



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.11.2016

CORAM:

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THE HONOURABLE MR.JUSTICE S.S.SUNDAR

S.A(MD)No.1241 of 2011

A.Pandian ... Appellant/Appellant/Plaintiff

-Vs-.

M.Nagappan ...Respondent/Respondent/Defendant

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the Judgement and Decree of the lower Appellate Court dated 09.07.2010 passed in A.S.No.6 of 2010 on the file of the learned Subordinate Judge, Devakottai, confirming the Judgment and Decree of the trial Court dated 07.12.2009 passed in O.S.No.137 of 2007 on the file of the Additional District Munsif, Karaikudi.

For Appellant : Mr.T.V.Sivakumar
For Respondent : Mr.D.Venkatesh

JUDGMENT

The plaintiff in the suit in O.S.No.137 of 2007 is the appellant in this second appeal.

2. The brief facts that are set out in the plaint in O.S.No.137 of 2007 are as follows:

2.1. The suit property is measuring an extent of 43.5 cents on the southern side out of 87 cents in Survey No.59/4B. The suit property is in the exclusive possession of the plaintiff. The said property was originally enjoyed by his father Late Arumugam and that his father died on 12.12.2004, leaving behind the plaintiff as his legal heir. The suit property was standing in the name of the plaintiff's father and in the name of the defendant as per UDR survey. The plaintiff has been paying the land tax in respect of the suit property. On the basis of the revenue records, the plaintiff also filed an application for effecting sub division and for getting separate patta for the suit property after laying foundation stone. The suit property was



given to the plaintiff's father even during his life time by way of a partition. The plaintiff also prescribed title by adverse possession in view of the facts that the plaintiff is in exclusive enjoyment of the suit property in his own right and that he is in uninterrupted possession for a long period of years. Though the defendant is only entitled to the northern 43.5 cents, he wants to grab the plaintiff's property by getting patta for the said property. The defendant also threatened the plaintiff to take possession of the suit property. Hence, the plaintiff stated that he is constrained to file a suit.

2.2. The suit was contested by the defendant by filing a detailed written statement and the case of the plaintiff was denied in entirety. The specific case of the defendant was that the suit property was owned by the father of the defendant one Meyyan S/o.Periyakaruppan and that he was alone in enjoyment of the suit property. The patta stood in the name of the defendant's father even from the year 1974. After the death of the defendant's father, it was the case of the defendant that the properties were in the enjoyment of the defendant, his brother and one sister, namely, Umayal jointly.

2.3. According to the defendant, the suit property was never in the enjoyment of the plaintiff's father or the plaintiff and that the plea of the plaintiff's in the plaint with regard to enjoyment and possession are false. It was the further case of defendant that in the suit property, the defendant's sister one Umayal had constructed a house and is living therein. Even in respect of the vacant land, the defendant states that they are in enjoyment of the property by periodically removing the Velikaruvai trees once in four months and by replanting the Velikaruvai trees in the suit property. The plaintiff, taking advantage of the absence of the defendant, has made an attempt to get patta for the suit property without any right. The sub-division of Survey No.59/4 as alleged by the plaintiff had never happened. Even with regard to the orders passed by the Revenue Authorities regarding the transfer of patta, the defendant has given a petition for making the records in accordance with earlier entries and in tune with the rights in favour of the defendant and his brother and sister who have the absolute right over the suit property.

2.4. The trial Court dismissed the suit and the plaintiff preferred an appeal in A.S.No.6 of 2010 on the file of the sub-Court, Devakottai. The appellate Court also concurred with the view of the trial Court and dismissed the appeal.

2.5. Aggrieved by the order of the Courts below, the plaintiff has filed the above appeal.

3. The learned Counsel for the appellant raised the following



substantial questions of law:-

"a) Are the Courts below correct and justified in dismissing the suit especially when the defendant or his father has not challenged the joint patta issued long prior to the suit?

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b) Are the Courts below correct and justified in negating the claim of the plaintiff on the basis of the documents filed by the defendant after the institution of the suit?

c) Are the Courts below correct and justified in negating the claim of the plaintiff admittedly when the defendant has already parted with a portion of his property to his sister?

d) Are the Courts below correct in negating the claim of the plaintiff that by Revenue Records, title cannot be established but at the same time accepted all the revenue records filed by the defendant and deciding the title in his favour?

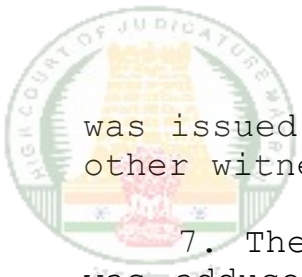
e) Are the Courts below correct and justified in rejecting the claim of the plaintiff without adverting to Section 6 of the Patta Pass Book Act that entries in Patta Pass Book are prima facie evidence?"

4. I have considered the arguments of the respective Counsel and perused the documents relied upon by the learned Counsel for the appellant and the learned Counsel for the respondent in support of their submissions.

5. The plaintiff has to prove his case and he has to fail or succeed only on the strength of his case. In the present case, the plaintiff affirmed the specific case of partition and allotment of 43.5 cents on the southern side in favour of his father. The father of the plaintiff, one Arumugam, is no more. The plaintiff has not even properly pleaded with reference to the details of previous ownership and how and when the alleged partition and the allotment of 43.5 cents in favour of the plaintiff's father. No document was filed before the Courts below to show that the suit property was allotted to the plaintiff's father in partition. The partition presupposes the right of common ancestor. In the present case, what is the right of the plaintiff's father to claim partition and how he was entitled to claim the share in the property, has to be explained only by the plaintiff by specific pleading and evidence.

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6. In this case, such plea is totally absent. Without the foundation of the plaintiff's case, he has produced the patta that



was issued just prior to the suit. The plaintiff also examined two other witnesses apart from himself.

7. The trial Court after considering the entire evidence that was adduced before it, came to the conclusion that the defendant has proved his case, whereas the plaintiff has not proved his title or enjoyment in respect of the suit property. As against the patta produced by the plaintiff, which is just prior to the suit, the defendant has produced the patta which was issued more than 30 years back. The house tax receipts and receipts for electricity service connection were produced in this case by defendant to show that a house has been constructed in the suit property. The Commissioner's report also indicates that the property is in the enjoyment of the defendant.

8. In view of the concurrent findings of facts by the Courts below after considering the entire evidence on record, this Court is not in a position to interfere with the findings of Courts below on appreciation of evidence particularly in the absence of any evidence to prove the title of plaintiff's father.

9. The questions of law raised by the appellant do not deserve any merit. The first question of law is about the joint patta relied upon by the plaintiff. The document filed by the defendant would clearly show that patta was obtained in the name of defendant's father about 30 years back and hence, the joint patta which was recently obtained cannot have any evidentiary value, particularly, the order granting joint patta is neither produced nor it is shown that the change of patta was in accordance with the provisions of Patta Pass Book Act.

10. The other questions of law are only factual. Since the appellant has not established his right or valid title and has not produced any document to substantiate his case, the proceedings of the Revenue Officers cannot be given much weight for deciding the question of title. When the defendant has produced patta during UDR Settlement and proved the existence of buildings put up by the defendant's sister, the case of the plaintiff that he is in possession of the property cannot be accepted.

11. For the foregoing reasons, this Court is of the view that no question of law, much less a substantial question of law arises for consideration in this second appeal. Accordingly, this second appeal fails and the same is dismissed. No costs.

Sd/-

Assistant Registrar (CO)



To

- 1.The Subordinate Judge, Devakottai.
- 2.The Additional District Munsif, Karaikudi.

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Copy To:-

The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

- + 1 CC TO Mr.T.V.SIVAKUMAR, ADVOCATE IN SR No. 65472.
- + 1 CC TO Mr.D.VENKATESH, ADVOCATE IN SR No. 66094

GSR

TE/SKS-RR : 03/01/2017 : 5P/6C

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