



WEB COPY

SA No. 660 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06-01-2026

CORAM

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

**SA No. 660 of 2023
and CMP.No.21021 of 2023**

1. M.Dharmalingam
S/o.Meiyappa Gounder, Manjaputhur Village,
Sankarapuram Taluk, Kallakurichi District
606208
2. M.Anbazhagan
S/o.Mayava Gounder, Manjaputhur Village,
Sankarapuram Taluk, Kallakurichi District
606208

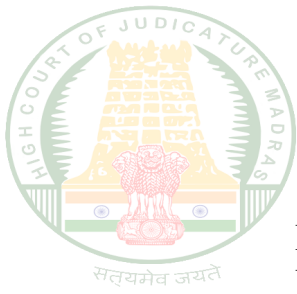
..Appellant(s)

Vs

1. R.Krishnan
S/o.Ramasamy Nayudu, Manjaputhur Village,
Sankarapuram Taluk, Kallakurichi District
606208
2. M.Ayyasamy
S/o.Mayava Gounder, Manjaputhur Village,
Sankarapuram Taluk, Kallakurichi District
606208

..Respondent(s)

Prayer: Second Appeal filed under section 100 of CPC., to set aside the judgment and decree dated 18.04.2022 and made in AS No.56 of 2017 on the file of the Principal Subordinate court, Kallakurichi confirming the Judgment and Decree dated 22.12.2015 and made in OS No.63 of 2009 on the file of the District Munsif Court, Sankarapuram



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For Appellant(s):
For Respondent(s):

Mr.T.Gowthaman
MS.S.RAJENI RAMADASS
FOR M/S RAJENI ASSOCIATES
FOR R1
R-2 - NO APPEARANCE

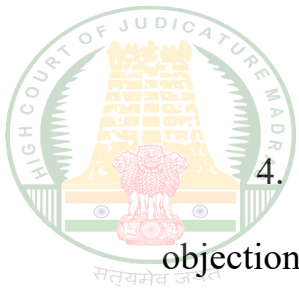
JUDGMENT

Challenging the concurrent findings of the Courts below, the defendants have preferred the present Second Appeal before this Court.

Brief Facts:

2. Before the Trial Court, the first respondent/plaintiff filed the suit for declaration, mandatory injunction, recovery of possession, and permanent injunction in respect of the suit property described in the schedule to the plaint, measuring an extent of 8 cents in Old Survey No.77/2, New Natham Survey Nos.173/18, 19, 21 and 22.

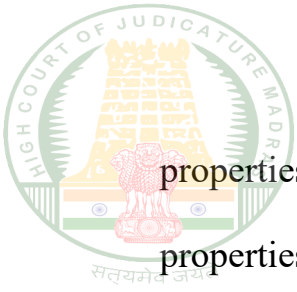
3. The case of the plaintiff is that the suit property was a joint family property belonging to himself and his brothers, Narayanan and Gopal. A partition was effected among the parties on 24.09.1983. In the said partition, the 'B' Schedule property was allotted to the share of the plaintiff, and the suit property forms part of the said allotment.



4. Thereafter, patta was granted in favour of the plaintiff. Though objections were raised by one Mayavan, S/o. Kesavan Gounder, upon verification, the Special Tahsildar issued a separate patta in favour of the plaintiff in respect of the suit property on 02.06.1983. Since 1983, the plaintiff has been in possession and enjoyment of the suit property as its absolute owner and had put up a thatched house on the northern side of the property.

5. While so, the first defendant requested him to let out a portion of the property. Accordingly, the first defendant was permitted to occupy a portion of the property under permissive occupation. However, with the help of his son-in-law/second defendant, the first defendant attempted to put up construction in the vacant portion adjacent to the plaintiff's property. In spite of the objections raised by the plaintiff, the defendants attempted to put up construction. Hence, he came forward with the suit.

6. The first defendant disputed the plaintiff's right, title and ownership over the suit property and also denied the permissive possession as claimed by the plaintiff. It was contended that the suit property originally belonged to one Kesava Gounder, who executed a Will dated 26.10.1961 in favour of his son and daughter in respect of the suit property along with other properties. Though the survey number was not specifically mentioned, after his demise, the beneficiaries under the Will, namely Mottaiyammal and Mayavan, inherited the



properties in equal shares and enjoyed the same separately. Thereafter, the properties were divided and possessed by the respective beneficiaries in accordance with their shares.

7. Thereafter, Mottaiyammal allotted the northern portion of the property in favour of her two sons. Mayavan enjoyed the portion allotted to him along with the thatched house situated therein. Thereafter, Mayavan died about twenty years ago. His house plot was divided among his three sons. The portion enjoyed by Mayavan was allotted to the share of the defendant Anbalagan, and after his demise, Anbalagan constructed a new tiled house on the said property. Likewise, Dharmalingam, another son, also constructed a house in the portion allotted to his share.

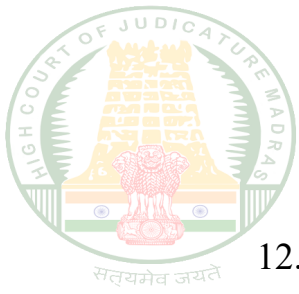
8. The defendants further contended that, at the time of execution of the Will, Kesava Gounder, the testator, omitted to mention Survey No.77/2. However, the boundaries of the property were correctly described in the Will. It was further alleged that the plaintiff, with a malafide intention, had wrongly included his name in respect of Survey No.77/2 and had attempted to make a false claim over the suit property. On the said grounds, the defendants prayed for dismissal of the suit.



9. Before the Trial Court, both parties adduced oral and documentary evidence in support of their respective claims of right and title over the suit property. The plaintiff relied upon Ex.A1, namely the partition deed executed between himself and his brothers in the year 1982, which shows that the suit property was allotted to his share in the said partition. After the said partition, in the year 1983, patta was also transferred in the name of the plaintiff in respect of the suit Survey No.77/2 measuring an extent of 8 cents. To that effect, documents marked as Exs.B2 and B3 were relied upon.

10. Before the Trial Court, the plaintiff also produced the registered extracts and other revenue records to establish that he had been in possession and enjoyment of the suit property. On the other hand, the defendants claimed title over the suit property on the strength of a Will alleged to have been executed by Kesava Gounder. However, they did not produce the original Will before the Court. Only a copy of the Will was produced and marked as Exhibit B1.

11. To prove the Will, certain witnesses were examined on behalf of the defendants. However, none of them were attesting witnesses to the said Will. Admittedly, the attesting witnesses had died long ago. Even otherwise, the evidence of the witnesses examined on behalf of the defendants did not establish that they were aware of the execution and attestation of the Will.

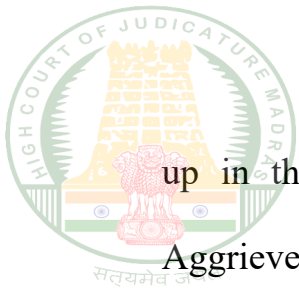


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12. Therefore, the Trial Court held that the Will had not been proved in the manner known to law as required under Section 68 of the Indian Evidence Act. Further, the defendants had also failed to establish the contents and execution of the Will by adducing acceptable secondary evidence as permitted under law.

13. Furthermore, it was also claimed by the defendants that the plaintiff had wrongly included his name in the patta relating to the suit survey number. However, it is pertinent to note that, till date, the defendants have not taken any steps to challenge the said revenue records before the competent authority. On the other hand, the plaintiff has been continuously paying kist and other taxes in respect of the suit property, which clearly establishes his possession and enjoyment of the same. Taking into consideration the oral and documentary evidence adduced on the side of the plaintiff, the Trial Court held that the plaintiff had successfully proved his case and, accordingly, decreed the suit.

14. The plaintiff further established that, during the pendency of the suit proceedings, the defendants had put up a construction in the suit property. The said fact was also substantiated through the Commissioner's Report and Plan marked as Exhibits C1 to C4. Therefore, the Trial Court granted a decree for mandatory injunction directing the defendants to remove the superstructure put



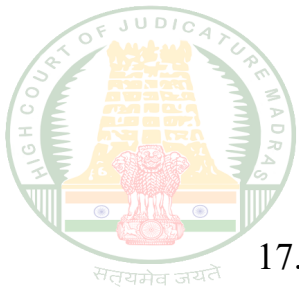
up in the suit property and consequently decreed the suit as prayed for.

Aggrieved by the said findings and decree, the defendants preferred an appeal in

A.S.No.56 of 2017 before the Principal Subordinate Court, Kallakurichi.

15. The First Appellate Court independently analysed the entire evidence on record, framed necessary points for consideration, and re-appreciated the facts and circumstances of the case. Upon such consideration, the Appellate Court concluded that the appellants/defendants had not proved the Will in the manner known to law. Nor had they established that the said Will pertained to the suit Survey No.77/2. On the contrary, in the said Will, Survey No.77/16 alone was mentioned, and the witnesses also reiterated that Kesava Gounder had executed a Will in respect of Survey No.77/16. Therefore, the First Appellate Court held that the defendants had failed to establish any right over the suit property based on Ex.B1, the Will said to have been executed by the testator Kesava Gounder.

16. The First Appellate Court further observed that the Will had not been proved in the manner known to law and also appreciated the evidence adduced on the side of the plaintiff and held that the plaintiff had proved that he was the lawful owner of the suit property through Exs.A1 to A7, thereby confirming the findings of the Trial Court and dismissing the appeal. Challenging the concurrent findings, the defendants have preferred the present appeal.



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17. The learned counsel argued that the Courts below failed to take note of the inconsistent evidence adduced on the side of the plaintiff and also committed an error in granting mandatory injunction in favour of the plaintiff on the premise that the defendants had put up construction in the suit property belonging to the plaintiff. It was further contended that the construction had been put up long ago, namely in the year 2005, and that the plaintiff had not raised any immediate objection. Therefore, the plaintiff was not entitled to the relief of mandatory injunction. Hence, he prayed to set aside the findings of the Courts below.

18. The learned counsel also argued that, through the evidence of D.W.3 and D.W.4, the defendants had proved the Will in the manner known to law and had also established long possession of the property. Therefore, he prayed to set aside the findings and to allow the appeal.

19. Considering the said submissions, and on perusal of the records, it is clear that the plaintiff came forward with the suit for declaration and mandatory injunction in respect of the suit property on the basis that the suit property had been allotted to his share under Ex.A1 partition deed effected among the joint family members in the year 1982. Thereafter, patta stands in his name from the year 1983 onwards. At the relevant point of time, Mayavan, the predecessor-in-

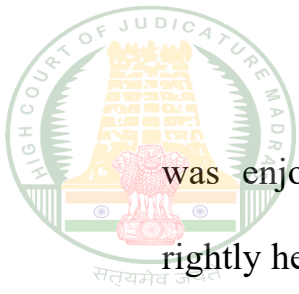


interest of the defendants, raised objections to the grant of patta in favour of the plaintiff. However, after due enquiry, the revenue authorities granted patta in favour of the plaintiff. Therefore, the plaintiff has established his title to the suit property through material documents.

20. On the other hand, the defendants claimed right over the property based on the Will said to have been executed by Kesava Gounder in favour of his two children, namely Mottaiyammal and Mayavan. Admittedly, Mayavan is the father of the first defendant. However, the Will relied upon by the defendants, marked as Ex.B1, is not the original Will. Only a copy of the Will was produced before the Court, and no reason was assigned for the non-production of the original.

21. Though witnesses were examined on behalf of the defendants, they were not aware of the execution of the Will. They were neither attesting witnesses nor persons connected with the execution of the document. Above all, in Ex.B1, the survey number mentioned is 77/16 and not the suit survey number 77/2.

22. Though the defendants/appellants contended that Kesava Gounder, being an illiterate person, was unable to mention the correct survey number in the Will, they have not produced any document to show that the suit property



was enjoyed by their predecessor-in-interest. Therefore, the Courts below rightly held that the Will had not been proved and that the defendants had failed to establish that the suit property belonged to them through the said Will. Hence, the findings recorded by the Trial Court do not require any interference. No substantial question of law is involved.

23. In the facts and circumstances of the case, the evidence has been properly appreciated by the Courts below and requires no interference. Therefore, the appeal is dismissed as devoid of merits, and no substantial question of law arises for consideration. It has also been brought to the notice of this Court that, during the pendency of the proceedings, the defendants put up construction in the suit property. Therefore, the defendants are directed to remove the superstructure and hand over vacant possession within a period of three months from the date of receipt of a copy of this order.

24. With the above directions, the Second Appeal is disposed of. The findings of the Courts below are confirmed. No costs. Consequently, connected miscellaneous petition is closed.

06-01-2026

Index: Yes/No

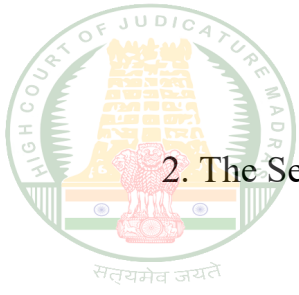
Speaking/Non-speaking order

Neutral Citation: Yes/No

MPA

To

1. Principal Subordinate court, Kallakurichi.



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2. The Section Officer, VR Section, High Court, Madras.

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T.V.THAMILSELVI, J.

MPA

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