

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :28.02.2019

PRONOUNCED ON:27.03.2019

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.NO.446 OF 2006

AND

C.M.P.NO.5611 OF 2006

1. Muthammal (Deceased)
2. Rajammal
3. Rajappan
4. Alamelu
5. Venkatachalam
6. Thangaraju
7. Madhambal

[Appellants 2 to 5 recorded as
LRs of the deceased 1st appellant
vide order of Court dated 18.08.2014
made in memo dated 14.08.2014
in S.A.No.446 of 2006]

... Appellants/
Appellants/Defendants

Vs.

1. Parvathy
2. The President,
Pukkampatty Panchayat,
Mettur Taluk,
Salem District.
3. The State of Tamil Nadu,
Rep. By the District Collector,
Collectorate, Salem.
4. The Tahsildar,
Mettur Taluk, Taluk Office,
Mettur, Salem District.

... Respondents 2 to 4/
Respondents 2 to 4/Respondents 8 to 10

Prayer:

Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree passed in A.S.No.80 of 2004 dated 21.12.2005 on the file of the Subordinate Judge's Court at Mettur, confirming the decree and judgment passed in O.S.No.220 of 2000 dated 09.06.2004 on the file of the District Munsif Court, Mettur.

For Appellants : Mrs.Chitra Sampath, SC
for M/s.M.R.Jothimanian

For RR1 : Mr.S.Parthasarathy, SC
for M/s.A.Sundaravadhanan

For RR2 to R4 : Dismissed vide order dated
25.04.2007

J U D G M E N T

In this second appeal challenge is made to the judgment and decree dated 21.12.2005 passed in A.S.No.80 of 2004 on the file of the Subordinate Court, Mettur, confirming the judgment and decree dated 09.06.2004 passed in O.S.No.220 of 2000 on the file of the District Munsif Court, Mettur.

2. The second appeal has been admitted on the following substantial question of law.

Whether the suit property originally belonged to Mr. Dasan @ Seeni Gounder, a common ancestor of the parties to the dispute and in the absence of partition in the family, can the first respondent/plaintiff claim absolute right with respect to the same?

3. For the sake of convenience, the parties are referred to as per the rankings in the trial court.

4. The suit has been laid by the plaintiff against the defendants seeking for the reliefs of declaration of title to the suit property based on the patta issued to her dated 18.06.1988 and alleging that the defendants 1 to 7 without any authority or entitlement had put up some construction in the basement put up in the suit property shown in blue colour in the rough plan filed along with the plaint and accordingly sought for the relief of mandatory injunction and the vacant possession of the abovesaid portion with reference to the same as against the defendants 1 to 7 and also sought for the relief of permanent injunction restraining the 8th defendant not to issue

any assessment order in respect of the suit property in favour of the defendants 1 to 7 or their family members and also sought the relief of permanent injunction against the defendants 1 to 7 to restrain them from in any way, interfering with her peaceful possession and enjoyment of the suit property.

5. The defendants 1 to 7 resisted the plaintiff's suit mainly contending that the plaintiff has no right to the suit property and no patta had been granted in favour of the plaintiff in respect of the suit property as described in the plaint and further according to the defendants, the land in survey No.140 had been subdivided pattas had been issued in favour of various persons and suppressing the same, the plaintiff has come forward with the suit and hence sought for the dismissal of the plaintiff's suit as devoid of any cause of action.

6. After hearing the submissions of both counsel and considering the approach of the issues involved between the parties as regards the matter by the trial court as well as the first appellate court, it is found that the primary issue between the parties is only as regards the actual extent of land for which the plaintiff had been issued the patta on 18.06.1988.

7. According to the plaintiff, she had been issued the patta in respect of the property in survey No.140 measuring east-west 60ft on both sides and north-south 50ft on both sides and the abovesaid property comprises of a titled house as well as a thatched structure plus the basement put up by the plaintiff and further according to the plaintiff, the abovesaid property is comprised to the south of Thambipayan's house and to the north of road, to the west of 6ft lane and Palanisamy's house and to the east of Panchayath road. The patta issued in favour of the plaintiff dated 18.06.1988 has been marked as Ex.A1 and therefore it has to be seen whether as claimed by the plaintiff, she had been issued the patta in respect of the suit property with the measurements described in the plaint. Now, according to the defendants, the patta in respect of the lands comprised in survey No.140 had been issued to various persons and accordingly they had also been issued the patta in respect of the suit property and thereby claiming right over a portion of the suit property on the strength of the patta alleged to have been issued in their favour, the defendants 1 to 7 resisted the plaintiff's case and thereby contended that the plaintiff has been granted patta only in respect of 3 cents of land by way of Ex.A1 document and apart from the abovesaid extent, the plaintiff is not entitled to claim more extent of land on the strength of the abovesaid patta and thereby the defendants would plead that with reference to the same i.e., the portion in their occupation, they had been granted the patta by the authorities

concerned and therefore, the suit laid by the plaintiff is liable to be dismissed.

8. As rightly determined by the Courts below, there is no material placed by the defendants 1 to 7 that the patta had been issued in their favour in respect of the property comprised in survey No.140. Furthermore, when the plaintiff has come forward with the case that she had been granted the patta in respect of the suit property and when according to the defendants, subsequent thereto, they and others had been granted the pattas in respect of the lands comprised in survey No.140, as rightly found by the Courts below, even as claimed by the defendants 1 to 7, if they had been granted any patta in favour of any portion of the suit property after the issuance of Ex.A1 patta, as rightly determined by the Courts below, due notice should have been sent to the plaintiff with reference to the same and only after inviting the objections of the plaintiff in connection with the same, the authority concerned would be competent to issue a valid patta in respect of the portion of the suit property in favour of the defendants 1 to 7. However, with reference to the same, no acceptable material has been placed by the defendants 1 to 7 that the due notice had been sent to the plaintiff and after due enquiry, the patta had been issued in respect of the portion of the suit property in favour of the defendants 1 to 7 by the competent authority. As aboveseen, when the defendants 1 to 7 have not even endeavored to place the patta said to have been issued in their favour and when with reference to the position as to why the original patta issued in favour of the defendants has not been placed for consideration, there is no proper explanation on the part of the defendants.

9. In the light of the abovesaid factual matrix, when admittedly, the patta had been issued in favour of the plaintiff by way of Ex.A1 in respect of the suit property and the only dispute between the parties is as regards the extent with reference to which the abovesaid patta had been granted in favour of the plaintiff and when the defendants 1 to 7 claimed title to a portion of the suit property on the strength of the patta said to have issued in their favour and when there is no material on the part of the defendants that any notice had been issued to the previous pattatharar namely the plaintiff before effecting any change in the patta, as rightly determined by the Courts below, even assuming for the sake of arguments that the patta had been subsequently issued in favour of the defendants 1 to 7 in respect of a portion of the suit property, the same would not confer a valid title to the defendants with reference to the said portion and thereby the defendants 1 to 7 would not be entitled to challenge the claim of title to the suit property put forth by the plaintiff on the strength of Ex.A1 patta.

10.The defendants had marked Exs.B1 to B5 in support of their case, however, the Courts below had analysed the abovesaid documents and also the evidence of D.W.2, through whom the abovesaid documents had come to be marked and found that the abovesaid documents would not in any manner establish the title of the defendants 1 to 7 in respect of the suit property.

11. The plaintiff has averred in the plaint that she has already levied a suit in O.S.No.28 of 1992 claiming the reliefs of declaration and permanent injunction in respect of the suit property against the defendants and it is specifically claimed by the plaintiff that the abovesaid suit was decreed in her favour on 30.11.1993. The certified copy of the decree passed in the above suit has been marked as Ex.A8. It is further seen that the first defendant has laid the suit against the plaintiff's husband and the plaintiff for claiming some right over the suit property in O.S.No.4 of 1992 on the file of the District Munsif Court, Mettur. However, had not chosen to prosecute the suit further, accordingly the above suit had come to be dismissed as "not pressed" and the certified copy of the memo filed by the first defendant in O.S.No.4 of 1991 with reference to the same has been marked as Ex.A6. The abovesaid facts have also been averred in the plaint by the plaintiff clearly. Not stopping there, the plaintiff has also averred that the first defendant had levied another suit in O.S.No.376 of 1997 on the file of the District Munsif Court, Mettur, in connection with the suit property and the same has also been dismissed and the certified copy of the judgment and decree in O.S.No.376 of 1997 have been marked as Exs.A.10 and A9 respectively. As regards the abovesaid case projected by the plaintiff in the plaint, absolutely, there is no specific denial on the part of the defendants 1 to 7 in the written statement. The abovesaid factors are narrated in para No.7 of the plaint clearly. However, the defendants in their written statement would only putforth a bare denial of the averments contained in para No.6 to 8 of the plaint as false. As such it is found that the defendants have not disputed the institution of the abovesaid proceedings by the plaintiff or by them in respect of the suit property one way or the other and inasmuch as, the defendants have no right or title to the suit property or to any portion of the suit property as presently put forth by them, it is found that they had not chosen to prosecute their suit in O.S.No.4 of 1992 and also not challenged the dismissal of their suit in O.S.No.376 of 1997 any further and on the other hand, as abovenoted, in respect of the suit property comprised in suit survey No.140 Grama natham 60 x 50 sq.ft area, the plaintiff has levied the suit against the defendants for the reliefs of declaration and permanent injunction and the said suit has ended in favour of the plaintiff. Though it is an exparte decree, however, the fact remains that the plaintiff's right to the suit

property had already been declared in the abovesaid suit and till date, the defendants have not taken any steps to set aside the decree passed in the above suit in favour of the plaintiff and also not furnished any reason as to why they had remained *ex parte* in the abovesaid proceedings without contesting the claim of title, possession and enjoyment as put forth by the plaintiff in respect of the suit property. That apart, nothing has been averred by the defendants in the written statement as regards the abovesaid suit proceedings other than the bare denial that the abovesaid statements are false. But, when the materials placed on record go to show that the institution of the abovesaid suit proceedings and their disposal one way or the other as abovenoted, particularly the suit laid by the plaintiff having ended in her favour laid in respect of the suit property, in such view of the matter, though the decree passed in the abovesaid suit is an *ex parte* decree, when the plaintiff has clearly averred in the plaint that the above suit had been laid only in respect of the suit property and when the defendants 1 to 7 had not controverted the same in specific terms as required by law, it is found that as rightly put forth by the plaintiff's counsel, unless and until the decree passed in favour of the plaintiff in O.S.No.28 of 1992 is set aside in the manner known to law, the same would be wholly binding upon the defendants and the defendants cannot be allowed to ignore the same by contending during the course of evidence/arguments that the suit property is not involved in the abovesaid suit. But no such plea had been raised by the defendants in the written statement that the present suit property is not involved in O.S.No.28 of 1992. Furthermore, as rightly found by the Courts below, even the suit laid by the first defendant against the plaintiff and others in respect of the properties situated in S.F.No.252/10 had ended against her and when the suits laid by the first defendant with reference to the same had not been prosecuted and left to be dismissed for default "as not pressed" and till date no further steps had taken to restore the abovesaid suit proceedings, in all, it is found that the defendants knowing fully well that they have no title to the suit property in respect of which the patta had been issued in favour of the plaintiff, marked as Ex.A1, it is evident that they had not put forth any interest in continuing the suits laid by them or defend the suit laid by the plaintiff as abovenoted.

12. As above seen, the plaintiff has laid the suit against the defendants claiming right to the suit property based on the abovesaid patta issued in her favour and in the written statement, the defendants have not projected as to on what basis they claim right, title to the suit property or to any portion thereof. Other than denying the plaint averments and putting forth that no patta had been granted in favour of the plaintiff and the documents projected by the plaintiff are

created for the purpose of the case and would only plead that in respect of the land covered in survey No.140, subdivision had already taken place and the patta had been issued in favour of various persons and had not stated on what basis or under what right, they claim title to the suit property or a portion thereof and in such view of the matter, as rightly found by the Courts below, the written pleas projected by the plaintiffs are found to be totally bereft of any particulars vis-a-vis their claim of title to the suit property. It is not even specifically pleaded by the defendants that they had been granted patta in respect of the suit property or a portion thereof and accordingly, they have any entitlement to the same. As found by the Courts below, when as per order 8, Rule 3 of the Code of Civil Procedure, it shall not be sufficient for the defendant in his written statement, to deny generally the grounds alleged by the plaintiff, but the defendant must deal specifically with each allegation of fact of which he does not admit the truth and as per order 8 Rule 4 of the Code of Civil Procedure, where a defendant denies an allegation of fact in the plaint, he must not do so evasively, but answer the point of substance and as per the order 8 Rule 5 of the Code of Civil Procedure, every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted, therefore, when a reading of the averments contained in the written statement would go to show that the defendants have made only an evasive denial to the case projected by the plaintiff and have not come forward with any specific case as to on what basis, they claim title to the suit property or a portion thereof and furthermore when the alleged title claim put forth by the defendants during the course of evidence has not seen the light of the day, the defendants having not explained as to why the original record has not been placed for consideration, in all, it is seen that without any entitlement or right, the defendants had been resisting the plaintiff's suit one way or the other with a view to grab the suit property belonging to the plaintiff on the strength of Ex.A1 patta.

13. As above pointed out, the only dispute between the parties is as regards to what is the actual extent of the land covered under Ex.A1 patta, whether it is 3 cents or the extent of land covered within the measurements given therein as 50 x 60ft. As abovenoted, the property comprised in Ex.A1 patta has been described to be located within the specific boundaries. Now according to the defendants, on the strength of Ex.A1 patta, the plaintiff is not entitled to claim more than 3 cents of land and it is also stated that the measurements given in the said patta should be read only as links and not as feet and so noted, it could be seen that the patta had been granted in favour of the plaintiff only in respect of 3 cents of land and on the

other hand, if the measurements found in Ex.A1 patta are read in feet, the plaintiff would be found to be claiming more extent of land than 3 cents i.e., nearly 6.88 cents and according to the defendants, when there is an entry in Ex.A1 patta as " only 3 cents " beyond that extent, the plaintiff would not be entitled to claim more land based on the measurements given in the document by reading the same that it should be taken into consideration as only denoting feet and not links. On the other hand, it is the specific case of the plaintiff that the measurements given in Ex.A1 patta should be read only as feet and furthermore according to him, when the property comprised in Ex.A1 patta has been clearly described by giving 4 boundaries in the said document itself as well as with the measurements, according to her, if at all there is any dispute as regards the extent covered within the said boundaries, as per the position of law, inasmuch as, the defendants have not disputed the boundaries recitals contained in Ex.A1 patta, following the dictum that boundaries would prevail when there is a doubt or dispute as regards the extent covered in the document and on that basis, the extent covered in the document should be determined and on that basis, it is found that the Courts below arrived at the conclusion, based on the materials placed on record, particularly the Commissioner's report and plan, who had measured the suit property with the help of the surveyor and accordingly determined that the plaintiff is entitled to the land measuring 60 x 50 ft within the boundaries described in Ex.A1 patta. I do not find any infirmity in the abovesaid determination of the Courts below, particularly, when the property comprised in Ex.A1 patta has been clearly described to be located within the specific boundaries and in such view of the matter, the abovesaid determination of the Courts below do not warrant any interference.

14. As rightly found by the Courts below, the original record of title claimed to have been issued in favour of the defendants, particularly, the first defendant has not been produced, for claiming any title to the suit property or the portion thereof. Furthermore, the first defendant had not chosen to enter into the witness box. When she would be the competent person to speak as to on what basis, she claims title to the suit property or a portion thereof, for the reasons best known to the defendants, they had avoided the first defendant from entering into the witness box and the abovesaid facts would only go to disclose that inasmuch as the first defendant is not having any document of title to the suit property or to any portion thereof, issued in her favour lawfully, it is evident that she has not endeavored to appear before the court for tendering evidence in support of her claim of title to the suit property or a portion thereof. As above noted, to identify the suit property the Commissioner had been appointed out and he had

measured the suit property with the help of the surveyor and filed his report and plan marked as Exs.C1 to C5. No objection has been preferred by the defendants to the Commissioner's report and plan placed in the matter. As rightly determined by the Courts below, the new construction found to be put up in the suit property had been put up by the defendants by encroaching into the suit property without any authority and in such view of the matter, when the defendants have failed to establish any claim of title to the suit property as such by placing acceptable and reliable material and on the other hand, when the plaintiff has filed the patta document for sustaining her claim of title to the suit property and her title had also been affirmed in the earlier suit preferred by her in O.S.No.28 of 1991, in all, it is found that it is only the plaintiff who has title to the suit property and accordingly entitled to obtain the reliefs prayed for with reference to the same as claimed in the plaint against the defendants 1 to 7, and as rightly determined by the Courts below.

15. In the light of the abovesaid discussions, in my considered opinion, no substantial question of law is found to be involved in the second appeal.

16. It is not the case of the plaintiff that she had derived title to the suit property through the common ancestors of the plaintiff and the defendants. It is also not the case of the defendants that the suit property originally belonged to the common ancestors and thereby they also have interest or right in the suit property. On the other hand, the plaintiff claims title to the suit property based on Ex.A1 patta. Per contra, the defendants during the course of evidence had projected the case that the first defendant had also been granted patta in respect of a portion of the suit property. In such view of the matter, the substantial question of law formulated in the second appeal is found to be not in any manner related to the issues involved between the parties and therefore the same is found to be not pertaining to the issues involved in the lis or the mode of claim of title to the suit property as put forth by the respective parties. In such view of the matter, the same does not require any determination for the disposal of the second appeal as such.

17. The counsel for the defendants in support of her contentions placed reliance upon the decisions reported in

1.MANU/TN/0738/2000 [Sengoda Gounder and others Vs. Komarasami Gounder and others]

2.2000 (3) MLJ 327 [Ramaiya Asari Vs. Ramakrishna Naicker alias Kollimalai Naicker and another]

3.MANU/TN/0822/1999 [Kaliyuga Kannan Vs. The Tahsildar, Land Survey and Settlement, Karaikal and others]

The counsel for the plaintiff in support of his contentions placed reliance upon the decisions reported in

1. 97 Law Weekly 59 [Dina Malar Publications Vs. Tiruchirapalli Municipality]

2. Order of this Court in S.A.No.420 of 2004 [C.Kaliyaperumal Vs. Rahdakrishnan and another]

The principles of law outlined the abovesaid decisions are taken into consideration and followed as applicable to the case at hand.

18. As above pointed out, in my considered opinion, the second appeal is found to be not involved with any substantial question of law and rests only on the factual matrix involved in the case and considering the assessment of the materials placed on record by the Courts below, both on factual aspects as well as on legal aspects, they having rightly assessed the same in the proper perceptive and also furnished convincing and acceptable reasonings and conclusions for upholding the plaintiff's case and rejecting the defence version, in my considered opinion, the judgment and decree of the Courts below do not merit interference in any manner. Accordingly, the second appeal is found to be devoid of merits and resultantly the same is dismissed with costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

mfa

To

1. The Subordinate Judge
Subordinate Court,
Mettur.
2. The District Munsif,
District Munsif Court,
Mettur.

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Copy to

The Section Officer,
VR Section, High Court,
Chennai.

+1cc to M/s.M.R.Jothimanian, Advocate, S.R.No.29271

+1cc to M/s.A.Sundaravadhanan, Advocate, S.R.No.29324

S.A.No.446 of 2006

and

C.M.P.No.5611 of 2006

VSNI (CO)
CS/16/12/2019



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