 1st defendant are joint owners and the plaintiff is entitled to half share in the suit property. Since the plaintiff and the 1st defendant alone are joint owners of the suit property, the suit is not hit by non joinder of necessary parties. There is no perversity or infirmity found in the judgment and decree passed by the courts below, which warrants interference by this



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Court. The substantial questions of law are answered against the appellant.

12. In the result,

- i. The Second Appeal is dismissed. No costs. Consequently connected miscellaneous appeal is closed.
- ii. The decree and judgment dated 26.07.2018 made in A.S. No.02 of 2015 on the file of the Principal District and Sessions Court, Ariyalur, confirming the judgment and decree dated 27.04.2015 made in O.S. No.70 of 2011 on the file of the Additional Sub Court, Ariyalur. is upheld.

02.09.2025

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
bga



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To

1. The Principal District and Sessions Judge, Ariyalur
2. The Additional Subordinate Judge, Ariyalur.
3. The Section Officer, VR Section, High Court, Madras.



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K.GOVINDARAJAN THILAKAVADI,J
bga

Pre-delivery judgment in
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