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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 03.08.2018

Pronounced on : 21.08.2018

CORAM:

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

S.A. No.1878 of 2001

Chakrapani

... Appellant/Plaintiff

Vs.

1.Pavun Gounder

2.Sundaresan

3.Anbu @ Chinnapaiyan

4.Chinnammal

... Respondents/Defendants

Prayer:- Second Appeal filed under Section 100 of C.P.C., to set aside the Judgment and decree made in A.S.No.116 of 2000 dated 30.04.2001 on the file of the Additional District Judge, Tiruvannamalai reversing the Judgment and decree made in O.S.No.68 of 1997 dated 11.07.2000 on the file of the Additional District Munsif No.I Court, Tiruvannamalai.

For Appellant : Mr.D.Kanaga Sundram

For Respondents 2 & 4 : Ms.R.S.Kamachi  
for Mr.T.R.Rajaraman

J U D G M E N T

This second appeal has been filed by the plaintiff against the Judgment and Decree passed by the Additional District Judge, Tiruvannamalai, in A.S.No.116 of 2000, dated 30.04.2001, reversing the Judgment and Decree passed by the Additional District Munsif No.I, Tiruvannamalai, in O.S.No.68 of 1997 dated 11.07.2000.

2. The appellant herein has filed a suit in O.S.No.68 of 1997, on the file of the Additional District Munsif No.I, Tiruvannamalai, to declare his title over the suit property and to restrain the defendants by means of permanent injunction from interfering with his peaceful possession and enjoyment of the suit property. The learned Additional District Munsif No.I, Tiruvannamalai, by the Judgment, dated 11.07.2000, has decreed the suit as prayed for with costs. Aggrieved by the same, the defendants have filed an appeal in A.S.No.116 of 2000, on the file of the Additional District Judge, Tiruvannamalai. The



learned Additional District Judge, Tiruvannamalai, by the Judgment, dated 30.04.2001, has allowed the said appeal and set aside the Judgment and decree passed by the Trial Court and dismissed the suit, however, directed the parties to bear their own costs through out. Feeling aggrieved, the plaintiff has filed the present second appeal. For the sake of convenience, the parties are referred to as described before the Trial Court.

3. The averments made in the plaint are, in brief, as follows:

The suit property was originally a 'Government poramboke land' and it was in possession and enjoyment of one Kanna Gounder son of Gurusamy Gounder and in recognition of his enjoyment, the Government had assigned the suit property in his favour in the year 1970. The said Kanna Gounder by virtue of his long, open, continuous and uninterrupted exclusive possession and enjoyment of the suit property for more than statutory period, has prescribed title over the same by adverse possession as well. Subsequently, patta was also granted in favour of the said Kanna Gounder. The said Kanna Gounder had sold the suit property in favour of the plaintiff through a registered sale deed dated 12.11.1996 and put the plaintiff in exclusive possession of the suit property. From that date onwards, the plaintiff is in possession and enjoyment of the suit property and patta has also been transferred to the name of the plaintiff. The plaintiff has been paying the kist to the Government. The defendants are the adjacent land owners and their lands are lying on the eastern and northern side of the suit property. The second and third defendants are the sons of the first defendant and the fourth defendant is the wife of the first defendant. The defendants had competed with the plaintiff in buying the suit property, but they failed to purchase the same. The plaintiff has successfully purchased the suit property. Being aggrieved over the same, the defendants tried to dispossess the plaintiff from the suit property. Hence, the plaintiff has filed the above suit for the aforesaid reliefs.

4) The averments made in the written statement filed by the first and second defendants and adopted by the third and fourth defendants are, in brief, as follows:

a) It is of course true that the suit property was a Government poramboke land. But, it is false to allege that one Kanna Gounder son of Gurusamy Gounder, was enjoying the said property and in recognition of his enjoyment, the Government has assigned the suit property in his favour in the year 1970. The said Kanna Gounder son of Gurusamy Gounder never enjoyed the suit property at any point of time. It is also false to state that the said Kanna Gounder son of Gurusamy Gounder, perfected his title to the suit property by adverse possession as well.



It is also false to state that the said Kanna Gounder son of Gurusamy Gounder, had sold the suit property to the plaintiff under a registered sale deed dated 12.11.1996 and from that date onwards, the plaintiff has been in possession and enjoyment of the suit property. The plaintiff has not purchased the suit property from the rightful owner. The plaintiff's alleged vendor is not the owner of the suit property and he was never in possession and enjoyment of the suit property. The plaintiff's alleged vendor is a permanent resident of Nookampadi Village, who is close relative of the plaintiff. The plaintiff secured a false sale deed from his close relative by committing an offence of forgery and impersonation. The documents filed by the plaintiffs are fabricated documents. It is true that the defendants are owning the lands on the eastern and northern side of the suit property. The land bearing Survey No.90, was originally a poramboke and the first defendant has been enjoying the said land by paying penal taxes to the Government. In confirming his enjoyment of the said land, the Government had assigned the land bearing Survey No.90 in his favour, which is situated on the eastern side of the suit property. The first defendant has been in possession and enjoyment of the said land bearing in Survey No.90, along with an extent of five cents in the suit land, which is situated on the eastern side of the suit property for the past several decades and hence he perfected title to the said portion by adverse possession also.

b) The second defendant's wife Parimala, was in possession and enjoyment of the Poramboke land bearing in Survey No.91 and the said land was assigned in favour of the said Parimala by the Government. She has been in possession and enjoyment of the said land along with 12-cents of land in the suit property (Survey No.89/3), which was clubbed with the land bearing Survey No.91, for several decades and perfected title to the said portion of the suit property by adverse possession. The other portions in the suit property are in possession and enjoyment of one Pachaiyappam, and VEDIYAPPAN. So the plaintiff is not in possession and enjoyment of any portion of the suit property. There are no ridges demarcating the suit property. The allegations that the defendants tried to purchase the suit property and failed to purchase the same and hence they attempted to dispossess the plaintiff from the suit property, are all false. Therefore, the defendants prayed to dismiss the above suit.

5. Based on the aforesaid pleadings, the learned District Munsif has framed necessary issues and tried the suit. During trial, on the side of the plaintiff, the plaintiff examined himself as PW.1 and also examined one more witness as PW.2. He has marked Ex.A.1 to Ex.A.9 as exhibits. On the side of the defendants, the second defendant was examined as D.W.1 and the first defendant was examined as D.W.2 and they have also



examined two more witnesses as D.W.3 and D.W.4. They have marked two documents as Ex.B.1 and Ex.B.2. The report and the plan filed by the Advocate Commissioner have been marked as Ex.C.1 and Ex.C.2 respectively. The sketches issued by the Surveyor to the Advocate Commissioner have been marked as Ex.C.3 and Ex.C.4.

6. The learned Additional District Munsif No.I, Tiruvannamalai, after considering the materials placed before him, found that the plaintiff is the absolute owner of the suit property and the defendants failed to prove that they have perfected title over the suit property by adverse possession. Accordingly, the District Munsif, decreed the suit as prayed for with costs. Aggrieved by the same, the defendants have filed an appeal in A.S.No.116 of 2000, on the file of the Additional District Judge, Tiruvannamalai. The learned Additional District Judge, Tiruvannamalai, has allowed the said appeal and set aside the Judgment and Decree passed by the Trial Court and ultimately, dismissed the suit. However, he directed the parties to bear their own cost throughout. Feeling aggrieved, the plaintiff has filed the present second appeal.

7. At the time of admitting this second appeal, this Court has formulated the following substantial questions of law:

"1. Whether the Lower Appellate Court is right in rejecting Exs.A1, A2, A8 and A9 on the ground that the appellant failed to summon revenue officials to prove the same?

2. Whether the Lower Appellate Court is right in rejecting the case of the appellant that the suit property was originally owned by Kannan Gounder, son of Gurusamy Gounder on the ground that in the plaint it was stated that the owner was Kannan Gounder, son of Duraisamy Gounder?"

8. Heard Mr.D.Kanaga Sundaram, learned counsel for the appellant and Ms.R.S.Kamachi for Mr.T.R.Rajaraman, learned counsel for the second and fourth respondents. The first and third respondents are set ex-parte.

9. Question Nos. 1 and 2:

The learned counsel for the appellant has submitted that the first appellate Court has failed to appreciate the well considered Judgment of the Trial Court and erred in allowing the appeal filed by the respondents. He further submitted that the first appellate Court has failed to appreciate Ex.A.1, Ex.A.2, Ex.A.8 and Ex.A.9, which would establish that the suit property was originally assigned in favour of Kanna Gounder son of



Gurusamy Gounder, by the Government. He further submitted that the said Kanna Gounder, while examining himself as P.W.2, has categorically deposed that the Government had assigned the suit property in his favour through Ex.A.1. He further submitted that the first appellate Court failed to appreciate that in the plaint inadvertently, it was mentioned that the Government had assigned the suit property in favour of Kanna Gounder son of Duraisamy Gounder instead of Kanna Gounder son of Gurusamy Gounder. He further submitted that when the plaintiff has proved his case by examining himself as P.W.1 and also his vendor as P.W.2 and also by producing the revenue records, the first appellate Court ought not to have drawn adverse inference against the plaintiff that he has not examined the revenue officials. He further submitted that the first appellate Court failed to consider that the defendants have failed to prove that they have perfected title over the suit property by adverse possession. He further submitted that the first appellate Court by relying upon the Commissioner's report and plan, has wrongly come to the conclusion that the plaintiff was not in possession of the suit property. He further submitted that it is well settled principle of law that possession cannot be proved through the Commissioner's report and therefore he prayed to allow the second appeal and set aside the Judgment and decree passed by the first appellate Court and restore the Judgment and Decree passed by the Trial Court.

10. Per contra, the learned counsel for the second and fourth respondents has submitted that the plaintiff has not proved that Ex.A.1 is a genuine document. She further submitted that the plaintiff has failed to prove that his vendor was in possession and enjoyment of the suit property at any point of time. She further submitted that the plaintiff has failed to prove that his vendor has got transferable right over the suit property. She further submitted that the Commissioner's report and plan would show that there is no ridge which separate the suit property from the defendants' property and that would show that the defendants have been in possession and enjoyment of the portions of the suit property for decades along with their patta lands. She further submitted that when the defendants disputing the genuineness of Ex.A.1, the plaintiff ought have proved the same as genuine by examining revenue officials. She further submitted that the Trial Court failed to consider the aforesaid facts in a proper perspective and hence the first appellate Court has rightly interfered in the said Judgment and decree of the trial court and dismissed the suit. She further submitted that in the said factual findings of the first appellate Court, this Court cannot interfere and therefore she prayed to dismiss the second appeal.

11. It is an admitted fact that the suit property



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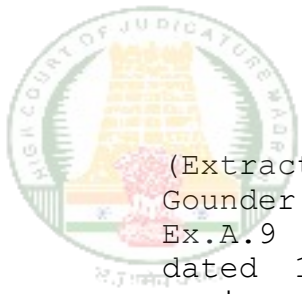
measuring about 53 cents equivalent to 0.21.5 hectares situated in new Survey No.89/3 (Old Survey No.76/3) at Palanandal Village, Tiruvannamalai Taluk. It is also an admitted fact that the defendants are the adjacent land owners and their lands are lying on the east and north of the suit property.

12. According to the plaintiff, the said property was originally, a Government poramboke land and the same was in possession and enjoyment of one Kanna Gounder son of Gurusamy Gounder and in recognition of his enjoyment, the Government had assigned the said land in his favour in the year 1970. The plaintiff has produced the said assignment deed and marked the same as Ex.A.1. In the said document, it is stated that the land measuring 53 cents situated in Survey No.76/3 of Palanandal Village, was assigned to one kanna Gounder son Gurusamy Gounder of Mangalam Village.

13. The plaintiffs' further case is that he purchased the suit property under a registered sale deed dated 12.11.1996, from the said Kanna Gounder son of Gurusamy Gounder. He has produced the said original sale deed and marked as Ex.A.3. In the said document, it is mentioned that the plaintiff has purchased the suit property from one kanna Gounder son of Gurusamy Gounder of Mangalam Village.

14. According to the learned counsel for the appellant/plaintiff, the father's name of the vendor in the plaint has been wrongly typed as Duraisamy Gounder, instead of Gurusamy Gounder. In order to substantiate the same, the said vendor has been examined as PW.2. PW.2 has categorically deposed that his father's name is Gurusamy Gounder and he only sold suit property under Ex.A.3 sale deed to the plaintiff. The said facts have not been disputed during his cross-examination. So it appears that the defendants have not disputed the father's name of the PW.2 as Gurusamy and also the fact that he sold the suit property under Ex.A.3 sale deed to the plaintiff.

15. During his cross-examination it was only suggested that Ex.A.1 Patta was not granted to him. As already pointed out that Ex.A.1 is an assignment deed granted by the Government in favour of the plaintiff's vendor (PW.2) in the year 1970. Ex.A.2 (Patta Pass-book) would show that based on Ex.A.1 assignment patta was granted in favour PW.2. Ex.A.4 (Patta Pass-Book) would show that in pursuance of Ex.A.3 sale deed patta was granted in favour of the plaintiff on 13.12.1996, in respect of the suit property. Ex.A.6 (Extract of Chitta), Ex.A.7 (Extract of Cultivate Accounts) would show that necessary entries have been made in the revenue records stating that Kanna Gounder (PW.2) was the patta holder of the suit property and subsequently, the plaintiff's name has been entered. In Ex.A.8



(Extract of re-settlement register) it is stated that Kanna Gounder (PW.2) was the patta holder for the suit property. In Ex.A.9 (Extract of Chitta), it is stated that as per the order dated 10.10.1970, vide D.K.No.478/80, the suit property was assigned to Kanna Gounder. Ex.A.6 to Ex.A.9 were issued by the Deputy Tahsildar of Tiruvannamalai Taluk. So, their genuineness cannot be suspected.

16. Relying upon the Ex.B.1 the learned counsel for the respondents has submitted that the Deputy Tahsildar of Tiruvannamalai has sent a reply to the petition submitted by the second defendant, in which he has stated that no file is available in office with regard to the patta No.478/80 and hence copy for the said patta can not be granted and therefore Ex.A.1 could not have been granted by the Government. In Ex.B.1 it is not stated that the patta having No.DK.478/80 has not been issued. On the contrary, it was stated that the file relating to the said patta is not available in their office and hence a copy for the said patta can not be granted. As already pointed out that in Ex.A.9 it is specially stated that the suit property was assigned to the said Kanna Gounder (PW.2) vide DK.478/80 dated 10.10.1970. Therefore it is clear that the suit property was assigned to PW.2 under Ex.A.1 in the year 1970 itself. In pursuance of the said assignment, regular patta also has been granted in favour of PW.2 and in other revenue records also necessary entries have been made. So there is no reason to suspect that Ex.A.1 is a forgery document and it was not issued in favour of PW.2. Therefore, the first Appellate Court was not right in rejecting Ex.A.1, A2, A8 and A9 on the ground that the Revenue Officials were not examined.

17. The case of the defendants is that the first defendant has got assignment in respect of the property situated in Survey No.90, in the year 1983 and from that date onwards, the first defendant was in possession and enjoyment of the land situated in Survey No.90 and also 5 cents in the suit property as his own property. If really, the first defendant was in possession of a portion of the suit property, the Government would have granted patta in his favour in respect of the said portion also. But the first defendant has not produced any patta to show that the alleged 5 cents situated adjacent to the suit property was also assigned to him.

18. D.W.2 stated in his evidence (in cross-examination) that the wife of the second defendant, namely, Parimala was in possession of one acre of land in survey No.91 and considering her possession, the Government had assigned the said land in her favour in the year 1997. He further deposed that along with the said land, she is in possession of 12 cents in the suit property. If really she has been in possession of 12 cents in the suit property, the Government would have granted patta in



her favour for that land also. The very fact that the Government had not issued patta in favour of the defendants 1 and 2 including the suit property itself would show that they are not in possession of any portion of the suit property.

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19. The defendants also have taken a defence that the remaining portion of the suit property has been occupied by D.Ws.3 and 4. They also did not produce any documentary evidence to show that they have occupied some portion in the suit property. Further, though D.W.3 and D.W.4 have claimed right over some portion in the suit property, they have not filed any petition to implead themselves as defendants in the suit.

20. It is well settled that the Advocate-Commissioner can not say who is in possession of the property. Advocate-Commissioner's report can be relied only to know the physical features. The possession has to be proved by oral and documentary evidence. The oral evidence of PW.1 and PW.2 and the documentary evidence of Ex.A.1 to A.9 would clearly establish that the plaintiff is the absolute owner of the suit property and he is in possession of the same. The defendants failed to prove that they are in possession of the suit property by producing satisfactory documentary evidence. The oral and documentary evidence produced by the plaintiff has been properly considered by the Trial Court and decreed the plaintiff's suit and also rejected the defence set up by the defendants, since they have not proved that they have perfected title by adverse possession. But the first appellate Court has not properly appreciated the evidence and reversed the well considered Judgment of the Trial Court. Therefore, the second appeal has to be allowed. Accordingly, substantial questions of law are answered in favour of the appellant/plaintiff.

21. In the result, the second appeal is allowed. The Judgment and Decree passed by the first appellate Court are set aside. The Judgment and Decree passed by the Trial Court are restored. No costs.

Sd/-

Assistant Registrar(CCC)

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Sub Assistant Registrar

nmm/gsi

To

1.The Additional District Judge,  
Tiruvannamalai.



2.The Additional District Munsif No.I,  
Tiruvannamalai.

3. The Section Officer,  
V.R.Section,  
High Court, Madras.

+1cc to Mr.D.kanagasundaram, Advocate SR.No.57161

S.A. No.1878 of 2001

BR (CO)

GMV (03/12/2018)