

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2018

CORAM : THE HONOURABLE MR.JUSTICE N.SESHASAYEE

S.A.No.630 of 2008
and MP.No.1 of 2008

Periasamy alias Kannan

..... Appellant/Respondent/Defendant

Vs

Thiruvaduthurai Arulmighu Komathiswarar Thirukoil
Rep by its Hereditary Trustee and
Thiruvaduthurai Adthina Karta of Thiruvaduthurai
Adthinam Sri La Sri Ambalavana Desika
Paramachari Swamigal

.. Respondent/Appellant/Plaintiff

(Cause-title amended Vide order of the Court
dated 07.09.2018 made in CMP.No.14854/2018 in
S.A.No.630 of 2008)

Prayer : Second Appeal filed under Section 100 of the Code of Civil Procedure, 1908, against the judgment and decree of the Principal Sub Court, Mayiladuthurai in A.S.No.114 of 2006, dated 26.3.2007 partly allowed against the Judgment and decree in O.S.No.257 of 2005 on the file of the Principal District Munsif Court, Mayiladuthurai dated 28.02.2006.

For Appellant : Mr.M.Thamizhavel
For Respondent : Mr.Vaithianathan

JUDGMENT

The defendant in O.S.No.257 of 2005, who has partially tasted success before the First Appellate Court has challenged the said decree to the extent it was decided against him in this appeal. Parties would be referred to by their ranks before the trial Court.

2.1 The suit was laid for declaration of title, that the patta issued to the defendant in No.546/1972 MYR is invalid, and for delivery of vacant possession of the land after removing the residential building which the defendant has put up.

2.2 The suit property is described as a plot of 20 cents comprised in Survey No.70 with a newly built tiled roof house. According to the plaintiff, the defendant's father was given a licence to occupy a portion of the property for the services he had rendered to the plaintiff-Trust during festival seasons, that he had put up a thatched roof house in the said property, that whatever interest granted to him over the said portion of the property was personal to him as it was connected to the services he had been rendering, and that on his demise, his services came to an end and so was the licence granted to him to occupy the suit property. The defendant did not offer any services to the plaintiff, yet he continued to occupy the house put up by his father. While so, sometime before 14.03.2005, the defendant attempted to convert the thatched roof building into a RCC roofed building, and immediately, the plaintiff issued a notice dated 14.03.2005, requiring the defendant not to put up any construction as he did not have any title or right to possession over the property and required him to deliver the property. Responding to the notice, the defendant has issued a reply dated 16.02.2005 raising untenable contentions which inter alia included that he was granted a patta for 6 cents in the suit Survey No.70. Factually, Survey No.70 was sub-divided into S.F.No.70/1 and 70/4 and the plaintiff has been granted patta for the entire extent. This would include Survey No.70/3 and therefore, the contention of the defendant that he was granted occupancy patta with regard to S.F.No.70/3 is invalid in law. Before issuing patta to the defendant, no notice was served on him. That apart, it has not been stated in the patta issued to him, where the 6 cents to which the patta relates is located within the larger extent in R.S.No.70 with specific boundaries. It is in these circumstances, the suit is laid for the reliefs already indicated.

3. In his written statement, the defendant has contended that he and his ancestors were contributing their services to the plaintiff-temple, that he has been granted a patta for 6 cents in Survey No.70, that the said property has been classified as "Natham Property" which would be granted only to those who are actually in physical occupancy, and that his house is situated in the specific portion in relation to which patta was granted. This has been done peacefully, openly and continuously without any objection from anyone. It is further alleged that the plaintiff has required to prove his title to the entire extent in Survey No.70.

4.1 Before the trial Court, the plaintiff has examined two witnesses and for the defendant, he examined himself as D.W.1. The plaintiff has produced six documents, of which Ext.A-1 is the patta passbook and Ext.A-6 is the

photostat copy of the patta issued to the defendant with regard to 6 cents in Survey No.70/3. Ext.A-6 appears to have accompanied Ext.A3-reply notice sent by the defendant to the plaintiff. The defendant on his side has not filed any documents.

4.2 Evaluating the evidence before it, the trial Court has dismissed the suit primarily on the ground that the plaintiff-Trust has not been able to define the property properly, and inasmuch as it has not chosen to challenge the grant of patta to the defendant under Ext.A6, the plaintiff-Trust is not entitled to any relief whatsoever.

4.3 Aggrieved by the said decree, the plaintiff-Trust has moved the First Appellate Court in A.S.No.114/2006 before the Principal Sub Court, Mayiladuthurai. The first Appellate Court has partly allowed the appeal, but proceeded to protect the right of the defendant/respondent to the extent of property covered under Survey No.70/3 equaling 6 cents under Ext.A6, patta. In its judgment, the first Appellate Court has entered a categorical finding that the suit property is properly defined with four specific boundaries and this is an adequate enough description. Aggrieved by this, the defendant has come before this Court.

5. This appeal is admitted on the following substantial questions of law :

1. Whether the lower Appellate Court is correct in allowing A.s.No.114 of 2006 partly without seeing that whether respondent has correctly stated boundaries of the suit property?
2. Whether the lower Appellate Court is correct in allowing A.S.No.114 of 2006 without framing the issue in respect of impleading the necessary party in the suit?
3. Whether the lower Appellate Court is correct in cancelling the manyam granted to the forefathers of the appellant?
4. Whether the lower Appellate Court is correct in partly allowing A.S.No.114 of 2006 without finding the fact that how respondent/plaintiff is entitled for remaining 14 cents lands in the suit property, since the respondent/plaintiff is seeking declaration and possession in respect of the 450 sq.ft. tiled house alone without seeking declaration and possession in respect of the entire 20 cents of land?

6. So far as the second question is concerned, it settled that even though Order 41 Rule 31 CPC, the First Appellate Court is required to frame points for determination, non-framing of points will not vitiate the judgment, if the entire points in controversy have been addressed by the first Appellate Court. Since this is done, this Court does not find any ground for objecting the decree of the first Appellate Court.

7.1 Turning to the larger issue, the decree of the First Appellate Court is essentially founded on the pleadings of the defendant. The learned counsel for the appellant would submit that, in the written statement, the appellant has taken three allegations in defence of the suit:

- a) That he and his ancestors were in occupation of the property by putting up a residential structure, and that they have been enjoying the remaining vacant portion, that this is done openly and continuously and peacefully without any objection from any quarters;
- b) that he has been granted patta to a specific plot of 6 cents as indicated in Ext.A6;
- c) That he has disputed the plaintiff's title to the property.

While evidence was adduced on all the three allegations, the first Appellate Court has confined the decree only to one of the grounds raised, but not to the rest, and in a suit where the plaintiff asserts title in its favour, the burden is entirely cast on him to prove that it is entitled to the property. Here except a bare assertion in the plaint and Ext.A1-patta, there is hardly any material to suggest that the plaintiff is the owner of the entire property in Survey No.70, and inasmuch as the plaintiff has not established its title over the reminder extent that falls outside Survey No.70/3, the first Appellate Court ought to have dismissed the suit, rather than granting a decree.

7.2 This apart, if the schedule of the property is perused, it is not limited to Survey No.70/3. In the plaint, the entire extent in Survey No.70 is shown along with the building. Therefore, it would be difficult to deliver the possession of that property which is ambiguous in terms of the pleadings of the plaintiff.

8. Per contra, the learned counsel for the plaintiff/respondent would argue that the fulcrum of appellant/defendant's contention is founded on Ext.A-6 patta, where he claims right of occupancy only over Survey No.70/3. On

the other hand, Ext.A-1, patta would indicate that the plaintiff has been recognised as a patta holder for the entire Survey No.70 and to fall back on an area that lie outside Survey No.70/3, defendant's case is founded on a set of pleadings that fall short of the pleadings that is required for an adverse possession. In a scenario such as this, the appellant is over ambitious in seeking a right larger than the one he has pleaded for. He also reminded the Court, that civil disputes are decided by preponderance of probability and that the First Appellate Court has decided the right of occupancy of the appellant based on the preponderating probability founded on the evidence before it.

9.1 This Court finds merit in the submissions of the counsel appearing for the respondent/plaintiff. If preponderance of probability is the rule by which defendant's right of occupancy under Ext.A-6 is recognised by the First Appellate Court, then by the same yardstick, the plaintiff's right recognized under Ext-A1, patta too has been accorded an identical recognition. Pitted against Ext.A-1, Ext.A6, patta deals with a much lesser extent. Secondly, except his self-serving statement both in his written statement and evidence, there is nothing material on record to indicate that the defendant has been in enjoyment of the property adverse to any known owner. Here, the defendant does not even name the person or institution in whom the title to the remainder portion of Survey No.70 vests and so far as the occupancy of the appellant is concerned, this is a fact conceded by the plaintiff itself in its pleadings and therefore, if at all the defendant requires to plead anything beyond what has been conceded then he ought to have made a better statement in his pleadings than the one now submitted before this Court. And, to add to the fortune of the appellant, the respondent has chosen not to file any cross-objection.

9.2 Taking the entire material available on record into consideration, this Court does not find any merit in this appeal and the same is liable to be dismissed.

10. In the result, this appeal is dismissed and the judgment and decree of the Principal Sub Court, Mayiladuthurai in A.S.No.114 of 2006, dated 26.3.2007 is hereby confirmed. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

To:

1.The Principal Sub Judge, Mayiladuthurai.

2.The Principal District Munsif, Mayiladuthurai

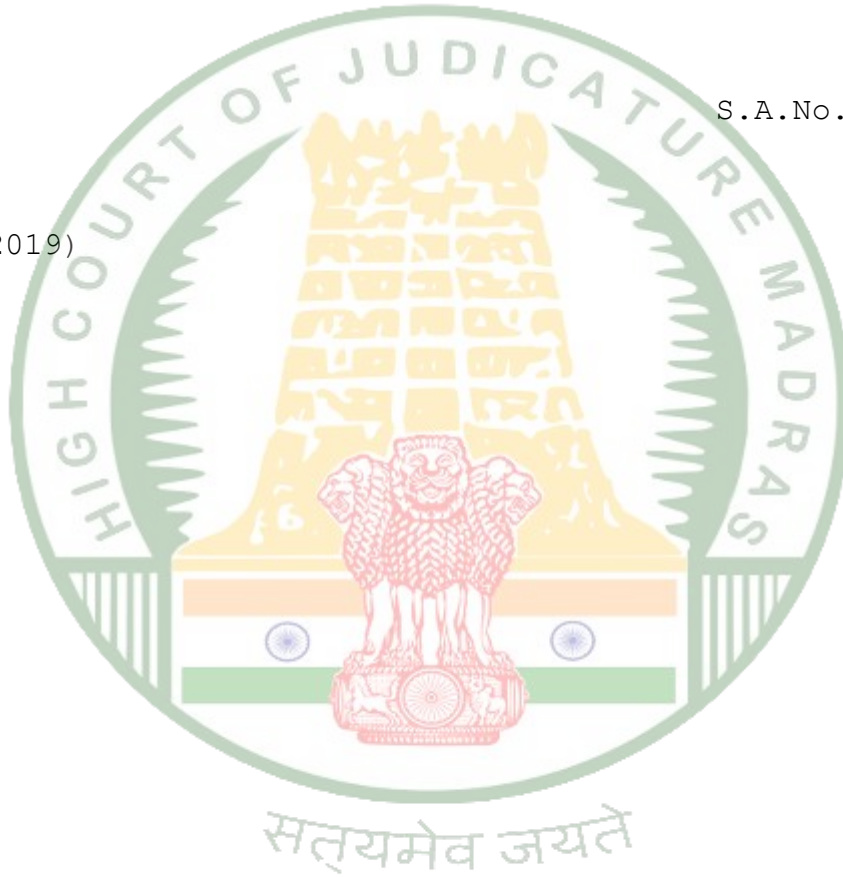
3.The Section Officer, VR Section, High Court, Madras.

+1 CC to Mr.M.Thamizhavel, Advocate sr 76362.

+1 CC to Mr.K.Chandrasekar, Advocate sr 76716

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CNR (CO)
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