

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :30.01.2019

Pronounced on : 19.02.2019

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

S.A.No.426 of 1997

1.A.Ethiraj (Deceased)
2.E.Kamatchi
3.E.Selvaraj
4.E.Usharani
5.E.Umarani

.... Appellants/1st Respondent/Plaintiff

Vs.

1.State of Tamil Nadu.
Rep., By District Collector,
Thanjavur

2.The Tashildar,
Maiyladuthurai Taluk,
Pattamangala Street,
Maiyladuthurai Taluk,
Nagapattinam District.

3.The Village Administrative Officer,
Manalmedu,
Maiyladuthurai Taluk,
Nagapattinam District.

4.Annadurai (Deceased)
5.Selvaraj
6.Mariappan
7.Pari
8.Katheeja Beevi (Deceased)
9.Ayisha Beevi
10.Omar Bazarla
11.Fathima Beevi
12.Sahran Beevi
13.E.Venkatraj
14.Santhanayagi

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15.A.Ramya
16.A.Karthik

... Respondents/Appellants 1 to 3/R4 to R10/Defendants 1 to 12

Appellants 2 to 5 & 13 Respondent brought on record as LRS of the deceased sole appellant vide court order dated 02.03.2017 made in CMP.No.237 of 2015 in S.A.No.426 of 1997 by GJJ.

RR14 to 16 brought on record as LRS of the deceased 4th Respondent vide court order dated 02.03.2017 made in CMP.No.238 of 2015 in S.A.No.426 of 1997 by GJJ.

Memo dated 17.12.2018 is recorded. RR7,9 to 12 are recorded as LRS of the deceased R8 viz., Katheeja Beevi vide order of Court dated 17.12.2018 made in S.A.No.426 of 1997(CVKJ)

PRAYER: The Second Appeal filed under Section 100 of CPC, against the judgment and decree dated 30.09.1996 in A.S.No.61 of 1990 on the file of the Additional Subordinate Court, Mayiladuthurai and against the judgment and decree dated 31/10/90 made in O.S.No.170/89 on the file of the District Munsif, Mayiladuthurai.

For Appellants : Mr.A.Muthukumar

For R1, R2 : Mr.N.Manikandan
(Govt.Advocate)

For R5, R6, RR14 to 16: Mr.S.Sounthar

For R12 : M/s.A.R.Rameeza Begam

For R13 : Mr.P.Anbarasan

For R3,R7,R9,R10,R11: No appearance

R4,R8 : Died

JUDGMENT

The plaintiff in O.S.No.170 of 1989 on the file of the District Munsif Court, Mayiladuthurai, is the appellant herein.

2.O.S.No.170 of 1989 had been filed by the plaintiff seeking declaration of title that the plaintiff and the 7th to 12th defendants are the owners of the suit property and to consequentially restrain the 2nd to 6th defendants from causing interfering with their peaceful possession and enjoyment and also for a direction to pay the costs of the suit. There were two items of suit property. The 1st Item of suit property was Natham Jarri land measuring 37 cents in R.S.No.432, Virudhanganallur Village, Manalmedu Vattam, Mayuram Taluk. It had been stated that Second Appeal is however, confined only to 27 cents. The 2nd Item of suit property was 9 cents of Poramboke land in R.S.No.429/2, again in Virudhanganallur Village, Manalmedu Vattam, Mayuram Taluk. By judgment dated 31.10.1990, the learned District Munsif, Mayiladuthurai, granted relief sought only with respect to the 1st Item of suit property and dismissed the suit with respect to the 2nd Item of suit property.

3.Challenging that judgment, the 4th to 6th defendants then filed A.S.No.61 of 1990 before the Additional Sub Court, Mayiladuthurai. The plaintiff did not file any appeal against the dismissal of the suit with respect to the 2nd Item of the suit property. By judgment dated 30.09.1996, the learned Additional Sub Judge, Mayiladuthurai, allowed the appeal with respect to the 1st Item of suit property. In effect, the suit in O.S.No.170 of 1989 was dismissed with respect to both items of suit property.

4.The plaintiff then filed the present Second Appeal. The Second Appeal was confined only with respect to the 1st Item of suit property. The Second Appeal had been admitted on 16.12.2006, on the following substantial question of law:

"Whether the first appellate court is correct in dismissing the suit when the plaintiff put forth sufficient evidence both oral and documentary, to prove title and also possession in respect of the items of suit properties?"

O.S.No.170 of 1989 (District Munsif Court, Mayiladuthurai):-

5.The plaintiff, A. Ethiraj had filed the suit against the State of Tamil Nadu represented by the District Collector of Thanjavur, the Taluk Tashildar, Mayiladuthurai, Village Administrative Officer, Manalmedu and also against the contesting 4th to 6th defendants and also against the 7th to 12th defendants for whose benefit also the suit was filed. As stated above, the suit was filed for declaration of title and permanent injunction against the 2nd to 6th defendants from interfering with the peaceful possession of the plaintiff and the 7th to 12th defendants. In the suit there were two items of suit schedule properties. The 1st Item was Natham Jarri land measuring 37 cents in R.S.No.432, Virudhanganallur Village, Manalmedu Vattam, Mayuram Taluk and the 2nd Item of suit property was 9 cents of Poramboke land in R.S.No.429/2, again in Virudhanganallur Village, Manalmedu Vattam, Mayuram Taluk.

6.According to the plaintiff, the 1st Item of suit property namely, 37 cents of Natham Jarri land was in the possession and enjoyment of the forefathers of the plaintiff and the 7th to 12th defendants for more than 100 years. The plaintiff also claimed similar right of possession with respect to the 2nd Item of suit property which was Poramboke land. The plaintiff and the 7th to 12th defendants were said to have raised fruit bearing trees. It is stated that 2C patta was also granted for the 2nd Item of suit property. It was stated that the suit property originally belonged to the predecessor of Umarmattha, the father of the 7th to 12th defendants. It was divided among the sharers. One of the sharers conveyed their share to Renganatha Iyer. Umarmattha's share was retained by him.

7.The plaintiff purchased the 1st Item of suit property from the family of Renganatha Iyer. It was claimed that the sale deed of the plaintiff was filed in O.S.No.105 of 1979 on the file of the District Munsif Court, Sirkazhi. The plaintiff also enjoyed the usufructs of the trees. It was stated that Sivaprakasa Padayachi, the father of the 4th to 6th defendants interfered with the possession. Consequently, the plaintiff and Umarmattha filed O.S.No.105 of 1979 on the file of the District Munsif Court, for declaration of title, possession and injunction. The suit was decreed. The portion which was in the possession of Sivaprakasa Padayachi was taken delivery through the process of Court.

8.Thereafter, the plaintiff filed an application before the Revenue Authorities to fix the stone boundaries. However, the Revenue Authorities laid claim over the property. The Village Administrative Officer also proclaimed that the plaintiff and

the 7th to 12th defendants did not have any manner of right or title over the suit property. It was also stated that the 4th to 6th defendants also attempted to interfere with peaceful possession. It was claimed that the Government has also lost right by long uninterrupted possession of the plaintiff and the 7th to 12th defendants. Since the 2nd to 6th defendants attempted to interfere with peaceful possession, the suit was filed seeking declaration of title and injunction.

9.The second defendant filed a written statement, which was adopted by the first and third defendants. It was stated with respect to the 1st Item of suit property in R.S.No.432, that the plaintiff has to establish his right and title. It was stated that the property was classified as Natham Jarri. With respect to the 2nd Item of suit property, it was stated that it was classified as Mayanam Poramboke in the revenue records. It was stated that 2C patta was granted only with respect to the usage of the usufructs tamarind trees. The pattadar cannot claim any right over the land over which the trees were standing. It was stated there was no cause of action for filing the suit. It was specifically stated that the plaintiff cannot claim adverse possession as against the interests of the Government and the Revenue Department.

10.The fourth defendant filed a written statement which was adopted by the fifth and sixth defendants. It was stated that he and his forefathers have been enjoying the suit property for more than 40 years. They have constructed a cow shed and were using it for tethering cattle. They also had a water tank. It was stated that the house of the defendants was also situated adjacent to the 1st Item of suit property and they have both been considered as one single unit. It was stated with respect to the 1st Item of suit property that the plaintiff or anybody else claiming under him have no right of title. It was denied that there was an attempted to interfere with peaceful possession. The averment with respect to O.S.No.105 of 1979 was denied. It was stated that the suit should be dismissed.

11.On the basis of the above pleadings, the learned District Munsif, Mayiladuthurai, framed the following issues for trial:

- 1.Whether the plaintiff and the 7th - 12th defendants are entitled for the relief of declaration of title?
- 2.Whether the plaintiff is entitled for permanent injunction against the 2nd - 6th defendants?
- 3.Whether the plaintiff is entitled for the reliefs claimed in the plaint?
- 4.To what other relief the plaintiff is entitled to?

12. During trial, the plaintiff A. Ethiraj examined himself as PW1. He also examined three other witnesses namely, Srinivasan, Dakshanamoorthy and Mohammed Bari as PW2, PW3 and PW4. The fourth defendant Annadurai examined himself as DW1. He also examined two other witnesses namely, kandasamy and Ashokan as DW2 and DW3.

13. The plaintiff marked Exs. A1 to A23. Exs. A1 to A4 were the adangal in the name of the Umarkattha for the fasli 1383, 1384, 1385 and 1387. Ex. A5 dated 12.08.1956 was the partition deed in the family of Renganatha Iyer. Ex. A6 dated 04.03.1966 was the sale deed executed by Renganatha Iyer in favour of Muthukumar. Ex. A7 dated 04.03.1966 was the sale deed executed by Renganatha Iyer in favour of the plaintiff. Ex. A8 dated 23.10.1974 was the sale deed executed by Vembu Ammal, Santhanalakshmi and minor Ravichandran in favour of the plaintiff. Ex. A9 dated 30.10.1975 was the partition deed in the family of the plaintiff. Ex. A10 was the certified copy of the judgment in O.S.No.105 of 1979 dated 22.08.1985. Ex. A15 was the voters list. Ex. A16 was the objection given by the plaintiff before the Tashildar, Mayiladuthurai, dated 16.05.1983. Ex. A20 dated 06.06.1989 was the reply. Ex. A22 dated 06.08.1980 was the sale deed in favour of the 4th defendant. Ex. 23 dated 28.09.1949 was the sale deed in favour of Arumuga Padayachi.

14. The defendants marked Exs. B1 to B5. Ex. B1 dated 12.07.1983 was the patta in the name of Sivapragasa Padayachi. Exs. B2 and B3 were the tax receipts in the name of Sivapragasa Padayachi. Exs. B4 and B5 were the voters list.

15. By judgment dated 31.10.1990, the learned District Munsif, Mayiladuthurai, examined the evidence on record. It was observed that in the written statement of the first to third defendants, serious objections were raised only with respect to the 2nd Item of suit property. It was also observed that it had been stated in the said written statement that the plaintiff should prove his title with respect to the 1st Item of suit property. It was observed that Ex. A10 is the certified copy of the judgment in O.S.No.105 of 1979, which was a suit relating to the suit properties filed by the plaintiff and the father of the 7th to 12th defendants herein against the father of the 4th to 6th defendants by name Sivapragasa Padayachi. It is also seen that in accordance with Ex. A10, possession was taken under Ex. A11. It was seen that the plaintiff and the 7th to 12th defendants have jointly participated in the proceedings in O.S.No.105 of 1979 and E.P.No.364 of 1989. It was also observed under Ex. A5,

dated 12.08.1956, the partition deed among the family members of Renganatha Iyer, the 1st Item of suit property was shown as the 16th Item in the partition deed.

16.The property was then purchased by the plaintiff and his brother Muthukumar from Renganatha Iyer. This has been established by Exs.A6 and A7. Since Muthukumar died his legal representatives conveyed his share by Ex.A8 to the plaintiff. Ex.A7 was the sale deed executed by Renganatha Iyer with respect to his share in the suit property. Ex.A9 was the partition deed in the family of the plaintiff. It was observed by the learned District Munsif, that the plaintiff had therefore established title to the 1st Item of suit property. It was also pointed out that in Ex.A22 which was the sale deed in favour of the 4th defendant Annadurai, the eastern boundary was shown as the house of the 4th-6th defendants. It was finally stated that since the 1st to 3rd defendants did not object to the claim of the plaintiff with respect to the 1st Item of suit property, a declaration with respect to the said item of suit property can be granted. However, the 1st to 3rd defendants have claimed right over the 2nd Item of suit property. Ex.B1 was observed to be dated after the institution of the suit. It was also seen that the Village Administrative Officer who was examined as a witness admitted that there were corrections in Ex.B1. Finally, the learned District Munsif, Mayiladuthurai, granted the relief sought with respect to the 1st Item of suit property, and dismissed the suit with respect to the 2nd Item of suit property.

A.S.No.61 of 1990 (Additional Sub Court, Mayiladuthurai):-

17.The fourth, fifth and sixth defendants filed the appeal challenging the grant of relief to the plaintiff with respect to the 1st Item of suit property. The plaintiff had not filed any appeal disallowing his claim with respect to the 2nd Item of suit property. By judgment dated 30.09.1996, the learned Additional Sub Judge, Mayiladuthurai, framed the following points for consideration:

- 1.Whether the plaintiff and 7th - 12th defendants are entitled for relief of declaration of title as claimed in the plaint?
- 2.Whether the plaintiff and 7th - 12th defendants have perfected title by adverse possession with respondent to the 2nd Item of suit property?

3. Whether the 4th to 6th defendants have any right over the tamarind trees in the 2nd Item of suit property?

4. Whether the plaintiff is entitled for the relief of declaration of title as sought?

5. Whether the plaintiff is entitled to the relief of permanent injunction?

6. To what other relief?

18. The learned Additional Sub Judge observed that the plaintiff and the 7th to 12th defendants are not claiming the 1st Item of suit property on the ground of adverse possession. It was seen that apart from the adangal for fasli 1383, 1384, 1385 and 1387 in Exs.A1 to A4, no other document had been produced to confirm ownership of Umarmattha over the 1st Item of suit property. Exs.A1 to A4 were also not title deeds. It was also observed that it cannot be held that on the basis of Exs.A1 to A4, the suit property was enjoyed by Umarmattha and his forefathers. It was also observed, that the plaintiff had not produced any witness to speak about Exs.A1 to A4. The plaintiff did not take any steps to examine the Revenue Authorities who issued Exs.A1 to A4.

19. It was also seen that in the plaint, it had been mentioned that the suit properties belonged to the forefathers of Umarmattha and later was partitioned. It was stated that significantly the names of the persons who executed the partition deed were not mentioned. It was also not mentioned as to the shares of each party. It was also observed that in the plaint, it had not been disclosed to whose share the suit property was allotted. It was seen that the plaintiff had come to court without proper and necessary documents. It was also seen that the plaintiff claims to have purchase from Ranganatha Iyer. But again it had not been disclosed how Ranganatha Iyer obtained title of the property. The said sale deed had also not to be produced. It was finally held that the entire case was a false case. It was held that the plaintiff and the 7th to 12th defendants have not produced any documents to show title of Umarmattha. It was also observed that merely on the basis of the evidence of PW1 to PW5, relief of declaration of title cannot be granted. Finally, the appeal was allowed with respect to the 1st Item of suit property and the relief granted by Trial Court were set aside. The relief denied by Trial Court with respect to the 2nd Item of suit property was confirmed.

S.A.No.426 of 1997:-

20.As stated above, the plaintiff then filed the present Second Appeal, challenging the judgment of the First Appellate Court. The result of the judgment of the First Appellate Court was that the suit in O.S.No.170 of 1989 was dismissed in entirety. The Trial Court had dismissed the suit with respect to the relief relating to the 2nd Item of suit property. The First Appellate Court dismissed the suit with respect to the relief sought in the 1st Item of suit property.

21.Pending the suit the appellant/plaintiff A.Ethiraj died and his legal representatives were brought on record as 2nd-5th appellants and as 13th respondent. The 4th respondent Annadurai also died and his legal representatives were brought on record as 14th - 16th respondents. The 8th respondent Kathija Beevi also died, but a memo was filed that her legal representatives were already on record.

22.The Second Appeal had been admitted on 16.12.2006, on the following substantial question of law:

"Whether the first appellate court is correct in dismissing the suit when the plaintiff put forth sufficient evidence both oral and documentary, to prove title and also possession in respect of the items of suit properties?"

23.Heard arguments advanced by Mr.A.Muthukumar, learned counsel for the appellants and Mr.S.Sounthar learned counsel for the 5th, 6th and 14th-16th respondents and Mr.Manikandan, learned Government Advocate for the first and second respondents and Mrs.A.R.Rameeza Begam, learned counsel for the 12th respondent and P.Anbarasan, learned counsel for the 13th respondent.

24.For the sake of convenience, the parties would be referred as plaintiff and defendants.

25.Even though there are two items of suit property, the present Second Appeal is confined only to the 1st Item of suit property. Both the courts below had concurrently negated the

claim of the plaintiff and 7th - 12th defendants with respect to the 2nd Item of suit property. The 1st Item of suit property has been described as Natham Jarri land measuring 37 cents in R.S.No.432, Virudhanganallur Village, Manalmedu Vattam, Mayuram Taluk. However, during the course of arguments it was stated that the plaintiff was restricting the relief only with respect to 27 cents.

26. In the plaint, it had been stated that the suit property originally belonged to Umarmattha's predecessor. Umarmattha is the father of the 7th - 12th defendants. The name of his predecessor or the predecessor who originally owned the land had not been disclosed. It had thereafter been stated in the plaint, that the land was divided among the co-sharers. The names of the co-sharers have not been disclosed. It was also stated in the plaint, that one of the co-sharers conveyed their share to Ranganatha Iyer. The name of the co-sharer who thus conveyed the land had not been disclosed. The plaintiff claimed that he had purchased the property from the family of Ranganatha Iyer. However, the learned First Appellate Court Judge non-suited the plaintiff on the ground that he had not mentioned or produced evidence to speak about the identity of the predecessors of Umarmattha who originally owned the lands and also to speak about the partition among the co-sharers.

27. It must be also seen that the 7th - 12th defendants whose case was also projected by the plaintiff remained *exparte* during trial. They also did not come forward to tender evidence to disclose who their father's predecessor was through whom they claimed share in the property. They would have given the best evidence in this regard, but for reasons best known to them, they did not participate in the judicial proceedings. It is the contention of Mr.A.Muthukumar, learned counsel for the appellant that Exs.A1 to A4 are the earliest records available and prior to that there were no documents available. It was stated that the 1st Item of suit property is Natham Jarri land and consequently, the plaintiff is seeking a right to enjoy the lands. Exs.A1 to A4 relate to fasli 1383, 1384, 1385 and 1387. These actually relate to 1973, 1974, 1975 and 1977. These documents have been rejected by the learned First Appellate Court Judge, on the ground that they have not been proved in manner known to law. Witnesses from the Revenue Department have not been summoned to speak about the said documents.

28. The First Appellate Court also held that merely on the basis of the boundaries given in Ex.A23 it cannot be held that the 1st Item of suit property belonged to the plaintiff and the 7th - 12th defendants. It was also observed that the boundaries have also not been disclosed in the plaint. Consequently, there was a doubt about the identity of the 1st Item of suit property

itself. It was also seen that Ex.A24 is a document which was subsequent to the institution of the suit.

29.It was stated that the plaintiff claimed that he had given a petition stating his objections for grant of joint patta on 03.05.1990. The plaintiff had not taken any steps to examine the Surveyor Inspector. Ex.A24 was rejected by the learned First Appellate Court Judge. It was also observed that no documents have been produced by the plaintiff to show title over the 1st Item of suit property either in his name or in the name of the 7th - 12th defendants. It was also seen that PW1 to PW5 have not convincingly spoken with authority that the 1st Item of suit property belonged to the plaintiff.

30.The substantial question of law which had been framed while admitting the Second Appeal was whether the First Appellate Court was correct in dismissing the suit when the plaintiff had put forth sufficient evidence to prove title and possession. The observations extracted above shows that the First Appellate Court had discussed in detail with respect to all the documents filed and had also commented on the oral evidence. A categorical finding had been given that the evidence of PW1 to PW5 were not convincing. Exs.A1 to A4 were rejected, since they had not been proved in manner known to law by summoning the witnesses from the Revenue Department. It is also seen that the plaintiff had not given the name of the predecessor of Umarkattha who was the original owner of the suit property. The plaintiff had not also disclosed the co-sharers among whom the partition was done. The exact area which was conveyed to Renganatha Iyer was also not disclosed. The name of the person who conveyed the property was also not disclosed. I hold that the plaintiff had not established in manner known to law his title to the 1st Item of suit property..

31.Consequently, I hold that First Appellate Court was correct in dismissing the suit, since the plaintiff had not established title over the 1st Item of suit property. It is also seen that the 7th - 12th defendants whose case the plaintiff also canvassed have not come forward to Court to disclose as to what was the name of their forefather and how their father Umarkattha came to own the 1st Item of suit property. They could have let in evidence on these aspects. As children of Umarkattha they would have tendered the best evidence. They have not even filed any statement either confirming or denying the stand of the plaintiff. It is for these reasons, the learned First Appellate Court Judge returned a categorical finding that the plaintiff had projected a false case before the Court. I find no convincing reason to differ from that finding. Till this date, the name of the original owner of the suit property remains a mystery.

32.In view of all the reasons stated above, I hold that the Second Appeal has no merits and accordingly, the Second Appeal is dismissed with costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To,

- 1.The District Munsif Court, Mayiladuthurai.
- 2.The Additional Sub Court, Mayiladuthurai.
- 3.The Section officer
VR Section, Madras High Court.

+1cc to Mr.A.Muthukumar, Advocate sr.15321
+1cc to Mr.S.Sounthar, Advocate sr.15650
+1cc to Special Government Pleader sr.15341
+1cc to M/s.P.Anbarasan, Advocate sr.16177

S.A.No.426 of 1997

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