



Second Appeal No.736 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.03.2024

CORAM :

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

Second Appeal No.736 of 2013

Pappireddypatti Sri Kanniga
Parameswari Devasthanam
Rep.by Arya Vysya Community Trustee

- 1.V.Seetharaman
- 2.K.Ramakrishnan
- 3.R.Sridharan
- 4.A.Vijayakumar
- 5.R.Soorappagupta

.... Appellants

-Vs-

- 1.Jayabal
- 2.Rani
- 3.Minor Muthu
- 4.Santhoshkumar
- 5.Jaya
- 6.Tahsildar
Pappireddipatti
- 7.The Executive Engineer
Second Grade Panchayat Union
Pappireddipatti.
- 8.Revenue Divisional Officer
Harur.
- 9.District Collector
Dharmapuri.
- 10.Assistant Director of Town Panchayats
Dharmapuri.
(Amended the substituted cause title vide
court order dated 24.01.2021 made in
CMP No.3378/2019 in SA No.736/2013)

... Respondents



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Prayer : Second Appeal under Section 100 of C.P.C., against the judgment and decree dated 21.12.2011 made in A.S.No.2 of 2010 on the file of the learned Subordinate Judge, Harur reversing the judgment and decree dated 30.11.2009 made in O.S.No.470 of 2008 on the file of the learned District Munsif-cum-Judicial Magistrate, Pappireddipatti.

For Appellants	: Mr.T.Sai Krishnan for M/s.D.Shivakumaran
For Respondents	: Mr.V.Karthikeyan for Mr.V.Nicholas - for RR 1 to 5 Mr.B.Tamilnidhi, Additional Government Pleader -for RR 6 to 8 and 10 Mr.C.Selvaraj Additional Government Pleader - for R7

J U D G M E N T

The present Second Appeal arises out of the judgment and decree dated 21.12.2011 made in A.S.No.2 of 2010 on the file of the learned Subordinate Judge, Harur reversing the judgment and decree dated 30.11.2009 made in O.S.No.470 of 2008 on the file of the learned District Munsif-cum-Judicial Magistrate, Pappireddipatti.

2. For the sake of convenience, the parties are referred to as per their rank in the suit.



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3. The plaintiff is the appellant. It filed a suit for the relief of declaration that the patta issued to the second defendant by the fourth defendant is liable to be cancelled and declaring the pattas issued in favour of the defendants 2, 3 and 8 by the fifth defendant are liable to be cancelled and for a permanent injunction restraining the defendants not to put up any construction over the suit property and also for delivery of possession.

4. The case of the plaintiff is that the suit schedule property originally belonged to one Venkatanarayana Iyer. The said Venkatanarayana Iyer executed a settlement deed on 31.12.1927 and endowed the property in favour of the plaintiff temple. The original survey number was 165/1 and later, on survey it was changed to 19/7 and finally during the Natham survey, it was given Survey No.288/8, which was in turn subdivided into 288/8A, 8B and 8C. Insofar as the subdivisions are concerned, in none of the proceedings the plaintiff had received notice and hence it came forward for the cancellation of the said proceedings.

5. Insofar as the relief of recovery of possession is concerned, the case of the plaintiff is that, Kannaiya Naidu had taken possession of the property from the temple as a lessee on 01.03.1960. Since he raised a dispute as regards the right of the temple, the plaintiff temple filed a suit in O.S.No.21 of 1969 on the file of the District Munsif Court at Dharmapuri seeking recovery of possession. In



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the said proceedings, a compromise was arrived by which the title of the plaintiff stood confirmed by the first defendant Kannaiya Naidu. On 15.04.1972, he handed over possession of the property to the plaintiff. Thereafter, Kannaiya Naidu had become the permissive occupant of the plaintiff on 07.10.1980. The defendants 2,3 and 8 are none else than the sons of the first defendant. The entire extent of the suit property is 29 cents, which, as pointed out above, had undergone subdivision etc., and today bears S.Nos.288/8A, 8B and 8C.

6. Taking advantage of the Natham survey proceedings, as the defendants 2, 3 and 8 were in possession of the property, they obtained patta for the same. The Devasthanam was not put on notice of the proceedings and on coming to know of the same, it issued a public notice that it is the owner of the property. It was when the second defendant attempted to put up construction over the suit schedule mentioned property that the plaintiff was constrained to file the suit. Pending the suit in O.S.No.28 of 1992, an Advocate Commissioner was appointed in I.A.No.1675 of 1997, who submitted a report that three thatched houses and a tiled house had been put up over the property. On the basis of the Natham Patta, the defendants 2 and 3 attempted to get loan from the bank, which was protested by the plaintiff. As the plaintiff's right was sought to be encroached upon by the defendants 2, 3 and 8, the temple trustees came forward with the suit for the aforesaid reliefs.



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7. The defendants entered appearance and submitted that the suit schedule mentioned property is not in S.No.165/1 but in S.No.166/1, of which the plaintiff is not the owner. They conceded that S.No.165/1 belongs to the plaintiff. They took a curious plea that if the revenue records of the year 1905 are compared, it will show that the plaintiff is not the owner of the said survey number. The defendants stated that they are neither tenants nor in permissive possession and that the compromise decree entered is not binding on them. The patta that had been issued by the Government authorities being under the Natham proceedings, it is binding on all. If at all the plaintiff has a right, they have to prefer an appeal before the appropriate authority and cannot maintain a suit.

8. The defendants 4, 5, 7 and 9 filed a separate written statement. According to them, the dispute with respect to S.No.288/8A and 8B is concerned, it is between the plaintiff and one Mathian. As per the order of the District Revenue Officer, Dharmapuri dated 28.04.1998 and the order passed by the Tahsildar, Harur dated 28.05.1992, Mathian has been in possession and enjoyment of the property. He had applied to the local Panchayat and had obtained an approved plan for the property situated in S.No.288/2 and hence the suit is liable to be dismissed.



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9. On the above pleadings, the learned Trial Judge framed the following issues:

1. தாவா சொத்து விவரம் சரியானதா ?
2. வாதி தேவஸ்தானத்திற்கு தாவா சொத்து பாத்தியமானதா ?
3. வாதியின் கோரிக்கை காலங்கடந்ததா ?
4. 3, 8 பிரதிவாதிகளுக்கு தாவா சொத்தில் எதிர்நிலை உடைமை மூலம் பாத்தியமேற்ப்பட்டுள்ளதா ?
5. தாவா சொத்தும், நீதிமன்ற கட்டணமும் சரியானதா ?
6. வாதி கோரும் 'அ' விளம்புகை பரிகாரம் அளிக்கத்தக்கதா ?
- 7.வாதி கோரும் 'ஆ' உறுத்துக்கட்டளைப் பரிகாரம் அளிக்கத்தக்கதா ?
8. வாதி கோரும் 'சி' விளம்புகை பரிகாரம் அளிக்கத்தக்கதா ?
9. வாதி கோரும் 'ஈ' விளம்புகை பரிகாரம் அளிக்கத்தக்கதா ?
10. வாதிக்கு கிடைக்கும் பரிகாரங்கள் யாவை ?

10. On the side of the plaintiff, P.Ws.1 to 3 were examined and Exs.A1 to A8 were marked. The defendants examined D.Ws.1 to 4 and marked Exs.B1 to B48. Since an Advocate Commissioner had been appointed to localise the property, his reports were marked as Exs.C1 to C3.



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11. The learned trial Judge after a detailed enquiry, on the basis of the oral and documentary evidence produced before her, decreed the suit as prayed for. This decree was carried on in an appeal before the Subordinate Judge, Harur, who allowed the appeal and dismissed the suit, against which the present Second Appeal has been presented before the Court. This Court had ordered notice regarding admission on 09.07.2013.

12. Mr.Nicholas entered appearance for the respondent. I heard the appeal on the following substantial questions of law.

- a) When the Plaintiff Temple has proved under Ex.A.20, the settlement deed dated 31.12.1927 by one Venkatnarayana Iyer in favour of Temple Devasthanam, that the plaintiff temple is the owner of larger extent of 29 cents in S.No.165/1 corresponding to new S.No.19/7 part and S.No.288 including the new subdivisions made as S.Nos.288/8A, 288/8B, 288/8C and 288/8, is the lower appellate court correct in holding that the plaintiff temple does not have title to the suit property by erroneously relying upon the order passed by the Settlement Tahsildar under Ex.B.39?
- b) When the plaintiff temple is the owner for the entire extent of 29 cents in S.No.165/1 is the lower appellate court correct in law in holding that the plaintiff does not have title to the suit property without appreciating the evidentiary value of Ex.A20.



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- c) When the plaintiff temple have proved their title to the suit property on the strength of the compromise decree dated 15.04.1972 in O.S.No.21 of 1969 on the file of the District Munsif Court at Dharmapuri, Ex.A.21 between the plaintiff temple and the deceased first defendant, Kannaiya Naidu, admitting the plaintiff's title in respect of the larger extent of 29 cents in S.No.165/1 and as such can the defendants, who are the descendants of Kannaiya Naidu deny the plaintiff's title to the suit property which is within the said 29 cents?
- d) When the defendants failed to let in any acceptable contra evidence to rebut Ex.A.20 and Ex.A.21, settlement deed and compromise decree, establishing the plaintiff's title to the suit property, is the lower appellate court correct in law in holding that title to the suit property have been conferred on the defendants merely on the basis of Ex.B34 to Ex.B.39, settlement patta and the proceedings of Settlement Tahsildar ?
- e) When the Patta has been obtained by misrepresentation by the defendants before the Settlement Tahsildar without setting up title independently and without disclosing Ex.A.20 and Ex.A.21 is the lower appellate Court correct in law holding that the civil Court has no jurisdiction to cancel the patta issued in the name of the defendants.

13. The appeal was moved by Mr.T.Saikrishnan for the appellants and Mr.V.Karthikeyan for the respondents.



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14. Mr.Saikrishnan would argue that title to the temple is vested by virtue of the document dated 31.12.1927 of old S.No.165/1 and new S.No.19/7 and present S.No.288/8. He would state that during the Natham survey proceedings, the first defendant managed to obtain patta, constraining the temple to file the present suit. He would state that, previously as against the first defendant a suit for ejectment had been filed and in that suit, a compromise had been entered into on 15.04.1972, under which the title of the temple stood confirmed. He would point out that the defendants 2, 3 and 8 are the sons of the first defendant who had taken the property as a permissive occupant on 07.10.1980 and therefore they cannot resist the same.

15. Mr.V.Karthikeyan would submit that the suit should have been filed for declaration of title and for recovery of possession and a suit for mere recovery of possession is not maintainable. He would also point out that the patta that had been granted has not been cancelled and therefore the plaintiff is not entitled to a decree. He also drew my attention to Ex.B39 to state that insofar as the cancellation of patta proceedings that were initiated, it had gone against the plaintiff and that will bind them and they are not entitled to succeed. He would state his clients are in occupation of S.No.166/1 and not S.No.165/1 and therefore the appeal deserves to be dismissed.



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16. I have carefully head the counsel on both sides and have gone through the records.

17. It is not in dispute and neither can the first defendant dispute that the property originally belonged to one C.R.Venkatnarayana Iyer who had executed a settlement deed on 31.12.1927 in favour of the temple. The survey number was S.No.165/1 and the extent of the property granted was 29 cents. The temple, by virtue of the settlement deed had been in possession and enjoyment of the property for more than 40 years. Since the first defendant raised a dispute as regards the right of the temple and an ejectment suit was filed in O.S.No.21 of 1969, in that suit the following compromise had been recorded by the learned District Munsif at Dharmapuri on 15.04.1972. The defendant in that suit is none else than Kannaiya Naidu, the first defendant in the present suit.

" That the suit property described hereunder will absolutely belong to the plaintiff temple (Sri Kanniga Parameswari Amman Koil, Pappireddipatti, Harur Taluk) and that the defendant delivered possession of the same to the plaintiffs today (15.04.1972)"

18. The schedule of the property in that proceedings are hereunder :



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" ச.நெ.19/7ல் உள்ள கால் ஜாகாவுக்கும் வடக்கு இதன் மத்தியில்
கிழமேல் 30 1/2 அடி, தென்வடல் 16 1/2 அடி. "

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19. Therefore, it is clear that Kannaiya Naidu had been in possession and enjoyment of S.No.19/7 as late as 1972. The present suit arose because during the Natham Survey, the defendants managed to obtain a Patta from the revenue authorities. The same are marked as Exs.B.34, B.35 and B.44. On account of having secured the patta, they started making a claim that they are the owners of the property. It is too well settled, but yet has to be repeated that a Patta is not a document of title and when a person possessing a better title to the property presents a suit, the revenue record has to yield to that of the title holder.

20. Now this takes me to the dispute that the suit property in survey number is 166/1 and not 165/1. The Village Administrative Officer has been examined as P.W.2. He has categorically deposed that the old survey number was 165/1, which changed to 19/7 and currently the survey number is 288/8. During the Natham survey, this was subdivided into S.Nos.288/8A, 8B and 8C.

21. One of the brothers finding that he was on a weak wicket, has settled the issue with the temple and has surrendered possession. It is the other two



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brothers who are resisting the appeal. Since a dispute had arisen over the identity of the property, the temple had taken steps to examine the Village Administrative Officer. The Village Administrative Officer has clearly and categorically deposed as regards the nature and extent of the property and his evidence has not been shaken in the cross examination. That being the situation, I have come to the conclusion that S.Nos.288/8A, 8B and 8C, which is the subject matter of the suit relate to Survey No.19/7, which corresponds to Ex.A21, the decree of the Court under which the title of the temple has been confirmed. Through Ex.A.21, I have to go back to Ex.A.20, which is the gift deed under which, on 31.12.1927 the previous owner C.R.Venkatnarayana Iyer had endowed the property to the plaintiff temple. Therefore, the plaintiff has succeeded to prove continuous title to the property right from 1927 till date.

22. An argument has been taken by the learned counsel for the respondents that, as the defendants have Natham Patta, they became the owners of the property. He has been emboldened to make such a statement because Grama Natham does not vest with the Government and therefore it is to be treated as vesting with the first occupant. He would refer to a judgment of a Division Bench of this Court in "**Dharmapura Adhinam Mutt -vs- Raghavan and Others (2011) 5 LW 545**". The facts of that case show how this authority is not applicable to the present case. The Division Bench had come to



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a conclusion that a Patta granted under the UDR scheme is not a bar for the civil Court to go into the issue.

23. If the principle of Grama Natham is applied to the present case, the original occupant was C.R.Venkatnarayana Iyer, who had given the property to the temple. Therefore, the original occupant had transferred the property in favour of the temple and in order to dispossess the title of the temple, the defendants 1, 2, 3 and 8 should have produced better title to the property. What was projected against the title deed are revenue records. I have concluded that revenue documents do not confer title. Unfortunately the lower appellate Court seems to have taken a view that the revenue documents being under the Natham proceedings will confer title to the person in occupation. If the land does not vest with the Government, then by virtue of Natham patta the Government cannot transfer title to a person in occupation. No proof has been let in to show that the temple was put on notice during the Natham proceedings. Therefore, the projection of Natham patta as against the title deed in Ex.A.20 does not help the case of the defendants.

24. This now takes me to Ex.B.39 which was very strongly relied upon by Mr.V.Karthikeyan. A careful reading of Ex.B.39 shows that it related to the property situated in S.No.19/5 and not in S.No.19/7. It is not the case of the



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plaintiff temple that it owned property in S.No.19/5 and therefore under such circumstances, the appellate authority under the Standing Orders of the Revenue Department concluded that the temple not being connected with S.No.19/5 is not entitled to stake a claim to enjoy the property situated in that survey number. Ex.B.39 being in a different survey number does not improve the case of the defendants as they are admittedly in S.No.288/8 (corresponds to old S.No.19/7) as is clear from the evidence of the Village Administrative Officer.

25. In the light of the above discussion, I find that the lower appellate Court had placed lot of reliance on the Natham patta having been granted to the defendants and had held that the suit for declaration is not maintainable. Apart from that, it is a settled position of law that a plaintiff in a suit for bare recovery of possession stands or falls on proving his title and in case he proves his title and the defendant is not able to displace the same, the plaintiff is entitled to succeed. However, if the defendant is able to project a better title, the suit necessarily has to fail (**Nair Service Society Ltd -Vs- Rev. Father K.C. Alexander [AIR 1968 SC 1165]**). The Supreme Court having settled the position of law, all that I have to say is, where the plaintiff has proved better title by way of Ex.A19 and Ex.A20, I am able to come to a conclusion that the temple is the owner of S.No.19/7 to an extent of 29 cents and the Natham patta proceedings are not going to help the defendants.



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26. Now I turn to the last point that the suit for bare recovery of possession is not maintainable and the suit ought to have filed for declaration of title. I am not in agreement with the said argument of the learned counsel for the respondents. This is for the simple reason that the relief of declaration of title is an expensive relief and that ought to be sought for only when a "cloud over title" is created by the defendants on the title of the plaintiff. As against the aforesaid title document referred to by me, the only "cloud" if at all that has been projected is the revenue proceedings. Revenue proceedings, as I have already held, would not confer title and therefore there is not even a whiff of a cloud over the title of the plaintiff. It is not the business of the plaintiff to seek for the relief of declaration of title merely to satisfy the ego of the defendants. This principle of law is very succinctly laid down by the Supreme Court in **Anathula Sudhakar vs P. Buchi Reddy (Dead) By LRs & Ors (AIR 2008 Supreme Court 2033)** and by this Court in **Arulmighu Velukkai Sri Azhagiya Singaperumal Devasthanam Rep.by its Trustees and Others -Vs- G.K.Kannan and Others (2020 SCC Online Mad 28257)**.

I apply the aforesaid two verdicts to the present case and reject the argument that declaration of title need not be sought for by the plaintiff.



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27. As I have answered all the points in favour of the plaintiff and I have rejected the objections raised by the defendants, nothing further remains in my hands than to answer the questions of law already framed in favour of the appellants and as against the respondents.

28. In fine, the judgment and decree of the Court of the Subordinate Judge at Harur in A.S.No.2 of 2010 dated 21.12.2011 is set aside. The judgment and decree of the learned District Munsif-cum-Judicial Magistrate at Pappireddipatti in O.S.No.470 of 2008 (originally numbered as O.S.No.41/2001 on the file of the District Munsif Court, Harur) dated 30.11.2009 is restored. The Second Appeal is allowed. Costs throughout. Time for handing over possession is three months from the date of receipt of a copy of this judgment.

26.03.2024

Index : Yes/No
Neutral Citation : Yes/No
Speaking Order / Non-speaking order
KST
To

1. The Subordinate Judge, Harur.
2. District Munsif-cum-Judicial Magistrate at Pappireddipatti.



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V.LAKSHMINARAYANAN, J.

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