



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 10.11.2016

C O R A M

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THE HONOURABLE MR. JUSTICE S.S.SUNDAR

Second Appeal (MD) No.557 of 2011

Duraisamy Naicker : Appellant/Appellant/Defendant

Vs.

1.Thiyagarajan
2.Pitchaiammal
3.Periyammal
4.Pitchaimuthu

: Respondents/Respondents/Plaintiffs

Prayer: - Second Appeal is filed under Section 100 of the Code of Civil Procedure, 1908, against the judgment and decree of the First Appellate court in A.S.No.35 of 2010 dated 24.08.2010, Second Additional Sub-Court, Trichy, confirming the judgment and decree of the District Munsif Court, Thuraiyur, in O.S.No.201 of 2005 dated 02.11.2009.

For Appellant : Mr.V.Singan

For Respondents : No Appearance

J U D G M E N T

The Defendant in the suit in O.S.No.201 of 2005 on the file of the District Munsif Court, Thuraiyur, is the appellant in this appeal.

2.The respondents in this appeal filed a suit in O.S.No.201 of 2005 for declaration of title and consequential permanent injunction restraining the defendant from interfering in the peaceful possession and enjoyment of the suit property. The suit property is an extent of 1.85 Acres in Survey No.516/2D in A.Padharpettai Village, Thuraiyur Taluk, Trichy District.

3. The case of the plaintiffs, as read out from the plaint, are as follows:-

The plaintiffs 1 and 2 are the son and daughter of the third plaintiff and the fourth plaintiff is a close relative of the plaintiffs 1 to 3. The suit property is the ancestral property of the third plaintiff's husband, namely, Periyasamy and the father of the fourth plaintiff one Periyannan. The ancestors of the plaintiffs obtained patta and when enjoying the suit property as

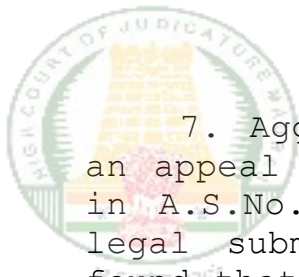


their exclusive property without any hindrance from any one. However, the defendant just to defeat the rights of the plaintiffs, claimed to have purchased the suit property recently in 2005 from strangers to the suit property. The plaintiffs also referred to the reply notice issued by the defendant wherein there was a reference to an earlier sale deed alleged to have been obtained from the original owners of the suit property. According to the plaintiffs, there was no such sale as alleged. It was also a specific case pleaded by them that there was no title in favour of any one under whom the defendant claimed title and that no patta was issued in the names of persons under whom the defendant claim right. The suit was contested by the defendant/appellant solely on the basis of the sale deed alleged to have been executed by one Thiruvengadam S/o Periyanna Muthuriyar, Pitchaimuthu S/o Periyanna Muthiriyar and others on 17.10.1994.

4.The defendant claimed that their vendors were also having patta for the properties in their own name and that the defendant is in the enjoyment of the property as per the sale deed obtained by them.

5. The trial Court after framing necessary issues found that the plaintiffs were in enjoyment for a long period on the basis of the patta as well as the document under Ex.A.25 which is an extract of ' A' Register prior and after the settlement. Though the trial Court observed that the patta is not a document of title, relying upon the judgment of this Court in **1999 (3) LW 727** held that the long enjoyment of the suit properties by the plaintiffs would establish their claim of title and enjoyment over the suit properties. It appears that the only argument that was advanced by the defendant before the trial Court was that mere patta would not confer title.

6. It was the case of the defendants before the trial Court that the plaintiffs are not entitled to declaration of title, since patta alone will not confer any title as held by this Court in several judgments. However, the trial Court found that the suit property which is claimed as an ancestral property of the plaintiffs, is proved to be under the enjoyment of the plaintiffs and their predecessors in interest from 1974. Since the plaintiffs have produced the extract of ' A' Register and several other documents to prove the fact that the suit property has been recognised as the properties of the plaintiffs by the Government, and that they are in enjoyment, the trial Court found enjoyment in favour of the plaintiffs and decreed the suit only for permanent injunction. Since the trial Court agreed with the defendant's contention that patta is not a document of title, refused to grant the declaratory relief.



7. Aggrieved by the same, the defendant/appellant preferred an appeal before the Second Additional Sub-Court, Trichirappalli, in A.S.No.35 of 2010. The Appellate Court also considered the legal submissions made in support of the defendant's case and found that the plaintiffs are entitled to decree for injunction as prayed for and dismissed the appeal.

8. One of the legal submissions which was raised before the Appellate Court by the appellant was that the trial Court has found against the plaintiffs holding that the documents filed by the plaintiffs, namely, the Patta and other revenue documents were not sufficient to prove the title of the plaintiffs in respect of the suit property and that the plaintiffs have not filed an appeal against the disallowed portion of the prayer for declaration and hence the consequential prayer for injunction cannot be granted.

9. Before the Lower Appellate Court, the legal submission on behalf of the appellant was that the revenue records would not confer any title on the holder and that the revenue records can not be relied upon to prove the enjoyment of the property as against a person who has rival claim. The judgment of this Court relied upon by the appellant before this Court was also referred to by the lower Appellate Court and found that the plaintiffs who have established their long and uninterrupted possession is entitled to seek injunction against any one who has no better title than themselves. After rejecting the case of the defendant with regard to title and enjoyment, the Appellate Court also confirmed the findings of the trial Court. As against the concurrent findings of the Courts below, the present Second Appeal has been filed by the appellant.

10. The learned Counsel for the appellant raised the following questions of law in the memorandum of appeal:-

" a) Whether the Courts below are correct in decreeing the suit for injunction without a declarative relief when there is a rivalry of title between the parties.?

b) Whether the Courts below are correct in decreeing the suit for injunction on the basis of tainted documents filed on the side of the plaintiff?

and

c) Whether the Courts below have not applied the principle that the plaintiff is to succeed or fall on the strength of his own case and not of the weaknesses in the case of the defendant?"



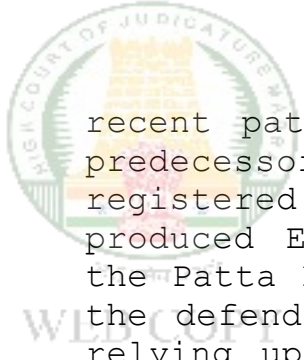
11. The learned Counsel for the appellant submitted that it is a well principle of law that patta is not a document of title. The Courts below having found that the patta relied upon by the plaintiffs would not confer them any right, erroneously granted a decree for injunction. According to the learned Counsel for the appellant, when the plaintiffs are not entitled to the main relief of declaration the Courts below ought not to have granted the decree for permanent injunction. He then pointed out that the documents relied upon by the plaintiffs are not considered in a proper perspective by the Courts below. Finally, the learned Counsel for the appellant submitted that the plaintiffs can succeed only on the strength of their case but not on the defects or weakness in the case projected by the defendant.

12. The learned Counsel for the appellant relied upon the judgment in **Radha Ammal and others -vs- Ramachandran Pillai** reported in **(2011) 3 TNCJ 51 (Mad)** wherein this Court has held that it is not possible to grant any relief to a person applying the provisions of Order 7 Rule 7 of Code of Civil Procedure, when the plaintiffs fail to succeed in their case for the relief prayed for in the suit. That was a case where the plaintiff failed to prove their title and enjoyment. It was held that without a prayer for an alternative relief of partition, it is not permissible to grant such relief especially when there is no admission by other side.

13. I have considered the submissions of the learned Counsel for the appellant. I have also referred to the documents filed by the plaintiffs in this case, since the attention of this Court was invited by the learned counsel for the appellant by raising some issues on the genuineness of the documents.

14. Exs.A1 and A2 are the patta pass book obtained by the plaintiffs predecessors in interest showing the suit property in the holding of plaintiffs' predecessors in- interest. From the patta, it is seen that the predecessors in interest of plaintiffs were shown as pattadars by indicating that the properties are their ancestral properties. This term "**வழிமுறை**" found in the document refers to the source of title for the pattadars.

15. Exs.A3 and A4 are the patta pass book given to the plaintiffs under the Tamil Nadu Patta Pass Book Act. Since the defendant obtained a sale deed from some of the persons whose names are similar to the names of the plaintiffs predecessors in interest, in Ex.A4, the suit property has been shown with reference to a joint patta in Patta No.1788. The document Ex.A25 is the extract of 'A' Register, which was prepared pursuant to the settlement as the extent of lands are given in Hectares. Apart from the Patta Pass Book that was filed by the plaintiffs, the plaintiffs have produced kist receipts from 1967 to 2005 and the



recent patta to show that the names of the plaintiffs and their predecessors in interest were found in the revenue records as registered land owners for several decades. The defendant also produced Ex.B1-sale deed that was obtained by the defendant and the Patta Pass Book under Ex.B2. Ex.B2 also goes to indicate that the defendant has obtained a sale deed from third parties but by relying upon a patta that was issued in favour of the plaintiffs predecessors-in-interest.

16.Going by the documents, this Court finds that even the observations of the Courts below with regard to the title of plaintiffs, are unwarranted and this Court is of the opinion that the plaintiffs title ought to have been declared by the trial Court. Since the plaintiffs have not filed an appeal against the judgment and decree of the trial Court, this Court is not in a position to grant any relief to the plaintiffs. However, the plaintiffs' possession as found by the Courts below, is supported by voluminous documents filed by the plaintiffs. Even in a case, where the plaintiffs have established only their possession for a long period, on the strength of such possession and the Courts are empowered to declare their possessory title.

17. In this case, the trial Court has not declared the title of the plaintiffs by relying upon some of the judgments of this Court which are not applicable to the facts. When the continuous possession of the plaintiffs for three decades are found by the Courts below, the decree of the trial Court as confirmed by the lower Appellate Court for permanent injunction is justified.

18. In this case, the defendant has not produced documents to prove his title. Though Ex.B1 is the sale deed produced by the defendant, the title or enjoyment of his vendors is not proved. More document of sale without any evidence to prove the title of the executants of sale deed cannot be the basis for recognising the title of the defendant.

19. It is true that the plaintiffs are entitled to succeed only if they prove their title and possession in the manner known to law. When there is a rival claim and both parties have produced evidence, it is open to the Court to consider the documents and arrive at a conclusion on the basis of the evidence and preponderance of probabilities.

20.When the Courts below have applied their mind with regard to documents and found that the plaintiffs are in continuous possession for several decades, the relief of injunction even without proving the title is permissible against a stranger who has not better title.



21. In view of the same, the decree granted by the trial Court as confirmed by the Appellate Court in favour of the plaintiffs, cannot be found fault with. The questions of law raised by the appellant in the factual context do not hold water and hence, this Court find no reason to interfere with the findings of the Courts below. In the result, the Second Appeal is dismissed. No costs.

Sd/-

Assistant Registrar (CS-II)

/True copy/

Sub Assistant Registrar

To

1.The Second Additional Sub-Court,
Trichy.

2.The District Munsif Court,
Thuraiyur .

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