



S.A.No.78 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.03.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.78 of 2021
and C.M.P.No.1709 of 2021

Sankaral

...Appellant

Vs

1. Ramayee
2. The Tahsildar,
Erode Taluk.
3. The State of Tamilnadu,
Rep by District Collector,
Erode

...Respondents

Prayer: Second Appeal is filed under Section 100 of C.P.C against the judgment and decree dated 30.07.2020 passed in A.S.No.61 of 2015 on the file of the II Additional Subordinate Judge, Erode reversing the decree and judgment dated 04.08.2014 passed in O.S.No.214 of 2013 by the I Additional District Munsif Court, Erode.



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For Appellant : Mr.Titus Enock
for Mr.I.C.Vasudevan

For respondent-1 : Mr.V.S.Kesavan

For respondent-2 : Mr.C.Selvam,
Additional Government Pleader

JUDGMENT

The plaintiff is the appellant before this Court challenging the judgment and decree passed by the learned II Additional Subordinate Judge, Erode in A.S.No.61 of 2015.

2. The facts are herein below set out and for easy understanding of the parties to the *lis*, they are referred to in the same ranking as before the trial Court.



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3. The plaintiff had filed the above referred suit for an injunction restraining the first defendant, her men and agents from in any manner disturbing her peaceful possession and enjoyment of the suit property. The property in question is a house site measuring 1 ares (0.01.0 hectares) with thatched hut comprised in R.S.No.401/2 of Nanjai Uthukuli Village, Erode and which is bounded on the South by East-West pathway, North by S.No.401/3, West by vacant site and East by Survey No.74.

4. It is the case of the plaintiff that she had occupied this suit property belonging to the Government and had put up a thatched hut where she has been living for several decades. Recognizing her possession, the Government had also granted her HSD patta on 22.01.1992. The plaintiff has been in continuous possession of the suit property. The patta granted to the plaintiff would also make



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reference to the house (hut).

5. The plaintiff would submit that she had been employed in stone crushing units and for this purpose, she would be away from the village for several days. On one occasion, when the plaintiff had returned after completing her work on 14.05.2013, the first defendant had come to the suit property and demanded the plaintiff to vacate the property and threatened her. She had informed the plaintiff that the Government had given patta to her. The plaintiff had immediately brought it to her notice that she had been given patta as early as in the year 1992. The first defendant had left but had informed the plaintiff that she would return. Once again on 09.06.2013, the first defendant along with several antisocial elements had come into the suit property and attempted to dispossess the plaintiff. The plaintiff has successfully prevented this with the help of her neighbours. Therefore, the plaintiff has come forward with the suit in question.



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6. The first defendant had filed a written statement, *inter-alia*, denying the plaintiff's claim to the suit property. She would submit that she and her husband have been residing in the suit property for well over years. Her husband had died long back leaving the first defendant and her children. She would submit that her children had grown up in the suit property and now they are settled in different places. She would submit that she has also obtained patta in her name. On 19.11.2011, when the first defendant had decided to construct on the property and for which purpose, he had cleared the property. However, the villagers had gathered around the property and objected to her clearing the suit property. Therefore, the first defendant has filed O.S.No.616 of 2011 for permanent injunction restraining the villagers and their men and agents from interfering



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with the peaceful possession and enjoyment of the suit property. This suit was decreed after a full trial on 29.08.2012. Therefore, the first defendant would submit that she has the right to the property and not the plaintiff.

7. The learned Judge had, on going through the pleadings, framed the following issues.

1. வழக்குச் சொத்தின் சுவாதீனத்திலும், ஆனபவத்திலும் வாதி

இருந்துவருகிறாரா?

2. வழக்குச் சொத்தின் சுவாதீனத்தில் 1ம் பிரதிவாதி

இருப்பதாக கூறவது சரியா?

3. அ.வ.எண்.616/2011ல் 29.08.2012 அன்று பிறப்பிக்கப்பட்ட

தீர்ப்பு இவ்வழக்கின் தரப்பினர்களை கட்டுப்படுத்தக்கூடியதா?

4. இவ்வழக்கு முன் தீர்ப்பு தடையால் பாதிக்கப்பட்டுள்ளதா?

5. வாதி கோரியவாறு வழக்குச் சொத்தைப் பொறுத்த நிரந்தர

உறுத்துக்கட்டளை கிடைக்கக்கூடியதா?



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6. வாதிக்குக் கிடைக்கக்கூடிய இதர பரிகாரங்கள் என்ன?

8. The plaintiff had examined herself as P.W1 and one Natarajan as P.W2 and marked Exs.A1 and A21 The first defendant had examined herself as D.W1 and marked Exs.B1 to B4. The learned I Additional District Munsif, Erode on considering the evidence decreed the suit as prayed for. Challenging the same, the first defendant had filed A.S.No.61 of 2015 on the file of the II Additional Subordinate Court, Erode. The learned Judge came to the conclusion that the property of the plaintiff and the defendant are one and the same. The learned Judge has also held that the suit property as well as the property covered under Exs.B1 and B2 are one and the same. The learned Judge therefore proceeded to allow the appeal and set aside the judgment and decree of the trial Court. The appellate Court had also held that the plaintiff has not proved the cause of



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action. The learned Judge observed that the plaintiff ought to have filed the suit for declaration since even prior to the institution of the suit, the first defendant had questioned the title. Challenging the same, the plaintiff has filed the above second appeal.

9. The second appeal has been admitted on the following substantial questions of law.

(a) Whether the Court below is justified in holding that the appellant's property as found in Ex.A1 and the property of the 1st respondent as found in Exs. B2, B3 and B4 are one and the same by relying on Adangal and the schedule of properties given in earlier suit filed by the 1st respondent?

(b) Whether the Court below is correct in holding that the suit is not maintainable for want



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of declaratory relief especially when the appellant prove her title through Ex.A1?

(c) Whether the Court below is correct in holding that the possession certified issued by the 1st respondent/Thasildar is not a valid document to prove possession?"

10. Heard the learned counsel on either side and perused the materials available on record.

11. The plaintiff's case is that she had been in occupation of the suit property and taking note of her long occupation and enjoyment of the property she had been granted HSD patta by the Government and the same has been marked as Ex.A1. A perusal of the plan attached to Ex.A1 would indicate that the property which has been allotted to her is bearing No.75. To the north of her property, there is a pathway and



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further on the North, there are some plots and north of these house sites, the Madurai Veeran temple and the vacant site around it is situate. The aforesaid discussion is necessary since in the written statement, the first defendant had clearly and categorically stated that when the first defendant had decided to put up a thatched hut in the suit property on 19.11.2011, the villagers had objected and had stated that the land belongs to the temple for which the first defendant had filed S.No.616 of 2011. The judgment and decree has been marked as Exs.B3 and B4. A perusal of Ex.B3, judgment in O.S.No.616 of 2011 would show that though the first defendant would submit that the property which is the subject matter of the suit O.S.No.616 of 2011 and the present suit as the same, the defense taken in O.S.No.616 of 2011 was that the suit property was situate close to the Madurai Veeran temple and the land is being used for cooking the offerings like Pongal etc., The argument that had been put across was that this



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property, which is a vacant site, was abutting the temple. The first defendant, as the plaintiff in O.S.No.616 of 2011, has not objected to the fact that the property was situate abutting the temple. Therefore, when the above statement is taken into consideration and Ex.A1 is examined, it is clearly evident that the property, which is the subject matter of the instant suit, is nowhere near the temple and is far away from the same. Therefore, it is crystal clear that the property belonging to the plaintiff and the defendant are entirely different. Further, the plaintiff has produced the patta issued to her in the year 1992. Exs.B1 and B2, which have been marked on the side of the first defendant, were obtained just before the filing of the suit. Further, the measurements that are shown in Exs.B1 and B2 clearly show that it is a larger extent and does not co-relate to the suit schedule property. Therefore, the findings of the lower appellate Court that the properties are one and the same is absolutely incorrect and the substantial



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question of law No.(a) is answered in favour of the plaintiff.

12.It is an admitted fact that the property in question belongs to the Government and in recognition of the possession, the plaintiff has been granted Ex.A1-patta as early as in the year 1992 by the revenue authority. The property has also been earmarked in the sketch annexed to the patta. Therefore, the first defendant has claimed title to the suit property, contending that it is the same property as covered under suit O.S.No.616 of 2011, which, as narrated supra, relates to totally different property. Therefore, the failure to seek the relief of declaration is not fatal to the case as the first defendant has no title to the suit property and that the plaintiff has been able to show her possession by filing Exs.A1 and A2. Therefore, the substantial question of law Nos.(b) and (c) are answered against the first defendant. Accordingly, the second appeal is allowed. The judgment



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and the decree of the lower appellate Court is set aside. The suit is decreed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No

Speaking order/non-speaking order

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To

1. The II Additional Subordinate Judge, Erode
2. The I Additional District Munsif Court, Erode.
3. The Section Officer, V.R.Section, High Court, Madras.



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P.T.ASHA, J.,

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