

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :08.12.2002

PRONOUNCED ON: 12.12.2017

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A. No.419 of 2002

1. Natarajan

2. Thanigaimalai

Vs.

Appellants

Manickapillai

Respondent

Prayer:- Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree dated 22.06.2000 made in A.S.No.3 of 2000 on the file of the Subordinate Court, Cheyyar, Thiruvannamalai District confirming the Judgment and decree dated 22.12.1999 made in O.S.No.4 of 1992 on the file of the Additional District Munsif Court, Cheyyar.

For Appellants : Mr.R.Thirugnanam

For Respondent : Mr.P.G.Padmanabhan

J U D G M E N T

सत्यमेव जयते

This second appeal is directed against the judgment and Decree dated 22.06.2000 made in A.S.No.3 of 2000 on the file of the Subordinate Court, Cheyyar, Thiruvannamalai District confirming the Judgment and decree dated 22.12.1999 made in O.S.No.4 of 1992 on the file of the Additional District Munsif Court, Cheyyar.

2. Parties are referred to as per their rankings in the trial Court.

3. Suit for declaration and Permanent injunction.

4. The case of the plaintiff, in brief, is that the suit property belongs to the plaintiff by virtue of the purchase of the same under a registered sale deed dated 02.06.1980 from Sagunthala and Chandra and thence from, it is only the plaintiff, who has been in possession and enjoyment of the suit property and as per the above said sale deed, the plaintiff had purchased 1.12 acres of land in survey No.77/1 and during the Updating Registry Scheme, while the plaintiff was granted patta, instead of granting patta for 1.12 acres, he had been wrongly granted patta for 1.08 acres in the above said survey number and with reference to the same, the plaintiff has presented the appeal and the same is pending. It is only the plaintiff, who has been paying kist for the suit property and enjoying the same and the defendants have no right or interest whatsoever in respect of the suit property and taking advantage of the grant of patta in favour of the plaintiff under the Updating Registry Scheme for a lesser extent as above stated, the defendants are attempting to interfere with the plaintiff's possession and enjoyment of the suit property, to which, the defendants are not entitled to and hence, the suit for appropriate reliefs.

5. The case of the defendants, in brief, is that it is false to state that the plaintiff had purchased an extent of 1.12 acres in survey No.77/1 by virtue of a sale deed dated 02.06.1980 and had been in possession and enjoyment by paying kist etc. The suit property originally belonged to Govindaraj Pillai and his son Chandran had alienated the specific extent of the suit property in survey No.77/1 in favour of the first defendant and though in the above said sale deed an extent of 0.80 cents had been mentioned, Chandran had been in possession and enjoyment of an extent of 0.83 cents in the above said survey number as allotted to his share and the said extent of 0.83 cents had been sold by him to the first defendant and accordingly, during the subdivision of the properties during 1982, accordingly, the first defendant had been granted patta in respect of 0.83 cents in survey No.77/1A and the plaintiff had been granted patta only in respect of 1.09 acres in survey No.77/1B and the plaintiff or his predecessors-in-title have never been in possession and enjoyment of more than 1.09 acres in survey No.77/1 and accordingly, in connection with notice issued by the plaintiff, the first defendant sent a reply containing true facts and it is only the first defendant, who has been in possession and enjoyment of 0.83 cents in the survey number concerned and inasmuch as the plaintiff is not in possession and

enjoyment of the disputed 0.03 cents, if at all, the plaintiff has got any title to the same, he has to lay the suit for recovery of possession of the said extent and hence, the suit for bare injunction is not maintainable and hence, the suit is liable to be dismissed.

6. In support of the plaintiff's case, PWs 1 & 2 were examined and Exs.A1 to 6 were marked. On the side of the defendants' Dws 1 to 3 were examined and Exs.B1 to 14 were marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties, the Courts below were pleased to accept the plaintiff's case and accordingly, granted the reliefs as prayed for. Aggrieved over the same, the defendants have preferred the second appeal.

8. At the time of admission of the second appeal, the following substantial questions of law were framed for consideration:

" (i) Whether the Courts below have not committed any error of law in not dismissing the suit when the respondent has not filed documents to prove that he

has been in possession and enjoyment of one Acre 12 cents in the suit property?

(ii) Whether the Courts below have not committed an error of law in not dismissing the suit when the respondent has not filed suit for recovery of possession?

9. The parties are not in dispute that the suit survey No.77/1 consists of a total extent of 1.92 acres. Now, according to the plaintiff, by virtue of the sale deed dated 02.06.1980, he had purchased an extent of 1.12 Acres in the suit survey number from his vendors and accordingly, been in possession and enjoyment of the said extent by obtaining patta and paying kist and the defendants, without any legal right, attempted to interfere with his possession and enjoyment to the above said extent in the suit survey number and hence, according to the plaintiff, he has been necessitated to institute the suit for appropriate reliefs. Further, it is the alleged case of the plaintiff that taking advantage of patta granted to the plaintiff under the Updating Registry Scheme for a lesser extent i.e. 1.09 acres in the said survey number, the defendants are attempting to disturb his possession.

10. Per contra, it is the case of the defendants that the first

defendant has acquired title to an extent of 0.83 cents in the suit survey number from his vendor by virtue of the sale deed dated 01.12.1981 and though in the above said sale deed only an extent 0.80 cents had been mentioned, during the sub divisions effected, the first defendant had been granted patta to an extent of 0.83 cents in respect of which he has found to be in possession and enjoyment and therefore, it is the contention of the defendants that the plaintiff cannot lay any claim over the disputed 0.03 cents in the suit survey number and even assuming for the sake of arguments that the plaintiff has title to the disputed 0.03 cents, the plaintiff has to seek recovery of possession of the same from the defendants and not the suit for permanent injunction and hence, on the above ground, it is contended that the suit laid by the plaintiff is liable to be dismissed.

11. The parties are not in dispute as to their claim of purchase of their specific extent in the suit survey number. The plaintiff claims title to have purchased an extent of 1.12 acres under the sale deed dated 02.06.1980, which has been marked as Ex.A1. On a perusal of Ex.A1, it is found that as contended by the plaintiff, he has purchased an extent of 1.12 acres in the survey number 77/1 under the said sale deed and accordingly, it is further seen that the plaintiff has also been

granted patta with reference to the above said extent, which has been marked as Ex.A2 and to evidence that, the plaintiff has been in possession and enjoyment of the same by paying kist etc., the plaintiff has also marked the kist receipts as Exs.A3 to 5. The grievance of the plaintiff is that during the Updating Registry Scheme, he has been wrongly issued patta only to an extent of 1.09 acres instead of an extent of 1.12 acres without properly verifying his title deed and hence, it is the further case of the plaintiff that he has sent a representation in connection with the same and the same is pending and taking advantage of the same, according to him, the defendants are attempting to interfere with his possession and enjoyment of the suit property.

12. Though the defendants would contend that the first defendant had purchased an extent of 0.80 cents by virtue of the sale deed dated 01.12.1981 from one Chandran, for the reasons best known to them, they had not chosen to mark the original sale deed, under which, they claim title to an extent of 0.80 cents in the suit survey number. On the other hand, it is only the plaintiff, who has come forward with the copy of the sale deed of the first defendant marked as Ex.A6 and on a perusal of the said sale deed, it is found

that the first defendant has purchased only an extent of 0.80 cents in the suit survey number from his vendor. It is thus found that as rightly determined by the Courts below, there is no valid title deed in favour of the first defendant that he had acquired title to an extent of 0.83 cents in the suit survey number from his vendor. That apart, there is no document placed on behalf of the defendants that his vendor viz., Chandran or his other predecessors in title had been in possession and enjoyment of an extent of 0.83 cents in the suit survey number and to evidence the same, the defendants have not chosen to mark the necessary Adangal extracts and this would only go to show that inasmuch as the defendants' predecessors in title had never been in possession and enjoyment of 0.83 cents in the suit survey number, no document is forthcoming on behalf of the defendants to buttress the same as determined by the Courts below. Further, the defendants seem to have made a claim to the disputed 0.03 cents only on the basis of the patta granted under the Updating Registry Scheme during the subdivisions effected and as rightly determined by the Courts below, the revenue records marked on the side of the defendants viz., the patta and the kist receipts by themselves would not confer a valid title to the defendants that they owned an extent of 0.83 cents in the said survey number and the revenue records like patta, kist receipt etc

cannot be construed as documents of title for upholding the defence version. Therefore, when the title deed, on which, the defendants claim title to a particular extent in the suit survey number only point out that they have title to an extent of 0.80 cents and not more than that and when that apart, the defendants have also not established by acceptable proof that their predecessors in title had been in the actual possession and enjoyment of an extent 0.83 cents as put forth by the defendants, it is seen that their vendors cannot convey a better title to a more extent than what they are actually entitled to as per law and in such view of the matter, the contention that inasmuch as the defendants had been granted patta under the Updating Registry Scheme for an extent of 0.83 cents, their case should be accepted as such cannot be countenanced.

13. The defendants' counsel would contend mainly that the parties are in issue only in respect of 0.03 cents in the suit survey number and inasmuch as the defendants have placed materials to show that they are in possession and enjoyment of the disputed extent and inasmuch as the plaintiff has not placed any document of proof to hold that he is in possession and enjoyment of the disputed extent, according to him, the plaintiff should have laid the suit for recovery of

possession of the disputed extent and hence, the suit laid for bare injunction cannot be accepted and on that score, it is argued that the plaintiff's suit should be dismissed,. However, the above contention does not merit acceptance. The plaintiff has produced his title deed marked as Ex.A1, which would clearly go to show that he has purchased an extent of 1.12 acres out of the total extent of 1.92 acres in the suit survey number 77/1 and on the basis of the Updating Registry Scheme, it is found that the first defendant has been granted patta for a larger extent, whereas, the plaintiff has been granted patta for a lesser extent, accordingly, the dispute between the parties centers around only 0.03 cents.

14. The main contention put forth by the defendants' counsel is that inasmuch as the plaintiff has failed to establish that he is in possession and enjoyment of the disputed extent of 0.03 cents in the suit survey number, the plaintiff's suit for the relief of permanent injunction is not maintainable as per law and according to him, as the defendants have established that they are in possession and enjoyment of an extent of 0.83 cents in the suit survey number inclusive of the disputed 0.03 cents, according to him, the plaintiff should have laid the suit only for recovery of possession and therefore,

the suit laid by the plaintiff is not entitled to for acceptance. However, as rightly determined by the Courts below, the defendants seem to have put forth their defence only on the basis of the revenue records obtained by him under the Updating Registry Scheme. When the defendants' revenue records projected in the matter are found to be not inconsonance with the title deed, under which, they could claim title only to a lesser extent in the suit survey number, it is found that based upon the said revenue records, we cannot conclude that the defendants have a valid title to an extent of 0.83 cents in the suit survey number. The main grievance of the plaintiff is that taking advantage of the revenue records issued wrongly under the Updating Registry Scheme, the defendants attempted to interfere with his possession and enjoyment. In this matter, the plaintiff examined as PW1 has clearly deposed that on the basis of the revenue records obtained under the Updating Registry Scheme, the first defendant attempted to fix the stone in his lands, but he had prevented the same and the defendants are unlawfully attempting to extend their property by misusing the revenue records obtained by them. With reference to the above case, though DW2 has also claimed that the defendants are in possession and enjoyment of 0.83 cents in the suit survey number, during the course of cross examination, he has admitted that the first

defendant claiming that he owns extra land in the suit survey number put up a stone with reference to the same and the plaintiff has removed the stone stating that the claim of the first defendant is untenable. Therefore, it is seen that the plaintiff has been all along resisting the claim of the defendants in their endeavour to annex more extent of land in the suit survey number on the basis of the revenue records alleged to have been issued to them. Similarly, DW3 also during the course of cross examination has admitted that though the defendants attempted to annex 0.03 cents of land by fixing stone in the property of the plaintiff, the plaintiff had removed the stone stating that the defendants' lands does not extent beyond their limits and they are not entitled to encroach into his land. Though it is alleged that the defendants have lodged a police complaint against the plaintiff, however as rightly found, the mere lodging of the police complaint by itself would not establish that the defendants have a valid claim to the disputed 0.03cents in the suit survey number. Further, it has also not been established as to what further action had been taken by the police with reference to the alleged complaint lodged by the defendants. The above facts cumulatively seen would go to show that as put forth by the plaintiff, the defendants, under the garb of the revenue records obtained by them during the Updating Registry

Scheme, attempted to encroach into the plaintiff's property. However, the same had been successfully resisted by the plaintiff on the footing that it is he, who has a valid claim and title to an extent of 1.12 acres in the suit survey number and accordingly, it is found that the plaintiff has all along been asserting his title, possession and enjoyment of 1.12 acres of land in the suit survey number. Therefore, the plea that the plaintiff has not established his possession and enjoyment of the disputed 0.03 cents of land in the suit survey number as such cannot be accepted in any manner. With reference to the above case of the parties, the Courts below have rightly assessed the matter in all aspects in the correct perspective both on factual as well as legal matrix and accordingly, found that it is only the defendants, who are attempting to encroach into the suit property illegally claiming extra land in the suit survey on the basis of the revenue records. However, when it is found that the revenue records cannot be equated to documents of title, on that basis, the defendants' contention could not be accepted. With reference to the above position of law that the revenue records cannot be the basis for upholding title, and lawful possession, the plaintiff's counsel placed reliance upon the decisions reported in **AIR 2014 Supreme Court 937 (Union of India and others V. Vasavi Co-op. Housing society Ltd., and others.)** and

2009 (3) CTC 493 (R.Pannerselvam Vs. A.Subramanian and another). As laid down in the above said decisions, it is found that the revenue records are not documents of title and the entries in the revenue papers by no stretch of imagination can form the basis for declaration of title in favour of a party. Therefore, it is found that when according to the first defendant, he has purchased only 0.80 cents in the suit survey number by virtue of Ex.A6 and when it is further seen that the plaintiff has purchased an extent of 1.12 acres in the suit survey number and when the parties are not in dispute that the total extent available in the suit survey number is only 1.92 acres, the claim of the defendants that they have title and possession to an extent of 0.03 cents extra in the suit survey number based on the revenue records as such cannot be countenanced in any manner. Further, as rightly argued by the plaintiff's counsel, the plaintiff has established without any doubt even as per the admission on the part of the defendants as above discussed that it is he, who is in possession and enjoyment of an extent of 1.12 acres in the suit survey number inclusive of the disputed 0.03 cents land and in such view of the matter, it is found that the plaintiff's suit laid for injunction is maintainable.

15. In the light of the above discussions, it is found that the

Courts below have correctly determined that the plaintiff has established his title, possession and enjoyment of 1.12 Acres of land in the suit survey number and accordingly, the Courts below have also rightly held that there is no need on the part of the plaintiff to institute the suit for recovery of possession of the disputed property and accordingly, the Courts below have, without committing any error of law, upheld the plaintiff's case and accordingly, granted the relief sought for by him, accordingly, the substantial questions of law formulated in this matter are answered in favour of the plaintiff and against the defendants.

In conclusion, the second appeal fails and accordingly, is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

12.12.2017

Internet : Yes/No

Index : Yes/No

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To

1. The Subordinate Court,
Cheyyar, Thiruvannamalai District.

2. The Additional District Munsif Court,
Cheyyar.

T.RAVINDRAN, J.

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**Pre-delivery judgment made in
S.A. No.419 of 2002**

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