IN THE COURT OF THE SENIOR CIVIL JUDGE AT NARAYANPET

Dated this the 24th day of January, 2019

Present: Smt.T.Jaya Lakshmi, B.Com., M.L,
Senior Civil Judge,
Narayanpet

A.S No.1 of 2015.

Between:-

Argay Mallappa S/o Chinna Bheemappa,
aged about 57 years, Occu:agriculture,
R/o Kodangal proper and Mandal,
District: Mahabubnagar

....Appellant

And

1. Sirson Srinivas S/o Hanmaiah,
aged about 37 years,m Occu:agril.,
2. Srison Bheemamma W/o Argay Mallappa,
aged about 52 years, Occu:agril.,
3. Nadipally Jagadish S/o N.Ramulu,
aged about 41 years, Occu:business.
All R/o Kodangal proper and Mandal,
Mahabubnagar District.

....Respondents

This is a appeal suit coming before me on 04.01.2019 in the presence of Sri S.Narayana, Advocate for the Appellant and Sri K.Sitha Rama Rao, Advocate for the Respondents 1 to 3 and the matter having stood over for consideration till this day this Court delivered the following.

J U D G M E N T

1. This appeal has been preferred by the unsuccessful plaintiffs O.S.No.47 of 2005, dated 5.10.2012 on the file of the Junior Civil Judge, Kodangal challenging the Judgment and Decree in dismissing the suit. Before going to take down the grounds of appeal it is necessary to have the pleadings and the findings of the lower court. The parties herein shall be referred as plaintiffs

and defendants respectively to avoid confusion.

2. The averments, in brief, of the plaint are: the plaintiff is the owner and possessor of the suit lands, one Argay Pedda Bheemappa and Argay China Bheemappa are the real brothers and the said Pedda Bheemappa’s wife Hanmamma and Chinna Bheemappa are equal shareholders of the land an extent of Ac.2.08 guntas in Sy.No.152 and an oral partition was effected between Hanmama and the said Chinna Bheemappa, who is the father of the plaintiff, in 1983 over the land an extent of Ac.2.08 guntas in Sy.No.152 and as per the said oral partition, the revenue authorities after elaborately enquiry, mutated the lands in an extent of Ac.1.04 guntas, Ac.0.22 guntas and Ac.0.22 guntas in the names of Hanmama and Chinna Bheemappa and the plaintiff respectively, in the relevant revenue records; and the revenue authorities also given sub division numbers to the said lands and survey Nos 152/AA, 152/E/4 and 152/EE4 respectively and the father of the plaintiff Chinna Bheemappa, Hanmamma and the plaintiff have been cultivating the said lands as per their shares since the date of oral partition as owners and the father of the plaintiff Chinna Bheemappa died in 1994 leaving behind the plaintiff as his legal heir and as such the plaintiff succeeded his father’s property i.e., an extent of Ac.0.22 guntas in Sy.No.152/E/4 and the said Hanmamma also died in 1993 and the plaintiff married two wives i.e., Venkatamma as first and defendant as second wife and the daughter of defendant No.2 was give in marriage to defendant NO.1 and as such the

defendant No.1 is son in law of plaintiff and defendant No.2 and the plaintiff was bed ridden in 1995 the plaintiff has been residing in the house of his first wife Venkatamma at Kodangal and his first wife Venkatamma performed her services to the plaintiff, the defendant NO.2 did not ask the welfare of the plaintiff and she resided in the house of her parents at Kodangal and since 1995 the plaintiff has been cultivating the suit lands through his wife Venkatamma and on 5.2.2005, through rumors the plaintiff came to know that the defendants 1 and 2 with a dishonest intention and in collusion with the Mandal Revenue Officer, Kodangal secretly and illegally, without the knowledge of the plaintiff and taking advantage of the illness of the plaintiff, mutated the suit lands in the name of defendant No.1 and after obtaining certified copies of record of rights and pahaneis over the suit lands from the Mandal Revenue Officer, Kodangl, the plaintiff came to know that the defendant No.1, without his knowledge and in collusion with the Mandal Revenue Officer, Kodangal got mutated the suit lands illegally in his name as adoptive son of the plaintiff through proceedings No.D1/2597 of 1995 dated 30.10.1995, in fact, the plaintiff is the father in law of defendant No.1, the said illegal proceedings of the Mandal Revenue Officer, Kodangal deprives the valuable legal rights of the plaintiff and after the said illegal proceedings, the lands in Sy.No.152/E/4 and Survey No.152/EE/4 are again changed to Survey No.152/AA and the proceedings dated 30.10.1995 issued by the Mandal Revenue Officer, Kodangal are illegal and the same does not create any rights to defendant No.1 over the suit lands and it needs and it needs to be declared as invalid and not binding on the plaintiff and according to his ownership and possession over the suit lands on 24.6.2005 at about 10 am, when the plaintiff was cleaning the suit lands with the help of labour, all the defendants came to the suit lands and tried to dispossesses the plaintiff from the suit lands and the plaintiff with great difficulty and with the assistance of the labour removed the defendants from the suit lands and the defendants while leaving the suit lands threatened the plaintiff that they will come again and occupy the suit lands and alienated the suit lands to others and defendant NO.1 taking advantage of the proceedings of the Mandal Revenue Officer, Kodangal over the suit lands, is trying to alienate the suit lands to others and defendant No.1 is not having any rights over the suit lands and he never cultivated the suit lands and in those circumstances, the plaintiff has constrained to file the suit against the defendants for appropriate reliefs.

3. In their Written statement, defendants 1 to 3 while denying the averments mentioned in the plaint and contended that defendant No.1 is the absolute and legal owner and exclusive possessor of the suit lands, one Hanmamma, who is the senior paternal aunt of the plaintiff, was the lawful owner and possessor of the suit lands in an extent of Ac.1.04 guntas and another extent of Ac.1.04 guntas totalling to Ac.2.08 guntas in Sy.No.152/AA and the suit lands are part and parcel of the suit land and the said Hanmamma executed a registered WILL

bearing No.6 of 1993 bequeathing the said land in an extent of Ac.2.08 guntas in favour of defendant No.1. and the said Hanmamma died in the second month of 194 and as such the defendant No.1 became lawful owner and possessor of the said land in extent of Ac.2.08 guntas, based on the said registered WILL and one Argay Pedda Bheemappa and Argay Chinna Bheemappa are brothers and they orally partitioned their ancestral property and later reduced the same into writing under Memorandum of partition dated 8.6.1975 in the presence of the elderly persons and the land in an extent of Ac.2.08 guntas in Sy.NO152/AA fell to the share of Argay Pedda Bheemappa and ever since the date of partition, the said Pedda Bheemappa exclusively enjoyed the said extent of Ac.2.08 guntas along with other allotted property till his death without the least concern of anyone muchless his younger brother Argay Chinna Bheemappa and since the partition, the China Bheemappa did not cultivate the said land and was not in actual possession of any extent what soever of Sy.No.152/AA however, in revenue records an extent is created initially in favour of Chinna Bheemappa and later in favour of both Chinna Bheemappa and his son Argay Mallappa(plaintiff) and the said illegal entries continue dtill 1994-95 and likewise though Pedda Bheemappa did not get any share in the land in an extent of Ac.2.09 guntas in Sy.No.731/A and B, his name and later his wife Hanmamma’s name were recorded in the revenue records showing them as shares in the said survey number and ever since the partition neither Pedda Bheemappa nor Hanmamma were in possession of any extent of the land in Sy.No.731/A&B. And the defendant No.1 approached the Mandal Revenue Officer, Kodangal seeking mutation based on the registered WILL deed dated 20.12.1993 and a notice was also served on the plaintiff as his name was figured in the revenue records pertaining to Sy.No.152/AA and on 30.10.1995 the plaintiff gave a statement on oath before the Mandal Revenue Oficer, Kodangal to the effect that his name was recorded as owner of the land in an extent of Ac.0.22 guntas in Sy.No.152/E and his father’s name was recorded as owner of the land in an extent of Ac.0.22 guntas in Sy.No.152/AA and in the said statement, the plaintiff further stated that his father died about one year back, and an extent of Ac.1.04 guntas was recorded in the name of his senior paternal aunt namely Hanmama for Sy.No.152/AA and she also died about two years back and he further stated that in the partition the entire extent of Ac.2.08 guntas in Sy.No.152/AA fell to the share of his senior paternal aunt, Hanmamma, and that she being issueless adopted defendant No.1 and the said extent of Ac.2.08 guntas in possession of defendant No.1 and he also stated that he has no objection for implementing Ac.0.22 guntas of land, each recorded in his name and his father’s name, in favour of defendant NO.1 and based on the own statement of the plaintiff and as per the registered WILL executed by Hanmamma, the entire extent of Ac.2.08 guntas in Sy.No.152/AA which includes the suit land in an extent of Ac.1.04 guntas, was implemented in the name of defendant NO.1 by mentioned adoption as the basis of mutation and the said Hanmamma who is the senior paternal aunt of the plaintiff, executed and registered WILL on 20.12.1993 on the ground that the defendant NO.1 was looking after her with love and affection owing to the said reasons, the name of defendant No.1 was recorded legally and correctly in revenue records from 1995-1996 onwards in respect of the land in an extent of Ac.2.20 cents in suit Survey No.152/AA which includes suit land in an extent of Ac.1.04 guntas and therefore, the averment of the plaintiff that he came to know about the proceedings of the Mandal Revenue Officer concerning suit survey number through rumors on 5.2.2005 is not only false but also baseless and the plaintiff had driven out defendant No.2 and forcing her to stay with her parents and the proceedings bearing No.D1/2597 of 1995 of the Mandal Revenue Officer are legal and proper and though the said proceedings did not refer tot he WILL it is actually dated 20.12.1993 bearing registration No.6/1993 which confers the legal rights of defendant No.1 in respect of not only the land in an extent of Ac.2.08 guntas in suit survey No.152/AA but also the other properties of the senior paternal aunt of the plaintiff in view of the participation of the plaintiff in the said proceedings, his entire claim seeking cancellation of the said proceedings is illegal and time barred as the plaintiff is not at all the owner and possessor over the suit lands, the question of cleaning the suit lands by the plaintiff with his labour on 24.6.2005 at about 10 am or any other date what sover does not arise at all and since the plaintiff is not at all in possession of the suit lands, the question of his dispossession does not arise at all and there was absolutely no occasion for defendant No.1 to witness the possession of the plaintiff over the suit lands and defendant NO.1 as absolute owner of the land in an extent of Ac.2.20 guntas in non suit Sy.No.152/A, but virtue of registered gift deed executed by defendant No.2 in his favour, sold 200 square yards in favour of defendant No.3 vide registered sale deed No.20-95/204, dated 25.8.2004 for consideration of Rs.40,000/- and as the plaintiff do not have any sort of rights whatsoever over the suit lands, he is not at all entitled to sue and the plaintiff has not cause of action to file the suit and as such prays for dismissal of the suit with compensatory costs.

5. Considering the pleadings the trial court has framed the following issues.

1. ***Whether the plaintiff is the owner and title holder of the suit schedule lands as prayed for?***
2. ***Whether the plaintiff is entitled for perpetual injunction against the defendants, restraining them from interfering with the possessino and cultivation of the plaintiff over the suit lands?***
3. ***Whether the proceedings No.D1/2597 of 1995 dated 30.10.1995 is liable to be cancelled and whether the same is binding on the plaintiff as prayed for?***
4. ***To what relief?***

6. The appellants herein has challenged Judgment and decree in OS 47 of 2005 on the following grounds:

a) That the Judgment and decree of the trial court is contrary to law and against the merits of the case.

b) The lower court did not consider the oral and documentary evidence of the plaintiffs and though the Ex.A1 to Ex.A15 is categorically proved that the appellant alone is the lawful owner of the suit schedule property.

c) The lower court has given much importance to the second issue and considering the second issue only the below dismissed the suit by wrongly came into conclusion with regard to the presumption of revenue records.

d) Though the lower court disbelieved the version of the respondents as they claimed the title basing on the WILL deed but only on the technical ground dismissed the suit.

And hence the appeal is to be allowed by setting aside Judgment and decree.

7. In the lower court on behalf of the plaintiffs PW.1 and PW.2 and Ex.A1 to A15 marked and on behalf of the defendants , DW-1 to DW.5 were examined and Ex.B1 to Ex.B27 was marked and both parties did not adduce any additional evidence in this appeal.

8. Heard both the learned counsels and perused the entire material placed before the court.

9. On the strength of the pleadings, I now formulate the following points for determination:

1.Whether the trail court did not considered the

provision of ROR Act and Ex.A1 to Ex.A15 documents which clearly establishes that the appellant/plaintiff is the absolute owner of the suit schedule property?

2. ***If so, Whether the Judgement and Decree in O.S.No.47 of 2005 on the file of the Junior Civil Judge, Kodangal is liable to be set aside?***

10.**POINT No.1:*****Whether the trail court did not considered the provision of ROR Act and Ex.A1 to Ex.A15 documents which clearly establishes that the appellant/plaintiff is the absolute owner of the suit schedule property?***

Ex.A1 is the certified copy of the ROR issued by the Deputy Thasilder, Kodangal which appears that the defendant No.2 was shown as pattadar and owner of the land an extent of Ac.2.08 guntas in Sy.No.152/A. Ex.A2 to Ex.A6 are the certified copies of the pahanies from the year 1983-1988 in which Hanumappa, Chinna Bheemappa and the plaintiff are the pattadars and possessors of the land an extent of Ac.2.08 guntas in Sy.No.152/AA. Ex.A7 to Ex.A9 are the certified copies of the pahanies for the years 1988 to 1992 which shows that Hanumappa, Chinna Bheemappa and the plaintiff are shown as pattadar and possessors of the land an extent of Ac.1.08 guntas, Ac.0.22 gunta, Ac.0.22 gutnas in Sy.No.152/AA. Ex.A10 to Ex.A12 are the certified copies of the pahanies which shows that Hanumappa, Chinna Bheemapa and the plaintiff are shown as pattadar and possessors of the land an extent of Ac.1.10 cents, Ac.0.55 cents, Ac.0.55 cents in Sy.No.152/AA, 152/E and 152/EE respectively. Ex.A14 and Ex.A15 are the certified copies of the pahanies for the year 1996-1998 which shows only defendant NO.1 is the pattadar and possessor of the land in an extent of Ac.2.20 cents in Sy.No.152/AA. Ex.A2 to Ex.A12 certified copies of the pahanies which clearly establishes that the plaintiff and his fathers name are shown as pattadars and possessors of the suit land in some of the pahanies till 1994-1995 but after 1995 the pahanies filed by the plaintiff himself i.e., Ex.A14 and Ex.A15 shows that the defendant No.1 is the pattadar and possessor of the land in extent of Ac.2.20 guntas in Sy.No.152/AA. Ex.A13 is the proceedings which is the basis for mutation of the name of the defendant No.1 but, admittedly, the said mutation proceedings were not challenged by the plaintiff. Plaintiff did not make any step for mutation of the proceedings under Ex.A13 till the filing of the suit. Even, the plaintiff did not filed any documents to show that as on the date of the filing of the suit, he is cultivating the suit schedule land. Ex.B27is the no objection statement given by the plaintiff for mutation of the name of the defendant No.1. The Senior Assistant of the Thasildar Office, Kodangal who recorded the statement of the plaintiff was examined as DW.4. He clearly and categorically stated that he recorded the statement of the plaintiff. Nothing was elicited from the evidence of the DW.4 that he did not recorded the statement of the plaintiff. It is a suit for declaration of title and the burden lies on the plaintiff to prove that he is the absolute owner of the schedule property but, the documents itself filed by the plaintiff shows that from the year 1995 the plaintiff is not in a possession of the schedule property and even he was not shown as the pattadar of the schedule land. The oral evidence coupled with the documentary evidence filed by the plaintiff did not establishes that he is the pattadar of the suit schedule land as on the date of the filing of the suit. The trial court elaborately discussed and considered the evidence of both parties in the judgment but not given much weight to the revenue entries and it was also taken into consideration of oral evidence. Therefore, I am of the opinion that the plaintiff failed to establish their right and title over the schedule property. The trial court has rightly taken into the consideration of the evidence of the both sides.

Hence, this point is answered against the appellant/plaintiff.

11.POINT No.2:*If so, Whether the Judgment and Decree in O.S.No.47 of 2005 on the file of the Junior Civil Judge, Kodangal is liable to be set aside?*

In view of the findings given on Point No. 1 the court did not find any interference over the judgment and decree in OS No.47 of 2005 on the file of the Junior Civil Judge, Kodangal and the appeal has to be dismissed.

In the result, the judgment and decree in OS No.47 of 2005 on the file of the Junior Civil Judge Court, Kodangal is confirmed and the appeal is dismissed without costs.

Typed to my Dictation, corrected and pronounced by me in open court, on this the 24th day of January, 2019.

SENIOR CIVIL JUDGE
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APPENDIX OF EVIDENCE.
(Witnesses Examined)

For Plaintiff:-

PW.1:Argay Mallappa
PW.2:Kanukurthy Bheem Reddy

For Defendants

DW.1:Sorsam Srinivas
Dw.2:Pasham Ramulu
DW.3:Kankurthy Narsimulu
DW.4: S.Pullanna
DW.5:Venkat Reddy

EXHIBITS MARKED

For Plaintiff:

Ex.A1: CC of ROR under namuna issued by Dy.Thasildar, Kodangal dated 28.2.2005
Ex.A2: CC of pahani for 1983-84 issued by Dy.Thasildar, Kodangal, dated 28-2-2005
Ex.A3:CC of pahani for 1984-85 issued by Dy.Thasildar, Kodangal, dated 28-2-2005
Ex.A4:CC of pahani for 1985-86 issued by Dy.Thasildar, Kodangal, dated 28-2-2005
Ex.A5:CC of pahani for 1986-87 issued by Dy.Thasildar, Kodangal, dated 28-2-2005
Ex.A6:CC of pahani for 1987-88 issued by Dy.Thasildar, Kodangal, dated 28-2-2005
Ex.A7:CC of pahani for 1988-89 issued by Dy.Thasildar, Kodangal, dated 28-2-2005
Ex.A8:CC of pahani for 1990-91 issued by Dy.Thasildar, Kodangal, dated 28-2-2005
Ex.A9:CC of pahani for 1991-92 issued by Dy.Thasildar, Kodangal, dated 28-2-2005
Ex.A10:CC of pahani for 1992-93 issued by Dy.Thasildar, Kodangal, dated 28-2-2005
Ex.A11:CC of pahani for 1993-94 issued by Dy.Thasildar, Kodangal, dated 28-2-2005
Ex.A12:CC of pahani for 1994-95 issued by Dy.Thasildar, Kodangal, dated 28-2-2005
Ex.A13: CC of proceedings No.D1/2597/1995 of MRO, Kodangal, dated 30.10.1995
Ex.A14: CC of pahani for 1996-97 issued by Dy.Thasildar, Kodangal, dated 28.2.2005
Ex.A15: CC of Pahani for 1997-98 issued by Dy.Thasildar, Kodangal

For Defendants:

Ex.B1: CC of panchanama in File No.G/1826/93 of MRO office, Kodangal, dated 2.6.1993
Ex.B2: CC of pahani for 1983-84 issued by Dy.Thasildar, Kodangal, dated 27.7.2005

Ex.B3: CC of the statement of the plaintiff before MRO, Kodangal, dated 30.10.1995
Ex.B4: Registered Willnama executed by Hanmamma, dated 20.12.1993
Ex.B5: CC of registered sale deed executed by the plaintiff, dated 7.6.1995
Ex.B6: CC of registered sale deed executed by the plaintiff, dated 2.3.1996
Ex.B7: CC of pahani for 1994-95 issued by Dy.Thasildar, Kodangal, dated 2.9.2005
Ex.B8: CC of pahani for 1995-96 issued by Dy.Thasildar, Kodangal, dated 2.9.2005
Ex.B9:CC of pahani for 1996-97 issued by Dy.Thasildar, Kodangal, dated 2.9.2005
Ex.B10:CC of pahani for 1997-98 issued by Dy.Thasildar, Kodangal, dated 2.9.2005
Ex.B11:CC of pahani for 1998-99 issued by Dy.Thasildar, Kodangal, dated 2.9.2005
Ex.B12:CC of pahani for 1999-2000 issued by Dy.Thasildar, Kodangal, dated 2.9.2005
Ex.B13:CC of pahani for 2000-01 issued by Dy.Thasildar, Kodangal, dated 2.9.2005
Ex.B14:CC of pahani for 2001-02 issued by Dy.Thasildar, Kodangal, dated 2.9.2005
Ex.B15: CC of pahani for 2003-04 issued by Dy.Thasildar, Kodangal, dated 2.9.2005
Ex.B16:Attested copy of phanai for 2004-05 issued by MRO, Kodangal
Ex.B17: CC of pahani for 2005-06 issued by Dy.Thasildar, Kodangal, dated22.12.2010
Ex.B18: CC of CC of pahani for 2006-07 issued by Dy.Thasildar,
Ex.B19: CC of pahani for 2007-08 issued by Dy.Tahsildar, Kodangal, dated 22.12.2010
Ex.B20:Copy of pahani for 2009-10 issued by VRO, Kodangal
Ex.B21: Encumbrance certificate issued by the Sub Registrar, Kodangal,
Ex.B22: pattedar passbook of defendant No.1 issued by MRO, Kodangal.
Ex.B23: S/B Account book of defendant NO.1 in Grammena Bank, Kodangal
Ex.B24: Cist receipt in the name of defendant NO.1, dated 11.2.2000
Ex.B25: Cist receipt in thename of defendant No.1, dated 28.6.1996
Ex.B26: Cist receipt in the name of defendant No.1, dated 14.7.1999
Ex.B27: Statement of the plaintiff before MRO, Kodangal, dated 30.10.2005

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