

Surendran, vs Muthu

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Court : Kerala

Decided On : Oct-31-2023

Judge : Honourable Mr. Justice a. Badharudeen

Appeal No. : RSA/586/2022

Appellant : Surendran,

Respondent : MUTHU

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A. BADHARUDEEN
TUESDAY, THE 31ST DAY OF OCTOBER 2023 / 9TH KARTHIKA,
1945 AGAINST THE ORDER/JUDGMENT AS 56/2016 OF ADDITIONAL
DISTRICT COURT, OTTAPALAM OS 88/2012 OF MUNSIFF
MAGISTRATE COURT, MANNARKKAD APPELLANTS/APPELLANTS 1,
3 TO 6 & SUPPL.7TH/PLAINTIFFS 1, 3 TO 6 & 1r OF THE 2ND
PLAINTIFF:

1 SURENDRAN, AGED 53 YEARS S/O. VALIPARAMBIL GOPALAN
AND OORPADAM VEETIL LATE LAKSHMI @ THATHA "RESIDING AT
9/16-1, LAKSHMI NAGAR, BK PUDUR, KUNIAMUTHUR POST,

COIMBATORE DIST. TAMIL NADU 2 USHA, AGED 52 YEARS D/O. VALIPARAMBIL GOPALAN AND OORPADAM VEETIL LATE LAKSHMI @ THATHA, RESIDING AT 9/16-1, LAKSHMI NAGAR, BK PUDUR, KUNIAMUTHUR POST, COIMBATORE DIST. TAMIL NADU 3 SATHYABHAMA, AGED 62 YEARS D/O. VALIPARAMBIL GOPALAM AND OORPADAM VEETIL LATE LAKSHMI @ THATHA, RESIDING AT 9/16-1, LAKSHMI NAGAR, B K PUDUR, KUNIAMUTHUR POST, COIMBATORE DISTRICT TAMIL NADU 641 008 4 VIMALA, AGED 56 YEARS D/O. VALIPARAMBIL GOPALAN AND OORPADAM VEETIL LATE LAKSHMI @ THATHA, RESIDING AT 9/16-1, LAKSHMI NAGAR, B K PUDUR, KUNIAMUTHUR POST, COIMBATORE DIST. TAMIL NADU 641 008. 5 KAMALA, AGED 58 YEARS D/E. VALIPARAMBIL GOPALAN AND OORPADAM VEETIL LAKSHMI @ THATHA RESIDING AT 9/16-1, LAKSHMI NAGAR, B K PUDUR, KUNIAMUTHUR POST, COIMBATORE DISTRICT, TAMIL NADU 641 6 P M AMBIKA, AGED 53 YEARS W/E. LATE VASUDEVAN, NO. 30/7C, ASBE STOS COMPANY STREET, NEAR CHANDRIKA SOAP FACTORY, METTUR, PODANUR POST, COIMBATORE 641 023 TAMIL NADU BY ADV R.SREEHARI

RESPONDENTS/RSPONDNETS 1, 3 TO 5 AND SUPPL 6 TO 8/DEFENDANTS 1, 3 TO 5 AND LRs OF THE 2ND DEFENDANT:

1 MUTHU AGED 87 YEARS S/O. LATE VEERANDI, OORPADAM HOUSE, KARIMBA AMSOM, DE SOM AND POST, MANNARKKAD TALUK, PALAKKAD DIST. 2 DEVAKI, AGED 85 YEARS W/O. MUTHU, OORPADAM HOUSE, KARIMBA AMSOM, DESOM AND POST, MANNARKKAD TALUK, PALAKKAD DISTRICT 678 3 RAMACHANDRAN @ MANI, AGED 64 YEARS S/O. DEVAKI, OORPADAM HOUSE, KARIMBA AMSOM, DESOM AND POST, MANNARKKAD TALUK, PALAKKAD DISTRICT 678 4 GENERAL MANAGER (TELECOM), SURYA COMPLEX, PALAKKAD POST, TALUK & DISTRICT 678 5 V VALSALA, AGED 66 YEARS S/O. LATE

CHANDRAN, 168, MEGA CITY, KURUMBAPALAYAM PIRUVU, MADUKARAI POST, COIMBATORE 641 106, TAMIL NADU 6 C PRADEEP, AGED 39 YEARS S/O. LATE CHANDRAN, 168, MEGA CITY, KURUMBAPALAYAM PIRUVU, MUDUKARAI POST, COIMBATORE 641 108, TAMIL NADU 7 C PRIYA, AGED 41 YEARS D/O. LATE CHANDRAN, 6/170A, HARIPRIYA ILLAM, GANDHI NAGAR, SUNDARAPURAM, COIMBATORE 641 023, TAMIL NADU BY ADVS. R1 TO R3 BY P.JAYARAM R4 BY T.SANJAY

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 31.10.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 31st day of October, 2023 This Regular Second Appeal arises out of Judgment and Decree in AS No.56/2016 on the files of the Additional District Court, Ottapalam, dated 31.03.2022, arose out of the judgment and decree in OS No.88/2012 on the files of the Munsiff Court, Mannarkkad dated 25.06.2016.

2. Appellants are plaintiffs 1, 3 to 6 and the legal representatives of the deceased 2nd plaintiff. Respondents are defendants 1, 3 to 5 as well as the LRs of the deceased 2nd defendant.

3. Heard the learned counsel for the appellants as well as the learned counsel appearing for the respondents, on admission.

4. Parties in this second appeal will be referred as plaintiffs and defendants for convenience hereafter.

5. The plaint averments in brief are as follows:-The plaintiffs

and the defendants belonged to Hindu religion and Ezhava community and are governed by Hindu Law of inheritance. According to the plaintiffs, the plaint schedule property originally belonged to one Oorppadam Veettil Veerandi who was the father of the mother of the plaintiffs and defendant No.1 and 2. Said

Veerandi died in the year

1962. After the death of Veerandi, the right upon the plaint schedule

property was devolved upon the mother of the plaintiffs and mother of the defendant No.1 and 2 being legal heirs. Subsequently their mother also died. Hence their right also was devolved upon the plaintiffs and defendant Nos.1 and 2. Now the plaint schedule properties were in joint Possession and ownership of plaintiffs and defendants No.1 and 2.

6. Though plaintiff's made repeated demands to the

defendants to make partition of the plaint scheduled property, they were not ready to partition. Later the plaintiff had sent a lawyer notice to the defendants demanding partition, but the same also returned unclaimed. According to the plaintiffs, the plaint schedule property is to be partitioned and the plaintiffs and the defendants would get 1/3rd shares each.

7. The first defendant filed written statement denying title of

Veerandi in respect of the plaint schedule property by asserting title thereof on the basis of document No.518/1976 as well as purchase certificates bearing numbers 851/1978 and 859/1978 issued in his favour by the Land Tribunal. According to the 1st defendant, the plaint schedule property originally is the property of Naduvil Madam Devaswam and it was entrusted to one Kupperan as per an oral agreement. After the death of Kupperan, the property devolved upon

his son Angalan. When Angalan died, the property devolved upon Swaminathan and Swaminathan executed document No.518/1976 in respect of 30 cents of property in the name of the 1st defendant. Accordingly, 1st defendant claimed title over the plaint schedule property, contending that the plaint schedule property was not partitionable.

8. Court below raised necessary issues and recorded evidence.

9. PW1 examined and Exts.A1 and A2 were marked on the side of the plaintiffs. DW1 and DW2 examined and Exts.B1 to B14(m) series were marked on the side

of the defendants.

10. Learned Munsiff adjudicated the claim and found that

property is not partible since the plaintiffs failed to prove the same as the property owned by Veerandi and thereafter devolved upon the plaintiffs and the defendants jointly. The trial court held that purchase certificates issued in the name of the 1st defendant is conclusive proof to show assignment of rights on him and therefore, as against the patta, no adverse title could be found.

11. When the matter was taken before the appellate court, the appellate court also dismissed the appeal and concurred the finding of the trial court.

12. It is argued by the learned counsel for the plaintiffs that Exts.B2 and B3 purchase certificates bearing Nos.851/1978 and

also would not confer individual title upon the first defendant and the same should be read as pattas which would inure the benefit to the plaintiffs and defendants, being joint family members.

13. Whereas, the learned counsel for the defendants submitted

that in this matter, plaintiff miserably failed to prove the genealogy they have pleaded in the plaint and no iota of evidence let in to show any right or possession over the property by Veerandi at any point of time. It is discernible that the plaint scheduled property is one originally belonged to Naduvil Madom Devasom. In turn, the 1st defendant obtained Exts.B2 and B3 purchase certificates in his name personally and there is nothing to suggest that purchase certificates were obtained for the benefit of the joint family and the same would inure the benefit of the plaintiffs and the defendants. Nothing available in this matter to see existence of joint family in any manner. Therefore, the trial court as well as the appellate court rightly negated the claim for partition. Therefore, concurrent verdicts entered into by the trial court as well as the appellate court do not require interference and no substantial question of law also is to be formulated to decide in this appeal.

14. To be on the crux of the matter, the plaintiffs who assert title

of Veerandi over the property as starting point of genealogy, not produced even a scrap of paper to show that Veerandi possessed or enjoyed the plaint scheduled property in any manner. The evidence of plaintiff is confined to that of PW1 and Ext.A1, copy of Lawyer notice and A2, the unserved Lawyer notice.

15. Per contra, the specific case put up by the first defendant is

that originally the property belonged to Naduvil Madam Devaswam and thereafter the same reached the hands of Kupperan, then to Angalan and Swaminathan. Swaminathan executed document No.518/1976 in favour of the 1st defendant and in turn the 1st defendant obtained Exts.B2 and B3 purchase certificates in relation to the plaint schedule property. It is discernible that the plaint scheduled property is one originally belonged to Naduvil Madom Devasom. In turn, the 1 st defendant obtained Exts.B2 and B3 purchase certificates in his name personally and there is nothing to suggest that purchase certificates would inure the benefit of the plaintiffs and the defendants.

16. It is pointed out by the learned counsel for the plaintiffs that document No.518/1976, whereby the 1 st defendant obtained property as contended in the written statement, not produced before the Court.

17. It is true that document No.518/1976 not produced before

the Court. But, the first defendant produced Ext.B1 to B14 documents to support his case and issuance of Exts.B2 and B3 purchase certificates in his favour. It appears that the 1st defendant in fact perfected title and possession over the plaint schedule items based on Exts.B2 and B3 patta and nothing substantiated by the plaintiffs to hold otherwise, so as to grant decree of partition. Thus, it appears that the trial court as well as the appellate court rightly appreciated and re-appreciated the evidence and negated the claim for partition. The said verdicts are perfectly in order.

In the result, the appeal stands dismissed, without being admitted. All the pending interlocutory applications in this second appeal shall also stand dismissed. SD/-
A.BADHARUDEEN JUDGE Nsd

