

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7118 OF 2009

PATTAPPA GOUNDER (D) BY L.RS.

.....Appellant(s)

Vs.

S.RAGHUNATHA GOUNDER (DEAD) THR LRS.

.....Respondent(s)

O R D E R

Leave was already granted by this Court on 23rd October, 2009.

This matter arises out of the civil proceedings initiated by the respondent against the present appellant (defendant in the Civil Suit) before the Court of the District Munsif of Tiruvannamalai. The suit of the plaintiff was for injunction and declaration regarding property i.e. Survey No. 195/2, Tiruvannamalai Registration District, Tiruvannamalai Sub-Regn. Dist. No.II, Meiyur Village, Punja Survey No.195/2 in 3.76 acres.

The case of the plaintiff was that the property i.e. Survey No.195/2 measuring 3 acres 76 cents originally

belonged to one Subbaraya Naicker of Varagur village. The said Subbaraya Naicker had three sons namely- (1) Appayee Naicker, (2) Mottaiyan alias Chinnasamy Naicker and (3) Ayyakkannu. After the demise of the said Subbaraya Naicker, the said three sons of Subbaraya Naicker orally partitioned 3 acres and 76 cents of land into three equal shares by metes and bounds in which the northernmost 1.253 acres were allotted to Abbey Naicker, the middle portion of 1.253 acres was allotted to Mottiyen alias Chinnasamy Naicker and the southernmost 1.253 acres was allotted to Ayyakkannu.

The plaintiffs had purchased the property comprising of 1.253 acres of the Survey No.195/2 from the sons of Mottaiyan alias Chinnasamy vide registered sale deeds dated 25.8.1976 and subsequently on 7.11.1976 the plaintiff had also purchased 1.253 acres in Survey No.195/2 from the sons of Ayyakannu and have taken possession of 2.506 acres of survey No.195/2, which is the suit property. They are in absolute possession and enjoyment of the suit properties in their own right and title.

The defendant also claiming his right on the said property by way of a registered sale deed dated 07.06.1975 which preceded the sale deed of plaintiff and on its basis he had already got the revenue records mutated in his

name. The plaintiff ultimately filed the above-mentioned civil suit before the Court of the District Munsif of Tiruvannamalai for declaration of title and injunction of the property. One of the defenses taken by the defendant in his written statement was that though he admitted that the property earlier belonged to one Subbaraya Naicker, it was not partitioned in three equal parts as claimed by the plaintiff and had contested the equal partition of the property. According to the learned counsel for the defendant Mottaiyan @ Chinnasami Naicker did not get 1.253 acres but was given 1.66 acres. In other words, there was a larger chunk of land belonging to Mottaiyan @ Chinnasami Naicker than claimed even by the plaintiff and this claim of the defendant was based on an oral partition deed of the family, which was reduced to writing, though it was unstamped and unregistered. Ultimately, the suit was dismissed by the trial Court on the ground that the plaintiff had not been able to prove his case that the property was equally divided between the three heirs as claimed. The appeal filed by the plaintiff against the order of the Trial Court was also dismissed except for the fact that .406 acres land i.e. (1.66 acres - 1.253 acres) would in any case be a part of the plaintiff's property. The case was then taken in second appeal by the plaintiff. The High Court in the second appeal ultimately allowed the suit and decreed the case of the plaintiff reversing the findings given by the Trial Court and the First Appellate

Court. The two substantial questions of law framed by the High Court were as follows:

"(i) Whether the Lower Appellate Court is right in law in looking into the recitals of Exhibit B-30 as a partition deed even though it is unregistered?

(ii) Whether the Lower Appellate Court is right in law in holding that there was a partition between the sons of Subbaraya Naicker as per Exhibit B-30, when Ex. B30 is sought to be relied upon as a partition deed to prove a partition particularly, when it is unregistered."

The findings of the High Court on the first substantial question of law were that on the basis of an unregistered and unstamped "koorchit" (i.e. partition deed) the objection of the defendant should not have been accepted as the plaintiff had sufficiently placed his evidence before the Court. All the same, none of the evidence which has been placed by the plaintiff were discussed by the Second Appellate Court.

As far as the question of law is concerned, we can have no quarrel with the ultimate findings of the High Court that the "Koorchit" being an unregistered and unstamped oral document should not have been relied upon either by the Trial Court or by the First Appellate Court. Be that as it may, the fact remains that even if the "Koorchit" is not to be considered by the Court the fact still remains that both the plaintiff and the defendant

claim that Mottaiyan @ Chinnasami Naicker was the owner of at least 1.253 acres of the property which was part of Survey No. 195/2. There is no dispute regarding the fact that the sale deed which was executed in favour of the defendant, was registered on 07.06.1975 which was prior in time, to the sale deed of 1976 executed in favour of the plaintiff by the successor in interest of Mottaiyan @ Chinnasami Naicker (the sale deed which was executed in favour of the defendant i.e 07.06.1975 and the sale deed which has relied upon by the plaintiff is dated 25.08.1976). Therefore, even if the 1924 oral partition deed called "koorchit" could not have been relied upon, the fact remains that the property which has ultimately been purchased by the defendant is from the successors of Mottaiyan @ Chinnasami Naicker, which has in fact been admitted by the plaintiff himself.

Therefore, we set aside the order of the High Court but we make it clear that this we have done only on the basis of our findings that even assuming for the sake of arguments that the partition deed of 1924 was not liable to be relied upon by the Trial Court yet there was every evidence on record to show that the property was indeed purchased by the defendant legally by registered sale deed (Exhibit B-6) prior to the sale deed which was in favour of the plaintiff (Exhibit A-1). We also make it clear that since the claim of the defendant was only on 1.253 acres which is a part of the Survey No. 195/2 belonging to

Mottaiyan @ Chinnasami Naicker, we uphold that part only. Defendant will have no claim on the remaining part of the plot which is .406 acres, which is the part of the Survey No. 195/2 as has already been held by the First Appellate Court.

The appeal is disposed accordingly.

Pending application(s), if any, shall stand(s) disposed of.

.....J.
(SUDHANSHU DHULIA)

.....J.
(RAJESH BINDAL)

New Delhi;
January 17, 2024.

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 7118/2009

PATTAPPA GOUNDER(D) BY L.RS.

Appellant(s)

VERSUS

S.RAGHUNATHA GOUNDER (DEAD) THR LRS

Respondent(s)

Date : 17-01-2024 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SUDHANSHU DHULIA
HON'BLE MR. JUSTICE RAJESH BINDALFor Appellant(s) Mr. V. Balachandran, AOR
Mr. Siddharth Naidu, Adv.For Respondent(s) Ms. Shobha Ramamoorthy, AOR
Mr. Shilp Vinod, Adv.
Mr. Gokulakrishnan, Adv.
Mr. Ajay Subash, Adv.UPON hearing the counsel the Court made the following
O R D E R

The appeal is disposed of in terms of signed order.

Pending application(s), if any, shall stand(s) disposed of.

(NEETA SAPRA)
COURT MASTER (SH)
(Signed order is placed on the file)(BEENA JOLLY)
COURT MASTER (NSH)