

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28 - 10 - 2015

CORAM:

THE HON'BLE SMT. JUSTICE PUSHPA SATHYANARAYANA

S.A. Nos. 130 and 131 of 2009

and

M.P. No. 1 of 2009 in S.A. No. 130 of 2009

K.S.Arokiadoss ... Appellant/Plaintiff
in SA.130/09

Appellant/3rd defendant
in SA.131/09

Vs.

1. S. John
2. S. Joseph
3. Periyamayagamery ... Respondents/Defendants
in SA.130 of 2009

1. Periyamayagamery ... 1st Respondent/Plaintiff
in SA.131/09

2. The Special Tahsildar
Natham Survey Scheme
Taluk Office, Panruti

3. The District Collector
Cuddalore

... 2nd & 3rd Respondents/
1st & 2nd defendants
in S.A. No. 131 of 2009

Appeals filed under Section 100 of the Code of Civil Procedure against the common judgment and decree dated 31.03.2008 passed by the Subordinate Judge, Panruti, in A.S. Nos. 1 and 3 of 2007 respectively confirming the common judgment and decree dated 19.10.2006 passed by the District Munsif, Panruti, in O.S. Nos. 392 of 1999 and 422 of 1996 respectively.

For Appellant in both Appeals : Mr. R. Subramanian
for Mr. R. Sunilkumar

For RR 1 to 3 in S.A. 130 / 2009: Mr. T. Sezhiyan
& R1 in S.A. No. 131 / 2009

For RR 2 & 3 in S.A. 131 / 2009: Mr. M. Venugopal
Spl. GP (CS)

COMMON JUDGMENT

The plaintiff in O.S. No. 392 of 1999, who is the third defendant in O.S. No. 422 of 1996, has preferred these instant Second Appeals S.A. Nos. 130 and 131 of 2009 against the common judgment and decree dated 31.03.2008 passed by the Subordinate Judge, Panruti, in A.S. Nos. 1 and 3 of 2007 respectively confirming the common judgment and decree dated 19.10.2006 passed by the District Munsif, Panruti, in O.S. Nos. 392 of 1999 and 422 of 1996 respectively.

2. Since the issue involved in these two appeals is inter-connected and as they arise out of common judgment and decree by the Courts below in respect of one and the same suit property, they are disposed of by this common judgment.

3. For the sake of convenience, the parties are referred to in the manner as they were arrayed in O.S. No. 422 of 1996.

4. Heard the learned counsel appearing for the parties and perused the records.

5. The issue is between the plaintiff and her brother-in-law, who is the third defendant in O.S. No. 422 of 1996.

6. The plaintiff has based her claim on Ex. A.3 Patta, which was issued in her name, based on the possession of her husband earlier who had been enjoying the same by putting up a small house and garden. The husband of the plaintiff died on 14.03.1977 and thereafter, the plaintiff had been living in the suit property with her children. To evidence the same, she had also filed house tax receipts under Exs. A1 and A.2 dated 12.12.1991 and 01.3.1995 respectively. As such, according to the plaintiff, she is in possession and enjoyment of the suit property. When the third defendant, appellant herein, who is none other than the brother-in-law of the plaintiff residing on the northern side of the suit property, had attempted to trespass into the suit property, she filed O.S. No. 422 of 1996 for declaration of title and permanent injunction restraining the official respondents from cancelling the suit and also for permanent injunction restraining the third defendant from interfering with her lawful possession of the suit property.

7. As a counter case, the third defendant in O.S. No. 422 of 1996 besides filing a written statement in the above suit denying all the facts supporting the cause of action in the plaint, filed suit O.S. No. 392 of 1999 contending that the patta issued in favour of plaintiff was by mistake as she was entitled to a portion of 23' x 15' only where a hut is situate. Besides, it was pointed out that the said patta was "Manaiivari Thoraya Patta" and the same was not confirmed. The patta was

also denied on the ground that it was obtained behind his back, without notice to him. In the ordeal, the appellant also claimed to have given an objection petition to the Natham Special Tahsildar and sought for cancellation of the same excepting with respect to 'C' schedule in O.S. No. 392 of 1999. The appellant further claimed his right based on an exchange deed executed by the husband of the plaintiff. However, according to him, despite notice on the enquiry, the plaintiff had allegedly filed the above suit. On these grounds, the third respondent sought for declaration of title with regard to 'B' Schedule property and for permanent injunction restraining the defendants therein from dispossessing him from the suit property.

8. In view of the inter-connectivity of the issue in the suits, they were tried in common and a common judgment was passed by the trial Court decreeing the suit filed by the plaintiff in O.S. No. 422 of 1996 and dismissing the suit O.S. 392 of 1999 filed by the third defendant. Aggrieved by the decree granted in O.S. No. 422 of 1996 and the dismissal of his own suit in O.S. No. 392 of 1999, the third defendant preferred appeals in A.S. Nos. 3 of 2007 and 1 of 2007 respectively.

9. The suit property, which is an extent of 166 sq.mts., approximately 4 cents, is situate in S. No. 190/5 of Sathipattu Village in Panruti Taluk. Originally, there was 9 cents of land and it was orally divided between plaintiff's husband and the third defendant / appellant in which the plaintiff's husband was allotted southern portion while the northern portion was allotted to the appellant.

10. Learned counsel appearing for the appellant / third defendant contended that the decree granted in favour of the plaintiff is liable to be set aside on the following grounds:-

- a) The boundary description given in the plaint is wrong;
 - b) Instead of facing the enquiry with respect to issuance of patta, the suit filed as such is premature;
 - c) As per exchange deed dated 09.03.1977, the husband of the plaintiff transferred the property in favour of the appellant; and
 - d) Ex. A.3 Patta itself was issued by mistake and hence, the third defendant cannot take advantage of the same.
- Besides the above points of attack, the appellant also raised a question as to whether a provisional patta issued can be relied on when patta itself will not confer title.

11. The appellant also filed M.P.No.1 of 2009 in S.A. No. 130 of 2009 to receive the deed of settlement dated 09.03.1977 alleged to have been executed by the husband of plaintiff in his favour. Though a pleading was made to that effect in the written statement by the appellant / third defendant in O.S. No.

422 of 1996, the same was not marked before the Court. The said document, according to him, was omitted to be marked by the counsel for the appellant before the trial Court. There is no convincing reason stated in the affidavit for not marking the same before the Lower Appellate Court. Even before this Court, the said document was not filed along with the petition. Only subsequently, it was filed with a memo. Admittedly, as the same which conveys title to a party, is not registered, it is inadmissible in evidence.

12. Though the appellant / third defendant, who is the plaintiff in O.S. No. 392 of 1999 with respect to the same suit property claims to be in possession of the entire extent, there is no evidence on record even to remotely challenge the correctness of patta issued.

13. Admittedly, the suit property was a poromboke and later on, converted to Natham. The plaintiff / respondent had filed Ex. A.3 Manaivari Thoraya Patta, though provisional, Kist receipts Exs. A.5 to A.7 and Exs. A.1 and A.2 House Tax Receipts to establish her title and possession whereas the appellant / third defendant has not filed any document to substantiate his contention with respect to the declaration of title and injunction. In effect, having failed to establish his case, the effort of the appellant is to substantiate his own pleadings by subterfuge.

14. In view of the aforesaid facts as noticed in each suit and in view of the concurrent findings of the Courts below which are not perverse, this court finds no reason to interfere with the same. As such, there is no substantial question of law arising for consideration. In such view of the matter, the plaintiff in O.S. No. 422 of 2006 is entitled to the reliefs sought for in the suit. Resultantly, the appeals fail and the judgment and decree passed in favour of the plaintiff in O.S. No. 422 of 2006 decreeing the suit, require no interference.

15. In view of the foregoing discussion, both the appeals fail and stand dismissed. Consequently, the common judgment and decree dated 31.03.2008 passed by the Subordinate Judge, Panruti, in A.S. Nos. 1 and 3 of 2007 respectively confirming the judgment and decree dated 19.10.2006 passed by the District Munsif, Panruti, in O.S. Nos. 392 of 1999 and 422 of 1996 respectively are affirmed for the reasons assigned by this Court in these appeals. In view of the relationship between the parties, there shall be no order as to costs. Connected Miscellaneous Petition is closed.

It is submitted by the learned counsel for the appellant across the bar, that the proceedings for cancellation of patta are still pending before the authorities. If the said

proceedings are still pending, it is made clear that the same may be proceeded with independently, without being influenced by the findings herein, within a period of four months from the date of receipt of a copy of the judgment.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

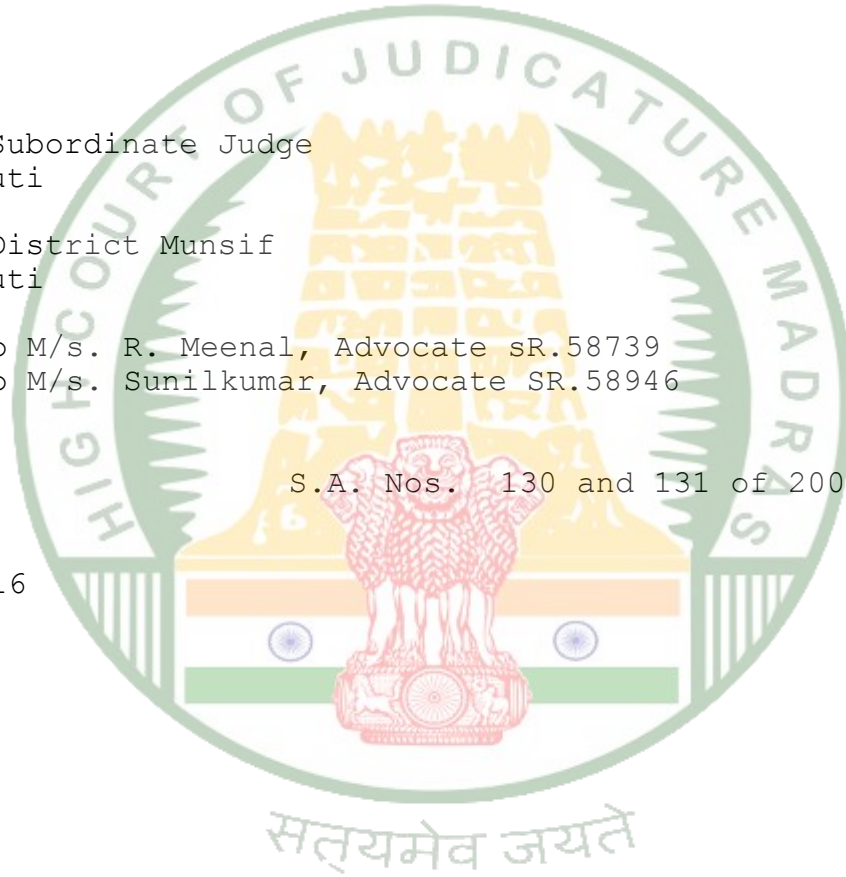
1. The Subordinate Judge
Panruti

2. The District Munsif
Panruti

+ 2 ccs to M/s. R. Meenal, Advocate sR.58739
+ 2 ccs to M/s. Sunilkumar, Advocate SR.58946

S.A. Nos. 130 and 131 of 2009

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