



SA(MD)No.249 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 01.07.2025

CORAM :

THE HONOURABLE Mr. JUSTICE G.ARUL MURUGAN

S.A.(MD)No.249 of 2025

T.Rengarani (Died)

1.T.Rajagopal

2.Revathi

3.Gopalakrishnan

4.Nandhagopalakrishnan

5.Anandhagopalakrishnan ...Appellant / Appellant / Plaintiff

Vs

1.Sundareshwari

Antonyraj (died) ... Respondents / Respondents / Defendant

Prayer : This Second Appeal is filed under Section 100 C.P.C., to set aside the judgment and decree of the lower appellate Court dated 04.04.2024 passed in A.S.No.42 of 2022 on the file of the Subordinate Judge, Aruppukottai, confirmed the judgment and decree of the trial Court dated 27.09.2022 passed in O.S.No.245 of 2011 on the file of the



SA(MD)No.249 of 2025

Additional District Munsif Court, Aruppukottai and allow the Second Appeal.

For Appellants : Mr.K.Chengiz khan

For Respondents : Mr.H.Thirunavukkarasu

ORDER

The legal heirs of the unsuccessful first plaintiff who are impleaded in the suit as plaintiffs 2 to 6 are before this Court on appeal. The appeal is filed challenging the judgment and decree dated 04.04.2024 in A.S.No.42 of 2022 on the file of the Subordinate Judge, Aruppukottai, confirming the judgment and decree dated 27.09.2022 in O.S.No.245 of 2011 on the file of the Additional District Munsif, Aruppukottai.

2. For the sake of convenience, the parties are referred to as per their litigative status before the trial Court.

3. It is the case of the plaintiffs that the suit property originally belong to the mother of the first plaintiff Rajammal. The property was



SA(MD)No.249 of 2025

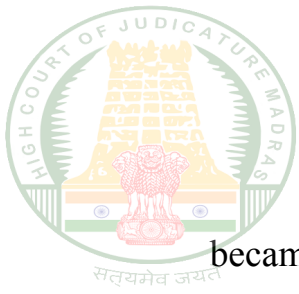
gifted to her by her father Gopalsamy Naidu as sridhana. Based on which her mother was in possession and enjoyment of the suit property and pursuant to her death, the plaintiff, being the legal heir, had inherited the suit property and are in enjoyment of the same. It is the further case of the plaintiff that patta has been issued in her mother's favour in patta No.199 and the plaintiff was paying the kist receipts and she is in possession and enjoyment of the suit property. While so, the first defendant who is the daughter of the first wife of her husband started to create problems and interfere in the suit property. As such the plaintiff have come up with the suit for declaration and permanent injunction. Pending suit, an amendment was also made by including the second defendant in the suit, on the ground that on 17.08.2010, the first defendant had settled the suit property in favour of her son, the second defendant. As such the further relief to declare the settlement deed executed by the first defendant in favour of the second defendant as null and void is also sought.

4. The defendants resisted the suit by filing a written statement contending that originally, the suit property belong to Gopalsamy Naidu.



SA(MD)No.249 of 2025

He had two sons and five daughter and by a settlement deed, dated 04.04.1949 in Ex.B2, he had settled the suit property in favour of three of his daughters Muniyammal, Boopathiammal and Maragathammal. Pursuant to the settlement, they became the owners of the suit property and were in possession and enjoyment of the same. It is the further case of the defendants that Boopathiammal had further settled her 1/3 share in the suit property in favour of her sister Muniyammal through settlement deed dated 22.10.1949 in Ex.B3. According to the defendants, Muniyammal who got 2/3 share of the suit property, by a settlement deed dated 23.11.1959 in Ex.B4, had settled the 2/3 share in favour of Sundareshwari, the first defendant and Thangaraj, the uncle of the first defendant. Further, it is the case of the defendants that Maragathammal in a family arrangement had given her 1/3 share to her son Ganesa Raja and since the first defendant married Ganesa Raja and pursuant to the death of Ganesa Raja, 1/3 share came to the first defendant. The other 1/3 share came through the settlement deed in Ex.B4 and the balance 1/3 share which went to Thangaraju, uncle of the first defendant. Since he died intestate in SriLanka, that 1/3 share also had devolved on the first defendant. As such according to the defendants, the first defendant



SA(MD)No.249 of 2025

became the absolute owner of the entire suit schedule property through these documents and she had settled the suit property in favour of her son in the year 2010. It is the further case of the defendant that based on these documents, the patta has been issued in favour of the first defendant's mother Muniyammal through a settlement register in Ex.B1, based on which the defendant is paying the kist to the Government in receipts in Ex.B9 and they are in the possession and enjoyment of the suit property. As such the plaintiffs does not have any right over the suit property and they have sought for dismissal of the suit.

5. During trial, the fourth plaintiff in the suit examined himself as P.W.1 and further examined P.W.2, P.W.3 and marked Ex.A1 to Ex.A6. On the side of the defendants, the first defendant examined herself as D.W.1 and one Mallika as D.W.2 and marked Ex.B1 to Ex.B9. Two other documents were also marked through witnesses as Ex.X.1 and Ex.X.2. The trial Court on analyzing the documents and evidences, came to the conclusion that the plaintiff had not established her title to the suit property and therefore is not entitled for declaratory decree. The trial Court also found that the subsequent relief sought for in amendment to



SA(MD)No.249 of 2025

declare the settlement executed by the first defendant in favour of the second defendant, was not filed within time and it is barred in view of Article 58 of the Limitation Act. The trial Court also concluded that since the plaintiffs have only relied on the patta in Ex.A1, the patta cannot be a document of title and thereby had dismissed the suit.

6. On appeal, the lower appellate Court on coming to the conclusion that the plaintiffs had not disputed the documents filed on the side of the defendants by filing a rejoinder and also coming to the conclusion that only when the UDR records were updated in the year 1989, the patta Ex.A1 came to be issued, whereas even prior to that the patta in respect of the suit property stood in the name of the mother of the first defendant, had come to be conclusion that the plaintiffs have not established the title. Further on placing reliance on the documents in Ex.B1 and also the mortgage executed by the defendants in Ex.B5 and Ex.B6 and the kist receipts in Ex.B9, concluded that the defendants are in possession and have title to the suit property, had dismissed the appeal confirming the judgment and decree of the trial Court.



SA(MD)No.249 of 2025

WEB COPY

7. Assailing to the concurrent finding of fact, the plaintiffs are before this Court on appeal.

8. Learned counsel for the appellant argued that the patta in Ex.A1 has been issued in favour of the first plaintiff's mother which establishes the title of the plaintiff. It is his further contention that the property was given as Sridhana by her grandfather Gopalsamy Naidu in favour of his mother Rajammal and pursuant to the death of Rajammal, the property devolved on her daughter, the first plaintiff Rengarani. As such by tracing the title from Gopalsamy Naidu through the gift and also the patta issued in favour of her mother in Ex.A1, learned counsel contended that the plaintiffs had discharged their onus and established the title to the suit property. Further, it is his contention that in view of the patta issued in Ex.A1 and coupled with the kist receipts filed by the plaintiffs, in Ex.A4 to Ex.A6, the plaintiffs are in possession of the suit property. It is the further vehement contention of the learned counsel that though the defendants claim title to the suit property through the document in Ex.B2 to Ex.B4, according to him, the settlement in Ex.B2 had never been acted



SA(MD)No.249 of 2025

upon and further, though the defendant is able to trace her title in respect to 2/3 of the suit property, in respect of the balance 1/3 that went to the share of Thangaraj, the defendants have not filed proper documents to establish their exclusive title of the suit property and therefore the conclusion arrived at by the Courts below that the defendants have title for the suit property and dismissing the suit of the plaintiff, is perverse and sought for interference of this Court.

9. Mr.H.Thirunavukkarasu, learned counsel appearing for the respondent submitted that when the plaintiffs had filed the suit seeking a relief of declaration and consequential injunction, the onus was on the plaintiffs to plea and prove their case for a decree of declaration. It is his further contention that the plaintiff cannot rely on the weaknesses in the case on the defendants and when the defendants were successful in establishing their title to the suit property and also filed documents to prove their possession, the plaintiff had miserably failed to file any documents tracing their title to the suit property. The further relief also seeking to amend the prayer to declare the settlement deed in Ex.B1 and Ex.B2 has also been rightly rejected by the Court as the same was filed



SA(MD)No.249 of 2025

beyond the period of three years prescribed under Article 58 of the Limitation Act.

10. Learned counsel further contended that the Courts below also rightly found that when even the patta stood in the name of the first defendant's mother prior to the UDR, the subsequent change created in the UDR mistakenly would not create any right in favour of the plaintiffs and had rightly dismissed the suit which are based on the documents available on record and therefore requires no interference and sought for dismissal of the appeal.

11. Heard the rival submissions and perused the materials available on record.

12. Admittedly, the suit property originally in Jamin Patta No.101 having paimash number 153/7 belong to one Gopalsamy Naidu. There is no dispute in respect of the fact that Gopalsamy Naidu was the title holder of the property. Further it is also the admitted case of the parties that the Gopalsamy Naidu had two sons and five daughters.



SA(MD)No.249 of 2025

WEB COPY

13. It is only the case of the plaintiffs that the said Gopalsamy Naidu had given the suit property to one of her daughter Rajammal as a gift for sridhana. No document evidencing the gift, as claimed to have been executed by the Gopalsamy Naidu in favour of Rajammal, is filed. It is the further claim of the plaintiff that in view of the gift given by Gopalsamy Naidu to Rajammal, she had been in possession of the suit property and based on which a patta in Ex.A1 came to be issued in favour of Rajammal. Pursuant to Rajammal's death, the first plaintiff Rengarani had inherited the suit property and she had been in possession and enjoyment of the same. Based on such claim, the plaintiff seeks a declaration to declare that she is the absolute owner and for consequential injunction.

14. However, it is the claim of the defendants that the Gopalsamy Naidu had executed a registered settlement deed on 04.04.1949 in Ex.B2 in favour of three of his daughters Muniyammal, Boopathiammal and Maragatham ammal. Since Gopalsamy Naidu is the admitted owner of the property, in view of the settlement deed executed by the said



SA(MD)No.249 of 2025

Gopalsamy Naidu, in favour of her three daughters in Ex.B2, Muniyammal, Boopathiammal and Maragatham ammal, became the absolute owners, each entitled to 1/3 share in the suit property. The defendants have also filed settlement deed dated 22.10.1949 in Ex.B3. The settlement deed in Ex.B3 reveals that the Boopathiammal who got 1/3 share in the suit property through the settlement deed in Ex.B2 had settled her share of property in favour of her sister, Muniyammal. As such through the settlement deeds in Ex.B2 and Ex.B3, Muniyammal became entitled to 2/3 share in the suit property and the balance 1/3 share vested with Maragatham ammal.

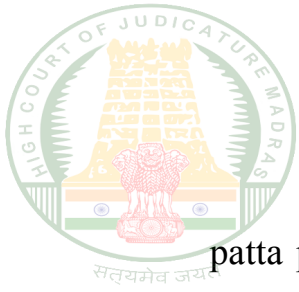
15. Muniyammal who got 2/3 share in the suit property had further executed a settlement deed dated 23.11.1959 in Ex.B4 settling the 2/3 share in favour of Sundareshwari, the first defendant and Thangaraju her uncle. It is the claim of the first defendant that in respect of the 1/3 share that remained with Maragatham ammal in a family arrangement, Maragatham ammal had given her 1/3 share of the property in favour of her son Ganesh Raja. Since the first defendant had married Ganesha Raja and the said Ganesha Raja died, pursuant to his death, as the wife,



SA(MD)No.249 of 2025

the first defendant had inherited the 1/3 share through Ganesha Raja from Maragatham ammal. It is the further case of the first defendant that though she had got only 1/3 share from Muniyammal, through the settlement deed in Ex.B4, in respect of the other 1/3 share which was settled in favour of Thangaraju, her uncle who died issueless in Sri Lanka and pursuant to which, the first defendant had also inherited the share that went to Thangaraju. As such the defendant by placing reliance on the registered settlement deed in Ex.B2, Ex.B3 and Ex.B4 had traced her title to the suit property.

16. It is to be noted that when the first defendant had made claim in respect of the balance 1/3 share apart from the 2/3 share which she got herself and through her husband that pursuant to the death of Thangaraju, she was entitled for that balance 1/3 share. The plaintiffs have not filed any rejoinder disputing the said contentions of the 1st defendant and the same has gone undisputed. The defendant had also filed a document in Ex.B1 which is the patta in the settlement register. Perusal of the document in Ex.B1 reveals that the patta prior to the UDR stood in the name of the mother of the first defendant ie., Muniyammal. When the



SA(MD)No.249 of 2025

patta prior to UDR in respect of the suit property stood in the name of Muniyammal, it is not explained as to how subsequently in the UDR, the patta came to be issued in the name of the first plaintiff's mother Rajammal in Ex.A1. It could only be a mistaken entry and the plaintiff miserably failed to establish as to based on which document they are entitled for the patta. When the patta prior to the UDR evidently stood in the name of the mother of the first defendant in Ex.B1, the claim made by the plaintiffs by merely relying on Ex.A1, cannot be sustained. Further from the documents filed in Ex.B5 and Ex.B6, the first defendant had mortgaged the suit property, earlier in favour of the co-operative society and later in favour of one private party Mallika Devi. The mortgage deeds marked in Ex.B5 and Ex.B6 (entire suit property) would also go to show that the first defendant is the exclusive owner of the suit property. Based on these documents the first defendant has been paying kist to the Government and she had also filed receipts in Ex.B9 which would evidence the possession of the first defendant in the suit property.

17. When the defendants by filing these documents in Ex.B1 to Ex.B9 had proved the title to the suit property and also their exclusive



SA(MD)No.249 of 2025

possession, the plaintiffs who had come up with the suit for declaration miserably failed to establish their title over the suit property. As per Section 101 of the Indian Evidence Act, the onus is on the plaintiffs to discharge their burden by proving their claim by filing necessary documents and evidences. It is only the argument of the learned counsel for the appellants that though the defendants had filed documents to trace title in respect of 2/3 share of the suit property, still they have not filed documents to establish their 1/3 share in the suit property. It is a settled proposition that the plaintiffs who had come up with the suit for declaration, is bound to succeed on his own strength and cannot rely on the weaknesses or defence on the side of the defendants. In the instant case, when the defendants have successfully filed documents and let in evidence to prove the title, the plaintiffs except by filing a document in Ex.A1 which is also a patta issued in the UDR, have not filed any other documents to establish the title. As rightly observed by the Courts below, a mere filing of patta does not evidence the title of the plaintiff and in the absence of any document to show the title, the plaintiff is not entitled for the relief of declaration.



SA(MD)No.249 of 2025

WEB COPY

18. In view of the above findings, the further relief of declaration, seeking to declare the settlement deeds in Ex.B2 and Ex.B3 are not sustainable and also in view of Article 58 of the Limitation Act, the plaintiff ought to have sought for such amendment within a period of three years and when admittedly they have not come up within such time, the relief has been rightly found to be barred by limitation.

19. In view of the above deliberations, this Court does not find any illegality or perversity in the concurrent finding of fact arrived at by the Courts below. There is no substantial question of law arise for the consideration in this Second appeal.

20. Accordingly, this Second Appeal is dismissed. However, there shall be no order as to costs.

01.07.2025

NCC :Yes/No
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15/16



WEB COPY



SA(MD)No.249 of 2025

G.ARUL MURUGAN, J.

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To

1. The Subordinate Judge, Aruppukottai.
2. The Additional District Munsif, Aruppukottai
3. The Section Officer, VR Section,
Madurai Bench of Madras High Court, Madurai.

S.A.(MD)No.249 of 2025

01.07.2025

16/16