

Raman @ Ramasamy (Died) vs Tamilselvi on 4 July, 2024

SA.(MD)No.373 of

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 04/07/2024

CORAM

The Hon'ble Mr.Justice G.ILANGO VAN

SA(MD)No.373 of 2022

and

CMP(MD)No.4370 of 2022

1.Raman @ Ramasamy (Died)
Paramathevar(Died)
Pandi (Died)
C.Raman (Died)

2.Duraipandi
3.K.V.Vellaisamy (Died)
4.Thayammal
5.Jothi Basu
6.Janaki
7.Susila
8.Rajapandi
9.E.Chithra
10.P.Krishnan
11.Kottaisamy
12.Pasupathi
13.Pandiyammal
14.Kannan
15.Kaviyarasan

: Appellants/Appellants/
Plaintiffs

16.Mani
17.Hemalatha
18.Indira
19.Parimala
20.Kasthuri Devi

(Appellants 16 to 20 are brought
on record as Lrs of the deceased
1st appellant, vide court order,
dated 08/06/2023 made in CMP(MD)
Nos.6608, 6610 and 6612 of 2013
in SA(MD)No.373 of 2022)

: Appellants 16 to 20

21.Songammal
22.Rajamanickam
23.Rajayokkiam
24.Rathika

: Appellants 21 to 24

<https://www.mhc.tn.gov.in/judis>
1/20

SA. (

(Appellants 21 to 24 are brought on record as Lrs of the deceased 3rd appellant, vide court order, dated 10/10/2023 made in CMP(MD) No.10529, 10536 and 10641 of 2023 in SA(MD)No.373 of 2022)

Vs.

1.Tamilselvi
2.Renuga

: Respondents/Resp
Defendants

PRAYER:-Second Appeal is filed under Section 100 of the Civil Procedure Code, to set aside the judgment and decree passed by the Sub Court, Usilampatti in AS No.41 of 2019, dated 02/03/2021 upholding the decree passed by the District Munsif-Magistrate No.1, Usilampati in OS No.139 of 2009, dated 01/09/2014.

For Appellants : Mr.N.Tamilmani

For Respondents : Mr.D.Malaisamy

J U D G M E N T

This Second Appeal is filed seeking an order to set aside the judgment and decree passed by the Sub Court, Usilampatti in AS No.41 of 2019, dated 02/03/2021 upholding the judgment and decree passed by the District Munsif-cum-Judicial Magistrate No.1, Usilampati in OS No.139 of 2009 dated 01/09/2014.

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2.Brief averments in the plaint:-

The suit survey No.84/5 having an extent of 1 acre and 82 cents originally belongs to one Nalluperiamayathevar. He had two wives. After his death, the childrens of his second wife inherited the properties. Joint patta was issued in the name of Nallakaruppathevar and Nallamayathevar. Nallakaruppathevar was born to Nelluperiyamayathevar through the second wife. Nallamayathevar is the son born through the first wife. The plaintiffs 1 and 2 are the sons of Nallakaruppathevar.

3.The property was under lease. After the expiry of the lease period, the whole extent was partitioned between the sons of the first wife and the second wife. In the partition, eastern side measuring about 91 cents, which is the suit property herein was allotted to the plaintiffs predecessors-in-title namely Thakkam Periyakaruppathevar and Nallakaruppathevar. Western side 91 cents were allotted to the predecessors-in-title of the defendants namely Nallamayathevar and Iyyer @ Anguthevar.

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4.As stated above, the plaintiffs are the sons of Nallakaruppathevar. Thakkam Periyakaruppathevar had two daughters namely Mayakkal and Thangayee @ Karuppayee. The 3rd plaintiff is the grandson of Mayakkal. The 4th plaintiff is the son of Mayakkal. The 5th and 6th plaintiffs are the sons of Thangayee @ Karuppayee. After the death of predecessors-in-title, the suit properties devolved upon the plaintiffs and they are in possession and enjoyment of the suit properties. The defendants' predecessors-in-title partitioned the western 91 cents through partition deed, dated 17/09/1956. Through the partition, 'A' schedule property was allotted to one Veerammal, who is the grand-daughter of Nallamayathevar. 'B' schedule to the grand-daughter namely Karuppayee. Later executed the sale deed in favour of one Shongammal. Shongammal is the mother of the defendants herein. Shongammal was settled with 67-1/2 cents in the western side measuring about 91 cents as mentioned above.

5.Revenue Authorities without noticing the development, issued patta in favour of Shongammal to the whole extent of 1 acres 82 cents. Petition was presented for consideration of the patta. In the patta proceedings, the defendants appeared and contested the title of the plaintiffs. Now they have claimed the entire extent of 1 <https://www.mhc.tn.gov.in/judis> acres 82 cents through the settlement deed executed by Shongammal. As mentioned above, Shongammal was entitled to western 91 cents and had no right, title and possession of 91 cents over the suit properties herein.

6.Before the patta Proceedings Tashildar, Usilampatti, the defendants stated that Shongammal filed a suit in OS No.349 of 1982 for the entire extent of 1 acre and 82 cents against the third parties for injunction. Decree was granted in her favour. Neither the above said decree, nor settlement deed executed by Shongammal in favour of the defendants are valid under law, binding upon the plaintiffs. So, the suit is laid for declaration that the suit property absolutely belongs to them and consequential permanent injunction.

7.That was resisted by the 1st defendant by filing written statement adopted by the 2nd defendant. Wherein, it has been stated that Nelluperiyamayathevar is the owner of the property measuring

about 1 acre and 82 cents in Survey No.84/5. But the oral partition pleaded by the plaintiffs was denied. It is further stated that Nelluperiyamayathevar owned several properties in several villages namely Kovilankulam, Valandhur, Chellampatti and Jothimanickam. Oral partition occurred in respect of <https://www.mhc.tn.gov.in/judis> all the village properties. By that oral partition, the predecessors-in-title of the plaintiffs were allotted properties situated in Chellampatti Village and the defendants predecessors-in-title were allotted properties situated in Jothimanickam village and other properties.

8.Nellamayathevar had childrens through the first wife namely Periyakaruppan, Karupayee, Nachiyar Ammal and Pechiammal Karuppae. In a partition took place between the Nallamayathevar and Iyyer @ Anguthevar, the suit properties were allotted to the share of Nallamayathevar. After the death of Nallamayathevar, the childrens partitioned the properties, in which 91 cents were allotted to Periyakaruppan and the west 91 cents were partitioned among the daughters of Nallamayathevar and daughters of Periyakaruppan through a registered partition deed, dated 17/09/1956. Later, Shongammal was settled with 67-1/2 cents, out of 91 cents on the western side through the settlement deed through the legal heirs of the sister of Periyakaruppan. Shongammal became the title holder of the entire extent in Survey No.84/5. She executed a settlement deed in favour of the defendants on 20/09/2004. So, the defendants are in possession and enjoyment of the property. Shongammal's right was confirmed in OS No.349 of 1982.

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9.On the basis of the pleadings, the trial court formulated five issues:-

“1.Whether the plaintiffs owners of the suit property?

2.Whether the plaintiffs are possession of the suit property?

3.Whether the plaintiffs entitled for declaration?

4.Whether the plaintiffs entitled for permanent injunction?

5.To what other relief plaintiffs are entitled for?”

10.Before the trial court, on the side

plaintiffs, two witnesses were examined and 8 documents were marked. On the side of the defendants, the first defendant was examined as DW1 and independent witness was examined as DW2 and 12 documents marked.

11. At the conclusion of the trial process, the trial court found that the plaintiffs failed to prove the title over the plaint schedule properties, accordingly, dismissed the suit without costs.

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12. Against which, appeal was preferred by the plaintiffs on the file of the Sub Court, Usilampatti, in AS No.41 of 2019. During the pendency of the appeal, some of the appellants were reported to be dead. Some of the legal heirs were brought on record. The appellate court also concurred with the finding of facts recorded by the trial court, accordingly, dismissed the appeal without any costs.

13. Against which, this second appeal is preferred.

14. After hearing both sides, the following substantial questions of law were framed:-

(1) Whether the courts below are right in dismissing the suit on the ground that no separate patta was issued in the names of the plaintiffs though the title of the plaintiffs can be proved by Exhibits A2 and A5?

(2) When the genealogy sketch (Exhibit A1) was admitted by the respondents/defendants, is it not sufficient that the appellants/plaintiffs are having title through the partition deed dated 17/09/1956 (Exhibit A3) made between the predecessors of the defendants?

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15. For better understanding the relationship of the parties, we can refer Ex.A1 genealogical table.

16. The fact that Nelluperiyamayathevar had two wives is not disputed. Now the issue is between the descendents of two wives namely the original plaintiffs 1 to 6 and the childrens and grand-childrens of Nelluperiyamayathevar through his second wife.

17. The defendants 1 and 2 who are the respondents herein are the childrens of the Nelluperiyamayathevar through the first wife, I will not trouble this judgment extensively and elaborately discussing relationship between the parties.

18. Suffice to say that the issue is between the descendants of the first wife and the legal heirs of second wife, who are the third generation legal-heirs.

19. A simple case of the plaintiffs is that the property was allotted to their predecessors-in-title share. To show the partition, neither any direct evidence nor indirect evidence in the form of

circumstantial evidence are available, except the partition deed entered between the predecessors-in-title of the defendants 1 and <https://www.mhc.tn.gov.in/judis> 2, which is marked as Ex.A3. We will go to the recitals in Ex.A3 in the later portion of the judgment.

20.The appellants would rely upon this document to sustain their plea that the suit property was allotted to their predecessors-in-title. In the absence of any direct evidence to show the oral partition, they want to draw inference or presumption that the suit properties were allotted to their predecessors-in-title.

21.In a suit for declaration, whether such a course is available to the court to draw inference or presumption on the basis of the documents is the question to be answered.

22.The appellants would submit that had it been shown that the entire property was allotted to the share to the defendants predecessors-in-title, they would have divided the entire property and not the western portion only in the suit survey number. But during the course of settlement executed by Shongammal, the entire extent including the suit property was settled in favour of the defendants. So, it is not permissible and Shongammal had no right to execute the gift deed in respect of the suit survey number including the present suit property. <https://www.mhc.tn.gov.in/judis>

23.How the fact in issue must be proved and regulated by the new Act called 'The Bharatiya Sakshya Adhiniyam, 2003. Of course during the trial, old Act was prevailing.

24.We will turn to the old Act as to the presumption, which is extracted herein:-

4."May presume"-Whenever it is provided by this act that the Court may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it.

"Shall presume".-Whenever it is direct by this Act that the Court shall presume a fact, it shall regard such fact as proved, unless and until it is disproved.

"Conclusive proof"-When one
is declared by this Act to

conclusive proof of another, the Court shall on proof of the one fact, regard the other as proved, and shall not <https://www.mhc.tn.gov.in/judis> allow evidence to be given for the purpose of disproving it."

25.Before that, we can extract section 101 of the Evidence Act, which reads as under:-

"101.Burden of proof.-Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of the facts which he asserts, must prove that those facts exist.

When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.”

26. So, it is the duty of the plaintiffs to prove the existence of the particular fact that the property was allotted to the predecessors-in-title. To show the partition as there is no direct evidence. As mentioned above, the appellants want the court to draw presumption, on the basis of the partition deed, dated 17/09/1956. <https://www.mhc.tn.gov.in/judis>

27. As per section 114 of the Indian Evidence Act, the court can presume the facts which are to be raised by the appellants herein. So, the question which arises for consideration is whether section 114 of the Indian Evidence Act will save the plaintiffs from non suing them. I am of the considered view that the admission made by the plaintiffs on the basis of the partition deed under Ex.A3 must fail, for the simple reason that no reference was made to the effect that the suit property was allotted to the share of the plaintiffs predecessors- in-title.

28. As mentioned in the written statement, it has been contended by the defendants that the plaintiffs predecessors-in-title were allotted with the properties situated in Chellampatti village. Even for showing the above said allotment, there is no evidence on record even by the defendants. Simply because Ex.A3 refers to the western portion in the plaint schedule, no inference can be drawn to the effect that the western portion namely the suit property was allotted to the share of the plaintiffs predecessors-in-title. It may not be proper and possible also after a lapse of several years to bring the oral partition. Not even a single document has been produced by the plaintiffs to show that after the alleged <https://www.mhc.tn.gov.in/judis> oral partition, revenue records were mutated and they were in continuous possession and enjoyment. In the absence of any continuous document, no inference can be drawn to the effect that the suit property was allotted to the predecessors-in-title of the plaintiffs. Without any basic document, the suit has been filed seeking declaratory relief.

29. So the contention on the part of the appellants that Shongammal executed a settlement deed for the entire suit property in favour of the defendants is not valid under law, were not properly established by them.

30. The learned counsel appearing for the respondents would submit that PW1 admitted during the course of the evidence that the suit property situated in Chellampatti village was allotted to their share. So according to him, the statement of the defendants that by convenience, the properties were allotted in various villages namely Kovilakulam, Chellampatti, Valandhur and Jothimanickam. Absolutely, there is no possibility for the defendants predecessors-in-title to have allotted shares in the present suit property, which is not situated in Chellampatti Village.

<https://www.mhc.tn.gov.in/judis>

31. It is further admitted by PW1 that his father died, when he was two years old. Now he is 68 years. So, he is not the direct witness to the partition pleaded by the parties. As mentioned above, it may not be proper or possible to discuss about that the partition took place, when PW1 was not even

born. After attaining 69 years, now he wants to say that the suit property was allotted to their father's share.

32.PW1 is not a man of ordinary standing. He admits that he was working as Village Panchayat President for quite sometime. He also admits that patta was transferred in the name of the defendants predecessors-in-title in 1978 itself. In spite of his social status as a Village President, he remained silent without taking any steps to set right the records correct. But even admitted that he obtained certified copies of Exs.A3 and A4 in 1974-1975. Changing of revenue records were known to them in the year 1978. In spite of these things, he remained silent for 12 years. The reason for the long inaction was not explained by him. This has been commented by the respondents that the suit is barred by limitation.

33.Further reading of PW1's evidence shows that the property which was allotted to them in Chellampatti <https://www.mhc.tn.gov.in/judis> village were partitioned among themselves in 1984 itself. But so far as this suit property survey number is concerned, they say that except this property, other properties were divided, which is also unbelievable in nature. So, we need not go into the question of bar of limitation for the simple reason that no issue was framed by the trial court on this aspect. No plea was also raised with reference to the limitation point in the written statement. We need not go into the question of limitation at the second appellate stage.

34.The learned counsel appearing for the respondents would submit that the suit property in OS No.349 of 1982 will further strengthen their defence. But the plaintiffs are not the parties to the above said suit. That suit was filed against one Raju Periyakaruppu Thevar and others. Periyakaruppu Thevar was the brother of Shongammal's husband. So that judgment may not be relevant here even as per section 41 of the Indian Evidence Act.

35.The learned counsel appearing for the appellants would submit that it is a collusive suit between the close relatives. Now whatever it may be, the plaintiffs are not the parties to the suit, that decree will not bind them. To show their continuous possession and claim, <https://www.mhc.tn.gov.in/judis> the defendants relied upon this decree. But no further discussion is required. The plaintiffs are not the parties to the litigation and it is also not binding them. So, on the analysis of the entire evidence on record, it stands established that the plaintiffs who are the appellants herein failed to establish their title and possession over the properties. So, the finding of facts recorded by the trial court as confirmed by the first appellate court requires no interference at the second appellate stage.

36.Since the plaintiffs failed to establish their title over the properties, Exs.A2 and A5 neither confer title nor establish their title over the suit properties. So, the first substantial question of law is answered that the plaintiffs failed to establish their title over the suit properties.

37.Regarding the second substantial question of law, the admission of genealogy under Ex.A1 is not sufficient enough to prove the title, so also partition deed under Ex.A3.

38.The learned counsel appearing for the respondents would rely upon the judgment of this court in <https://www.mhc.tn.gov.in/judis> S.Subramaniam & Co., represented by its Partner S.Subramanian Vs. State of Tamil Nadu represented by the Secretary to the Government of Tamil Nadu, Department of Commercial Taxes and Religious Endowments, Madras (1998(3)MLJ 526), it is settled law that the judgment in personam not inter parties is not admissible in evidence except for the limited purpose showing the subject matter of the issue and the property. But this judgment is not relevant for discussion here with regard to the title issue between the parties.

39.For all the reasons stated above, this court is of the considered view that the concurrent findings recorded by the courts below does not call for any interference at the hands of this court.

40.In the result, this second appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

04/07/2024 Index:Yes/No Internet:Yes/No er <https://www.mhc.tn.gov.in/judis> To,

1.The District Munsif-cum-Judicial Magistrate, Usilampatti,

2.The Sub Judge, Usilampatti,

3.The Section Officer, VR/ER Section, Madurai Bench of Madras High Court, Madurai.

G.I L A N G O V A N , J <https://www.mhc.tn.gov.in/judis> er 04/07/2024
<https://www.mhc.tn.gov.in/judis>