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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **06.12.2021**

CORAM

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

S.A(MD)No.761 of 2021

Thiruvenkada Ramanujam ... Appellant/Appellant/Defendant

Vs.

Jeyaraman ... Respondent/Respondent/Plaintiff

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree, dated 12.10.2020 passed in A.S.No.16 of 2019, on the file of the Sub Court, Paramakudi, confirming the judgment and decree dated 07.09.2018 passed in O.S.No.107 of 2016 on the file of the Principal District Munsif Court, Paramakudi.

For Appellant : Mr.K.Alagarsamy

JUDGMENT

The concurrent Judgments and decrees passed in O.S.No.107 of 2016 by the Principal District Munsif Court, Paramakudi and in A.S.No.16 of 2019, by the Sub Court, Paramakudi, are being challenged in the present Second Appeal.

2. The respondent/plaintiff has instituted a suit in O.S.No.107 of 2016 on the file of the trial Court for the relief of declaration, permanent injunction and also to cancel the patta issued by the District Revenue Officer, wherein, the present appellant has been shown as defendant.

3. The case of the plaintiff is that originally the father of the plaintiff, viz., Thirupathi Nadar, has purchased the property measuring an extent of 5 acres 10 cents, in the year 1963, for his minor son, who was aged about 16 years, as a guardian and the same has been registered as Document No.465, dated 13.05.1963 and he has also purchased another property, measuring an extent of 5 acres 10 cents for his minor son, as a guardian and the same has also been registered as Document No.466, dated 13.05.1963 and both the properties are situated in Survey No.282. The total extent of the said lands come to an extent of 4.28 hectares. After the plaintiff became major, he was in possession and enjoyment of the same and by

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UDR scheme, he had also obtained patta No.422 on 10.04.1973 in Survey No.282. When the plaintiff was in possession and enjoyment of the suit property, the defendant trespassed into the plaintiff's property by clandestinely making some mutation in the revenue records and obtained Patta No.711 and the issuance of patta to the defendant came to the knowledge of the plaintiff only in the month of December, 2012. Immediately, thereafter the plaintiff had approached the Revenue Divisional Officer, Paramakudi, on 24.12.2012 by filing an appeal. The Revenue Divisional Officer has sent a notice to the defendant, but he did not appear for the enquiry and the Revenue Divisional Officer had passed an order by referring the matter to the District Revenue Officer, as he has got no jurisdiction to entertain such plea. The District Revenue Officer did not enquire it properly and passed an order by dismissing the claim made by the plaintiff. The plaintiff having produced all the documents to show that he is in possession and enjoyment of the property, the defendant, on an erroneous approach using the muscle power and man power, had obtained a fraudulent patta No.711 in Survey No.282 and also obtained computerized patta. As the defendant was trying to encroach upon the suit schedule property of the plaintiff, he filed a suit for declaration, permanent injunction and also to cancel the patta issued by the District Revenue Officer.

4. The defendant filed a written statement denying all the averments, but admitted the said document, dated 13.05.1965, which was executed by the father of the plaintiff, when the plaintiff was a minor and stated that the suit schedule property was not purchased by the father of the plaintiff on his own income and the same has been purchased by utilising the income derived from the ancestral property. As per the oral partition held between the said parties, namely Thirupathi Naidu, Devakiammal, Srinivasan, plaintiff and the defendant, all the properties were divided and accordingly, an unregistered partition deed was executed as all the parties agreed and signed in front of the elders, who have also signed as witnesses. The original document is available only with the plaintiff and the xerox copy is available with the defendant and as per the said partition deed, the divided portion of the property has been handed over to the defendant and he is in possession and enjoyment of those properties and other properties are still stands in the name of their parents. With regard to the undivided portion, patta No.422 which stands in the name of the plaintiff has been cancelled by the revenue authorities and after partition, as per UDR scheme, for the properties of the defendant including other properties, the revenue authority has issued patta No.711 and the suit schedule properties were not fit for cultivation. Hence, the defendant planted prosopis juliflora and he was in possession for more than 30 years and enjoying the same and only based on the evidence, the revenue authorities have dismissed the appeal filed by the plaintiff and the suit is barred by limitation and prayed for dismissal of the same.

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5. Before the trial Court, on the side of the plaintiff, the plaintiff examined himself as P.W.1 and one Pandian was examined as P.W.2 and Exs.A1 to A6 were marked. On the side of the defendant, the defendant was examined as D.W.1 and Sathish Kumar was examined as D.W.2 and Exs.B.1 to B.4 were marked and on the side of the witness, Ex.X.1 to Ex.X4 were marked.

6. On the basis of the rival pleadings made on either side, the trial Court, after framing necessary issues and after evaluating both the oral and documentary evidence, has granted a decree of declaration and granted permanent injunction restraining the defendant, their men and agents from encroaching and trespassing into the suit schedule property. Regarding the cancellation of patta, the same was dismissed against the plaintiff.

7. Aggrieved by the Judgment and decree passed by the trial Court, the defendant as appellant, had filed an Appeal Suit in A.S.No.16 of 2019. The first appellate Court, after hearing both sides and upon reappraising the evidence available on record, had dismissed the appeal, confirming the Judgment and decree passed by the trial Court.

8. Challenging the said concurrent Judgments and decrees passed by the Courts below, the present Second Appeal has been preferred at the instance of the defendant, as appellant.

9. Heard the learned counsel for the appellant and also perused the records carefully.

10. The learned counsel appearing for the appellant/defendant would submit that the Courts below have failed to consider Ex.B.1 to Ex.B.4 in a proper perspective and the Courts below have failed to consider the evidence of P.W.1-Jeyaraman that he admitted that there was a partition among his family and the plaintiff's family in his evidence, but the Courts below held that the plaintiff is in possession and enjoyment of the suit property. The Courts below had erred in holding that the document of partition has not been filed by the appellant. Once the plaintiff admitted before the Courts below through his evidence that there was a partition among his family and the plaintiff's family and thereby not producing the partition document is not fatal to the case of the appellant. The Courts below failed to consider the order passed by the Revenue Divisional Officer, dated 04.08.2016 viz., Ex.B.4 and Ex.B.1-patta obtained by the appellant and also Ex.B.2-mortgage deed.

11. It is the admitted case of the plaintiff that originally the father of the plaintiff, namely, Thirupathi Nadar, has purchased two properties in favour of the plaintiff, who was a minor, aged about 16 years, as a guardian and the same have been registered as Document Nos.465 and 466, dated 13.05.1963 and both the properties are in Survey No.282 and the total extent of the said lands totally

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come to an extent of 4.28 hectares. After the plaintiff became major, he was in possession and enjoyment of the same and by UDR scheme, he has also obtained patta No.422 on 10.04.1973 in Survey No.282. When the plaintiff was in possession and enjoyment of the suit property, the defendant trespassed into the plaintiff's property and fraudulently obtained Patta No.711. Thereafter, the plaintiff approached the Revenue Divisional Officer, Paramakudi, on 24.12.2012 by filing an appeal. The said Revenue Divisional Officer had passed an order by referring the matter to the District Revenue Officer, as he has got no jurisdiction to entertain such plea. The District Revenue Officer dismissed the claim made by the plaintiff. As the defendant tried to encroach upon the suit schedule property of the plaintiff, he filed the suit. The defendant had admitted the document dated 13.05.1965, which was executed by the father of the plaintiff, as a guardian, when the plaintiff was minor and stated that the suit schedule property was not purchased by the father of the plaintiff on his own income and the same has been purchased by utilising the income derived from the ancestral property. As per the oral partition, all the parties agreed and signed infront of the elders, who have also signed as witnesses and the original document was available with the plaintiff and the xerox copy was available with the defendant and as per the said partition deed, the divided portion of the property has been handed over to the defendant and he was in possession and enjoyment of those properties and other properties are still in the name of their parents. With regard to the undivided portion, patta No.422 which stands in the name of the plaintiff has been cancelled by the revenue authorities and after partition, as per UDR scheme, the properties of the defendant including other properties, the revenue authorities has given pattta No.711.

12.On a perusal of Ex.A.1 and Ex.A.2-sale deeds, dated 13.05.1963, it is seen that the documents have been purchased by the father of the plaintiff on behalf of his minor son, as a guardian, when the plaintiff was aged about 16 years, which were registered documents and the same have to be considered as a original genuine one and the same have not been purchased through income from the ancestral property. Further, it is seen that the father of the plaintiff has purchased the properties only on behalf of the plaintiff as a guardian and after two years, when he becomes major, the properties devolved on the plaintiff and he was in possession and enjoyment of the same. Ex.A.3-patta, dated 10.04.1973, would prove that separate patta No.422 has been issued in the name of the plaintiff. At the time when the plaintiff attained the age of 18, within three years ie., at the age of 21, the defendant has not raised any objection that Ex.A.1 and Ex.A.2-sale deeds are ancestral properties and the defendant has not taken any steps for cancelling the patta, dated 10.04.1973. Only after a long period, the defendant claimed that the suit property has not been purchased by the father of the plaintiff on his own income and claimed that it is a common joint family property. However, there is no material to establish

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that the father of the plaintiff has purchased the property from his own income or how the plaintiff and the defendant partitioned the other properties, are not established. The defendant has stated that the properties has been allotted to him by oral partition and based on which, patta was issued, could not be a legally valid one, as he has produced an unregistered document before the authorities and the same has been accepted by the revenue authorities and obtained patta, but the said unregistered document was not marked before the trial Court and there was no other evidence to prove that there was a partition held between the family members. As no details regarding on what date partition has been effected and who are all available at the time when partition took place and no evidence has been let in in this regard and also the original document has not been produced and examined, the trial Court as well as the first Appellate Court have come to the conclusion that in the absence of any parent title deed ie., partition deed, the defendant claim has to be rejected.

13. Further, if at all the original document is with the plaintiff, the defendant could have called for the same by filing appropriate application under Order 11 Rule 16 seeking for production of the original document and the same was not initiated by the defendant to establish his case. Further, the revenue authorities have issued patta No.422 in favour of the plaintiff and later on only, patta No.711 was issued in favour of the defendant. That being the case, the defendant has not proved under what circumstances, Ex.B.1-patta was issued to him and on going through the said document, it is seen that not only with regard to the suit schedule property but also with regard to other properties, separate patta has been issued to the defendant measuring an extent of 7.88 hectare lands. During the cross-examination, the defendant has stated that for 18 acres, patta has been issued to him and he had also sold 7 acres of land in Valimarichan Village. That being the case, there are three brothers viz., the plaintiff, the defendant and one Srinivasan and the defendant was not in a position to say how he got 18 acres of land for his share alone and the claim was not accepted. Before UDR scheme, separate patta was issued in favour of the plaintiff, which was marked as Ex.A.3. Before cancelling Ex.A.3, the defendant has to make an application before the Tahsildar and the Tahsildar has to follow the procedure and give an opportunity to the parties and after hearing them only, the Tahsildar can pass appropriate orders under the patta pass Book Act and cannot make changes or mutation as and when he wishes and for giving effect to this order, the parties should be examined and reasoned orders should be passed. When patta has been issued by the authorities in favour of the plaintiff, the same cannot be unilaterally cancelled by the revenue authorities and in the absence of any registered document in favour of the defendant, the order issued by the authorities is erroneous and the same has to be cancelled.

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14. In the absence of any evidence to show that under what basis patta was cancelled and fresh patta was issued to the defendant, the said patta issued in favour of the defendant is hereby cancelled and the authorities are hereby directed to pass appropriate orders in favour of the plaintiff, who has established the title by producing appropriate sale deeds, dated 13.05.1963.

15. As the original title traces back to the plaintiff and the defendant was never a owner of the said land, the revenue authorities while making mutation under UDR scheme, the said act of the authorities cannot bind on the plaintiff. The patta issued in favour of the defendant will not confer any title to the defendant, as the defendant had obtained the UDR patta by malpractices and he has not established his case that the suit properties are joint family properties and hence, this Court is of the view that the Judgment rendered by the trial Court as well as the first Appellate Court has to be confirmed. Further, when the title to the property is disputed, the revenue authorities has got no authority to decide the issue and it has to be decided only by the competent civil Court. Accordingly, when the plaintiff has filed a suit for declaring the title in favour of him, as the Courts below have already come to a conclusion that the properties belonged to the plaintiff, the authority also based on the declaration has to issue patta in favour of the plaintiff. The other facts regarding the possession, the plaintiff has proved his possession by examining D.W.2-Village Administrative Officer and during the cross-examination, he has stated that the suit property was in the possession of one Chandran and further stated that the crop insurance was also issued in the name of Chandran, who was a lessee in the hands of the plaintiff. Accordingly, the factum of possession was also proved by the plaintiff and in the absence of any other evidence other than UDR patta issued by the revenue authorities, the plaintiff is entitled for the relief of declaration and permanent injunction. The revenue authorities are hereby directed to pass appropriate orders for issuing patta to the plaintiff.

16. For the reasons aforesaid, this Court is of the considered view that no substantial questions of law has been made out by the appellant/defendant to interfere with the well considered judgments and decrees rendered by the Courts below and accordingly, the Second Appeal fails and the same stands dismissed. No costs.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)

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To

1.The Sub Court,
Paramakudi.

2.The Principal District Munsif Court,
Paramakudi.

3.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai. (2 COPIES)

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