

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.06.2018

PRONOUNCED ON : 02.07.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.2127 of 2004

Venugopal Appellant/Plaintiff
Vs.

Gopal Konar Respondent/Defendant

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 10.02.2004 passed in A.S.No.49 of 2002 on the file of the Subordinate Court, Thiruvarur, reversing the Judgment and Decree dated 26.04.2002 passed in O.S.No.26 of 2001 on the file of the District Munsif Court, Thiruthuraipoondi.

For Appellant : Mr.K.Sellathurai

Respondent : Mr.N.Nithyanandam

JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 10.02.2004 passed in A.S.No.49 of 2002 on the file of the Subordinate Court, Thiruvarur, reversing the Judgment and Decree dated 26.04.2002 passed in O.S.No.26 of 2001 on the file of the District Munsif Court, Thiruthuraipoondi.

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

3. Suit for Permanent injunction.

4. The case of the plaintiff, in brief, is that the suit property is the ancestral property of the plaintiff and in his possession and enjoyment and joint patta has been issued in respect of the suit property and the defendant married the sister of the plaintiff and he had been given 3 cents of land in the suit survey number on the southern side for the purpose of constructing a house and 2 cents of land in the northern portion

is in the possession and enjoyment of the plaintiff and the plaintiff has been using the same by fencing it and though the suit property is assessed jointly and joint patta issued, the possession of the plaintiff and the defendant is separate and further, the plaintiff also owns house on the western side of the suit property in another survey and accordingly, the fence separates the properties in the possession of the plaintiff and the defendant and while so, the defendant started giving troubles to the plaintiff by sending false representations to his office and thereby, interfered with his possession and enjoyment of the suit property without any authority and also attempts to annex the suit property in the possession and enjoyment of the plaintiff with his property and in this connection, there had been exchange of notices and hence, left with no other alternative, he has been necessitated to lay the suit for appropriate reliefs.

5. The case of the defendant, in brief, is that the suit is not maintainable either in law or on facts. Merely on the footing that the joint patta has been issued in respect of the suit property, the plaintiff is not entitled to maintain the suit for permanent injunction against the other co-owner and on that basis alone, the suit is liable to be dismissed and it is false to state that the defendant was entrusted 3 cents of land on the southern side in the suit survey number by the plaintiff and the northern 2 cents of land in the suit survey number has been fenced by the plaintiff and is in his possession and enjoyment and in respect of 5 cents of land in the suit survey number, the defendant had been granted the assignment patta on 20.03.1979 under the Tamil Nadu Act 40/1971 and thereafter, the joint patta could not have been issued in respect of the suit property in the name of the plaintiff and the defendant as claimed by the plaintiff and the entire 5 cents of land in the suit survey number is only in the possession and enjoyment of the defendant and the claim of the plaintiff that he is in the possession and enjoyment of the suit property is false. The Government, after recognising the possession of the defendant in respect of the entire 5 cents of land, had granted the abovesaid patta and suppressing the same, the plaintiff, taking advantage of working in the Taluk office, was able to secure the joint patta without any notice to the defendant and to the notice sent by the plaintiff, the defendant has sent a suitable reply on 11.08.2000 and the plaintiff having claimed partition of the property cannot be allowed to lay the suit for permanent injunction on the footing that he is in the possession and enjoyment of the suit property and the defendant is unaware of the grant of joint patta in the name of the plaintiff as put forth in the plaint and in any event, the grant of joint patta would not in any manner bind the defendant and the suit property is not in the possession and enjoyment of the plaintiff either

on the date of the suit or prior to the same or at any time and the suit property has not been properly described and hence, the suit laid by the plaintiff is liable to be dismissed.

6. In support of the plaintiff's case, PWs 1 to 5 were examined and Exs. A1 to A14 were marked. On the side of the defendant, DW1 was examined and Exs. B1 to B15 were marked.

7. The trial Court, on a consideration of the materials placed on record, both oral and documentary evidence adduced by the respective parties in the matter and the submissions made, was pleased to decree the suit as prayed for. On appeal by the defendant, the first appellate Court, on an appreciation of the materials placed on record, was pleased to set aside the judgement and decree of the trial Court and by way of allowing the appeal preferred by the defendant, dismissed the plaintiff's suit. Impugning the same, the present second appeal has been preferred.

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

" (i). Whether the learned Appellate Judge is right in holding that the suit for bare injunction is not maintainable without prayer for declaration and without impleading the Government as party?

(ii). Whether the observation of the learned Judge that the Ryotvari patta under Ex.B-1 granted in favour of the defendant unless set aside will not confer any right on the plaintiff to claim possession or maintain the suit for present injunction is justifiable in law?

(iii). Whether the admission by the defendant to the plaintiff's possession and enjoyment of the suit property is not sufficient to grant decree for permanent injunction?"

9. The suit property is situated in Nedumbalam village of Thiruthuraipoondi in survey No.274/31 measuring 2 cents of land, out of 5 cents, within the specific boundaries. As per the plaint averments, the plaintiff claims the abovesaid suit property to be his ancestral property and accordingly, in his possession and enjoyment from the days of his ancestors. However, with reference to the abovesaid claim of the plaintiff

that the suit property belongs to him ancestrally, there is no acceptable material forthcoming on the part of the plaintiff. In this connection, the plaintiff examined as PW1, during the course of cross examination, has deposed that he has not placed any material to show that the suit property belongs to him ancestrally as claimed in the plaint and accordingly, it is found that there is absolutely no material as such placed by the plaintiff to show that he and his ancestors had been in the possession and enjoyment of the suit property prior to the institution of the suit as put forth by the plaintiff. Therefore, the plea of the plaintiff that the suit property belongs to him ancestrally as such cannot be countenanced in any manner. Knowing fully well that the above plea put forth by him does not lie, later, the plaintiff has admitted that he claims title to the suit property based on the joint patta issued in his favour, which has come to be marked as Ex.A1. It is found that the suit survey consist of 5 cents of land. The patta marked as Ex.A1 is found to be jointly issued both in the name of the plaintiff and the defendant. Thus, it is found that even as per the abovesaid document, on which, the plaintiff sustains the suit is issued both in the name of the plaintiff and the defendant. Ex.A1 is found to be dated 14.03.1995. However, as put forth by the defendant, it is found that way back on 20.03.1979, the defendant had been granted the patta in respect of the entire 5 cents of land in the suit survey under the Tamil Nadu Act 40/71 and the said patta had been marked as Ex.B1. Thus, it is found that the defendant had been granted the patta much prior to the grant of Ex.A1 patta in the name of the plaintiff and the defendant and accordingly, as rightly put forth by the defendant, it could be seen that Ex.B1 patta having been granted in favour of the defendant for the entire 5 cents of land in the suit survey number recognising his possession and enjoyment, the case of the plaintiff that joint patta had been granted in 1995 in respect of the suit property as such cannot be readily accepted. As rightly put forth by the defendant, when the plaintiff has not placed any material to hold that the patta granted to the defendant under Ex.A1 had been cancelled in the manner known to law, it does not stand to reason as to how the joint patta could have been issued in respect of the same property by the revenue authorities under Ex.A1. It is found that the plaintiff is working as the Village Assistant under the VAO and also admitted that he is working as the Village Assistant in the Village, where, the suit property is located. It is found that prior to the institution of the suit, there has been exchange of notices between the parties and in the reply notice issued by the defendant marked as Ex.A4, the defendant has asserted that he had been granted the patta under Ex.B1 in respect of the entire 5 cents of land in the suit survey. Despite the above position, the case of the plaintiff that he had not made any enquiry with reference to the same, that too,

when it is noted that the plaintiff is working as the Village Assistant in the suit Village cannot be countenanced in any manner. Thus, it is seen that the plaintiff has been able to secure the joint patta somehow or the other marked as Ex.A1 and has come forward with the suit claiming that the suit property is in his possession and enjoyment.

10. As above noted, the suit property is only stated to be measuring 2 cents of land and even as per the case of the plaintiff, the 3 cents of land on the southern side is in the possession and enjoyment of the defendant. The further case of the plaintiff that it is he, who had entrusted the said 3 cents to the defendant, on the defendant marrying his sister is not borne out by acceptable material. On the other hand, in the light of Ex.B1, it is found that the entire 5 cents of land had been in the possession and employment of the defendant over a long period of time and accordingly, recognising his possession and enjoyment of the same, it is found that Ex.B1 patta had been granted in his favour. When such being the position, the case of the plaintiff that it is he, who had entrusted the 3 cents of land in the suit survey number to the defendant falls to the ground and it is found that the plaintiff has put forth the abovesaid claim on the footing that the suit property is his ancestral property. However, when as above seen, there is no material placed to hold safely that the suit property belongs to the plaintiff ancestrally, particularly, the plaintiff having not traced his title i.e. as to how he claims the suit property to be his ancestral property and also not placed any material to substantiate the abovesaid case, the plea put forth by the plaintiff that it is he, who had entrusted 3 cents of the land to the defendant as such cannot be believed and accepted.

11. The chitta document produced by the plaintiff also stand both in the name of the plaintiff and the defendant. However, as contended by the defendant, when the patta had been granted in favour of the defendant for the entire 5 cents of land in the suit survey number, without the cancellation of the same in the manner known to law, the plaintiff cannot be allowed to project a case, as if later by way of Ex.A1, the joint patta had been issued in the name of the plaintiff and the defendant. If the joint patta had been lawfully issued as claimed by the plaintiff, nothing prevented the plaintiff, who had laid the suit for seeking appropriate reliefs, to examine the authority concerned, who had issued the said patta in his favour. If that endeavour had been made by the plaintiff, the Court would have been in a position to assess as to whether the joint patta issued and marked as Ex.A1 had been lawfully issued despite the issuance of Ex.B1 patta. In such view of the matter, as on date, it is found that the plaintiff claims the reliefs based on Ex.A1 joint patta. However, when the said patta had not been

shown to be lawfully issued as such, the alleged possession and enjoyment of the plaintiff, following the same, cannot be termed as legal and rightful possession in the manner known to law.

12. Even otherwise, the materials placed by the plaintiff do not in any manner establish that he is in the possession and enjoyment of the suit property as put forth by him. As above seen, the patta and chitta documents placed by the plaintiff had been issued both in the name of the plaintiff and the defendant. The other documents projected by the plaintiff are only notices and the other communications sent to the respective departments as rightly held by the first appellate Court, the photos projected by the plaintiff through PW5 by itself could not be safely relied upon to conclude that he is in the possession and enjoyment of the suit property as put forth by him. Thus, it is found that there is no valid material projected by the plaintiff to hold that he is in the legal possession and enjoyment of the suit property as claimed by him.

13. As rightly determined by the first appellate Court and as analysed and pointed by the first appellate Court, the evidence of PWs1 to 5 do not inspire confidence to hold that the plaintiff is in the possession and enjoyment of the suit property as claimed by him to the exclusion of the defendant. Accordingly, it is found that the first appellate Court has rightly discarded the evidence of PWs2 to 4 and as above seen, the evidence of the photographer examined as PW5 and the photos marked by him as such would not be useful to hold that the plaintiff is in the legal possession and enjoyment of the suit property. When the authenticity of the patta Ex.A1 itself is in question, the further claim of the plaintiff that he has been in the possession and enjoyment of the suit property, pursuant to the same, as such cannot be believed and accepted and accordingly, it is found that the plaintiff's alleged possession and enjoyment of the suit property cannot be countenanced for extending the equitable relief of permanent injunction in his favour.

14. Even otherwise, as per the case of the plaintiff, only the joint patta had been issued in favour of the plaintiff and the defendant in respect of the suit property and when both the plaintiff and the defendant claim exclusive possession of the suit property as such, and when it is found that the defendant had been granted the patta for the entire 5 cents of land in the suit survey number under Ex.B1 in the year 1979 itself, the case of the plaintiff that he is in the exclusive possession and enjoyment of the suit property cannot be believed. That apart, they being the joint owners or co-owners of the suit property as per the case of the plaintiff himself, as rightly put forth by the defendant's counsel, even assuming for the sake of

arguments that the plaintiff had been also granted the patta in respect of the suit property jointly with the plaintiff, it is seen that the defendant, cannot maintain the suit for bare injunction against the co-owner and as rightly determined by the first appellate Court, if at all the plaintiff is entitled to the suit property as such, the only remedy available to the plaintiff is to seek appropriate legal redressal by seeking the relief of partition as such. That apart, when the claim of title, possession and enjoyment of the suit property is being hotly contested by the defendant and even prior to the institution of the suit, the defendant has thrown a serious challenge to the claim of the plaintiff's title, possession and enjoyment of the suit property, accordingly, it is found that the plaintiff should have sought for the relief of declaration of his title to the suit property as put forth by him by impleading the Government, particularly, when the defendant has stiffly impugned the validity of the patta, under which, the plaintiff claims title, possession and enjoyment of the suit property. It is thus found that the first appellate Court has properly appreciated the materials placed on record in the right perspective and found that the plaintiff has miserably failed to establish his legal possession and enjoyment of the suit property as well as his claim of title to the suit property and rightly declined the relief of permanent injunction sought for by the plaintiff.

15. In the light of the above discussions, the substantial questions of law formulated in the second appeal are answered against the plaintiff and in favour of the defendant.

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

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Assistant Registrar(CS VI)

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Sub Assistant Registrar

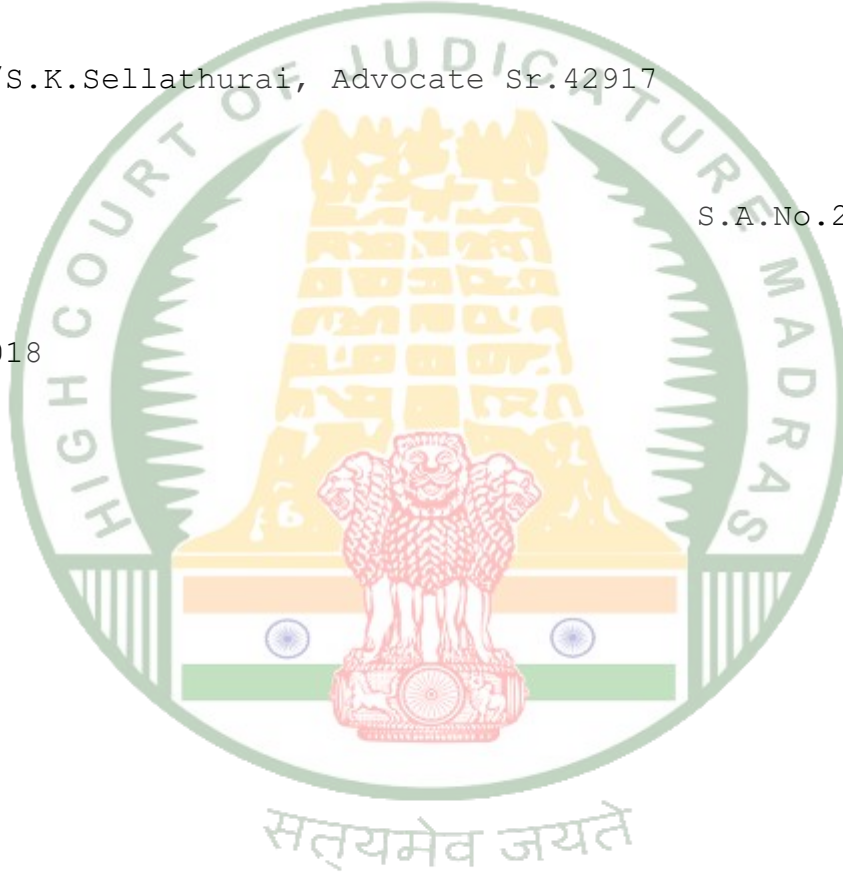
To

1. The Subordinate Judge,
Thiruvavarur.
2. The District Munsif,
Thiruthuraipoondi.
3. The Section Officer,
V.R.Section, High Court, Madras.

+1cc to M/S.K.Sellathurai, Advocate Sr.42917

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srg 1/8/2018



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