



S.A.No.515 of 2003

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.12.2022

CORAM :

THE HON'BLE Ms.JUSTICE P.T.ASHA

S.A.No.515 of 2003

- 1.Nallasamy (Died)
- 2.Kuppammal
- 3.N.Rathna
- 4.N.Meganathan
- 5.N.Radhamani

... Appellants

Versus

- 1.Ramasamy
- 2.Suseela
- 3.Ayyavu
- 4.Tamil Nadu Government Rep by its
District Collector,
Collectorate, Salem.
- 5.The Tahsildar,
Taluk Office,
Mettur, Salem.



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6.The Inspector,
Natham Survey Unit,
Mettur, Salem.

7.N.Selva Arasu.

... Respondents

[***Appellants 2 to 5 and the 7th respondent are brought on record as the Legal Heirs of the deceased sole appellant vide order dated 14.11.2018 made in C.M.P.No.1019 to 1021 of 2013 in S.A.No.515 of 2003]

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure, to allow the second appeal setting aside the decree and judgment made in A.S.No.25 of 2002 on the file of the Sub Court, Mettur dated 29.01.2003 reversing the Decree and Judgment made in O.S.No.127 of 1990 on the file of the District Munsif Court, Mettur, dated 09.11.2001.

For Appellants : Mr.E.Duraivaiyapuri,
for Mr.Doraisamy

For Respondents : Mr.P.Jegadeesan, for R1
R2 - Died
R3 (Served) - No appearance
Mr.V.Jeevagiridharan,
Additional Government Pleader,
for R4 and R5
R6 - Dismissed
vide order dated 16.12.2009.
Mr.K.A.Prabaharan, for R7



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JUDGMENT

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The plaintiff, who has lost before the Lower Appellate Court has filed the above Second Appeal.

2. The facts in brief, with the parties being referred to in the same rank as before the trial Court, is herein narrated below:-

2.1. The plaintiff had filed the suit in O.S.No.127 of 1990 on the file of the District Munsif, Mettur seeking injunction restraining defendants 1 to 4 from interfering with his peaceful possession and enjoyment of the suit schedule property and an injunction restraining defendants 5 to 7 from issuing patta to defendants 1 to 4.

2.2. It is the case of the plaintiff that the suit property which is an Oornatham poromboke land comprised in Survey No.152 of Navappatti Village measuring an extent of 14 cents was encroached upon by his father, Muthuboyan. The plaintiff and defendants 1 to 3 are the sons of said Muthuboyan. It is the case of the plaintiff that his father along with



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the plaintiff and his brothers were in enjoyment of specific portions of the said property and each had put up a shed in their share. The Government had issued separate pattas to all the encroachers including Muthuboyan and his four sons. To the plaint, the plaintiff, had enclosed a rough plan showing 7 portions. It is his contention that the 5th portion was allotted to the share of this father Muthuboyan, who had put up a hut for himself in the said property. Muthuboyan died 16 years ago and his share was being enjoyed by the plaintiff as well as defendants 1 to 3 equally.

2.3. However, the plaintiff would contend that he is in enjoyment of a larger extent and now his elder son also in the enjoyment of the property. The plaintiff would submit that cause of action for filing the suit was the fact that the defendants 1 to 3 were attempting to take advantage of the new survey scheme to get a patta in their name in respect of the property which is now in the enjoyment of the plaintiff. The plaintiff would contend that he is entitled to portions 3, 6 and 7 in the rough plan and to a 1/3rd share in the sixth portion. Considering the fact that the defendants 1 to 3 were attempting to trespass into the property, he has come forward with the suit.



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2.4. The third defendant had filed the written statement *inter alia* denying the allegations contained in the plaint as also the rough plan. He had admitted that 14 cents was being enjoyed separately by the plaintiff and the defendants 1 to 3 and the partition had taken place even before the death of Muthuboyan. The defendant would further submit that the share of first defendant, who had died a bachelor had fallen to the share of the third defendant by virtue of the Will executed by the first defendant in his favour, since it was third defendant who had taken care of him. They had further contended that the plaintiff has not come forward with a clear description of the property, which he claims was in his exclusive enjoyment. That apart, the plaintiff had not proved the cause of action for the filing of suit for permanent injunction.

2.5. The 7th defendant had filed written statement stating that the suit is premature in as much as the 7th defendant had not even commenced the work of settlement in the village. Further even if an order is passed, the same is appealable and the interest of the plaintiff was protected. The 7th defendant also contended that the rough plan was not as per the enjoyment. This defendant had also raised an issue regarding the



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jurisdiction of the Civil Court to try the suit relating to the grant of patta which they contended has been specifically barred by the Tamil Nadu Patta Passbook Act. Therefore, he had sought for dismissal of the suit.

3. The learned District Munsif, Mettur had framed the following issues:-

- “1) இந்த வழக்கை விசாரிப்பதற்கு நீதிமன்றத்திற்கு அதிகார வரம்பு உள்ளதா ?
- 2) வாதி வழக்குரையில் கோரியுள்ளது போன்ற நிரந்தர உறுத்துக்கட்டளை பரிகாரம் பெற உரிமை உடையவரா ?
- 3) பரிகாரமும் செலவுத் தொகையும் ?”

4. On the side of the plaintiff, three witnesses were examined and Ex.A1 to Ex.A22 were marked. Likewise, the defendant has also examined three witnesses and marked Ex.B1 to B10.

5. The trial Court returned the findings in favour of the plaintiff in respect of the first issue regarding jurisdiction. As regards the second issue, the learned District Munsif also went on to hold that since the 7th



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defendant in his written statement has admitted that the Revenue Authorities have failed to issue the patta as per the respective enjoyment and therefore had come to the conclusion that the suit had to be decreed. Further, the learned Judge had taken note of the Ex.A12 to Ex.A22, which were the house tax receipts, which stood in the name of the Selva Arasu, son of the plaintiff. The Will, Ex.B10, projected by the third defendant was held to be invalid. Ultimately, the learned Judge had decreed the suit as prayed for.

6. Challenging the said judgment and decree, the defendants 3 and 4 had filed the A.S.No.25 of 2002 on the file of the Sub Court. Pending the suit defendants 1 and 2 had passed away and the suit had been dismissed against them. The learned Subordinate Judge observed that the plaintiff has come to Court with vague allegations. Though he had contended that the suit property was divided into 7 portions as indicated in the rough plan, however, there is nothing to show as to who was in enjoyment of the respective portions. Further, even without having any exclusive right to the 6th portion, the plaintiff was asserting an independent right over said portion.



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7. The learned Judge observed that there was no conflict with reference to portions 1, 2, 3, 5 and 6. With reference to the fourth portion, the learned Judge held that the plaintiff had not proved exclusive possession as pleaded by him and further with reference to the 6th portion, the plaintiff has admitted that the same had been allotted to the share of the first defendant. Therefore, once again the plea of the plaintiff was incorrect. The conflict was only with reference to items 4 and 6. With reference to these two portions, the plaintiff has not been able to establish his possession or enjoyment of the same. Further with reference to the 5th portion, both parties have accepted that it belonged to their father. The plaintiff has set an independent right to the 6th portion. However, in his cross-examination, he had totally given up this plea and had admitted that the 6th item was in possession of the first defendant. The learned Judge had also upheld Ex.B10, Will in and by which the first defendant has bequeathed his portion upon the third defendant i.e., the 6th portion. Therefore, the learned Judge decreed the suit for injunction holding enjoyment and possession in favour of the plaintiff.



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8. With regard to the second prohibitory order, sought for by the plaintiff against the defendants 5 to 7, the learned Judge had observed there cannot be an injunction restraining the respondents 5 to 7 from exercising the power vested under them under the Land Act to give effect to Natham Land Tax scheme.

9. That apart, the learned Judge observed that the remedy if any party is aggrieved is that they can always file an appeal as contemplated under the Act and therefore the plaintiff is not entitled to decree for injunction even in that regard. Challenging the same, the plaintiff filed the above Second Appeal.

10. A memo was filed on 21.07.2022 stating that the second respondent had died on 03.10.2021 leaving behind her surviving only her husband, the first respondent. Therefore, the death of the second respondent has been noted and her husband, the first respondent is recorded as her legal heir.

11. The second appeal was admitted on the following substantial question of law:-

“Whether the burden of proof lies on the plaintiff when the authenticity of a rough sketch of the suit property is disputed ?”



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12. Heard the learned counsels and perused the materials available on record.

13. The plaintiff has come to Court with a specific case that he is entitled to an injunction in respect of the suit property which he would contend is in his enjoyment. However, the plaintiff has failed to prove the same. On the contrary, during his cross-examination, the plaintiff has contradicted his statement contained in his chief examined as well as his pleadings. The defendants had questioned the title of the plaintiff to the suit property, which the plaintiff claims has been allotted to him and is in his enjoyment. The plaintiff, who come to Court stating that the suit property has been divided as described in the rough plan, has not given any details as to the persons in possession of each of these portions.

14. That apart, the suit property is an entire extent of 14 cents and the prayer would read that the plaintiff is seeking an injunction against the defendants 1 to 4 from interfering with his enjoyment of entire extent of 14 cents. The four boundaries is also with reference to the entire extent of 14 cents. Therefore, the plaintiff is not entitled to the decree as he has not



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established the portion in his possession within specific boundaries. That apart, he has not been able to prove his exclusive possession, since admittedly with reference to some of the portions, the plaintiff is admittedly in joint enjoyment. The learned Appellate Judge had extensively considered the pleadings and evidence and come to the conclusion that the plaintiff, has not proved his case. The learned Judge had also questioned the authenticity of the rough plan which has been exhibited as Ex.A1 since the plaintiff has not been able to establish his case as per the plea. The substantial question of law is answered against the plaintiff.

15. In the result, the Second Appeal is dismissed. The judgment and the decree of the learned Lower Appellate Court stands confirmed. Consequently, the connected miscellaneous petitions are also closed. There shall be no order as to costs.

05.12.2022

Index : yes/no
Speaking order/Non-speaking order
nsa



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To

- 1.The Sub Court,
Mettur.
- 2.District Munsif Court,
Mettur,
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P.T.ASHA. J.,

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