



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 18.02.2022

Pronounced on : 04.03.2022

WEB COPY

Coram::

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Appeal Suit No.1219 of 2015

&

C.M.P.No.1080 of 2022

Uthandi

... Appellant / 2nd claimant

/versus/

1. Srinivasan

...1st Respondent / 1st Claimant

2. The Special District Revenue Officer,
Highways
District Collector Office,
Villupuram.

...2nd Respondent / 1st Respondent

Prayer: Appeal Suit has been filed under Section 96 C.P.C., praying against the order and decree of the Principal Subordinate Court, Tiruvannamalai dated 12.08.2015 made in L.A.O.P.No.1/2013.

For Appellant : Mr.S.Vijayakumar

For R1 : Mr.M.V.Seshachari

For R2 : Mr.Tamilnithi,
Additional Government Pleader

J U D G M E N T

The 2nd claimant/Uthandi in L.A.O.P.No.1 of 2013 claiming share in the compensation awarded by the Highways Department for the well acquired in S.No.280/1B2A, is the appellant herein. The 1st claimant/Srinivasan, who is the co-owner is the 1st respondent herein

2. The crux of the appeal is that the National Highways Department acquired vast extend of land for their project which



includes the land belongs to family of Gopal Gounder family. An award was passed for a sum of Rs.30,66,124 in respect of 2nd item (Well) jointly owned by the claimants. Due to the dispute between the claimants regarding the apportionment of the compensation, the 2nd claimant/Uthandi being aggrieved by the award of the Tribunal has preferred this appeal.

3. According to the appellant, the suit property originally belong to Gopal Gounder. It is a joint family property consisting of Gopal Gounder and his sons Kothandaraman, Uthandi and Srinivasan. On 27.06.1984, there was a partition between family members wherein the properties were allotted to the family members and after the partition, they were enjoying their respective shares allotted to them in the partition. The well Kavalaijadi, along with 5 H.P motor and electricity connection were allotted to the claimants Uthandi/2nd claimant and Srinivasan/1st claimant to share them equally. For the purpose of laying bypass road near Kilpennathur National Highways, 0.15.86 Hectare out of 0.32.5 Hectare of land in S.No.279/1 was acquired and assigned as S.No.279/1B. For the said land, a sum of Rs.2,77,391/- was awarded to the 1st claimant/Srinivasan. For 0.24.60 Hectare of land out of 0.42.5 Hectare of land in S.No.280/1B1 acquired and reassigned as S.No.280/1BA1 and a sum of Rs.4,30,254/- was awarded to the 1st claimant/Srinivasan. In S.No.280/1B2 a well in 0.01.64 Hectare was acquired and reassigned as S.No.280/1B2A. For the said well, a sum of Rs.26,89,592/- was awarded as compensation to Srinivasan. That apart, an old well in S.No.280/1B2 was valued at the cost of Rs.3,76,532/-. Srinivasan and Uthandi have equal rights in the said well.

4. The dispute is in respect of well situated in S.No.280/1B2A for which compensation fixed at Rs.26,89,592/-. The 1st claimant/Srinivasan claims absolute right over the said well, whereas the 2nd claimant Uthandi claims $\frac{1}{2}$ share in it. When this matter was referred to Reference Court in L.A.O.P.No.1 of 2013, the claim was considered by Reference Court in the light of the documents produced by the rival claimants and the claim was held in favour of the 1st claimant declaring him as absolute owner of well in S.No.280/1B2A and both the claimants are entitled to share the compensation amount, awarded for the well situated in S.No.280/1B3.

5. The 2nd claimant being aggrieved by the award which has dis-entitled to claim share in the compensation for the well situated in S.No.280/1B2A is before this Court by way of an appeal. The appellant, claims share in S.No.280/1B2A and the well submit that the family had two wells in the land acquired by the Highways Department and both were jointly held by the claimants 1 & 2. The reference Court, while rightly held that



the appellant is entitled for $\frac{1}{2}$ share in the well situated in S.No.280/1B3 erred in excluding the appellant in respect of well situated in S.No.280/1B2A.

6. Though accepting the partition deed entered between the family members on 27.06.1984, which is marked as Ex.C.1. The reference Court has failed to appreciate the fact that the well in the survey number is a common well and joint patta was issued by the Revenue Authorities based on the deed of partition dated 27.06.1984. The Revenue records were mutated by the Revenue Authorities in the year 1989. Based on which joint patta was issued in favour of the appellant and 1st respondent. After partition, the well was re-constructed with joint contribution of the claimants 1 & 2. Soon after the acquisition, the appellant made his claim for 50% compensation in respect of the well situated in S.No.280/1B2A. The Authority concluded that the appellant and the 1st respondent are entitled for compensation equally.

7. While so, patta was issued by Tahsildar subsequently on 04.04.2012 in favour of 1st respondent/1st claimant exclusively, ignoring the fact that the property is joint property and after the partition and joint patta was issued in the name of both the claimants in the year 1989.

8. Aggrieved by individual patta issued for the land in S.No.280/1B2A in favour of 1st respondent/claimant herein, the appellant/1st claimant filed a Civil Suit No.91/2012 and sought for declaratory relief to declare his $\frac{1}{2}$ share in the well comprised in S.No.280/1B2A and interim injunction was obtained. Simultaneously, the appellant/2nd claimant approached Revenue Divisional Officer by way of an appeal to set aside the order of the Tahsildar, granting exclusive patta to the 1st claimant without proper perusal of the records and enquiry. The Revenue Divisional Officer, who conducted enquiry found that issuance of patta exclusively to the 1st claimant is wrong and incorrect, hence directed the authorities to amend the revenue records by including the name of the appellant as joint owner in respect of property in S.No.280/1B2A. While so, the 1st respondent/appellant filed O.S.No.168 of 2012 on the file of Principal District Munsif, Thiruvannamalai, seeking declaration in respect of the well situated in S.NO.280/1B2A claiming that, he is the exclusive owner of the said well and also sought for permanent injunction restraining the appellants herein from claiming any amount of compensation from the 2nd respondent. However, the 1st respondent/1st claimant failed to prosecute the said suit and the suit was dismissed on 04.08.2014.

9. The 1st respondent also filed a Writ Petition No.1136 of 2013 to refer the dispute regarding apportionment of



compensation. Pursuant to the order passed by the High Court directing the authorities to refer the dispute to the competent Civil Court, the present L.A.O.P.No.1 of 2013 came to be numbered.

WEB COPY

10. In the partition deed dated 27.06.1984 the properties listed under 'C' schedule was allotted to the appellant/2nd claimant and the property shown under 'B' schedule was allotted to the 1st respondent/1st claimant. The well in the acquired land was left for the common property of both the claimants. In the year 1984, the well got damaged, both the claimants joined together and constructed a well.

11. The appellant/1st claimant contending that, the trial Court arbitrarily and contrary to the facts and records had proceeded on the basis that the well was exclusive possession and enjoyment of the 1st claimant by ignoring the relevant records indicating the appellant/2nd claimant have share in the well and had been using the water drawn from the well to irrigate his land, pray for interference of the reference Court award.

12. Per contra, the Learned Counsel appearing for the respondent would submit that the well which was acquired by Highways Department falls well within the land allotted to the 1st respondent/1st claimant. The common well which is referred in the partition deed got dilapidated by efflux of time. So the parties who were allotted separate share in the land, decided to have their own well in the land allotted to them instead of sharing the common well. As a result, in the land allotted to the 1st respondent/1st claimant, the well was dugged by him. Therefore, the joint patta issued earlier was cancelled by the Tashildar and exclusive patta was issued to the 1st respondent/1st claimant. Based on the separate patta and other documents, the reference Court has rightly held that the 1st respondent alone is entitled for the compensation. Out of total extend of land 2 acres of land, 1st respondent/1st claimant was allotted 1.10 acres of land and rest of the lands were allotted to the appellant.

13. The Reference Court, after considering the recital in Ex.C.1 has held that the property in 'C' schedule was allotted to the appellant/2nd claimant/Uthandi. The 5th item under 'C' schedule of the partition deed dated 27.06.1984 refers the well in S.No.280/1B and 5 H.P. Motor. In the said well and motor, the 2nd claimant is entitled for ½ share. Similarly under 'B' schedule, 7th item allotted to 1st claimant/Srinivasan is the ½ share in the well in S.No.280/1B with 5 H.P motor. Only the two wells in S.No.280/1B and S.No.280/1B3 were to be shared by the claimants 1 & 2 commonly whereas the other well which is in S.No.280/1B1A was scared out from S.No.280/1B2 and part of the



land allotted to the 1st claimant in the partition deed and he alone contributed to dig the well. The 1st claimant evidence regarding contributing money for digging the well was accepted by the Reference Court. In view of the sale of the electricity service No.247 by the 2nd claimant in favour of 1st claimant towards ½ share through sale deed dated 10.05.1990 marked as Ex.C.12, the 1st claimant has become the absolute owner in respect of electricity service connection which has been transferred to new well dugged by him in S.No.280/B2. This sale deed is an evidence to infer the appellants have no right in the well.

14. The Learned Counsel appearing for the respondent would submit that having established, the well in survey number was dugged by the 1st claimant/1st respondent within the area allotted to him under 'B' schedule of the partition deed. The Appellant/2nd claimant cannot have any right in the suit property. The Trial Court has rightly held that the 1st respondent is the absolute owner of the well in S.No.280/1B2A. Therefore the award has to be confirmed.

Point for determination:-

Whether the subject well is exclusive property of the 1st claimant/1st respondent or joint property of the appellant/2nd claimant?

15. The Learned Counsel for the appellant would submit that when the recital of the partition deed clearly indicates that the parties have equal share in the well and it is a common property for both the claimants, contrary to the documents merely based on a fraudulent patta issued exclusively in the name of the 1st claimant and later cancelled, the reference Court has awarded the entire compensation for the said well in S.No.280/1B2A exclusively in favour of the 1st respondent/1st claimant. The order of Tashildar issuing patta exclusively in favour of the 1st respondent was later cancelled and joint patta has been issued. The 1st respondent herein has not challenged the issuance of joint patta in S.No.280/1B2A. Therefore, the appellants have equal right in the compensation given for the well.

16. In response to the said submission, the learned counsel for the 1st respondent would submit that patta is not a document for title and in any event the new patta alleged to have been issued in the name of both the claimants has no consequence since the land has been acquired by the Highways and therefore, this respondent has chosen not to proceed further against the order of the Tashildar, issuing joint patta in respect of the property.



17. The Learned Counsel for the appellant would rely upon the Division Bench judgment rendered in Lakshmana Gounder -vs- The Special Deputy Collector (LA), Salem Steel Plant, Salem and others reported in 2002 (5) CTC 640, wherein this Court has held that for the purpose of apportionment of compensation, the entry found in patta and other revenue documents are relevant. The Division Bench judgment has observed in paragraph Nos.11 & 12,

"11. It is canvassed before us that the Court below erred in apportioning the compensation on the basis of Exs.B.2 and B.3; that respondents 2 and 3 together are entitled only to half of the total compensation and the appellant is entitled to the remaining half; and that the extent mentioned in Exs.B.2 and B.3 is in Hectares and not in Acres. The said argument is untenable as the appellant herein has not placed any evidence either before the Court below or before us to substantiate the same.

12. A patta is a record of possession represents a distinct fractional part of lands. The said presumption has its roots in the system of land tenure and in the custom of the area in which the lands are situate. Each pattadar manages his lands and pays fixed share of the Government Revenue. Entries in revenue records are not conclusive, but their importance in a case for possession cannot be denied, until contrary is shown. Though one cannot challenge the entry in revenue records as incorrect but can always impugn it as having been made fraudulently or surreptitiously. Followed the decision in Vishwa Vijay Bharathi v. Fakhrul Hassan and others reported in 1976 (3) SCC 642. In this case, the Apex Court has held the entries in the Revenue records generally to be accepted at their face value and Courts should not embark upon an appellate enquiry into their correctness. But, the presumption of correctness can apply to genuine, not forged or fraudulent entries. When, in a particular case, facts disclose no title in either party, possession alone will decide the right of the parties."



18. Per contra, The Learned Counsel for the 1st respondent referred the judgment of this Court in Vadapalani Andavar Temple Devasthanam -vs- The Society of St. Joseph College and others reported in MANU/TN/0389/2016 has held that,

"23. It is a settled proposition that in the presence of title deeds like sale deeds, patta shall not be a document of title. Patta is a document showing the person from whom the land revenue will be collected. It cannot be projected against a proper document of title, which is anterior to the issuance of patta. Only in cases of government poramboke and natham poramboke lands, assignment patta shall be treated on par with other title deeds. In no case patta alone will destroy the title of the other person who derived it by a valid title deed. In the case on hand, except the extract from the Settlement Register showing the appellant/first defendant to be the owner of the suit property, no other document has been produced by the appellant/first defendant temple."

19. And also paragraph Nos.19 & 20 in the judgment of this Court rendered in Viswalingam -vs- Balasubramanian reported in (2013) 5 MLJ 785 was relied by the respondent.

19. Patta will not confer title. The following decisions would exemplify with the legal position.

(i) 1973 (1) MLJ 44 [Velayudham Pillai v. Sandhosa Nadar]

(ii) 1995 (1) MLJ 426 [Kuppuswami Nainar v. The District Revenue Officer, Thiruvannamalai]

(iii) 1998 (I) CTC 630 in Srinivasan v. Sri Madhyarjuneswaraswami, Pattavaithalai, Tiruchirapally District by its Executive Officer at Pattavaithalai Devasthanam.

(iv) 2008 (7) MLJ 1183 [Venkatachalam (died) v. Rajammal]



WEB COPY

(v) 2009 (3) CTC 493 R.
Pannerselvam v. A. Subramanian]

The above precedents would connote and denote that mere patta would not confer title.

20. As such as against the registered documents mere obtention of patta would not in any way enure to the benefit of the plaintiff and the first appellate Court correctly negated the claim of the plaintiff. The first appellate Court being the last court of facts correctly analysed the evidence both oral and documentary and arrived at the conclusion.

20. Patta will not confer title, but no doubt it is semblance of title. In case of acquisition of land and payment of compensation, the entry in patta is relevant and significant. In so far as the instant case is concerned, from the partition deed (Ex.C.1) it is clear that two wells were allotted to the claimant to be enjoyed jointly one in S.No.280/1B2 and another in S.No.280/1B3.

21. The specific case of the appellant is that the well in S.No.280/1B2 got dilapidated and therefore, with the contribution by both claimants a new well was dugged and the land where the well located was assigned S.No.280/1B2A. It is a common practice that when parties are given ownership to the well to be enjoyed commonly, any improvement or repair will also be expected to be shared by all sharers. In this case, when the source of water to irrigate the land allotted depends on the common well. The claim of the 1st respondent that he improved the land which he purchased and 50% of the share in the electricity motor service connection was also purchased from the appellant, this requires scrutiny.

22. Ex.C.12 is the sale deed in respect of ½ share in the electricity service connection. This has been executed by the appellant in favour of the 1st respondent, since the 1st respondent already given ½ share in service connection as per the partition deed, by executing the sale deed Ex.C.12, the appellant has transferred his right in the service connection. Reading of Ex.C.12 dated 10.05.1990 indicates that the appellant herein has received Rs.500/- from the 1st respondent towards the share in the deposit for service connection No.247. The receipt of Rs.500/- been reduced into writing in two Ten Rupees Stamp Paper. This document, at the most would indicate that the appellant has sold his right in the service connection and not



his right in the well. If, at all anybody wants relinquishment of his right in the service connection, he has to give consent for transfer of service connection in favour of the other person and the same should be recorded by Electricity Department. Whereas, in Ex.C.16 which is relied by the respondent, there is not even a reference that the 1st respondent is a co-sharer in the service connection. The recital sounds as if the appellant is the sole proprietor of the service connection and he sold the service connection to the 1st respondent for consideration of Rs.500/-. In view of this, such sale of service connection cannot be construed as implicit relinquishment of the right in the well held jointly by the claimants as per partition deed and as per patta.

23. In this connection, the Division Bench judgment of this Court in Lakshmana Gounder cited supra is relevant and appropriate to refer and rely.

24. Therefore, this Court is of the view that the trial Court judgment holding that the 1st respondent alone is entitled to get the compensation awarded for the well in S.No.280/1B2A is erroneous and liable to be set aside.

25. The allocation of the land in the partition deed (Ex.C.1) and joint patta given to the claimants 1 & 2 in respect of S.No.280/1B2A would sufficiently indicate that the appellant is the co-owner of the well along with the 1st respondent and therefore, the appellant is entitled for 50% of the compensation awarded for the said well in S.No.280/1B2A.

26. Accordingly, the trial Court judgment and decree is partially set aside in respect of declaration regarding the entitlement to receive compensation of Rs.26,89,592/- for the well situated in S.No.280/1B2A. Instead of exclusively to the 1st claimant it is modified to be shared equally by the claimants 1 & 2.

27. As far as the other part of the judgment and decree same stand confirmed.

28. In the result, the Appeal Suit is allowed. The judgment and decree of the Trial Court passed in L.A.O.P.No.1 of 2013 is set aside to the effect that the appellant and the 1st respondent are entitled to share equally the compensation award of Rs.26,89,592/- fixed for well acquired in S.No.280/1B2A, along with accrued interest, if any.



29. Considering the relationship between the parties, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

WEB COPY

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To:-
The Principal Subordinate Court,
Tiruvannamalai.

Copy to

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

+1cc to Mr.M.V.Seshachari, Advocate, S.R.No.15369
+1cc to Mr.S.Vijayakumar, Advocate, S.R.No.14428

Appeal Suit No.1219 of 2015
& C.M.P.No.1080 of 2022

KV[co]
NSK/23/06/2022