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S.A.No.1238 of 2004

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 13.09.2022

CORAM

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

S.A.No. 1238 of 2004

Viswanathan

...Appellant

Vs.

1. Ramachandran (died)

2. Rajeswari

3. R.Ramajayam

4. R.Sathish Kumar

5. R.Rajasekar

(Respondents 2 to 5 are impleaded as LR's of the

deceased Ramachandran vide order dated 20.11.2018

made in C.M.P.No.434 of 2013 in S.A.No.1238 of 2004 by SMSJ.)

...Respondents

PRAYER : Second Appeal filed Under Section 100 of the Code of Civil Procedure against the Judgment and Decree of the Learned Additional District and Sessions Judge (Fast Track Court No.II), Tindivanam in A.S.No.64 of 2002 dated 14.02.2003 confirming the judgment and decree of the Learned District Munsif of Vanur in O.S.No.426 of 1995 dated 26.04.2000.

For Appellant

:

Mr.Prithivi

for Mr.Kaithamalai Kumaram



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For Respondents

: No appearance for D2 to D5
D1 - died

JUDGEMENT

This Second Appeal is preferred as against the Judgment and Decree of the learned Additional District and Sessions Judge (Fast Track Court No.II), Tindivanam in A.S.No.64 of 2002 dated 14.02.2003 confirming the judgment and decree of the Learned District Munsif of Vanur in O.S.No.426 of 1995 dated 26.04.2000.

2. For the sake of convenience, the parties are referred to as per their ranking before the trial Court.

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

The suit is filed for declaration and permanent injunction. The plaintiff and 1st defendant are the brothers. The suit property is Gramanatham. The plaintiff took possession of the same 15 years ago and built up a thatched house and has been living peacefully and also paying taxes. Before possession, the suit property was a vacant site. Except the plaintiff, nobody else was in possession and enjoyment. The plaintiff and

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the 1st defendant are not in good terms. From 19.01.1995 onwards, the defendant is threatening the plaintiff that he would set fire to the hut, drive him away from there and will take possession forcefully. The plaintiff hails from a poor family. If he is driven out by the defendant, he along with his family members will be in streets without any shelter. The defendant is taking law in his own hands and he has support in the village and also had man power. Hence, the plaintiff filed the suit for declaration and permanent injunction.

4. The defendant, resisting the suit claim, filed a written statement, inter alia, stating that the suit is not proper and he denies that the suit property exclusively belongs to the plaintiff and that the plaintiff has not taken possession of the suit property 15 years ago and has not been in peaceful possession and enjoyment of the suit property. The suit property along with the thatched house does not belong to the plaintiff and it is not a Gramanatham land. On 29.03.1985, the suit property was settled in favour of Venkatakrishna Reddiyar by one Thirukkamu Reddiar by way of Registered Settlement Deed and handed over possession to him also. As



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such, the vacant site was in possession of Venkatakrishna Reddiar, who in turn, executed a Will in favour of one Sarojini Ammal and she has been in possession and enjoyment of the suit property. Several years before, in the said land, the defendant's father Velayutha Pandithar built a thatched house, with the permission of Venkatakrishna Reddiar. Therefore, the thatched house is built by Velayutha Pandithar and not by the plaintiff. On 20.06.1994, the said Sarojini Ammal entered into a sale agreement for Rs.13,000/- with one Rajeswari Ammal, who is none other than the defendant's wife. On the date of agreement itself, the suit property was given in possession to Rajeswari Ammal. Hence, Rajeswari Ammal is necessary party to this suit. The suit property is not in possession of the plaintiff. Hence, the defendant prayed that the suit is not maintainable and is liable to be dismissed with costs.

5. Based on the pleadings, the trial Court has framed the following issues:

i) Whether the plaintiff is entitled for declaration and permanent injunction?



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ii)Whether the suit property is in possession of the plaintiff?

iii)Whether the agreement of sale dated 20.06.1994 of the suit property is valid?

iv)Whether the suit property is in possession of the defendant?

v)Whether the suit is bad for non-joinder of necessary parties?

vi)To what relief the plaintiff is entitled for?

6. On the side of the plaintiffs, P.W.1, P.W.2 and P.W.3 were examined and seven documents were marked as Ex.A.1 to Ex.A.7. On the side of the defendants, they examined DW.1, D.W.2 and D.W.3 and were marked as Exs.B.1 and B.2 and Commissioner's Report and sketch were marked as Exs.C1 and C2.

7. Based on the materials placed on record, both the oral and documentary evidence adduced by the respective parties and on considering the submissions made by the learned counsel for the parties, all the issues were answered against the plaintiff and the trial Court dismissed the suit. Aggrieved by the same, the plaintiff filed an Appeal Suit in A.S.No.64 of



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2002 before the lower appellate Court, which also came to be dismissed.

Aggrieved by the same, the plaintiff preferred the present appeal.

8. At the time of admission of this Second Appeal, the following substantial questions of law were framed for consideration:

i) Whether the courts below are justified in rejecting Ex.A5 patta issued in favour of the appellant while considering the title of the appellant to the suit property?

ii) Whether the lower appellate Court is right in dismissing the suit in toto without considering the finding of the trial Court that the suit property is joint family property of the appellant and the respondent?

9. The learned counsel appearing for the plaintiff/appellant submits that the suit property is a Gramanatham and the plaintiff has been in occupation and enjoyment of the property even at the time of filing of the suit. There were patta proceedings in the year 1992 initiated at the instance of the plaintiff and in the cross-examination, the defendant has admitted



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that there were patta proceedings in the year 1992. Finally, the patta was issued in favour of the plaintiff after full contest by the defendant as the defendant made a strong objection for grant of patta in favour of the plaintiff.

10. However, after considering the objections of the defendant, the Revenue Authority issued patta in favour of the plaintiff. There was no finding rendered by the Courts below with regard to the initiation of patta proceedings, over which, strong contest was made by the defendant as early as in the year 1992, which is prior to the filing of the suit. Even subsequent to the issuance of patta in favour of the plaintiff, the defendant or his legal heirs, have not filed any statutory appeal against the issuance of the patta in favour of the plaintiff.

11. On 16.06.2022, this Court directed the appellant to get instructions whether the defendant/respondent had filed any appeal against grant of patta before the RDO and whether any further proceedings were taken before DRO or before the Collector and its natural culmination.



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12. In pursuant to the above order, the matter is listed today. No one represented for the defendants/respondents even though the matter is posted for submissions of the respondents. The learned counsel for the plaintiff/appellant submitted that to the best of his client's knowledge, no proceedings were initiated against the grant of patta in favour of the appellant by the defendants/respondents.

13. On perusal of Ex.P5 patta, issued in favour of the plaintiff/appellant, it appears that the same issued even prior to the filing of the suit. The patta was issued based on the plaintiff's representation made in the year 1992 and after contest made on behalf of the defendant, it was issued in the year 1995 in favour of the plaintiff. In fact, the defendant has raised strong objection for grant of patta in favour of the plaintiff/appellant and after considering the objections of the defendant, the patta came to be issued in favour of the plaintiff/appellant by the Revenue authorities. Therefore, the Courts below out not to have rejected the patta in toto and further, this aspect was also admitted by the defendant in his cross-examination.



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14. The trial Court has also appointed an Advocate Commissioner, who after conducting inspection, filed a report, wherein he has specifically noted that there was a thatched house and other house hold items and all these aspects would clearly prove that the appellant has been in possession of the suit property, which aspect was not considered by the Courts below. Even the trial Court in its findings, has observed that the suit property was in joint possession of both the parties. This finding cannot be accepted for simple reason that the defendant made objection before the Revenue authorities for grant of patta in favour of the plaintiff and after considering the objections raised by the defendant, the patta came to be issued, which ultimately shows that the property has been in possession and enjoyment of the plaintiff/appellant, which aspect was unnoticed and failed to give finding on this point by both the courts below.

15. In the light of the above discussion, this Court is of the considered view that the Courts below are not justified in rejecting the Ex.P5 patta stood in the name of the plaintiff in respect of suit property and that the plaintiff/appellant has been in possession and enjoyment of the same.



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Accordingly, the first substantial question of law is answered in favour of the plaintiff/appellant and against the defendant/respondent.

16. As far as the second substantial question of law is concerned, in fact, even prior to the filing of the suit in the year 1992, patta proceedings were initiated by the plaintiff/appellant and after considering the objections raised by the defendant/respondent, the Revenue Authority issued patta in favour of the plaintiff recognizing the possession of the plaintiff/appellant. This would clearly establish that the suit property is in exclusive possession of the plaintiff/appellant and it is not in possession of the joint family, which was not considered in toto by the Courts below. Accordingly, the second substantial question of law is also answered in favour of the plaintiff/appellant and against the defendants/respondents.

17. In the result, the Second Appeal is allowed. Consequently, the Judgment and Decree passed by the learned Additional District and Sessions Judge (Fast Track Court No.II), Tindivanam in A.S.No.64 of 2002 dated 14.02.2003 as well as the judgment and decree of the learned District Munsif of Vanur in O.S.No.426 of 1995 dated 26.04.2000, are set aside and



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O.S.No.426 of 1995 is decreed as prayed for. Both parties shall bear their own costs.

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Pns

Index : Yes / No

Internet : Yes / No

To

1. The Learned Additional District and Sessions Judge,
(Fast Track Court No.II), Tindivanam.
2. The Learned District Munsif,
Vanur.



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KRISHNAN RAMASAMY, J.

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