



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE: 15.12.2021

CORAM

THE HON'BLE MRS.JUSTICE V. BHAVANI SUBBAROYAN

SA(MD)No.531 of 2015 &

MP(MD)No.1 of 2015

WEB COPY

1.Chithiran (died)

Through his power agent Veeraiah

2.Ponnammal

3.Veeraiah

4.C.Sarasu

5.Kaliammal

6.Amaravathi

... Appellants/Appellates/Plaintiffs

(Appellants 2 to 6 were brought on record as lrs. of deceased sole appellant vide Court order dated 30.09.2020 in CMP(MD)Nos.4858 to 4860/2020 in SA(MD)No.531/2015)

vs.

1.Subbiah

2.Karuppaiah

... Respondents/Respondents/
Defendants 1&2

Prayer: Second Appeal filed under Section 100 of CPC to set aside the Judgment and decree in AS.No.44/2012 dated 02.03.2015 on the file of the Subordinate Court, Ramanathapuram, Ramanathapuram District confirming the Judgment and decree in OS.No.116/2009 dated 29.06.2012 on the file of the District Munsif Court, Thiruvadanai, Ramanathapuram District.

For Appellants 2 to 6 : Mr.R.Anand

For Respondents : MrJ.Barathan

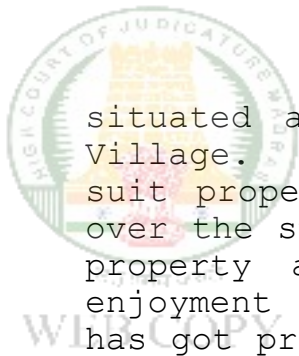
JUDGMENT

This Second Appeal is filed to set aside the Judgment and decree in AS.No.44/2012 dated 02.03.2015 on the file of the Subordinate Court, Ramanathapuram confirming the Judgment and decree in OS.No.116/2009 dated 29.06.2012 on the file of the District Munsif Court, Thiruvadanai, Ramanathapuram District.

2. The suit was filed for declaration and permanent injunction restraining the defendants from interfering with the possession and enjoyment of the suit property. In the suit, the plaintiff was represented through his Power Agent, namely, Veeraiya.

3. The case of the plaintiff in brief is as follows.

The suit property is the plaintiff's ancestral property,



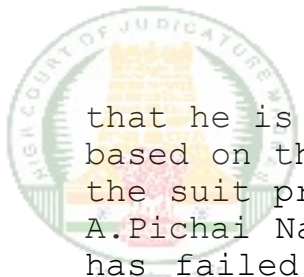
situated at Thiruvadanai Taluk, Pullamadai Group, Chappaniyendhal Village. The plaintiff has been in possession and enjoyment of the suit property through Patta No.486. The defendants have no right over the suit property. The defendants are claiming right over the property and are interfering with the peaceful possession and enjoyment of the property from 25.10.2009 onwards. The plaintiff has got prescriptive title over the suit property. Hence, he filed a suit.

4. In the suit, the defendants filed a written statement and the brief facts are as follows.

The defendants denied the right of the plaintiff and contended that they are in possession and enjoyment of the suit property and there is no prescriptive title in favour of the plaintiff. The suit properties originally belong to one Singan, Sathappan Vagaiyara. Kathamuthu Nadar and Suppan Nadar, who are brothers, belong to one of Singan, Sathappan Vagaiyara. Kathamuthu Nadar had no legal heirs. He adopted Chithiran Nadar, who belongs to Palayanakottai Village. Many properties including the suit property, which belongs to Kathamuthu Nadar and Suppan Nadar were partitioned between them 60 years back. After partition, Suppan Nadar was in possession and enjoyment of item 1 of the suit property. Subsequent to the death of Suppan Nadar, his legal heir Muthu Nadar was in possession and enjoyment of the same. After the demise of Muthu Nadar, the defendants are in possession and enjoyment of item 1 of the suit property till date. The entire suit property was in the names of Singan Nadar and Sathappan Nadar. Since the plaintiff was working as Thalaiyari in Revenue Department, he had mutated the revenue documents by including his name in the suit property and some other properties. The items 2 to 4 of the suit property were in joint possession of the plaintiff and Muthu Nadar and it is not partitioned till date. The plaintiff has filed this suit with regard to the item 1 of the suit property, which is in possession of the defendants and items 2 to 4 of the suit property, which is in joint possession of the plaintiff and the defendants. The averment of the plaintiff that the defendants interfered with his peaceful possession and enjoyment of the suit property from 25.10.2009 onwards is false. Hence, they prayed for dismissal of the suit with costs.

5. Before the Trial Court, on the side of the plaintiff, PW1 was examined and Exs.P1 to P11 were marked. On the side of the defendants, DW1 was examined and Exs.D1 to D5 were marked.

6. On the basis of the rival pleadings on either side, the learned District Munsif, Thiruvadanai, Ramanathapuram District has framed necessary issues and after evaluating both oral and documentary evidences, had dismissed the suit on the grounds that (i) the plaintiff has failed to prove that the suit property is his ancestral property, (ii) no other document except patta has been produced by the plaintiff to substantiate his case and patta is not
<https://hsr.scribd.com/document/341111111> (iii) no witness was examined on his side to prove



that he is in possession and enjoyment of the suit property and (iv) based on the Settlement Registers and Adangal Register Exs.D3 to D5, the suit property stood in the names of V.Subbaiya Nadar, Sathappan, A.Pichai Nadar, R.Pichai Nadar and S.Pichai Nadar and the plaintiff has failed to prove as to how the property was transferred in his name.

WEB COPY

7. Aggrieved by the Judgment and decree passed by the Trial Court, the plaintiff filed an appeal in AS.No.44/2012 before the Subordinate Court, Ramanathapuram on the grounds that (i) the Trial Court failed to consider the fact that the plaintiff had filed tax receipts to prove that he has been in possession and enjoyment of the suit property, (ii) the trial Court ought to have seen that the defendants have filed documents of another village, which are unrelated to the suit property and the names and survey numbers in those documents have been altered illegally, (iii) the trial Court ought to have seen that the patta registration of the suit property was neither in the names of the defendants nor in the names of their ancestors and (iv) there is no evidence for the observation of the trial Court that the plaintiff had mutated the revenue documents of the suit property, since the plaintiff has been working as Thalaiyari in Revenue Department.

8. The plaintiff had also filed IA.No.101/2013 before the Appellate Court to mark Settlement Register and Adangal Register as additional documents, stating that the copy of those documents were received only after the Judgment and decree of the Trial Court. The defendants filed a counter stating that the documents proposed to be marked by the plaintiff are not rare documents and their existence is well within the knowledge of the plaintiff, since he had been working in the Revenue Department. Acceptance of those documents will cause prejudice to the defendants and they prayed for dismissal of the Interlocutory Application. The Appellate Court after detail consideration and by relying on Judgments of the Hon'ble Supreme Court of India cited by the defendants in the cases of *Union of India vs. Ibrahim Uddin* and another reported in 2012 4 LW 359 and *Malayalam Plantations Limited vs. State of Kerala* and another reported in 2011(1) CTC 122, dismissed the said application stating that the plaintiff cannot file additional documents to fill up the lacuna in his case; those documents will not also strengthen the case of plaintiff; and the Court can come to a definite conclusion with the available documents itself.

9. While deciding the Appeal Suit, the Appellate Court after hearing both sides and upon reappraising the evidences available on record, has dismissed the appeal and confirmed the Judgment and decree passed by the Trial Court stating that (i) the Power Agent of the plaintiff, who was examined as PW1 accepted the fact that there are no details available as to from whom the plaintiff received the suit property (ii) based on the Judgment of the Principal Seat of



this Court in the case of *Rengasamy Pillai vs. Vaidayalingam Pillai* reported in *CDJ 2012 MHC 771*, the plaintiff is not entitled to get any relief via UDR patta and (iii) sale deeds Exs.P5 to P7 are third party documents and it will not bind on the defendants and hence, the plaintiff cannot seek any relief based on those documents.

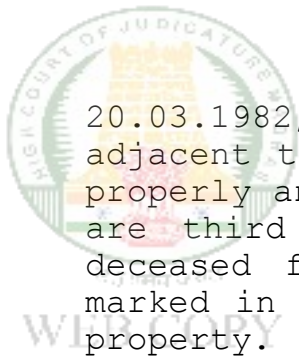
10. Challenging the concurrent Judgments and decrees passed by the Courts below, the present Second Appeal has been filed. Pending Second Appeal, the plaintiff Chithiran died and his legal heirs were brought on record as appellants 2 to 6.

11. Heard both sides and perused the materials available on record.

12. The learned counsel for the appellants would submit that the Courts below erred in rejecting the patta that stood in the name of the first appellant / plaintiff (deceased) vide Patta No.486 in respect of the suit property. The first appellant / plaintiff marked registered sale deeds dated 20.03.1982, 19.04.1984 and 15.05.1984 as Exs.P5, P6 and P7 respectively. Those documents would clearly show that the suit property belong to the first appellant / plaintiff. While so, the Courts below ought to have considered those documents and granted the relief sought for by the first appellant / plaintiff. The presumption of the Courts below that since the Power Agent of the deceased first appellant / plaintiff has been working as Thalaiyari in the Revenue Department, he might have mutated the Revenue Records is without any basis. The first appellant / plaintiff had marked 14 documents before the Trial Court including patta, tax receipts and sale deeds, which would clearly prove that he was in possession and enjoyment of the suit property. He therefore, prayed for allowing this appeal.

13. The learned counsel appearing for the respondents / defendants would submit that the Courts below, after analysing the oral and documentary evidences available on record, have rightly dismissed the suit and prayed for dismissing the Second Appeal.

14. According to the deceased first appellant / plaintiff, the suit property is his ancestral property and he was in possession and enjoyment of the same through Patta No.486. Ex.P1, UDR patta in respect of the suit property, stands in the name of the deceased first appellant / plaintiff. PW1 who is the Power Agent had clearly given evidence that he had not filed any document to prove as to how the property transferred from his grandfather name to his father's name and the UDR patta Ex.P1 was issued directly under the name of the deceased first appellant / plaintiff. Hence, the claim of the first appellant / plaintiff that the suit property is his ancestral property is not supported by any document. Further, patta is not a title document. Mere possession of patta will not give any right over the suit property. Exs.P5, P6 and P7 are sale deeds dated



20.03.1982, 19.04.1984 and 15.05.1984, relating to the properties adjacent to the suit property in this case. The Courts below have properly analysed the sale deeds and concluded that those sale deeds are third party sale deeds and merely because the name of the deceased first appellant / plaintiff is found in the boundaries marked in the said sale deeds, he cannot claim right over the suit property.

15. The first appellant / plaintiff had marked tax receipts under Exs.P4 and P11 to claim that he had been in possession and enjoyment of the suit property. After perusing those documents, the Trial Court has held that except those documents no other document was adduced or witness was examined to prove that, even now, he is in possession and enjoyment of the property, which was also confirmed by the Appellate Court. The defendants have stated that they have been in possession and enjoyment of the suit property and marked Settlement Registers and Adangal Extract Exs.D3 to D5 to prove the same. The names of V.Subbaiya Nadar, Sathappan, A.Pichai Nadar, R.Pichai Nadar and S.Pichai Nadar were found in those documents. However, the first appellant / plaintiff was not able to produce any evidence to prove as to how the property devolved on his name and he is in possession of the same.

16. The first appellant / plaintiff filed suit for declaration and permanent injunction. However, no reliable piece of evidence had been adduced by him to establish his case. Hence, in the absence of sufficient evidence and in the facts and circumstances of the case, this Court concurs with the conclusion of the Courts below. It is pertinent to point out that the respondents / defendants themselves admitted that the items 2 to 4 of the suit property were in joint possession of the plaintiff and the defendants. Since, partition has not been effected till date, it is left open to the parties to workout their remedy before appropriate forum in the manner known to law.

17. In fine, no substantial question of law arises for consideration in this appeal and this Second Appeal is dismissed. The Judgment and decree in AS.No.44/2012 dated 02.03.2015 on the file of the Subordinate Court, Ramanathapuram District is hereby confirmed. No costs. Consequently, the connected Miscellaneous Petition is closed.

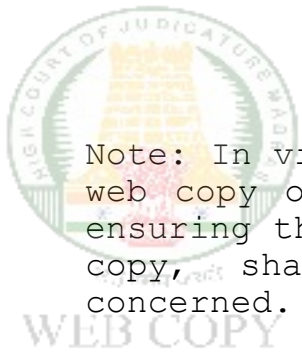
Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)



Note: In view of the present lock down owing to COVID 19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

1. The Subordinate Judge,
Ramanathapuram
2. The District Munsif,
Thiruvadanai, Ramanathapuram.
3. The Record Keeper,
VR Section,
Madurai Bench of Madras High Court,
Madurai.(2 copies)

+1 CC to M/s.T.R.JEYAPALAM, Advocate (SR-38997[F] dated 16/12/2021)

SA(MD)No.531 of 2015
15.12.2021

RK(25/01/2021) 6P 6C