



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.06.2021

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

S.A.No.801 of 2008

and

CMP.No.6354 of 2019 and MP.Nos.1 of 2008,  
1 of 2010 and 1 of 2012

1.Kannan

2.Venkatesan

3.Mani ...Appellants 1 to 3 / Respondents 1 to 3 /  
Defendants 1 to 3

versus

1.Muthaiyan @ Muthaiyaa Pillai ...1<sup>st</sup> Respondent / Appellant /  
Plaintiff

2.Ganeshan

3.Mannangatti

4.Murugesu Pandithar ...Respondents 2 to 4 / Respondents 4 to 6 /  
Defendants 4 to 6

Second Appeal filed against the judgment and decree dated 10.10.2007 made in A.S.No.112 of 2005 on the file of the Sub-Court, Gingee, reversing the decree and judgment dated 30.09.2004 made in O.S.No.167 of 1998 on the file of Additional District Munsif Court, Gingee.

For Appellants : Mr. P. Srinivas

For Respondent : Ms. Gayatri for Mr. P.B. Balaji for R1  
R2 and R4- Served - No appearance  
R3- Ex-parte.

#### JUDGMENT

The defendants 1, 2 and 3 are the appellants before this Court.

2. The second appeal is filed challenging the judgment and decree in A.S.No.112 of 2005 on the file of the Sub Court,



Ginjee reversing the judgment and decree made in O.S.No.167 of 1998 on the file of the Additional District Munsif, Ginjee.

3. The facts in brief are as follows:

Plaintiff's Case:

3.1. The first respondent herein had filed the above suit for a declaration and permanent injunction in respect of the suit property. Thereafter, the suit was amended to include the relief of recovery of possession, if the courts were to come to the conclusion that defendants had encroached into the suit property. The suit was filed against the appellants herein and respondents 2 to 4 herein.

4. The case of the first respondent was as follows:

4.1. The suit properties belonged to his father Muttaiya Pillai and the old patta number for the same was 87. Muttaiya Pillai was in possession and enjoyment of the property till his death in the year 1986. The first respondent being the sole legal heir had inherited the same and has been in possession and enjoyment of the properties. The natham patta was also issued in the name of the first respondent and the new Patta Number was 120.

4.2. The first respondent contended that he and his predecessor in title being in open and continuous possession of the suit property for over a period of 12 years had therefore perfected the title to the same by adverse possession.

4.3. The defendants who have no semblance of right, title or interest to the suit property have been interfering with the first respondent's peaceful possession and enjoyment of the suit property thereby constraining the first respondent to file the suit.

Written Statement of the First Defendant:

4.4. The first appellant herein as first defendant had filed a written statement which was adopted by the other defendants and respondents 2 to 4. In their defense they had denied the entire contentions of the first respondent and had stated that the suit property never belonged to Muttaiya Pillai, the first respondent's father.

4.5. The first appellant further contended that the Advocate Commissioner who had been appointed in the above suit has submitted a report stating that there is a house existing in the suit property which is very old and the first respondent had not taken any steps to show the house in the schedule of properties. The appellant and his ancestors have been enjoying the suit property for well over 60 years by paying the revenue charges and having electricity service connection to the said house. The first appellant had further contended that the old



survey numbers in the suit property is Survey Numbers 73 and 74 and the patta which has been obtained by the first respondent was not a valid one.

Additional Written Statement of the first defendant:

4.6. The first appellant had also filed an Additional written statement, which was once again adopted by the other appellants and respondents 2 to 4 herein, contending that the plaintiff had not filed the suit for recovery of possession despite the fact that he had stated that the appellants herein and respondents 2 to 4 had encroached into the suit property. Therefore, the suit was barred by limitation.

4.6. The appellants had questioned the Court fee paid and sought for dismissal of the above suit.

4.7. The appellants 1 and 2 had filed O.S.Nos.67 of 1997 and 68 of 1997 for declaration of the plaintiffs' possessory title to the suit property and for a permanent injunction in both the suits.

Trail Court:

5.1 The Trail Court originally framed the following issues in the above suit:

- " 1. Whether the plaintiff and his ancestors were in possession and enjoyment over the suit properties and had perfected right and title over the suit properties ?
2. Whether the plaintiff is in possession and enjoyment of the suit property?
3. Whether the plaintiff is entitled for the relief as prayed for ?
4. To what relief, the plaintiff is entitled ?

5.2. Additional issues were also framed which are detailed hereinbelow:

1. Whether the defendants are in possession and enjoyment of the suit property ?
2. Whether the suit is barred by limitation ?
3. Whether the plaintiff is entitled for recovery of possession as alternative relief ?

5.3. Considering the fact that the subject matter of the suits and the parties were same, joint trail of the suits O.S.Nos.67 and 68 of 1997 and O.S.No.167 of 1998 was ordered on the basis of a memo.



5.4. The witnesses were examined and exhibits were marked in O.S.No.67 of 1997. The first respondent was referred to as the defendant and appellants 1 and 2 were referred to as the plaintiffs. The first and second appellants had examined themselves as P.W.1 and P.W.2 and examined Mahalingam, Kamapillai and Gandhi as P.W.3, P.W.4 and P.W.5 and marked Exs. A1 to A39. The respondent had examined himself as D.W.1 and had marked Exs.B1 to B8.

5.5. The Trial Court rendered a finding that none of the plaintiffs have proved their case and therefore dismissed all the three suits. Challenging the said judgment and decree, only the respondent herein had filed A.S.No.112 of 2005 on the file of the Sub Court, Ginjee. The appellants 1 and 2 did not file any appeal, as a result, the findings and the decision in their suits O.S.Nos.67 and 68 of 1997 respectively had attained finality.

#### Appellate Court

6.1. The learned Subordinate Judge had considered the evidence on record, both oral and documentary as well as the Advocate Commissioner's report and plan which had been marked as Exs.C1 and C2 and returned a finding that the plaintiff had proved possession and considering the evidence and the Commissioner's report it was clear that the construction had been put up only after the suit and therefore also decreed the suit for the relief of recovery of possession.

6.2. Aggrieved by this reversing judgment and decree, the appellants 1 to 3 alone have filed this Second Appeal and defendants 2 to 4 have not challenged the judgment and decree and therefore the same has attained finality insofar as they are concerned.

#### Submission:

7.1. Mr. P. Srinivas, learned counsel appearing on behalf of the appellants would contend that that the Appellate Court has failed to appreciate that the first respondent has not come forward with a clear description of the property, subject matter of the suit. It is his contention that the first respondent had come forward with a case that the suit properties were vacant sites and after the visit of the Advocate Commissioner he has amended the plaint to include the relief of recovery of possession.

7.2. He would submit that the perusal of the Advocate Commissioner's report would clearly demonstrate the existence of appellants' house, which the Advocate Commissioner has described as being very old, and which is stated to be situate in the suit schedule property.



7.3. This would clearly show that the appellants are in possession of the property and the respondent is not in possession of the same.

7.4. He would further submit that the first respondent has come forward with a specific case that the property is a vacant site however the Advocate Commissioner's report would demolish this contention of the first respondent. It is his case that the Appellate Court has not considered the evidence from its proper perspective and this has resulted in an erroneous judgment.

7.5. Ms. Gayatri, learned counsel appearing on behalf of Mr. P.B. Balaji, leaned counsel for the first respondent would contend that the appellants cannot challenge the judgment and decree of the Appellate Court since they have not filed any appeal. challenging the dismissal of their suits, which was filed for declaration and injunction.

7.6. She would further contend that the property in question is a natham land. It is only the patta which is proof of possession and being a natham land possession would presuppose title as natham lands are house sites in which the person in possession is presumed to be the owner, unless there is a contrary evidence. She would further argue that the first respondent has produced the patta and kist receipts right from the year 1958 which would clearly disprove the case of the appellants that they are in possession of the suit property.

8. Heard the counsel and perused the records.

Discussion:

9.1. Admittedly the appellants have not challenged the decree of the Trail Court which went against them. It is only the first respondent herein who had filed an Appeal. The first respondent had filed Ex.B1 which is the patta issued to the first respondent as early as in the year 1992 which is prior to the dispute coming into existence. He has also filed the kist receipts standing in the name of his father which are of the years 1957 and 1958. After the demise of his father, he has filed the kist receipts standing in his name. The Advocate Commissioner has found the respondent being in possession of the property and the Appellate Court had relied on this report of the Advocate Commissioner as one of the pieces of evidence to show that the property is in possession of the first respondent.

9.2. The Appellate Court has also relied on the evidence to come to the conclusion that the constructions/encroachments were of a very recent origin and therefore the first respondent was entitled to the relief of recovery of possession.



9.3. The appellants have not been able to disprove the documents filed on the side of the first respondent. The Trial Court has clearly opined that the documents filed on the side of the appellants namely the house tax receipts do not indicate that it relates to the suit property. On the other hand the first respondent's documents are with reference to the suit survey numbers. As already observed the suit property is a Natham land, where ownership is determined by possession. The revenue records are proof of such possession. The first respondent having produced these documents, the Trial Court has rightly come to the conclusion that the property belongs to the first respondent. Therefore, the substantial questions of law are answered against the appellants and the Second Appeal stands dismissed and the judgment and decree of the Subordinate Court, Gingee in A.S.No112 of 2005 is confirmed. Consequently connected Petitions are closed. No costs.

Sd/-  
Assistant Registrar (CCC)

// True Copy //

Sub Assistant Registrar

mrn

To

- 1.The Subordinate Judge,  
Gingee
- 2.The Additional District Munsif,  
Gingee.

Copy To

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

+1cc to M/s.P.B.Balaji, Advocate SR.No.29650

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GPL(CO)  
RVM(20/09/2021)