

(2002) 10 MAD CK 0176
In the Madras High Court
Case No : S.A. No. 2046 of 1989

Ramalinga Velar

APPELLANT

Vs

Parvatham Anni, Venkitachala Mudaliar (died), Parvatham,
Anandhi, Hema, Jamuna, Savithri and Malar

RESPONDENT

Date of Decision : 09-10-2002

Acts Referred:

Evidence Act, 1872 — Section 65, 74
Income Tax Act, 1961 — Section 22

Citation : (2002) 10 MAD CK 0176

Hon'ble Judges : K. Sampath, J

Bench : Single Bench

Advocate : K. Chandramouli, S.C. for S. Viswanathan, for the Appellant; M. Kalyanasundaram, S.C. for K.J. Bharathi Mohan, for the Respondent

Judgement

K. Sampath, J.—The defendant in O.S.No.90 of 1987 on the file of the District Munsif at Nannilam is the appellant in the second appeal. Respondents 1 and 2 filed the suit against the appellant for declaration and permanent injunction or in the alternative for recovery of possession in respect of the suit property which was originally two items - (1) S.No.13(I) 12 cents, and (ii) S.No.13(J) 13 cents - now a single S.No.21/10 - 26 cents of wet lands in Anandanallur village. It will be easier to narrate the facts with a genealogy. The genealogy is as follows:

2. There was a partition among Kanagasabai Mudaliar @ Chinnappa Mudaliar, his brother Ayya Mudaliar's sons Rajagopala Mudaliar and Singaravelu Mudaliar, and another brother Velu Mudaliar's son Vaithialinga Mudaliar on 25.6.1988. In that partition, the first schedule property was allotted to Kanagasabai Mudaliar @ Chinnappa Mudaliar, the second schedule to Vaithialinga Mudaliar, and the third schedule to Rajagopal Mudaliar and Singaravelu Mudaliar. The suit was divided into north and south. The southern half fell to the share of Vaithialinga Mudaliar and northern share to Rajagopal Mudaliar and Singaravelu Mudaliar. Rajagopal Mudaliar had no male issue. In Survey and Settlement Register, suit first item was registered in Rajagopal Mudaliar's name and suit second item in Vaithialinga

Mudaliar's name. In the partition deed, the suit property was shown as "Kalladi". The southern owner Vaithialinga Mudaliar was enjoying the property by leasing it out. After his life time, his son Renganatha Mudaliar was in possession and after him Vaithialinga Mudaliar and Venkatachala Mudaliar (the second plaintiff in the suit), were in possession. There was a further partition between Renganatha Mudaliar's sons Vaithialinga Mudaliar and Venkatachala Mudaliar (the second plaintiff). The property fell to the second plaintiff's share. He has been in enjoyment since 1954. The northern portion fell to the share of the first plaintiff/ Parvatham, wife of Thiagaraja Mudaliar, in a partition between her and her son Kuppiah. In 1924, there was a re-survey, S.Nos.13(I) and 13 (J) were measured and R.S.No.21/10 was given. There is also a ridge between the northern and the southern parts. During the UDR proceedings, patta was given to the defendant without reference to the plaintiffs. The parties did not ascertain the possession. In February 1987 the plaintiffs were harvesting CR 1009 paddy. There was interference by the defendant, necessitating the filing of a police complaint. There was no action taken. The suit came to be filed. Pending suit, there was a forcible trespass by the defendant on 30.4.1987. The prayer was amended as one for recovery of possession.

3. The defendant filed a written statement and an additional written statement, contending as follows:

The suit property never belonged to the family of the plaintiffs. They never had enjoyed the same. The suit property belonged to one Narayana Velar for over 100 years. After him, one Ramachandra Velar and Govinda Velar became entitled to the properties. There was an exchange among the three and in that exchange the defendants paternal uncle got the property and as a heir to him, the defendant became entitled to the same. He was also given patta in patta No.66 and through Village Adangal, Accounts and Chit records, the defendant's right stands established. In these circumstances, the title traced, and the partition effected as set out in the plaint, are all denied. The suit is also barred by limitation. Proper enquiry was conducted and ryot patta was given to the defendant. As per the Registered Exchange Deed, dt.9.9.1935, the defendant's paternal uncle Narayana Velar got the property and ever since he and the defendant have been in possession. The alleged trespass is false. The suit is liable to be dismissed.

4. The trial Court framed the necessary issues and on the oral and the documentary evidence held that the plaintiffs had not established their title, that the defendant had been issued patta, and that he had been paying kist for possession and enjoyment. By judgment and decree, dt.24.4.1989 the trial Court dismissed the suit. However, on appeal, the learned principal District judge, Nagapattinam, allowed the appeal, set aside the judgment and decree of the trial Court and decreed the suit as prayed for by judgment and decree, dt.18.10.1989.

5. It is as against that the present second appeal has been filed.

6. Before the lower appellate Court there was an application filed for reception of additional evidence, which was also allowed. The lower appellate Court in coming to its conclusion, relied on those documents also.

7. At the time of admission, the following substantial questions of law were raised for decision in the second appeal:

(1) Whether the learned District Judge erred in law in receiving additional documents in the appeal without the plaintiffs making sufficient cause for their reception and without any oral evidence therefore as provided under Order 41, Rule 27 C.P.C.?

(2) Whether the judgment of the lower appellate Court is vitiated in upholding title in the plaintiffs on the ground of their possession of large extent of properties, especially when the suit property has not been dealt with in their partition deed of 1935 or in the Will of 1937?

8. Pending second appeal, the second respondent died and his LRs have been brought on record as respondents 3 to 7.

9. Mr. K.Chandramouli, learned Senior Counsel, appearing for the appellant made the following submissions:

Exs.A.1 and A.2 which were relied on by the learned District Judge do not at all refer to the suit property, and that Exs.A.3 and A.4 will not prove the plaintiffs' title. The documents produced by the defendant support his case. The evidence of P.W.1, P.W.2, and D.W.1 has not been properly considered by the lower appellate Court. The lower appellate Court has not given any valid reason for allowing the application under Order 41 Rule 27 C.P.C. According to the learned Senior Counsel if the documents filed and received by the appellate Court are eschewed from consideration, the position will be that the plaintiffs' title will remain unproved and the suit will have to fail.

10. Per contra Mr. M.Kalyanasundaram, learned Senior Counsel, appearing for the respondents strongly relied on Exs.A.1 and A.3 and also the further fact that the defendant's case of exchange cannot be accepted as the property, which is said to have been exchanged, is still with him. As regards the admission of additional evidence, the lower appellate Court has clearly analysed the provisions of Sec.74 of the Evidence Act and received the documents which are public documents. The learned Senior Counsel further submitted that even without those documents the case of the plaintiffs stands proved, on the documents produced before the trial Court. Both the counsel relied on a number of decisions which will be referred to in the course of the judgment.

11. There are certain vital aspects which would clearly show that the plaintiffs' case is true. Ex.A.1 is a partition deed, dt.25.6.1888. It is a registered document. In that document only the names of the lands are mentioned. It is specifically stated by the plaintiffs that the suit property is known as Kalladi Nathangal. There is no denial by the defendant that Kalladi Nathangal is not the

suit property. In that partition, Kalladi Nathangal has been divided into north and south, and the southern half was given to Vaithialinga Mudaliar. The northern half fell to the share of Rajagopala Mudaliar and Singaravelu Mudaliar. These details are found in Ex.A.1/document. Under the caption Kalladi Nathangal the suit property is mentioned. In the second schedule to Ex.A.1 (Page 37) this is mentioned; the northern half as having been given to Rajagopala Mudaliar and Singaravelu Mudaliar is found in page 52. There was no cross-examination on behalf of the defendant in this regard particularly when P.W.1 has stated that Kalladi Nathangal is the suit property. Again in Ex.A.3, which is the Disposal Register, the suit property is shown as two items - S.Nos.13(I) and 13(J), and it relates to Kalladi Nathangal. It is specifically mentioned in Ex.A.3 that old S.No.13(I) of an extent of 12 cents is registered in the name of Rajagopala Mudaliar and S.No.13(J) of an extent of 13 cents in the name of Vaithialinga Mudaliar. The register gives details of S.Nos., sub-divisions, directions, whether they are wet or dry, Poramboke or Vaikkal, Cart track or bund, the extent, kist, whether Inam, and the owner. These details are all found in Ex.A.3. It had come into existence in 1898 and as rightly pointed out by the lower appellate court it is not open to the defendant to dispute the contents of Ex.A.3. Ex.A.3 corroborates the contents of Ex.A.1. Then there is Ex.A.8, which is the Encumbrance Certificate for the period between 10.1.1925 and 31.12.1934 and it clearly shows that there was no encumbrance created in respect of the suit property during that period. Under Ex.A.4, which is the re-settlement register of the year 1924, the suit property gets a new survey number, namely, R.S.No.21/10 and the extent is given as 26 cents. Ex.A.2 is dt.22.7.1995, which is a registration copy of the lease deed. An extent of 6 cents in Old S.No.13(k) is the subject matter of the lease. The name of the land is given as Kalladi Nathangal. There are certain other items, which are also subject matter of the original of Ex.A.2. They are 13-D-H. Ex.A.10, which has been received by the appellate Court as additional evidence, is dt.22.7.1985 - the same date as Ex.A.2. It is the registration copy of the lease between Vaithialinga Mudaliar and Maruthappa Vanniar. The property covered in Ex.A.10 is the balance seven cents in 13-J. It is mentioned as the northern half and its name is given as Kalladi Nathangal. From Exs.A.2 and A.10, the lower appellate Court inferred that the northern seven cents in 13-J were leased out to Maruthappa Vanniar and the southern six cents to Appasamy Udayar by Vaithialinga Mudaliar. It is the case of the plaintiffs that 13 cents in Old S.No.13-I were in personal cultivation. It is also admitted by the defendant that neither the plaintiffs nor their predecessors ever entered into any exchange arrangement with the defendant or his predecessors in interest. Ex.A.8 is the Encumbrance Certificate, as already noted, for ten years between 1925 and 1934 and there is no encumbrance shown. Thus, from 1888 till 1934 the suit property had been in the possession and enjoyment of the plaintiffs' predecessors in title either in person or through lessees, and there was no encumbrance created in respect of the property. As against these documents, on the side of the defendant, Ex.B.2, Exchange Deed, dt.9.9.1935 between Ramachandra Velar and Govinda Velar, has been produced. The defendant is claimed to be the brother's

son of Narayana Velar. In Ex.B.2 it is recited that 20 cents in S.No.22/4 and 24 cents in S.No.22/6, in all 44 cents, were given to Ramachandra Velar and Govinda Velar, and they got back the northern 18 cents in S.No.22/5 and 26 cents in S.No.21/10 in exchange. In that, the patta number of Narayana Velar is given as 66, and the patta number of Ramachandra Velalar and Govinda Velalar as 323. In Ex.B.2 the "0" in "10" is not full. It has a break in the wheel. This has been noticed by the lower appellate Court. There is nothing to show that S.No.21/10 belonged to Duraisamy's sons Ramachandra Velar and Govinda Velar. When it is found that at least till 1934 that the suit property was in the family of the plaintiff, it is incumbent on the defendant to show as to how the parties to Ex.B.2 were entitled to the properties dealt with under the document. There is no prior document produced. There is no satisfactory oral evidence given. Merely saying that the defendant became entitled to the suit property through his father's brother will not mean anything. The defendant did not produce any material whatsoever to show as to how his predecessors in interest were entitled to the property and how the persons who executed the exchange deed got right. Secondly, in the cross-examination the defendant would say that he did not know whether the suit property was an ancestral property or the self-earned property of the person who executed the exchange deed. He said he did not know. The lower appellate Court has elaborately considered this aspect in para 14 of its judgment. The learned Judge even finds that Ramachandra Velar, the attestor in the lease deeds, Exs.A.2 and A.10, could be an ancestor of Ramachandra Velar and Govinda Velar and it would mean that the title of Vaithialinga Mudaliar had been accepted. The learned Judge further finds that the plaintiffs' family had been enjoying the suit property by keeping it in the family itself without entering into any exchange arrangement. There is nothing to show that after 1936 the suit property was in the enjoyment of the defendant and his predecessors in interest. Thus, even without the additional documents, the lower Court has come to the conclusion and in my view the correct conclusion that the plaintiffs had proved their case.

12. It is now necessary to refer to some of the decisions cited by the learned Senior Counsel on either side.

13. Mr. Chandramouli relied on a judgment of ISMAIL, J. (as the learned Judge then was) in N.S. Kuppuswamy Odayar and Another Vs. The Panchayat Narthangudi and Others, for the proposition that the mere fact that in the Re-settlement Register, a particular piece of land has been described as poramboke will not by itself establish title of the Government to the land in question.

14. Again in Jattu Ram Vs. Hakam Singh and others, it has been held that entries made by patwari in official record are only for fiscal purpose and no title is created by them.

15. In so far as the above two decisions are concerned, there is no difficulty in accepting the proposition in those decisions. However, in the present case it is not mere reliance on any entry in Re-settlement Register on which the plaintiffs

have based their title. Their title dates, back to Ex.A.1 and Exs.A.3 A.4, etc. are only to support the case of the plaintiffs as found in Ex.A.1 and their reliance on the Settlement Register is only for the purpose of supporting their title and they do not rely on them for establishing their title. As already noted, the defendant has nowhere disputed the identity of the suit property. There was no cross-examination of the plaintiffs' witnesses in this regard that the suit property was known as Kalladi Nathangal. The decisions relied on do not in any way support the case of the defendant.

16. The other decisions relied on are with regard to the scope of Order 41 Rule 27 CPC. The lower appellate Court, according to the learned senior counsel, has allowed the application for reception of additional evidence as a matter of course without affording any opportunity to the defendant to rebut the case of the plaintiffs, and that no grounds for reception of additional evidence in the appeal had been made out and those documents should have been eschewed from consideration. The additional documents, according to the learned Judge, are copies of public documents and they can be received in evidence.

17. In *The Land Acquisition Officer, City Improvement Trust Board Vs. H. Narayanaiah and Others*, while dealing with Order 41 Rule 27 CPC it has been held that if the High Court admits the evidence without recording reasons why it found the admission of such evidence to be necessary nor giving any opportunity to party affected to rebut any inference arising from its existence by leading other evidence, such a course is not correct.

18. Again, in *ARULMIGU VEDARANYESWARA SWAMI DEVASTHANAM v. HARIDAS* 2001 1 LW 206 it has been held by A.RAMAN, J. that the presumption under S.90 can be invoked only when it is produced from proper custody. The presumption cannot be invoked when only certified copy is produced. No plea as to person with whom original is in possession, against whom the document is sought to be proved, that the person is not subject to the process of the Court, or that the original is destroyed or lost. In such circumstances, the Court cannot admit certified copy in evidence.

19. As against these decisions Mr. Kalyanasundaram, learned Senior Counsel for the respondents, relied on a Full Bench decision of this Court in *Katikineni Venkata Gopala Narasimha Rama Rao Vs. Chitluri Venkataramayya*, wherein the Full Bench has observed that the ground of public policy is not a sufficient reason for excluding from evidence any document which is legally admissible under the Evidence Act and is not excluded by any statutory prohibition. The Full Bench has further observed:

"It would be putting an unwarranted restriction on the words "documents forming the acts or records of the acts" in S.74, Evidence Act, to say that they should be confined to those parts of an Income Tax record which the Income Tax officer has himself prepared and to exclude documents which he has himself called for or which have been admitted to the record for the purposes of the

assessment. The record of an Income Tax case must be regarded as the record of the acts of the Income Tax Officer in making his assessment and therefore any document properly on the record is just as much a public document as the final order of assessment. Hence, a profit and loss statement and a statement showing the details of net income, filed by an assessee in support of his return of income furnished under S.22, Income Tax Act, are public documents with reference to S.74, Evidence Act, of which certified copies would be admissible under S.65(e), Evidence Act."

20. The other decision for this point relied on by the learned Senior Counsel is *Banamali Das Vs. Rajendra Chandra Mardaraj Harichandan and Others*, in which it has been held that the check Memo which is required to be maintained by the Officer in charge of the counting table is a document forming record of the acts of a public officer and therefore, a certified copy thereof given by the Collector in whose custody the document is kept, can be admitted in evidence in proof of the contents of the original document.

21. In *Shabhas Khan Ghorl Pallivasal, (Hanifee Jamatu) Sivakasi and Another Vs. D. Syed Sharfudeen*, I have held that the true test is whether the appellate court is able to pronounce judgment on the materials before it without taking into consideration the additional evidence sought to be adduced.

22. We have already noted that even without the additional documents it is possible to accept the case of the plaintiffs and the mistake if any committed by the lower appellate Court with regard to reception of additional evidence does not in any way affect the ultimate conclusion reached by the lower appellate Court.

23. In view of the discussion above, I find it is unnecessary to answer the first substantial question of law, and so far as the second substantial question of law is concerned it is answered against the appellant. The mere fact that the suit property has not been dealt with in the partition deed of 1935 or the Will of 1937, will not disprove the title of the plaintiffs or establish any right or title in the defendant. The second substantial question of law is accordingly answered. I do not find any merits in the second appeal and it is dismissed. No costs.