



A.S.No.168 of 2012

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.04.2024

PRONOUNCED ON : 11.07.2024

THE HONOURABLE Ms. JUSTICE P.T. ASHA

A.S.No.168 of 2012

1. S.Rajagopal (died)

2. R.Aruptham

3. R.Chelladurai

4. R.Mohan

... Appellants

Vs.

G. Balakrishnan

... Respondent

(Appellants 2 to 4 recorded as Lrs of the deceased 1st appellant. Memo recorded vide order of Court dated 01.03.2021)



A.S.No.168 of 2012

Prayer: First Appeal is filed under Section 96 of CPC against the Judgement and Decree dated 28.10.2011 passed in O.S.No.20 of 2010 on the file of the District Court, Karaikal.

For Appellants : Mr. T.Murugamanickam
Senior Counsel
For Mr. K.Govi Ganesan.

For Respondent : Mr. T.R. Rajagopalan
Senior Counsel
for Mr. Sai Krishnan.

JUDGEMENT

The unsuccessful defendants are the appellants before this Court challenging the Judgement and Decree passed by the District Judge, Karaikal in O.S.No. 20 of 2010. The facts are briefly set out herein below and the parties are being referred to in the same ranking as before the District Court, Karaikal.



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Plaintiff's Case:

2. The plaintiff has filed the suit O.S.No.20 of 2010 for declaration that he is the absolute owner of the suit schedule property and for consequential relief of injunction restraining defendants from interfering with his peaceful possession and enjoyment of the suit schedule property. The suit schedule property has been described as follows:

“புதுவை பதிவு மாவட்டம், நிரவு உதவி பதிவு மாவட்டம், நிரவி கொம்பூன் பஞ்சாயத்து, ஏண்.30, கிழமனை (ஊழியபத்து) கிராமத்தில்,

மறு அளவை எண். 136/11, பழைய அளவை எண்கள். 579, 580 பட்டா எண். 232, மொத்தபரப்பு 06 ஆர் புஞ்சையில், பழைய அளவை எண்.579ன் படி 03 ஆர் 10 சாந்தியார் அல்லது 23 1/4 குழிகள் பரப்புடைய புஞ்சை



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நான்கெல்லைகள்

தேசமுலை சாலைக்கு வடக்கு

நாகம்மாள் வகையறாவுக்கு சொந்தமான

பஞ்சைக்கு கிழக்கு.

ராஜமாணிக்கம் செட்டியார் வகையறா

நஞ்சைக்கு தெற்கு மற்றும்

ஆறுமுக வன்னியருக்கு சொந்தமான

பஞ்சைக்கு மேற்கு.

3. From the description it is clear that out of the total extent of 6 ares an extent of 3 ares 10 centiares or 23 ¼ Kuzhi is set out in old S.No.579. The property in the above schedule is described as a total extent of 6 ares comprised in old S.Nos.579 and 580 corresponding to re-survey No.136/11.

4. It is the case of the plaintiff that the property originally



belonged to one Ramalingam Chettiar. Ramalingam Chettiar had a son Rajamakicka Chettiar, whose wife was one Sarojini and his sons were Srinivasan and Parthasarathy. The property had fallen to the share of the said Rajamanickam Chettiar under a gift deed executed by his father, Ramalingam Chettiar. The suit property has been described as the 87th item in this irrevocable gift deed. On the death of Rajamanickam Chettiar, the property devolved on his wife and two sons. Later, under a registered release deed dated 28.08.1984, the wife of Rajamanickam Chettiar and his son Srinivasan, had released their share in the suit schedule property in favour of the other son Parthasarathy. The suit property has been described as 19th item in the said release deed. Thereafter, the said Parthasarathy had sold the suit property to the plaintiff herein under a registered sale deed dated 18.09.2007.

5. It is the case of the plaintiff that even prior to this purchase, he has been in possession and enjoyment of the suit property for over 25



years under a leave and license from the said Parthasarathy to park his Bullock Cart and to stock his agricultural implements. It is the case of the plaintiff that the suit property is situate opposite to his house. Therefore, he had requested the said Parthasarathy to permit him to use the suit property. After being permitted to occupy the suit property, the plaintiff had put up thatched hut in the southern portion of the suit property abutting the main road and had parked his Bullock Cart and the agricultural implements in the said hut. The remaining vacant portion on the northern side was utilised for tethering his bullocks.

6. It is the further case of the plaintiff that the 1st defendant who is the father and defendants 2 to 4 his sons were residing to the west of the suit property and they had no right over the suit property. The patta in respect of the suit property was No.232. By mistake, the same has been entered in the name of Chinnammal who was the paternal aunt of the 1st defendant and another unknown person. In the last week of September 2007 the defendants attempted to trespass into the suit



property constraining the plaintiff's wife to lodge a complaint with the Neravy Police Station.

7. On 01.10.2007, the 2nd defendant had lodged a complaint with the District Collector, Karaikal, wherein the defendants had admitted that the plaintiff was in possession of the suit property with the permission of the defendants. The defendants claim a right to the property on the basis of the patta standing in the name of Chinnammal and under two Wills stated to have been executed by the said Chinnammal in favour of the 1st defendant.

8. It is the case of the plaintiff that in the first Will dated 15.02.1983 there was no mention about the suit property. On 22.10.2007, the plaintiff had filed an application to Deputy Collector to correct and mutate the patta in favour of the plaintiff. The request was also made by the plaintiff's vendor Parthasarathy. Both the applications are pending. Meanwhile, a case under Section 145 Cr.PC



was registered on the basis of the complaints lodged by the plaintiff's wife and the 2nd defendant. The Sub Divisional Magistrate, Karaikal who had taken cognizance of the complaint in MC.No.194/2008 had called for the Thasildar's report. The Tahsildar has submitted his report stating that the plaintiff is in possession of the suit property.

9. On 11.11.2010, the Sub Divisional Magistrate had passed an order holding that the plaintiff is in possession of the suit property and directing the defendants not to disturb his possession. The defendants 2 to 4 had filed a revision to the Additional Sessions Judge, Karaikal in C.R.P.No. 15 of 2009. On 08.03.2010 this criminal revision was allowed and the matter was remitted back for fresh enquiry directing the Sub Divisional Magistrate to give adequate opportunity to both the parties to adduce their evidence and pass detailed order. Thereafter, once again the defendants started disturbing the plaintiff's possession.

10. On 15.03.2010, the plaintiff had commenced repair work in



the hut, which had fallen down and the defendants had objected to the same. The plaintiff being aged and weak person was unable to withstand the attempts made by the defendants to trespass into the suit property. Therefore, the plaintiff has come forward with the suit in question.

Defendants' case:

11. The defendants had denied the allegations contained in the plaint and would contend that the plaintiff has not marked any of the earlier documents but has only filed the manipulated documents of the year 2007. On 13.09.2006 the 1st defendant had executed three settlement deeds in favour of his sons, Arputham, Chelladurai and Mohan, in respect of the suit property. The plaintiff's vendor had no right to execute the sale in respect of the suit property in favour of the plaintiff.

12. It is the case of the defendants that Section 145 Cr.PC



proceedings was manipulated by the plaintiff with the help of Police authorities. The Additional District Judge, Karaikal had set aside the order of the Sub Divisional Magistrate, Karaikal and remitted the matter for fresh enquiry. The defendants would further highlight the fact that the Public Prosecutor who had appeared for the State before the Additional District Judge, Karaikal is the counsel for the plaintiff.

13. The defendants would further submit that they had been dispossessed after the Sub Divisional Magistrate's order with the help of Police. The defendants would submit that the plaintiff's vendor had filed an application for mutation of the revenue records along with the plaintiff only in the year 2007 which would clearly show that the lands belonged to the defendant.

14. The defendants would further submit that the settlement deeds executed in favour of his sons by Rajagopal traces their title to the property. They would submit that they are in possession of the



property which is evidenced by the Municipal Tax and Electricity Charges for over 20 years. Therefore, they sought to have the suit dismissed.

Trial Court:

15. The learned Judge had framed the following issues:

“(i) Whether the plaintiff is the absolute owner of the suit property?

(ii) Whether the plaintiff is entitled to the relief of declaration as prayed for?

(iii) Whether the plaintiff is entitled to the relief of Permanent Injunction as prayed for?

(iv) Whether the Will executed by Chinnammal is true and valid?

(v) Whether the settlement deed executed by Rajagopal in favour of Mohan on 13.09.2006 and in favour of Arputham are true?



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(vi) Whether the defendants are the owner of the

property as stated in para 3 of the written statement?

(vii) Whether the defendants are in possession of the

property as stated in the written statement?

(viii) To what relief?

16. The plaintiff had examined himself as P.W.1 and one Siva and Parthasarathi as P.W.2 and P.W.3 respectively and marked Ex.A.1 to Ex.A.21. On the side of the defendants, the 3rd defendant had examined himself as D.W.1. The 2nd defendant as D.W.2 and one Gunasekaran as D.W.3 and Ex.B.1 to Ex.B.28 were marked.

17. The learned Trial Judge after perusing the evidence on record and pleadings decreed the suit as prayed for. Challenging the same, the defendants are before this Court.



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Submissions:

18. Mr. T.Murugamanickam, learned Senior counsel appearing on behalf of the learned counsel for the defendants would submit that the plaintiff has come to the Court claiming a declaration in respect of an extent of 6 ares comprised in R.S.No.136/11, which in turn consist of Old S.Nos.579 and 580. He would draw the attention of the Court to Ex.A.5, which is the sale deed under which the plaintiff has purchased the property.

19. The learned senior counsel would submit that the plaintiff traces title from the sale deed in favour of Ramalingam's father Muthukumarasamy, which has been marked as Ex.A.1 and dated 31.03.1941. In this sale deed, the property that has been conveyed apart from other properties was an extent of 3 ares and 10 centi ares in Cadastrar No.579. Thereafter, under Ex.A.2, which is the document under which the property had been gifted by the said Ramalinga



Chettiyar in favour of Rajamaickam Chettiyar, the plaintiff's vendor's father dated 15.02.1960 relates only to O.S.No.579 measuring 3 ares and 10 centi ares. The release deed Ex.A.4 dated 25.08.1984, in favour of the plaintiff's vendor also relates only to O.S.No.579 measuring 3 ares and 10 centi ares.

20. The learned senior counsel would submit that therefore under Ex.A.1, Ex.A.2 and Ex.A.4 the property that has been subject matter of these documents is only 3 ares and 10 centiares in O.S.No.579. However, in the sale deed Ex.A.5 in favour of the plaintiff for the first time O.S.No.580 has been included and the total extent is shown as 6 ares. The learned senior counsel would submit that the plaintiff has not pleaded as to how he became entitled to the extent of 6 ares in the two survey numbers. He would submit that the plaintiff has not let in any evidence to show how he claims title to the extent situate in S.No.580.



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21. The learned senior counsel would submit that patta even as admitted by the plaintiff stood only in the name of Chinnammal, the paternal aunt of the 1st defendant who had executed two Wills in favour of the 1st defendant which has been marked as Ex.A.7 and Ex.A.8. The learned senior counsel would rely upon paragraph no.3 of the plaint to show the plaintiff's case with reference to possession. However, the plaintiff has not let in any proof whatsoever to show that he has been in possession of the property ever since 1985. He has not produced revenue records standing either in his vendor's name i.e., Parthasarathy nor in favour of Rajamanickam Chettiar and Ramalingam Chettiyar in respect of the suit property. The plaintiff has also not examined the said Parthasarathy in this regard. The records which the plaintiff seeks to place reliance upon are only the documents which have been created just prior to the filing of the suit.



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22. The learned senior counsel would also point out that even the vendor of the plaintiff has sought to mutate the revenue records in his name only on the very same date as the plaintiff had filed his application which is evident from Ex.A.10. Therefore, the plaintiff has not proved possession in respect of the suit schedule property. However, these facts have not been taken note by the Trial Court and the Trial Court has solely relied upon Ex.A.18 report of the Neravy Police Station to come to the conclusion that the possession is with the plaintiff. On the contrary, the learned senior counsel would submit that the defendants have proved title through the two Wills executed by the said Chinnammal in whose name the patta to the suit property stands since 1969, which is clear from Ex.B.6 to Ex.B.17.

23. The learned senior counsel would further submit that Ex.B.21 is an assessment certificate issued by Neravy Commune Panchayat, Karaikal, which states that the house tax is being assessed in the name



of Rajagopal, the 1st defendant. It is also seen that in the year 1974 notice has been issued to the said Chinnammal under the Survey and Boundaries Act for certifying the land and subdividing the same. The learned senior counsel would also submit that the Electricity Card Ex.B.27 stands in the name of the 1st defendant. Therefore, the learned senior counsel would submit that the possession has been with the defendants and not with the plaintiff.

24. He would rely upon the Judgement reported in **2013 (9) SCC 319 – State of Andhra Pradesh and others Vs. Star Bone Mill and Fertiliser Company**, in support of his argument that no person can claim a title better than what he possessed. In the instant case, there is nothing to show that the plaintiff has title to the lands comprised in O.S.No.580. The earlier deeds relied upon by the plaintiff is only with reference to the lands measuring an extent of 3 ares 10 centi ares in O.S.No.579 and the lands in O.S.No.580 has not been conveyed in these documents. For the first time in Ex.A.5, sale deed under which



the plaintiff purchased the property O.S.No.580 has been included and the extent is increased to 6 ares. Therefore, in the light of the afore said Judgement. The plaintiff is not entitled to a decree for declaration.

25. The learned senior counsel would also submit that the plaintiff has nowhere stated the period from which he has been in possession of the property except for stating that 25 years ago, he has entered possession of the property by way of leave and license. Therefore, in the light of such vague pleadings and the fact that the title has not been proved, the findings of the Trial Court has to necessarily be set aside.

26. Per contra, Mr. T.R.Ragagopalan, learned senior counsel appearing on behalf of the learned counsel for the plaintiff would submit that with regard to title Ex.A.1 to Ex.A.5 has been produced on the side of the plaintiff. That apart, though patta stands in the name of Chinnammal there is nothing to show how the said Chinnammal, the



paternal aunt of the 1st defendant trace title to the property. On the contrary, the plaintiff has established title from the year 1941 itself as evidenced by Ex.A.1.

27. The learned senior counsel would also rely upon Ex.A.16, Cadastrar Matrice, which reflects the name of one Muthukumarasamy, the plaintiff's vendor's great grand father who had purchased the property. The Cadastrar Matrice is a register grouping holdings for each revenue village and it shows the following particulars, name of the owner, the Survey Number, classification and area in matrices. Ex.A.16 clearly shows that O.S.No.579 measuring 3 ares stands in the name of Muthukumarasamy @ Kanagasabai son of Nataraja Vanniyar besides other properties. Therefore, the plaintiff has clearly traced his title to the suit property from the year 1941 onwards, whereas the defendants who relied upon Ex.A.7 and Ex.A.8 = Ex.B.1, Wills does not trace the title of Chinnammal i.e., it does not show how Chinnammal gets title to the property.



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28. The defendants have based their claim only on the basis of the patta and the Will. Infact the patta is a joint patta standing not only in the name of Chinnammal but also stands in the name of one Kathayi Ammal. Therefore, the plaintiff has clearly established title to the property.

29. As regards possession, the learned senior counsel would submit that the property as on date is a vacant land. Therefore, as per the Judgement in *2008 (4) SCC 594 – Anathula Sudhakar Vs. P.Buchi Reddy (Dead) by Lrs.*, possession follows the title. That apart, even in the written statement, the defendants have admitted that they are not in possession of the suit property and they would submit that the building which is referred to in the written statement is the adjacent building and not the one for the suit property.



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30. Further, D.W.1 the 3rd defendant during his cross examination admits possession is with the plaintiff. That apart P.W.3 the vendor of the plaintiff has in his evidence clearly stated that possession was given to the plaintiff 25 years ago. The plaintiff on purchasing the property has also immediately taken steps to have the revenue records mutated. Therefore, he would say that the Appeal Suit deserves to be dismissed.

31. The points for consideration in the above Appeal Suit are as follows:

(i) Whether the plaintiff is entitled to have his title declared as mentioned in the suit property in R.S.No.136/11, Old S.No.579 & 580, Patta No.232 totally measuring 6 ares, in which an extent of 3 ares and 10 cent ares, i.e., 23 ¼ kuzhi is comprised in O.S.No.579?

(ii) Whether the plaintiff is in possession of the property?



32. The plaintiff in paragraph no.2 of the plaint has described the suit property as follows:

2. The Re-Survey Number of the suit property is R.S.No.136/11. The total extent of the suit R.S.No.136/11 is 06 Acres. Two Old Survey Nos. comprised this R.S.No.136/11. The two Old Survey Nos are 579 & 580. In these two Old Survey Nos., O.S.No.579 alone Originally belonged to R.Ramalingam Chettiar and it developed subsequently as stated above to R.Parthasarathy. The extent of this Old survey No.579 is 03A-10Ca. The total extent of R.S.No.136/11 is 06 Acres, as stated above. The extent of Old Survey No.580 is 02A-90Ca. The Old Survey No.579 alone was sold by R.Parthaarathi to the plaintiff, as stated supra

The property described in the suit schedule is a total extent of 6 ares in R.S.No.136/11, Old Survey No.579 & 580, Patta No.232.



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33. The plaintiff has traced his title through Ex.A.1 which is the sale deed executed in favour of the great grand father of the plaintiff's vendor. In the said document the suit property is described in Item No.21 as 3 ares 10 centiares in Cadastrar No.579. The document does not refer to the property in Cadastrar No.580. On death of the said Muthukumarasamy, the property has devolved on his son Ramalingam, who had settled the property under Ex.A.2 dated 15.02.1960 in favour of his son Rajamanickam. The 87th item in the schedule to the settlement deed relates to property measuring 3 ares and 10 centiares or 23 Kuzhi in O.S.No.579. Once again there is no reference to the lands in O.S.No.580.

34. On the death of Rajamanickam Chettiar his wife and another son Srinivasan have settled the lands in R.S.No.136/11, O.S.No.579 measuring 3 ares 10 centiares. Once again there is no reference to O.S.No.580. However, for the first time in Ex.A.5 sale deed under which the plaintiff has purchased the suit property reference is made



both to O.S.No.579 as well as O.S.No.580 stated to be comprised in R.S.No.136/11 and totally measuring 6 ares. The land measuring 3 ares and 10 centiares is the extent in O.S.No.579 and 2 ares and 90 centiares is the extent in O.S.No.580. There is no mention as to how the plaintiff's vendor had obtained title to an extent of 2 ares and 90 centiares in O.S.No.580. All the earlier documents have only referred to an extent 3 ares and 10 centiares in O.S.No.579.

35. Ex.A.9 and Ex.A.10 are the letters addressed by the plaintiff and his vendor, respectively for mutation of revenue records. The plaintiff in Ex.A.9 has stated as follows:

“நான் கடந்த 13.09.2007ல் நிரவி கொம்பூன், எண் 30, கீழ்மனை (ஊழியபத்து) கிராமத்தில், ரிசர்வே எண். 136/11, கதாஸ்தர் எண்கள் 579, 580 பரப்பு 03 ஆர் 10 சாந்தியார் அளவுள்ள மனையினை விலைக்கு வாங்கியுள்ளேன்



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36. However, his predecessor in title, namely Parthasarathy had requested as follows:

“நிரவி கொம்பூன், எண் 30, கீழ்மனை (ஊழியபத்து) கிராமத்தில், ரிசர்வே எண். 136/11 ல் ஒரு பகுதி, கதாஸ்தர் எண் 579 பரப்பு 03 ஆர் 10 சாந்தியார் அளவுள்ள மனை எனக்கு சொந்தமானது.

.... மேற்படி மனையானது ரீசர்வே செய்யும் போது சின்னம்மாள் மற்றும் காத்தாயி பெயரில் தவறுதலாக பதியப்பட்டுள்ளது. எனவே மூல ஆவணங்களை சரிபார்த்து எனக்கு சொந்தமான 3 ஆர் 10 சாந்தியார் அளவுள்ள மனையினை உட்பிரிவு செய்து என் பெயரில் பட்டா மாற்றித்தருமாறு தாழ்மையுடன் கேட்டுக்கொள்கிறேன்.

Therefore, the plaintiff was very conscious that he had title to an extent of 3 ares and 10 centi ares.

37. As held by the Hon'ble Supreme Court in the Judgement



referred to by the defendants, namely, **2013 (9) SCC 319 – State of Andhra Pradesh and other Vs. Star Bone Mill and Fertiliser Company**, the plaintiff cannot plead something more than what he is entitled to as per document particularly when the plaintiff has come forward with a suit for declaring his title. Therefore, as regards the first point for consideration, the same is answered in favour of the plaintiff only with reference to the lands measuring an extent of 3 ares and 10 centi ares in O.S.No.579 now comprised in R.S.No.136/11.

38. The plaintiff's vendor had a right only to an extent of 3 ares and 10 centi ares in O.S.No.579 and Ex.A.5 does not describe how the plaintiff has got a right to an additional extent of 2 ares and 90 centi ares in S.No.580, which has not been the subject matter of the earlier documents in title. Therefore, the plaintiff has a right to 3 ares and 10 centi ares in O.S.No.579.

39. Coming to the next issue regarding possession, the property



admittedly is now a vacant site. The defendants in their written statement have stated as follows:

“After passing of the order by the Sub Divisional Magistrate, the defendants were dispossessed with the help of the Police and infact a fence was erected in front of the entrance of hut the roof of which has falled down on the west dilapidated building / house where the defendants reside is situate.”

40. Therefore, the defendants have themselves admitted that prior to the filing of the suit, the plaintiff is in possession of the suit property. The plaintiff has also examined P.W.3 his vendor who during his chief examination has submitted as follows:

“வழக்கு சொத்தை நான் கடந்த 13.09.2007 அன்று வாதிக்கு கிரையமாக விற்றேன். அன்றைய தினமே வழக்கு சொத்தின் அனுபோகத்தை வாதியிடம் அதன் உரிமையாளர் என்ற முறையில் கொடுத்துவிட்டேன். அதற்கு முன்பே கடந்த 25 வருடங்களாக வாதி எனது அனுமதியுடன் வழக்கு செத்தை அனுபவித்து வந்தார்.



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This statement has not been controverted in the cross examination.

41. Taking into account the fact that the plaintiff has proved his title to the property in O.S.No.579 measuring 3 ares and 10 centiares, right from the year 1941 and taking note of the fact that the property in question is now a vacant land possession has to follow title. Therefore, the second point for consideration is answered in favour of the plaintiff.

42. Consequently, the Appeal Suit is partly allowed and the decree of the Trial Court is restricted with reference to declaration and possession only to an extent of 3 ares and 10 centiares in O.S.No.579 (R.S.No.136/11). No costs.

11.07.2024

Index: Yes/No
Speaking order/non-speaking order
Neutral Citation: Yes/No

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To,

The District Judge,
Karaikal.

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