



S.A.No.858 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.04.2025

CORAM:

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

**S.A.No.858 of 2012
and M.P.No.1 of 2012**

Nadanasabapathy

... Appellant /Plaintiff

Vs.

1.Selvaraj
2.Kumar
3.Aandal
4.Boorayar
5.Govindarasu

... Respondents/Defendants

Prayer: This Second Appeal is filed under Section 100 of C.P.C., against the judgment and decree dated 06.01.2012 made in A.S.No.33 of 2011 on the file of the Principal Subordinate Court, Vriddhachalam, reversing the judgment and decree dated 23.12.2010 passed in O.S.No.338 of 2005 on the file of the I Additional District Munsiff Court, Vriddhachalam.

For Appellant : Mr.C.Prabhakaran
for Mr.V.Anand

For Respondents : Mr.J.Antony Jesus



S.A.No.858 of 2012

JUDGMENT

This Second Appeal has been preferred by the sole plaintiff against the judgment and decree dated 06.01.2012 passed in A.S.No.33 of 2011 by the Principal Sub-Court, Virudhasalam reversing the judgment and decree dated 23.12.2010 passed in O.S.No.338 of 2005 by the I Additional District Court, Virudhasalam.

2.Parties are indicated herein as per their litigate status and ranking before the Trial Court.

3.According to the plaintiff, the suit property (R.S.No.246/8) to an extent of 0.08 cents out of 0.16 cents, 0.08 cents is situate at Kaarmangudi Village of Pennadam Sub-Division, Vriddhachalam Registration District and the property situate to the South and West of the suit property, originally belonged to three brothers namely, Kuppusamy, Thiruvengadam and Chella Pillai. 60 years before the suit property and the property situate to the South of the suit property were allotted to the said Chella Pillai. From then onwards Chella Pillai and after the demise of Chella Pillat, his legal heirs had been in possession and enjoyment of the suit property.

3.1.Chella Pillai has two sons namely Srinivasan and Appadurai.



S.A.No.858 of 2012

Srinivasan died issueless. On 13.07.1996 Plaintiff purchased the suit property from the legal heirs of Appadurai and two cents of land in the suit property, northern side 0.04 cents is used as 'thrashing floor', dumping waste and manure are kept in 0.04 cents. Southern side four cents of land to an extent is levelled and the plaintiff has been cultivating the same. As the defendants are denying his title and trying to interfere with his possession and enjoyment of the suit property, the plaintiff has filed suit for the relief of declaration of his title and for permanent injunction.

4.Contending Contra, on behalf of the defendants 1 to 5, it is contended that Chella Pillai's son Appasamy had five sons and, leaving the two sons of Appasamy, the plaintiff has purchased the suit property through Ex.A1 over and above the extent which the vendors have no right to sell. The thrashing floor, which is said to be in possession and enjoyment of the plaintiff, is in fact being used by all the branches as thrashing floor in common. In the Adangal Extract filed by the plaintiff, five names have been mentioned. Therefore, all the said five persons are entitled for 1/5th share in it. Therefore, Ex.A1 sale deed has been obtained from the persons who have no right for the said extent and therefore, the said sale deed (Ex.A1) will not bind the defendants. Therefore, the suit property in R.S.No.246/8, out of total extent of 6.5 Ares, the plaintiff is entitled only 1/5th share.

3/12



S.A.No.858 of 2012

WEB COPY
issues.

5. Based on the rival contentions, the trial Court framed the following

1. Whether the plaintiff is entitled for the relief as prayed for in the plaint?
2. To what other relief the plaintiff is entitled?

6. At trial, to substantiate the plaint details, the plaintiff has examined himself as P.W.1 and among his three vendors, he has examined the third vendor Arumugam S/o.Appadurai as P.W.2. The Advocate Commissioner was examined as P.W.3 and seven documents have been marked. Ex.A1 is the registered sale deed dated 13.07.1996 executed by Alamelu W/o.Deivasigamani, Velmurugan S/o.Ramu, A.Arumugam S/o.Appadurai in favour of the plaintiff in respect of the suit property. Ex.A2 is the patta in respect of R.S.No.246/7 and 246/8 dated 17.02.2004 for an extent of 0.09.0 ares [2.5 ares + 6.5 ares] standing in the name of five persons. Ex.A3 is Patta in respect of R.S.No.246/8 in patta No.315. Ex.A4 and Ex.A5 are the adangal extracts for the year 01.03.2004 & 28.03.2005. Exs.A6 and A7 are the kist receipts. On the defendants side, the 1st defendant has examined himself as D.W.1 and four documents have been marked. Exs.C1 to C3 are the report of the Advocate Commissioner and rough sketch (I.A.No.1792 of 4/12



2005 and I.A.No.1661 of 2005) FMB in respect of the suit property is marked as Ex.C5.

7.Upon consideration of the oral and documentary evidence and after hearing arguments advanced by either side, the trial Court decreed the suit as prayed for in favour of the plaintiff. Aggrieved, the defendants preferred appeal in A.S.No.33 of 2011 before the Principal Sub-Court, Virudhasalam. In consideration of the case records and upon hearing the arguments of both sides, the first appellate Court held that as the plaintiff has not proved that the suit property fell to the share of Chella Pillai and no title deed or revenue documents in the name of Chella Pillai was marked and only the joint patta has been marked by the plaintiff and based on the Exs.A1 to A7, it cannot be concluded that the plaintiff has got right in the suit property and reversed the findings of the trial Court. Against the said findings, the plaintiff has preferred this Second Appeal.

8.The learned counsel for the appellant/plaintiff strenuously contended that oral partition was taken place among the brothers namely Kuppusamy, Thiruvengadam and Chella Pillai. The revenue records can at best raise a preliminary presumption that the property was held in joint and



S.A.No.858 of 2012

the revenue documents can by no means stand as complete proof of the title and possession. He would further contend that the suit property namely 0.08 cents is identifiable separately and out of which, four cents is demarcated by the raised land. He would further argue that the plaintiff has discharged his burden of proving the fact of partition by examining P.W.2 whose evidence stands unimpeached. The plaintiff has purchased from the legal heirs of Appadurai as per the oral partition took place between Kuppusamy, Thiruvengadam and Chella Pillai. From the date of his purchase, the plaintiff has been in possession and enjoyment of the suit property and in the joint patta along with the name of the defendants, his name is also added.

9.Whereas the learned counsel for the respondent/defendants vehemently argued that the fact that the properties were orally partitioned between the three brothers namely Kuppusamy, Thiruvengadam and Chella Pillai and what was the extent which was in the possession of Chella Pillai are not at all put forth by the plaintiff. The Commissioner's report clearly shows that four cents of suit property which is situated on the north is being used as thrashing floor and being used as place for keeping the factory waste and cow-dung. He forcefully argued that as per the joint patta, all the the five pattadhars are entitled for 1/5th share each and, at the best, the

6/12



S.A.No.858 of 2012

plaintiff is entitled only to 1/5th share in the suit property. As the plaintiff has not established that the suit property was allotted to the share of Chella Pillai and the same in possession and enjoyment of the above said persons, the Appellate Court has rightly allowed the appeal by setting aside the judgment and decree passed in O.S.No.338 of 2005 by the I Additional District Munsif Court, Virudhasalam.

10.The fact that Kuppusamy, Thiruvengadam and Chella Pillai are brothers is not in dispute.

11.The case of the plaintiff in nutshell is that he has purchased the suit property from three legal heirs of Appadurai under a registered sale deed dated 13.07.1996 and his name is added in the joint patta subsequent to his purchase. Therefore, he is the owner of the property and he is entitled for declaration of title and permanent injunction as sought for by him.

12.The defendant Nos.1 to 4 are from the branch of Kuppusamy and 5th defendant is from the branch of Thiruvengadam. The plaintiff claimed that the three brothers namely Kuppusamy, Thiruvengadam and Chella Pillai have divided their family properties through oral partition. But, there is no



S.A.No.858 of 2012

whisper in the plaint that Chella Pillai had been in enjoyment of suit property.

WEB COPY

13.Chella Pillai had two sons namely Srinivasan and Appadurai. Srinivasan is no more and died issueless, which is not in dispute. Appadurai had five sons as per the evidence of D.W.1. But, the plaintiff has purchased the suit property through Ex.A1-sale deed from three legal heirs leaving the other two legal heirs namely Pattusamy and Kaipillai. When the defendants have stated that Appadurai died leaving five legal heirs and only from three legal heirs the plaintiff has taken the sale deed, then in order to establish his case, the plaintiff should have taken steps to prove the fact that Appadurai had only three legal heirs from whom he has purchased the suit property.

14.From the revenue records, namely Exs.A2 to A5, B1, B2, Exs.C1 to C5, it is pellucid that the family originally owns 0.10.0 ares = 24.7 cents

(R.S.No.246/7 2.5 ares;

R.S.No.246/8 0.65 ares;

R.S.No.246/10 0.10 ares)

15.From both sides evidence and Advocate Commissioner's plan and report, it is made clear that northern portion of the suit property is being

8/12



S.A.No.858 of 2012

used as thrashing floor measuring 0.04 cents and still it is being used as thrashing floor as well as collection place for cow-dung and dumping waste.

The Patta in respect of the suit survey number even after Ex.A1-sale deed stands in the name of plaintiff as well as the defendants (6 persons). The plaintiff has not given any details as to the exact extent of the suit property fell to the branch of Chella Pillai and no revenue records in the name of Chella Pillai have been shown to the effect that before 60 years oral partition took place between the three brothers (Kuppusamy, Thiruvengadam and Chella Pillai). The plaintiff has examined one of the vendors, namely, Arumugam S/o.Appadurai as P.W.2. Even P.W.2 is not in a position to clarify these details. Therefore, based on two reasons, the appellant/plaintiff has to be non-suited.

- i) No explanation as to the details of oral partition and the extent of property fell to the share of Chella Pillai have been given
- ii) Non filing of revenue records in the name of Chella Pillai.
- iii) The plaintiff has taken the sale deed only from some of the legal heirs of Appadurai leaving some of the legal heirs.

16.In view of these discussions and observations, this Court does not



S.A.No.858 of 2012

find any good reason to upset the finding of the first appellate Court. The Substantial Questions of Law are answered against the plaintiff. This Court

WEB COPY

does not find any perversity or illegality in the findings of the 1st Appellate Court.

17.Above being the position, the Second Appeal stands dismissed. The judgment and decree dated 06.01.2012 passed in A.S.No.33 of 2011 by the Principal Sub-Court, Virudhasalam stands confirmed. There is no order as to costs. Consequently, connected Miscellaneous Petition is closed.

gbi

29.04.2025

Index : Yes / No
Internet : Yes/ No



S.A.No.858 of 2012

To
WEB COPY

- 1.The Principal Subordinate Court,
Vriddhachalam.
- 2.The I Additional District Munsiff Court,
Vriddhachalam.
3. The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.



WEB COPY



S.A.No.858 of 2012

R.KALAIMATHI, J.,

gbi

S.A.No.858 of 2012

29.04.2025