

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.07.2018

PRONOUNCED ON:28.08.2018

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.2084 of 2004

Narayanasamy Gounder

... Appellant/Respondent/Plaintiff

Vs.

1.Mainavathi

2.Kasiyammal

3.Palani

4.Minor Ammu

[Minor 4th Respondent rep. By her
mother and Guardian 1st respondent]

... Respondents/Appellants/Defendants

Prayer: Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree in A.S.No.112 of 1997 on the file of the District Judge, Thiruvannamalai and dated 11.06.2004 in reversing the well considered judgment and decree in O.S.No.594 of 1990 on the file of the Additional District Munsif No.II, Thiruvannamalai, dated 29.08.1997.

For Appellant : Mrs.V.Srimathi

For Respondents : Mr.S.Parthasarathy, SC
for M/s.Sarvabhauman Associates

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J U D G M E N T

In this Second Appeal, challenge is made to the judgment and decree dated 11.06.2004 passed in A.S.No.112 of 1997 on the file of the Principal District Court, Thiruvannamalai, reversing the judgment and decree dated 29.08.1997 passed in O.S.No.594 of 1990 on the file of II Additional District Munsif Court, Thiruvannamalai.

2. The parties are referred to as per the rankings in the trial court.

3. Suit for declaration and permanent injunction.

4. According to the plaintiff, the suit properties had been in the possession and enjoyment of the plaintiff's family for well over 30 years from the days of his father Ezhumalai Gounder openly, continuously, and uninterruptedly beyond the statutory period and accordingly, it is stated that the plaintiff and his predecessors in interest had been enjoying the suit properties by paying Kists etc., to the Government and accordingly, recognizing their possession, the plaintiff had been issued patta in respect of the suit properties and accordingly, it is stated by the plaintiffs, the defendants without any right or title to the suit properties are unlawfully claiming the right over the suit properties and thereby attempting to take over the possession of the same from the plaintiff and hence according to the plaintiff, he has been necessitated to lay the suit for appropriate reliefs.

5. The case of the defendants in brief is that after denying all the allegations put forth in the plaint, stated that the land in survey No.44/1, 3.44 acres of land situated at Mangalam village was originally a poramboke land belonging to the Government and one Narayanasami, S/o, Ayyamperumal occupied the same, which included items 1 and 2 of the suit properties several decades ago and enjoying the same by paying penal tax etc., and accordingly the abovesaid Narayanasami applied for the grant of assignment in respect of the abovesaid land in his favour and the Government after considering all the aspects, granted the assignment in favour of the abovesaid Narayanasami and since then, it is only Narayanasami, who has been in possession and enjoyment of the abovesaid property in his own right, by paying Kists due to the Government and exercising all the ownership and Narayanasami died intestate in 1972 leaving behind his wife Sengamalam @ Alagammal and son Kannan to succeed to the abovesaid property and his LR's became the absolute owners of the abovesaid property and enjoying the same and the patta for the abovesaid property was later transferred in favour of Sengamalam @ Alagammal and taking advantage of the assignment granted in favour of Narayanasami and taking advantage of the absence of Sengamalam @ Alagammal and Kannan from the suit village, they had been enjoying the abovesaid property with the help of hired agricultural laborers, it is stated that the plaintiff by making a false representation that he is the assignee to the abovesaid land and manoeuvred and procured the patta under the updating registry scheme without the knowledge of the real owners namely Sengamalam @ Alagammal and Kannan and without any notice being sent to them and hence the grant of patta for the items 1 and 2 of the suit properties

in favour of the plaintiff is invalid and void and the plaintiff has never been in the possession and enjoyment of the abovesaid properties as well as the remaining suit properties and the claim of the plaintiff that they have prescribed title to the suit property by way of adverse possession is false and baseless. Out of 3.41 acres in suit survey No.44 /1 which includes items 1 and 2 of the suit properties Sengamalam @ Alagammal sold the southern 0.41 acres to one Kuppan S/o, Ammavasai by way of a registered sale deed dated 03.11.1989 and delivered the possession and the first defendant purchased the northern 3 acres in the abovesaid survey number from Sengamalam @ Alagammal by way of a registered sale deed dated 19.02.1990 and obtained possession and since then it is only the first defendant, who has been possession and enjoyment of the items 1 and 2 of the suit properties and other properties acquired under the abovesaid sale deed. The items 3 and 4 of the suit properties belong to another Narayanasami and the plaintiff has no manner of right over the suit properties in any way and never been in possession and enjoyment of the same and there is no cause of action for the suit and the suit is therefore liable to be dismissed.

6. In support of the plaintiff's case, P.Ws.1 and 2 were examined. Exs.A1 to A8 were marked. On the side of the defendants' D.Ws.1 to 5 were examined. Exs.B1 to B11 were marked.

7. On consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial court was pleased to decree the suit as prayed for. On appeal, it is found that in the first appellate court, additional documents had come to be marked on the side of the defendants as Exs.B12 to B16. On appeal, the first appellate court, on an appreciation of the materials placed on record, was pleased to set aside the judgment and decree of the trial court and by way of allowing the Appeal preferred by the defendants, dismissed the suit laid by the plaintiff. Challenging the same the present Second Appeal has been laid.

8. At the time of admission of the Second Appeal, the following substantial questions of law were formulated for consideration.

(a) Is the Lower Appellate Court rightly considered the claim of the plaintiff for Possessory title and title?

(b) Whether the Lower Appellate Court is right in ignoring the specific directions of the High Court in A.S.No.389 of 2000 dated 27.06.2000 in not averting to the findings of the trial

Court?

(c) Whether the Lower Appellate Court is justified in reversing the findings even in the absence of any proof to establish fraud or misrepresentation by the appellant in securing patta under Exs.A1 and A2?

(d) Whether the Lower Appellate Court is right in presuming fraud when the respondents have failed to summon the revenue authorities to impeach the document under Exs.A1 and A2?

9. On a reading of the plaint, it is found that according to the plaintiff, the suit properties were in the possession and enjoyment from the days of his father openly, continuously and uninterruptedly and thereby it is stated that the plaintiff and his father had prescribed title to the suit properties by way of adverse possession and accordingly it is further stated that recognizing their abovesaid possession or adverse title, the patta had been granted in their favour by the Government and accordingly, based on the abovesaid pleas, the plaintiff has laid the suit complaining that the defendants, without any authority, are attempting to interfere with the possession and enjoyment of the suit properties for the reliefs of declaration and permanent injunction. Declarative relief is sought for by the plaintiff as regards his claim of possessory title to the suit properties. The claim of possessory title to the suit properties, as put forth by the plaintiff, is based on the plea of adverse title. It is thus found that the plaintiff by way of the present suit is only trying to enforce his claim of title to the suit property by way of adverse possession. When it is found that the declaration of ownership of land on the basis of adverse possession cannot be maintained by way of filing a suit on the part of the plaintiff, in the light of the decisions of the Apex Court reported in 2014 (1) SCC 699 [Gurudwara Sahib Vs. Gram Panchayat Village Sirthala and another] and 2018 (11) SCC 449 [Dharampal (Dead) Through Lrs Vs. Punjab Wakf Board and others], it is found that as such the relief of declaration sought for by the plaintiff cannot be sustained. Further, for claiming the adverse title to the suit properties, the plaintiff relied only upon the patta marked as Exs.A1 and A2 and certain Kist receipts marked as Exs.A3 to A8. However, when the patta documents marked as Exs.A1 and A2 cannot be termed as documents of title, it is thus found that based on Exs.A1 and A2, the plaintiff's claim of title to the suit properties as such cannot be countenanced. That apart, the defendants have impugned Exs.A1 and A2 patta projected by the plaintiff contending that originally the patta had been granted in respect of the extent of 3.44 acres of land in survey No.44/1 which

includes items 1 and 2 of the suit properties in favour of one Narayanasami, S/o, Ayyamperumal and according to the defendants, taking advantage of the similarity of the name of Narayanasami, it is stated that the plaintiff Narayanasami, had influenced of the revenue officials and got executed Exs.A1 and A2 patta and therefore it is contended that on the strength of Ex.A1 and A2 patta, the plaintiff cannot be allowed to base his claim of title to the suit properties as such. The plaintiff also knowing that the patta documents projected by him cannot be the basis for upholding his claim of title to the suit properties is found to have filed the suit only for seeking the declaration of possessory title and the said relief is sought for by the plaintiff based on the plea of adverse possession and when the plaintiff as a suitor cannot maintain the suit for claiming ownership to the suit properties on the plea of adverse possession, in the light of the above stated Apex Court decisions, altogether, it is found that the plaintiff cannot obtain the relief of declaration as prayed for. Further, as contended by the defendants, particularly when the defendants have seriously challenged the validity of Exs.A1 and A2 patta, the plaintiff basing his suit only upon the abovesaid documents, to establish that the said patta had been duly granted in favour of the plaintiff, the plaintiff should have endeavored to examine the author of the documents for sustain his claim of title to the suit properties. However, the plaintiff has not placed any material worth acceptance to evidence that Exs.A1 and A2 patta had been issued in his favour only after inviting objections from all concerned and on the strength of his alleged claim of possession and enjoyment of the suit properties. Though the plaintiff would claim that he and his father is in the possession and enjoyment of the suit properties continuously, openly and uninterruptedly for several years beyond the statutory period, it is found that other than six Kist receipts of the year 1976, 1978, 1982 (2), 1985 and 1990 marked as Exs.A3 to A8, there is no other material on the part of the plaintiff to establish his alleged claim of title, possession and enjoyment of the suit properties openly, continuously and uninterruptedly beyond the statutory period right from the days of his father as projected in the plaint. It is thus found that the Kist receipts projected by the plaintiff could not in any manner be accepted for upholding the claim of possessory title to the suit properties as prayed for. In such view of the matter, the further claim of the plaintiff that the patta Exs.A1 and A2 had been granted in his favour on the strength of the abovesaid alleged possessory title by the Government also falls to the ground. Accordingly, it is seen that, when the defendants have thrown a stout challenge to the validity of Exs.A1 and A2 patta, it is for the plaintiff to establish the authenticity of the same and when with reference to the same, the plaintiff has not placed any material worth

acceptance, both oral and documentary, it is found that the first appellate court has rightly disbelieved the plaintiff's case and accepted the defence version.

10. In this Second Appeal also, the plaintiff's counsel instead of basing the alleged claim of title to the suit properties as projected by him, has been strongly contending only on the weakness the defendants' case. However, as rightly argued, the plaintiff having come forward with the suit has to fall or stand on the strength of his case. He cannot be allowed to pick holes in the defence version and thereby endeavor to succeed in his lis/case.

11. The materials placed on record go to show that in respect of the property lying in survey No.44/1 of an extent of 3.44 acres which admittedly, originally belonged to the Government, it is found that recognizing the possession and enjoyment of the same by one Narayanasami S/o, Ayyamperumal, the Government has granted assignment in his favour, the said document has come to be marked as Ex.B1. Thus, by way of Ex.B1, the defendants have clearly established that the assignment had been granted by the Government in favour of the abovesaid Narayanasami as regards the property comprised therein and when from the materials further placed on record by the defendants, that thereby Narayanasami had left behind his wife Sengamalam @ Alagammal and son Kannan as his legal heirs and accordingly the patta had been subsequently mutated in the name of Sengamalam @ Alagammal as could be seen from the document, the chitta extract marked as Ex.B2, it is found that it is only the legal representatives of Narayanasami, S/o Ayyamperumal who would be entitled to succeed to the property, covered under Ex.B1 assignment patta. Accordingly, it is found that exercising ownership over the said property, Sengamalam @ Alagammal had sold the abovesaid properties in favour of one Kuppan by way of a sale deed dated 03.11.1989 marked as Ex.B3 of an extent of 41 cents and sold an extent of 3 acres in favour of the first defendant by way of a sale deed dated 19.02.1990 marked as Ex.B4 and accordingly, it is found that following the same, it is only the defendants who had been granted the patta in favour of the properties acquired by her marked as Ex.B5 and to evidence the possession and enjoyment of the same, the Kist receipts have been marked as Exs.B6 to B11.

12. In addition to that, as rightly determined by the first appellate court, when the original assignment granted in favour of Narayanasami S/o, Ayyamperumal could also be evidenced from "A" Register extract marked as Ex.B14 and thereafter the same having been mutated in the name of first defendant on the strength of Ex.B4 sale deed and Ex.B5 patta book, it is seen that as rightly determined by the first

appellate court, it is only the first defendant who is found to have acquired title to an extent of 3 acres of land in survey No.44/1 from the legal heirs of original assignee i.e., Narayanasami, S/o, Ayyamperumal and accordingly enjoying the same by obtaining patta, paying Kists etc., and when for the claim of possessory title to the suit properties, the plaintiff as above seen relied only upon Exs.A1 and A2 patta and when the plaintiff have failed establish that the abovesaid patta had been issued in his favour by sending notice to all parties, particularly the original assignee Narayanasami S/o, Ayyamperumal in whose favour the assignment had already been granted under Ex.B1. It is found that on the strength of Exs.A1 and A2, we cannot uphold the plaintiff's claim of title, possession and enjoyment of the suit properties as pleaded.

13.The plaintiff's counsel during the course of arguments, pointing to the evidence of witnesses examined on the side of the defendants, contended that the defendants have failed to establish the original assignment in favour of Narayanasami S/o, Ayyamperumal as put forth by them and hence the plaintiff's claim of title to the suit properties should be upheld. However, when from the materials placed on record, it is found that the assignment in favour of Narayanasami, S/o,Ayyamperumal has been granted on 11.01.1969 and thereafter the patta had been granted in favour of his wife on 11.11.1975 and thereafter the properties comprising of suit items 1 and 2 were found to be in the enjoyment of the first defendant and further when from Ex.B14, the patta had been shown to be changed in the name of the first defendant, in toto, it is found that it is only the defendants who had established their claim of title to the suit property in the preponderance of probabilities tracing the title from Narayanasami S/o, Ayyamperumal as above noted and accordingly the plaintiff having failed to establish his claim of title based on Exs.A1 and A2 as having been lawfully secured and thus it is found that the first appellate court has rightly assessed all the materials in the proper perceptive both factually as well as legally and rightly negated the plaintiff's suit.

14.In the light of the above discussions, the first appellate court has rightly considered the materials placed on record, thereby negated the claim of title, the possessory title sought for by the plaintiff in respect of the suit properties. The first appellate court has also rightly appreciated the pros and cons of the findings of the trial court in the proper perceptive and found justified in holding that the plaintiff has failed to establish the grant of patta under Exs.A1 and A2 to have been lawfully made in his favour and accordingly it is seen that the first appellate court has rightly held that it is only for the plaintiff to establish his

claim of title to the suit properties as projected in the plaint and in such view of the matter, the substantial questions of law formulated in Second Appeal are accordingly answered against the plaintiff and in favour of the defendants.

15. Last but not the least, the materials placed on record also would go to show that the plaintiff during the course of evidence has admitted that it is only the defendants who are in possession and enjoyment of the suit properties. In such view of the matter, it has not been explained by the plaintiff as to how the suit could be maintained by him on the strength of the claim of possessory title for the relief of permanent injunction as prayed for. It is thus seen that as rightly argued by the defendants' counsel, the plaintiff found to be admittedly not in possession of the suit properties and thereby cannot maintain the suit for the relief of permanent injunction as prayed for and further the relief of declaration also sought for by him cannot be maintained in the eyes of law as above noted and even assuming for the sake of arguments that the abovesaid declaratory relief could be maintained, when the plaintiff has failed to seek the relief of possession, on having admitted that the suit properties are in the possession and enjoyment of the defendants, the suit laid by the plaintiff without the said relief is found to be not clearly maintainable in the light of the decisions of the Apex Court reported in 2017 (2) CTC 678 [Executive Officer, Arulmigu Chokkanatha Swamy Koil Trust, Virudhunagar Vs. Chandran and others] , (2014) 14 SCC 502 [Venkataraja and other Vs. Vidyane Doureradjaperumal (dead) through Lrs and others] and in view of the above position also, it is found that the plaintiff's suit has to fail.

16. For the reasons aforesaid, the Second Appeal fails and is accordingly dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

सत्यमेव जयते Assistant Registrar (CS-VIII)

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Sub Assistant Registrar

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To

1. The District Judge, Thiruvannamalai.

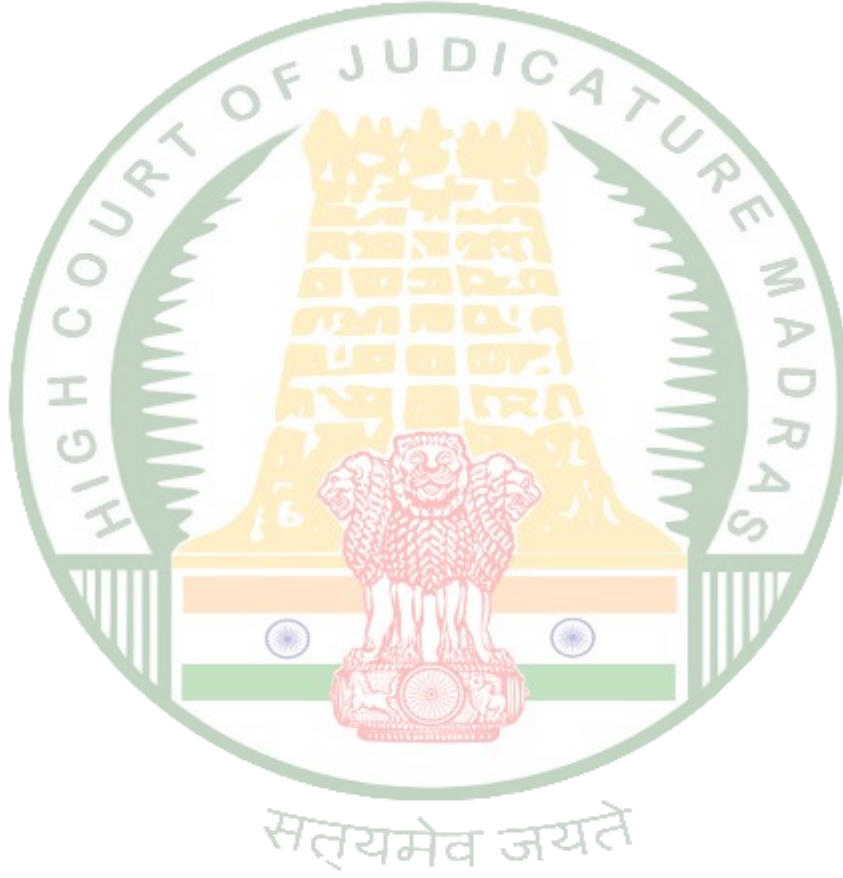
2.The Additional District Munsif No.II, Thiruvannamalai.

+1cc to Mrs.V.Srimathi, Advocate SR.No.58594

+1cc to Mr.Kuyilan, Advocate SR.No.58761

S.A.No.2084 of 2004

GMV (25/09/2018)



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