



A.S.No. 179 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

DATED : 13.03.2025

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

A.S.No. 179 of 2017

1. Yasothai

Ponnan @ Ponnusamy (died)

3. Palanivel

4. P.Krishnamoorthy

5. P.Palusamy

6. P.Kalyanasundaram

7. R. Karpagam

Appellants 3 to 7 are brought on record
as LR's. of deceased 2nd appellant vide
order of court dated 27.01.2020 made
in C.M.P.No. 8227 of 2019

... Appellants

Vs.

1. Kaliyaperumal

2. Premkumar

3. Paramasivam

.. Respondents

PRAYER : Appeal Suit filed under Sec. 96 r/w Order 41 Rule 1 of Civil

Procedure Code, to set aside the judgment and decree dated 17.08.2016

passed by the Principal District cum Sessions Court at Ariyalur in O.S.



A.S.No. 179 of 2017

No.10 of 2014.

WEB COPY

For Appellants : Mr.R.Jayaprakash

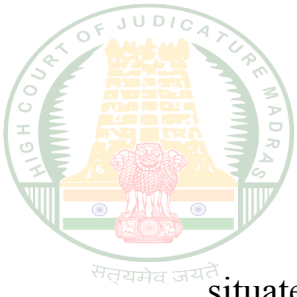
For Respondents : Mr.Usha Ramman

JUDGMENT

The appellants 1 and 2 herein are the defendants in the suit in O.S.No.10 of 2014, on the file of Principal District cum Sessions Court at Ariyalur filed by 1st respondent/plaintiff claiming partition of his half share in the suit property. On hearing both sides, the trial court granted the relief as prayed for. Now, challenging the said findings, they have preferred this Appeal Suit.

2. For the sake of convenience, the parties are denoted as per the ranking in the suit.

3. Before the trial court, the suit was originally filed by plaintiff against the defendants 1 to 4. The 2nd defendant is his brother and 3rd and 4th defendants are the successors of second item of suit property. The plaintiff contended that the suit property is an ancestral property and the 2nd item



A.S.No. 179 of 2017

WEB COPY

situated on the north to south of ancestral property was enjoyed by their family for several decades treating it as joint family properties. After the demise of his father, plaintiff is having half share and his brother, 2nd defendant is having half share in the property. But, the 2nd defendant managed to get a patta in favour of his wife in respect of second item of suit property. Based on that, he has sold the property to defendants 3 and 4 on 23.12.2013, but the said sale would not bind on him. Hence, he come forward with the present suit claiming partition.

4. The defendants 1 and 2 have contested the suit. The 3rd and 4th defendants remained exparte. On hearing both sides, considering the evidence on record, the trial judge found that the suit properties are ancestral in nature, thereby the plaintiff entitled to half share as prayed for. Accordingly, the suit was decreed. Challenging the said findings, now the defendants 1 and 2 have preferred this Appeal Suit.

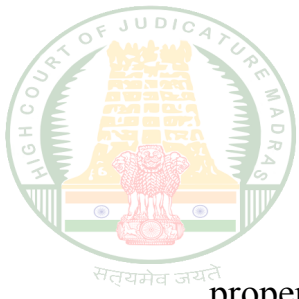
5. Brief facts of the case is as follows :-



A.S.No. 179 of 2017

WEB COPY

The plaintiff and 2nd defendant are brothers and sons of one Velan is an admitted fact. The 1st defendant is the wife of 2nd defendant. The suit properties/item Nos.1 and 2 as described in the plaint schedule situated on the north to south of ancestral land belongs to plaintiff's family and his father was in possession and enjoyment of suit properties along with his ancestral property situated in the middle and as per physical features on ground, they could not enjoy their patta lands without the suit property. The suit property all along treated as joint family properties along with ancestral property. At the instance of 2nd defendant, he managed to get an assignment in favour of his wife/1st defendant in respect of second item of suit property and on coming to know about the same, he raised objections. Thereafter, a joint patta was issued on 31.05.1989 by including his name in respect of both items of suit property. Immediately, the 1st defendant herein filed a suit against this plaintiff in O.S.No.276 of 1989 claiming that the suit property assigned to her and enjoyed the same absolutely and prayed for permanent injunction against this plaintiff and other consequential reliefs. In that suit, this plaintiff filed a written statement stating that Yasodhai/1st defendant has no absolute right and claim over the suit



A.S.No. 179 of 2017

WEB COPY

properties as it is an ancestral property. Thereafter, the said suit was allowed to dismiss for default and she took steps to restore the suit in I.A.No. 424 of 1993 with an application for condonation of delay of 942 days and the same was also dismissed. Against which, Civil Revision Petition in C.R.P.No.799 of 1997 was filed and the same was also dismissed. Thus, the alleged assignment claimed by the 1st defendant is not true and valid one. In fact, plaintiff's father was in actual possession and enjoyment of the suit properties continuously for more than 16 years. After his demise, the plaintiff and his brother Ponnann, each entitled for half share in the suit properties and they enjoyed the same by raising R.S. Pathi trees in the suit properties. But, with an ulterior motive, 2nd defendant obtained assignment in the name of his wife and also obtained patta. When it was objected by the plaintiff, on enquiry, the R.D.O. passed an order on 15.01.1989 by including the plaintiff's name along with 1st defendant and issued a joint patta in the month of May 1989. Thereafter, 1st defendant filed the earlier suit in O.S.No.276 of 1989 and subsequently, she has not prosecuted the suit. After dismissal of the said suit, on 23.12.2013 the defendants 1 and 2 sold the entire suit properties in favour of defendants 3

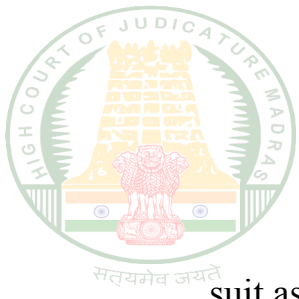


A.S.No. 179 of 2017

WEB COPY

and 4 including plaintiff's share. But, the said sale would not bind the plaintiff's half share. Therefore, he came forward with the present suit claiming partition.

6. The 1st defendant contested the suit by filing a written statement, wherein she admitted the relationship, but denied the other allegations. She would submit that the suit properties absolutely belong to her and her husband obtained patta in favour of her in the year 1989 and ever since, she enjoyed and patta also assigned No.1078 in her favour. She would also submit that it is not ancestral property as claimed by the plaintiff and in respect of patta land belong to plaintiff's family was orally divided about 60 years back, in which the plaintiff was allotted with the lands in Survey No.181/1B2, 181/1B4, 181/2B and her husband was allotted with the lands in Survey No.181/1B1 and 181/1B3. After that, they have obtained separate patta under UDR scheme, since the suit properties are not ancestral property, it was included, thereby denied the plaintiff's claim of partition. Further, she would submit that she sold the property for a valid consideration to defendants 3 and 4. Therefore, she prayed to dismiss the

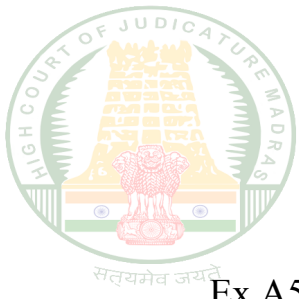


A.S.No. 179 of 2017

suit as no merit.

WEB COPY

7. The 3rd and 4th defendants remained exparte. Before the trial court, on the side plaintiff, he was examined as P.W.1 and documents Ex.A1 to Ex.A8 were marked. On the side of defendants, D.W.1 and D.W.2 were examined and individual witness was examined as D.W.3 and the documents Ex.B1 to Ex.B8 were marked. Considering the evidence on record, the trial court framed three issues. The foremost issue is whether the suit property is an ancestral property and another issue is whether the plaintiff is entitled for partition as prayed for. While discussing the issues, the trial judge perused the documents adduced on either side and found that as per Ex.B3, suit second item in Survey No.181/2A assigned in the name of 1st defendant, but the same was not mentioned in the earlier suit filed by the 1st defendant against this plaintiff in O.S.No. 276 of 1989, simply she claimed right based on the patta and if at all, she was assigned with absolute right, she would have stated the same in her earlier suit, which itself shows that the 1st defendant not enjoyed the properties with her absolute right, besides as per the order passed by Tahsildar marked as



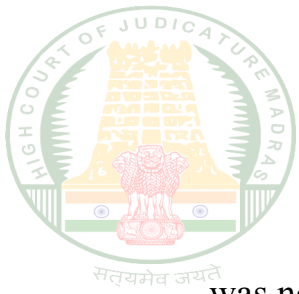
A.S.No. 179 of 2017

WEB COPY

Ex.A5, a joint patta was issued in favour of plaintiff and the 1st defendant.

Against which, no appeal was preferred, without which, the 1st defendant was not entitled to claim absolute right and as on date, the plaintiff had also jointly possessed along with 1st defendant. As per evidence, in between suit two items, ancestral property was situated and the 2nd defendant, who claimed that already partition held in the family, but the same was not mentioned in the sale deed executed by them in favour defendants 3 and 4, which itself shows that the suit property is ancestral in nature and not partitioned, thereby the plaintiff was entitled for half share as he claimed. Accordingly, the suit was decreed. Challenging the said findings, the defendants 1 and 2 preferred this Second Appeal.

8. The learned counsel for appellants argue that the court below failed to take note of the fact that the suit property was assigned in favour of 1st defendant as early as in the year 1969, but the same was disagreed without assigning any reason as such is not acceptable one. He would further submit that oral partition was effected 50 years back in respect of ancestral property and mutation of records was also effected, but the same



A.S.No. 179 of 2017

WEB COPY

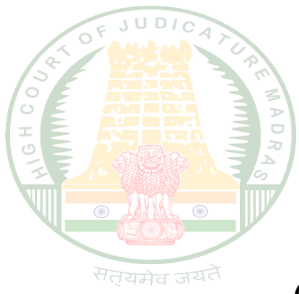
was not objected by the 1st respondent. To that effect, he relied the ratio laid down in authority reported in **2010 (4) CTC 640** in the case of **Venkataramana and 7 others vs. N.Munuswamy Naidu and 4 others**, wherein this Court held as follows:-

“Evidence Act, 1872 (1 of 1872), Sec. 115 – Law of Estoppel – Applicability – Mutation in revenue records – During Settlement proceedings Revenue entries were mutated in favour of defendant – Plaintiff failed to raise an objection before authorities, even though they had knowledge about mutation of revenue entries – Plaintiff ought to have raised objection, otherwise he is estopped from claiming right over property.”

He would further submit that the plaintiff is having other sisters, but they were not added as necessary parties. To that effect, he relied the ratio laid down in authority reported in **2001 (2) CTC 601** in the case of **Kaliammal vs. Karuppan and 2 others**, wherein this Court held as follows:-

“Code of Civil Procedure, 1908, Order 1, Rule 9 – Non-joinder of necessary party – Suit for partition against purchaser from co-sharer – Non-impleadment of one of co-sharer/transferor – Suit is liable to be dismissed.

Code of Civil Procedure, 1908, Order 1, Rule 10(2) – Powers of



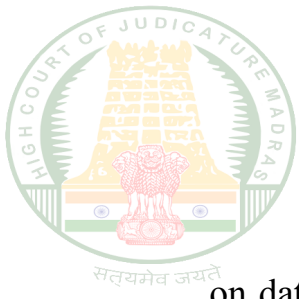
A.S.No. 179 of 2017

WEB COPY

Court to add necessary parties – Court cannot take any initiative on its own under Order 1 Rule 10(2) of C.P.C. in absence of proper particulars relating to all parties who are left out.....”

He would also submit that the trial court erroneously held that the suit property was an ancestral property by taking into consideration of joint patta as such is liable to be set aside, since there is no material evidence to establish that the suit properties are ancestral in nature. But the court below erroneously concluded that the suit properties are ancestral properties, since because it is situated nearby the ancestral property as such is illegal and liable to be set aside.

9. By way of reply, the learned counsel for 1st respondent/plaintiff would argue that the suit property was possessed and enjoyed by his father Velan for several decades and in the middle of the same, the ancestral properties are situated and it cannot be enjoyed without the suit properties. But, the 2nd defendant/his brother fraudulently obtained assignment in the name of his wife and obtained patta, but on objections, the Tahsildar conducted enquiry and granted joint patta by including the plaintiff. So, as



A.S.No. 179 of 2017

WEB COPY

on date, the joint patta is in force. Against which, no appeal was preferred by the defendants 1 and 2. Furthermore, the 1st defendant filed a suit in O.S.No. 276 of 1989 after issuance of joint patta in the year 1989, wherein this plaintiff filed a written statement denying her right and thereafter, suit was allowed to dismiss for default without contest. All of a sudden, defendants 1 and 2 collusively sold the suit properties to defendants 3 and 4 in order to defraud the plaintiff's right over the suit properties, but the court below rightly appreciated the evidence on record and correctly held that it is an ancestral property, in which the plaintiff is entitled for half share, which needs no interference, accordingly, he prayed to dismiss this Second Appeal as no merit. Further, he would contend that the dispute is between the plaintiff and the defendants 1 and 2. So, there is no necessity for impleading other legal heirs and the suit properties are under the cultivation of plaintiff and defendants 1 and 2 as per joint patta. Hence, the suit is not bad for non-joinder of necessary parties. Accordingly, he prayed to dismiss the appeal suit as no merit.

10. Heard and considered rival submissions made on either side and



A.S.No. 179 of 2017

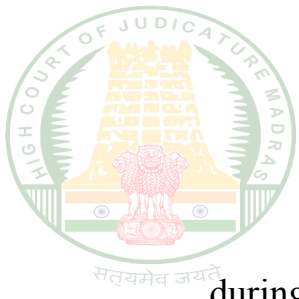
WEB COPY

perused the materials available on record.

11. The point for consideration is as follows :-

Whether the plaintiff is entitled for half share in the suit property or is it an admitted property of 1st defendant.

12. Considering both side submissions, the fact reveals that the plaintiff and the 2nd defendant are brothers and sons of one Velan. The 1st defendant is the wife of 2nd defendant. The contention of plaintiff is that on the north to south of their ancestral property, the suit properties are situated, without which, their ancestral property cannot be enjoyed. For several decades, his father possessed and enjoyed the suit properties along with ancestral property and after his demise, his two sons, plaintiff and 2nd defendant enjoyed the properties jointly, but the plaintiff denied that the 2nd defendant managed to get assignment in favour of his wife after the marriage. Based on that assignment, patta was also issued in her name and on coming to know that, the plaintiff raised objections. After due enquiry, the Tahsildar issued joint patta in the name of plaintiff and 1st defendant



A.S.No. 179 of 2017

WEB COPY

during May 1989. Thereafter, the 1st defendant filed a suit in O.S.No.276 of 1989 in the month of July 1989 as if she possessed and enjoyed the property after her marriage nearly about 20 years without any interruption.

13. As rightly pointed out by the learned counsel for plaintiff that there is no mentioning about the alleged assignment stand in her name and the said suit was objected by the plaintiff by filing written statement, wherein it is stated that it is an ancestral property. After that, the suit was allowed to dismiss for default and the same was not restored. An application for condonation of delay was filed and the same was dismissed. Consequently, a Civil Revision Petition proceedings was initiated, which was also dismissed. The issue is whether the plaintiff is bound to prove that he is having half share in the suit properties as he come forward with this suit. To prove his claim, the plaintiff produced joint patta dated 31.05.1989, which itself shows that suit two items in Survey No.181/1A1 and 181/2A, on enquiry, the Tahsildar issued a joint patta by including this plaintiff along with 1st defendant in Patta No.1078. After the issuance of the said patta in the month of July 1989, Yasothai, 1st defendant filed a suit in

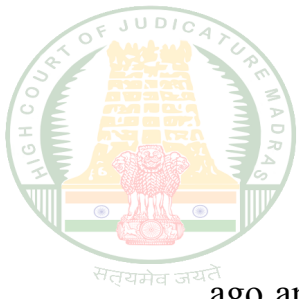


A.S.No. 179 of 2017

WEB COPY

O.S.No.276 of 1989, but she has not filed any appeal against the order passed by the Tahsildar, thereby as on date, joint patta stands in the name of plaintiff and 1st defendant. During the evidence, D.W.1 and D.W.2 also admits that in the middle of suit property, their ancestral property was situated. Admittedly, the 1st defendant claimed right after her marriage, but during the evidence, D.W.2 admits that during the life time of his father, he possessed and enjoyed the suit property, which itself shows that even before the alleged assignment relied by the 1st defendant, the plaintiff's father possessed and enjoyed the suit property. Considering the said possession alone, on due enquiry, the Tahsildar issued joint patta in the name of plaintiff and 1st defendant. Therefore, the plaintiff is able to establish that his father possessed and enjoyed the suit properties along with ancestral property for several decades.

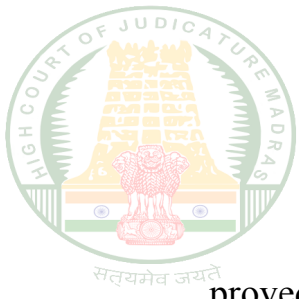
14. The objections raised on the side of 2nd defendant that already in respect of ancestral property, oral partition was effected long back 50 years



A.S.No. 179 of 2017

WEB COPY

ago and the suit properties are not included in the said partition, since it is absolutely belonged to his wife/1st defendant. To establish the same, they produced a patta passbook stands in the name of plaintiff and 1st defendant. Admittedly, in respect of some other survey numbers, two pattas stand in the name of plaintiff and 1st defendant marked as Ex.B2 and Ex.B5. According to 2nd defendant, the suit property was assigned to 1st defendant absolutely and subsequently it was sold to defendants 3 and 4 for a valid consideration. To that effect, the sale deed is marked as Ex.A8. On perusal of the said document, both defendants 1 and 2 sold the property in favour of defendants 3 and 4 and their sons on 23.12.2013, wherein it was mentioned that the suit property was ancestrally belongs to them and they enjoyed absolutely. If the 1st defendant is having exclusive right over the suit properties, there is no necessity to include other family members in the sale deeds, which itself shows that it is not absolute property of 1st defendant. Further, as per the recitals of sale deed, the nature of property is mentioned that it was belong to them ancestrally. From that, it could be ascertained that it is not individual property of 1st defendant and it is ancestral property of the family. Furthermore, oral partition was also not



A.S.No. 179 of 2017

WEB COPY

proved by the 2nd defendant. Though he was examined as D.W.2, he was not able to give evidence in respect of oral partition held in the family and the same was rightly observed by the court below. When the 2nd defendant relied the oral partition, he was bound to prove the same, but he failed. Considering the joint patta stands in the name of plaintiff and 1st defendant as well as evidence of 2nd defendant, who admits that his father enjoyed the suit property along with ancestral property itself proves that the suit property was also ancestral in nature and the same was rightly concluded by the trial court, which needs no interference. Finally, it is concluded that the suit properties are ancestral properties, in which plaintiff is entitled for half share and 2nd defendant is entitled for half share by including the share of plaintiff. Now, the sale deed was conveyed in favour of defendants 3 and 4 as such it would not bind the plaintiff, thereby he is entitled for the relief of partition as prayed for. Accordingly, issue no.1 is answered.

15. As discussed above, the suit properties are ancestral in nature and as on date, joint patta stands in the name of both plaintiff and 1st defendant and it is not absolute property of 1st defendant as she claimed. Accordingly, issue no.2 is answered.



A.S.No. 179 of 2017

WEB COPY

16. In view of the above, this Appeal Suit is dismissed as no merit and the findings rendered by the learned Principal District cum Sessions Judge, Ariyalur in O.S.No.10 of 2014 is confirmed. Suit is decreed as prayed for. The plaintiff is granted with half share by way of preliminary decree. In respect of non-joinder of necessary party, it would not arise for the reason that based on the joint patta, suit properties belong to plaintiff and 1st defendant. Therefore, the other parties are not necessary and hence, the plea of non-joinder of necessary party would not arise. To that effect, the objections raised by the appellants is unsustainable one. No costs.

13.03.2025

Index : Yes / No
Internet : Yes / No
Speaking/Non-speaking order
rpp
To
Principal District cum Sessions Judge, Ariyalur.

T.V.THAMILSELVI, J.

rpp



WEB COPY



A.S.No. 179 of 2017

A.S.No. 179 of 2017

13.03.2025