



A.S(MD)No.249 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 07.09.2023

DELIVERED ON: 22.09.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

A.S(MD)No.249 of 2022

and

C.M.P.(MD)No.11424 of 2022

Sathaiah

: Appellant/Plaintiff

Vs.

1.Chellammal

2.Pandiammal

3.State represented by
The District Collector,
Ramanathapuram District,
Office at Sethupathi Nagar,
Ramanathapuram.

4.The District Revenue Officer,
Ramanathapuram,
District Collector Office Campus,
District Collector Office Post,
Ramanathapuram.

: Respondents / Defendants



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PRAYER : The Appeal Suit is filed under Section 96 of C.P.C., to call for the records from the Court below and set aside the decree and judgment in O.S.No.25 of 2015 passed by the learned Additional District Sessions Judge, Ramanthapuram, dated 29.01.2021.

For Appellant : Mr.D.Nallathambi

For Respondents : Mr.J.John Rajadurai,
Government Advocate (Civil Side), for R3 & R4

: No Appearance, for R1 & R2.

JUDGMENT

The Appeal Suit is directed against the judgment and decree passed in O.S.No.25 of 2015, dated 29.01.2021 on the file of the learned Additional District Sessions Judge, Ramanthapuram.

2. The suit is for partition, declaration and for permanent injunction.

3. Admittedly, the appellant/plaintiff is the son and the second respondent/2nd defendant is the daughter of the first respondent/first defendant.



4. For the sake of convenience and brevity, the parties herein will be referred as per their status/ranking in the trial Court.

5. The case of the plaintiff is that the suit property measuring 72 cents of land and the land in the south of the suit property were originally belonging to one Ukkirapandiyathevar; that the said Ukkirapandiyathevar sold the suit property to the plaintiff's father Karuppan, vide sale deed, dated 23.03.1964 and since then, the suit property had been in possession and enjoyment of the plaintiff's father; that the plaintiff's father Karuppan had died intestate leaving behind the plaintiff and the defendants 1 and 2 as his legal representatives and hence, the plaintiff and the defendants 1 and 2 are entitled to get 1/3 share in the suit property; that when the plaintiff has been taking steps for changing patta in their names, the defendants 1 and 2 colluded with each other and were trying to transfer the suit property to third parties; that though the plaintiff has approached the defendants 1 and 2 for partition and allotment of his 1/ 3 share in the suit property, the same was rejected by the defendants 1 and 2 and that therefore, the plaintiff was constrained to file the above suit for partition and allotment of 1/3 share in the suit property.



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6. It is the further case of the plaintiff that the property mentioned within the boundaries of the sale deeds was in possession and enjoyment of his father Karuppan; that the plaintiff and the defendants 1 and 2 had contacted the Village Administrative Officer for getting joint patta in their names and at that time, the plaintiff came to know that the patta for the suit property was not changed to his father's name; that the plaintiff has then preferred an appeal to the fourth defendant dated 23.10.2013, for changing the patta; that the fourth respondent, after inspecting the property has rejected the plaintiff's requisition to change the patta vide order dated 03.03.2015, on the ground that the property referred by the plaintiff was shown as 'Poramboke' land in the Government records; that the fourth defendant has specifically admitted the possession of the plaintiff in respect of the property situated in S.No.149/1; that the suit property was utilized as an agricultural land by the plaintiff's father and subsequent to the death of his father, the plaintiff and the defendants 1 and 2 have cultivated paddy and chilli in the suit property in the year 2014; that since there were mistakes occurred in the revenue records and taking advantage of the order of fourth respondent, the officers/agents of the third and fourth respondents are



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causing trouble to the plaintiff from 20.05.2015 and that therefore, the plaintiff was constrained to claim the relief of declaration that the order passed by the fourth defendant dated 03.03.2015 in respect of the suit property is legally invalid and also for permanent injunction restraining the defendants from interfering with the plaintiff's peaceful possession and enjoyment of the suit property.

7. The defendants 1 and 2, who are the mother and sister of the plaintiff had remained exparte.

8. The defence of the defendants 3 and 4 is that the plaintiff has claimed title to the suit property on the basis of the sale deed, dated 23.03.1964; that the plaintiff has sent a requisition on 18.11.2013 to change the patta in respect of 82 cents of land situated in O.S.No.152/3 of Vayaloor Village, Perungalur Group, Paramakudi Taluk, as patta was wrongly issued at the time of UDR scheme; that the fourth defendant has obtained a report from the Thasildar, Paramakudi and whereunder, the Thasildar has informed that the property in S.No.152/3 has already been sub-divided into 12 sub divisions and the patta was issued in the name of one Srinivasaraghavan; that the plaintiff was in possession of the property in S.No.149/1, which is



classified as 'கனம் புறம்போக்கு' and as such the order passed by the fourth defendant, dated 03.03.2015, is legally valid; that the plaintiff has no cause of action to file the suit and the suit is barred by limitation and that therefore, the suit is liable to be dismissed.

9. The learned trial Judge, upon considering the above pleadings, has framed the following issues :

(i) whether the plaintiff is entitled to get 1/3 share in the suit property from the defendants 1 and 2 ?

(ii) Whether the plaintiff is entitled to get the relief of permanent injunction ?

(iii) Whether the order passed by the fourth defendant, dated 03.03.2015 in Na.Ka.B.5/92233/2013, in respect of the suit property is invalid ?

(iv) Whether the suit is barred by limitation ?

(v) To what other reliefs, the plaintiff is entitled ?

10. During trial, the plaintiff has examined himself as P.W.1 and one Thiru.Sathappan as P.W.2 and exhibited seven documents as Ex.P.1 to



Ex.P.7. The defendants 3 and 4 have examined Thiru.Balakrishnan, Deputy Thasildar attached to the District Revenue Office, Ramanathapuram Town as R.W.1 and exhibited eight documents as Ex.P.1 to Ex.P.8 and one document as witness document Ex.X.1 and the Commissioner's report and plan as C1 and C2.

11. The learned trial Judge, upon considering the evidence both oral and documentary evidence and on hearing the arguments of both the sides, has passed the impugned judgment, dated 29.01.2021, dismissing the suit. Aggrieved by the dismissal of the suit, the plaintiff has preferred the present appeal.

12. The learned counsel for the appellant would submit that there existed difference between the boundary and the extent and as such, the boundary will prevail, that when the boundary to the S.No.149/1 and S.No. 152/3 are same, the trial Court ought to have confirmed that the property scheduled under the sale deed, dated 23.03.1964 is S.No.149/1, though it is mentioned as S.No.152/3; that when there is contradiction between the boundary and the survey number, the boundary will prevail; that when the



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boundary to the property under S.No.149/1 and S.No.152/3 are same, the trial Court ought to have confirmed that the property scheduled under the sale deed is S.No.149/1; that the trial Court has merely relied on the revenue records and has dealt the title issue and the trial Court has erred/misled by concluding the title against the plaintiff and the defendants 1 and 2 by merely relying on the revenue records, is liable to be set aside; that the Advocate Commissioner appointed by the trial Court has inspected the physical features and has confirmed that the physical features is not a Kalam, wherein, when the property is under the active agricultural usage in the possession of the plaintiff, the trial Court observing that the property is a 'kalam' is absolutely improper, untenable and liable to be set aside.

13. He would further submit that D.W.1 Thasildar has categorically stated that the suit property is subjected to agricultural purposes; that when the District Revenue Officer has already confirmed the title of the plaintiff and the defendants 1 and 2, wherein, when the order passed by the DRO also confirms the fact that the property under S.No.149/1 and 152/3 are one and the same and that therefore, the impugned judgment and decree passed by the trial Court are liable to be set aside.



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14. The learned Government Advocate (Civil Side) would submit that the plaintiff has to prove that the suit property was the undivided property of his father Karuppan and after his death, the same came to be owned by the plaintiff and the defendants 1 and 2; that the plaintiff has claimed title to the suit property on the basis of the sale deed dated 23.03.1964, but the suit property was shown to be in S.No.149/1 whereas, the sale deed dated 23.03.1964 is with respect to the property in S.No.152/3, that the Thasildar, Paramakudi, after enquiry has submitted a report stating that the S.No.152/3 has already been sub-divided and patta was issued in favour of one Srinivasaraghavan; that the plaintiff was in possession of S.No.149/1, which is classified as 'Kalam Poramboke' in the revenue records, patta cannot be issued in favour of the plaintiff and the defendants 1 and 2 and that the trial Court, upon considering the evidence available on records, has rightly dismissed the suit.

15. The point for consideration are :

(i) Whether the trial Court erred in dismissing the suit by merely relying on the revenue records, despite showing that the plaintiff's father



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Karuppan has purchased the said property from Ukkirapandiyathevar, vide sale deed, dated 23.03.1964 and since then, the plaintiff's father and after his death, the plaintiff and the defendants 1 and 2 have been in possession and enjoyment of the same.

(ii) Whether the trial Court erred in giving a finding that the order of the fourth defendant dated 03.03.2015 is legally valid, despite showing that the revenue authorities have themselves admitted that the property mentioned within the boundaries of the sale deed dated 23.03.1964 was in possession and enjoyment of the said Karuppan and after him with the plaintiff and the defendants 1 and 2 and that the boundaries in the records submitted by the plaintiff and the boundaries of the property in possession were similar ?

(iii) Whether the judgment and decree dated 29.01.2021 passed in O.S.No.25 of 2015, is liable to be interfered with ?

(iv) To what other reliefs, the parties are entitled ?

16. It is the specific case of the plaintiff that the suit property and the property situated on the south of the suit property were originally owned by Ukkirapandiyathevar, who in turn sold the suit property to the plaintiff's



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father Karuppan, vide sale deed, dated 23.03.1964 under Ex.A.3. In the sale deed/Ex.A.3, it has been specifically stated that the property referred by the plaintiff was in S.No.152/3 of Vayaloor Village. But, as rightly pointed out by the learned Government Advocate (Civil Side), the plaintiff in his plaint has shown the suit property of 72 cents of land in S.No.149/1 of Vayaloor Village, Perungalur Group.

17. The main contention of the plaintiff is that the property covered under Ex.A.3 sale deed is situated in S.No.149/1, it has been mentioned as S.No.152/3 and that when the boundary to the property in S.No.149/1 and S.No.152/3 are same, the trial Court ought to have decided that the property schedule under Ex.A.3 sale deed is S.No.149/1.

18. It is the specific contention of the defendants 3 and 4 that the property in S.No.152/3 stands in the name of some other person and that since the property situated in S.No.149/1 has been classified as 'கனம் டுறம்போக்கு' in the Government records, the plaintiff is not entitled to get the relief in respect of any of the above two properties.



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19. The plaintiff and the defendants 3 and 4 have produced the copies of the settlement 'A' register with respect to S.No.149/1 and S.No.152/3 under Ex.A.6 and Ex.A.7 and under Ex.B.1 and Ex.B.4 whereunder S.No.149/1 has been shown as 'களம் புறம்போக்கு' and whereas sub divisions made in S.No.152/3 are shown to be the lands of one Srinivasaraghavan. In Ex.B.2/Adangal register for the pasali 1428, S.No.149/1 is shown as 'களம்'. Ex.B5/Chitta with respect to sub divisions made in S.No.152/3, stand in the name of Srinivasaraghavan, S/o.Krishnasamy Iyyangar.

20. The defendants 3 and 4 have also produced the copies of the settlement register with regard to S.Nos.149/1 and 152/3 under Ex.B.7 and Ex.B.8 respectively and whereunder S.No.149/1 has been shown as “களமும் வண்டிப்பாதையும்” and S.No.152/3 has been shown as 'தர்மாசனம்'.

21. D.W.1/Deputy Thasildar in his evidence would say that the plaintiff has originally claimed patta in respect of the property situated in S.No.152/3 on the basis of the sale deed/Ex.A.3 and after coming to know from the order of the fourth respondent under Ex.A.4 that S.No.152/3 has already been sub-divided and the same stands in the name of some other



person, the plaintiff by taking a contradictory stand that the property purchased by his father was in S.No.149/1 has laid the above suit and that the plaintiff is clearly estopped from taking the present stand.

22. In cross examination, D.W.1 would say that the suit property is a 'களம் புறம்போக்கு' and is situated in S.No.149/1; that S.No.152/3 is situated on the south of the suit property; that the property in S.No.152/3 has already been sub-divided and that the plaintiff alone was in possession of the property in S.No.149/1. At this juncture, it is necessary to refer the report submitted by the Thasildar, Paramakudi to the fourth defendant

“மனுதாரர் மகன் கருப்பன் மகன் சாத்தையா என்பவர் அனுபவம் செய்து வரும் இடம் புல எண்.149/1, விஸ் 0.61.5 ஏர்ஸ் “களம் புறம்போக்கு” எனத் தாக்கலாகி வருகிறது என்றும், மேற்படி இடத்தில் லோகநாதன் மற்றும் சாத்தையா ஆகிய இருவரும் நீண்ட காலமாக நெல் மற்றும் மிளகாய் சாகுபடி செய்து வருகின்றனர் என்றும், மனுதாரர் சமர்மித்துள்ள ஆவணம் 560 நாள் 23.03.1964 – ன் படி மனுதாரரின் அனுபவ இடம் 152/3 என்றும், ஆனால் உண்மையில் அவர் அனுபவம் செய்யும் இடம் புல எண் 149/1 “களம் புறம்போக்கு” ஆகும் என்றும், மனுதாரர் அனுபவம் செய்து வரும் இடத்திற்கும் அவர் சமர்மித்துள்ள ஆவணத்திற்கும் எவ்வித சம்பந்தம் இல்லை என்றும், மேலும் வயலூர் கிராமத்தில் புல எண் 152/3 ஆனது 12 – உட்பிரிவுகளால் பிரிக்கப்பட்டு பட்டா நிலங்களாகவே தாக்கலாகி வருகிறது.”



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23. The fourth defendant, after making local inspection of the property in dispute and on considering the report submitted by the Thasildar, Paramakudi, has passed the impugned order rejecting the claim of the plaintiff for issuance of patta in respect of the suit property and the order of the fourth defendant is extracted hereunder for better appreciation :

“ மனுதாரர் சமர்ப்பித்துள்ள ஆவணத்தில் தெரிவித்துள்ள நான்குமால் மற்றும் அனுபவம் செய்து வரும் புலத்திற்கான நான்குமால் ஓரளவு ஒத்துச் செல்கிறது. இப்புலத்தினை மனுதாரரும், லோகநாதன் என்பவரும் மிகையம் மற்றும் நெல் சாகுபடி செய்து அனுபவம் செய்து வருகின்றனர். மனுதாரர் அனுபவித்து வரும் இடத்திற்கும் அவர் சமர்ப்பித்துள்ள ஆவணத்திற்கும் எவ்வித சம்பந்தமுமில்லை என்பதாலும், மனுதாரர் அனுபவம் செய்து வரும் இடம் “களம் அரசு புறம்போக்கு” என தாக்கலாகி வருவதால் மனுதாரருக்கு பட்டா வழங்க மார்க்கமில்லை என இதன் மூலம் உத்தரவிடப்படுகிறது.”

24. Considering the revenue records available and also the evidence of D.W.1, it is clearly evident that S.No.149/1 has been classified as “களம் புறம்போக்கு” whereas sub-divisions in S.No.152/3 has been shown as the land belonging to one Srinivasaraghavan.



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25. As already pointed out, the plaintiff in the appeal filed before the fourth defendant claiming patta in respect of S.No.152/3, alleging that the property was purchased by his father and that since the plaintiff's father, after his death, the plaintiff and the defendants 1 and 2 have been in possession and enjoyment of the same, they are entitled to get the reliefs claimed.

26. As rightly observed by the learned trial Judge, the plaintiff has miserably failed to prove that the property in S.No.149/1 was originally owned by Ukkirapandiyathevar and that the same was purchased by his father Karuppan. But, as rightly pointed out by the learned counsel for the plaintiff, the revenue authorities including the fourth defendant have admitted that the suit property situated in S.No.149/1 is in possession and enjoyment of the plaintiff. Since the plaintiff has not proved the title to the suit property, the question of claiming partition in the suit property does not arise at all. Considering the nature of the property situated in S.No.149/1, the impugned order of fourth respondent in rejecting the plaintiff's claim for patta cannot be found fault with. Considering the above, the decision of the



trial Court in dismissing the suit cannot be found fault with and this Court is in entire agreement with the findings recorded by the trial Court.

27. The learned counsel for the appellant/plaintiff would submit that in case, if the Court is not inclined to accept the case of the appellant, the appellant/plaintiff may be given liberty to file a separate suit to protect his possession, except under due process of law.

28. No doubt, the learned trial Judge has specifically observed that since the plaintiff has been in possession and enjoyment of the suit property, he can very well take appropriate proceedings before the appropriate forum that he should not be evicted, except under due process of law and there is no bar for the plaintiff to file a separate case in this regard.

29. Considering the above, this Court concludes that the appeal is devoid of merits and the same is liable to be dismissed. Considering the facts and circumstances of the case, this Court further decides that the parties are directed to be their own costs and the above points are answered accordingly.



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30. In the result, the Appeal Suit is dismissed and the judgment and decree passed in passed in O.S.No.25 of 2015, dated 29.01.2021 on the file of the learned Additional District Sessions Judge, Ramanthapuram, stands confirmed. Parties are directed to bear their own costs. It is clarified that the plaintiff is at liberty to file the appropriate proceedings and claim relief that he should not be evicted, except by due process of law. Consequently, connected Miscellaneous Petition is closed.

22.09.2023

NCC : Yes/No
Internet : Yes/No
Index : Yes/No
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To

- 1.The Additional District Sessions Judge,
Ramanthapuram.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

das

Pre-delivery order made in
A.S(MD)No.249 of 2022
and
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22.09.2023