



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.02.2022
PRONOUNCED ON : 30.03.2022
CORAM:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

S.A.No.276 of 2010
and
M.P.No.2 of 2010 and C.M.P.No.19206 of 2016 and
C.M.P.No.15955 of 2021

1.Govindasamy (Died)
2.G.Indira
3.A.Vijalakshmi
4.D.Varalakshmi
5.Prabhakaran

...Appellants/Appellants/Plaintiffs

Vs.

1.Devendran
2.Kala
3.Revathi
4.Vinoth
5.Jagan

...Respondents/Respondents/Defendants

[Appellants 2 to 5, brought on record as LR's of the deceased sole appellant Govindasamy vide court order dated 20.04.2021, made in CMP No.4833/2021 in SA No.276/2010(PTAJ)]

[RR4 & 5, declared as major and their guardian, the 2nd respondent viz., Kala discharged from Guardianship vide order of Court dt. 15.02.2021 made in CMP Nos.6530 & 6531/2016 in SA No.276/10(TRNJ)]

Prayer:- This Memorandum of Second Appeal is filed under Section 100 of Code of Civil Procedure, against the Judgment and decree dated 25.08.2009 made in A.S.No.100 of 2006, on the file of the learned Subordinate Judge, Madurantakam, confirming the judgment and decree dated 30.08.2006 made in O.S.No.313 of 1996 on the file of the learned District Munsif, Madurantakam.

For Appellant : Mr.T.V.Krishnamachari

For Respondents

For RR1,2,4 &5 : Mr.A.K.Kumarasamy, Sr. Counsel
for Mr.K.Govi Ganesan

For R3 : No appearance.



J U D G M E N T

The Second Appeal is focused as against the judgment and decree dated 25.08.2009 made in A.S.No.100 of 2006, on the file of the learned Subordinate Judge, Madurantakam, confirming the judgment and decree dated 30.08.2006 made in O.S.No.313 of 1996 on the file of the learned District Munsif, Madurantakam.

2. The suit is for declaration, declaring that the plaintiff is the absolute owner of the suit schedule properties and also for permanent injunction, restraining the defendants from interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule properties. The plaintiff is the appellant and the defendants are the respondents in this Second Appeal.

3. For the sake of convenience, hereinafter the parties are referred to, as per their litigative status before the trial Court.

4. The laconic averments made in the plaint, are as follows:

(i) The plaintiff has purchased the suit property on 19.12.1995 from Rajasekaran Reddiar and since from the date of purchase, he is in possession and enjoyment of the suit properties, he is paying the necessary tax to the Government. The defendants, who are strangers and who do not have any right or interest over the suit schedule properties are casting cloud and are attempting to trespass into the suit properties. Hence the suit.

(ii) Pending suit, the defendants had taken forcible possession of the 2nd item of the suit properties on 20.12.2002 and had annexed it with their properties in Survey Nos.96/19 and 96/20. Therefore, the suit which was originally filed for declaration and injunction alone were amended for prayer of recovery of possession of the 2nd item of the suit properties. Pending suit, the 2nd defendant died on 26.08.2004, leaving behind defendants 4 to 6 as his legal heirs.

5. The averments found in the written statement and additional written statement filed by the defendants, are as follows:

(i) Property in Survey No.96/21, originally belonged to the 1st defendant's father Kandi Naicker and his three sons. In the family partition, the said properties were allotted to Kandi Naicker and he was enjoying the suit properties by raising crops. During Settlement proceedings, the Settlement Officer has granted patta recognising his title and possession under



Settlement Patta No.178. This properties along with the properties situated in 96/19 and 96/20 were divided into three portions and were enjoyed separately by the 1st defendant and his two brothers.

WEB COPY

(ii) During the UDR Scheme, the patta has been wrongly transferred in the name of the Ramakrishna Reddiar under Patta No.455. On application, it was rectified and separate patta was given to the 1st defendant under Patta No.766. The 1st item of the suit properties are the Pakkiri Maniyam, which belong to one Saiyath Karumarudeen Sahib. He has sold the properties to one Dharuma Naicker on 16.01.1997. Dharuma Naicker is the great grandfather of the 2nd defendant. Subsequent to the Inam Abolition Act, this property was classified as Devathayam Lands. It was continuously enjoyed by the 2nd defendant's predecessor and successors. The Patta for Survey No.222/2, which is the 1st item of the suit schedule property was granted to the 2nd defendant under patta No.767. Therefore, neither the plaintiff nor anybody else can claim any right over the suit schedule properties.

(iii) The defendants also claim that they had prescribed title, by adverse possession also. It is also claimed that the plaintiff's vendor Rajasekaran Reddiar and his father Ramakrishna Reddiar, did not possess any right in the suit properties for them to execute any conveyance in favour of the plaintiff. It is denied that the sale deed dated 19.12.1995, is true and valid. As such, the defendants claim that the plaintiff is not entitled to any relief in the suit.

(iv) By virtue of the additional written statement, the defendants have claimed that the suit properties were not described properly and the boundaries are incorrect. It is denied that the plaintiff is in the possession of the suit property either on the date of the suit or on any other date. Hence, they prayed for the dismissal of the suit.

6. Based on the above averments, the trial Court framed necessary issues and tried the suit. On the side of the plaintiff, PW1 to PW4 were examined and twelve documents were marked as Ex.A1 to Ex.A12. On the side of the defendants, DW1 to DW3 were examined and nineteen documents were marked as Ex.B1 to Ex.B19. Apart from those documents, the report and plan submitted by the learned Advocate Commissioner were marked as Ex.C1 to Ex.C4.

7. Having considered the materials placed before him, the learned District Munsif, Madurantakam, came to the conclusion that the plaintiff has not proved his case and ultimately, dismissed the suit.



8. Challenging the same, the plaintiff preferred an appeal in A.S.No.100 of 2006 before the learned Subordinate Judge, Madurantakam. While at the time the appeal was pending for enquiry, the plaintiff filed an interlocutory applications in I.A.No.96 of 2008, 195/2008 and 133/2009 for the receipt of the following documents as additional evidence.

1. Receipt dated 21.09.1994 issued by Ramakrishna Reddiar, to the plaintiff's father Rajabathar.
2. The order dated 13.02.1997, passed by the Thasildhar, Cheyyar.
3. Copy of the Settlement Register dated 21.07.2006 pertaining to Nergunapattu Village, for the year 1961.
4. Notice dated 04.08.1969, issued by the Tahsildar, Madurantakam, to the plaintiff's father Rajabathar.
5. Copy of the Chitta Register dated 11.11.2008 for the fasli year from 1396 to 1405
6. Copy of the Chitta Register, issued by the District Collector.

9. In respect to those interlocutory applications, the respondents/defendants filed a counter, wherein they disputed the documents saying that those documents are unnecessary for deciding the issue raised in the appeal.

10. The learned Subordinate Judge, Madurantakam, after allowing those applications, marked those document as Ex.A13 to Ex.A18. However, he dismissed the appeal and confirmed the judgment rendered by the trial Court.

11 . Feeling aggrieved over the findings arrived at by the Courts below, the plaintiff is before this Court with the present Second Appeal. Pending appeal, the appellant/plaintiff died and his legal representatives were brought on record as appellants 2 to 5 and the 5th appellant herein filed a petition under Order 41 Rule 27 of CPC, in CMP No.15955 of 2021 and prayed to receive the following documents as additional evidence.

1. Notice dated 10.04.2017, issued by Tahsildhar, Cheyyur in Na.Ka.No.2136 of 2017, with regard to cancellation of Patta for Survey No.222/2.
2. Notice dated 08.05.2017, issued by Tahsildhar, Cheyyur in Na.Ka.No.2136 of 2017, with regard to cancellation of Patta for Survey No.222/2.
3. Notice dated 19.06.2017, issued by Tahsildhar, Cheyyur in Na.Ka.No.2136 of 2017, with regard to cancellation of Patta



for Survey No.222/2.

4. Patta No.767 for Survey No.222/2 in the name of Mohanarangan
5. Patta No.455 for Survey No.222/2 in the name of Ramkrishna Reddiar.
6. Notice dated 04.06.2018, issued by Tahsildhar, Cheyyur, in Na.Ka.No.3614 of 2017, with regard to cancellation of patta for Survey No.222/2.
7. Notice dated 16.10.2018, issued by Tahsildhar, Cheyyur, in Na.Ka.No.3614 of 2017, with regard to cancellation of patta for Survey No.222/2.
8. Entire set of documents obtained from the RTI Officer, Cheyyar in Oo.Moo.8443/2018 Aa1 dated 03.01.2019
9. Patta No.1379 for Survey No.222/2, in the name of Govindasamy, deceased appellant.

12. In the affidavit filed in support of the said petition, it is the submission made by the 5th appellant that his father G.Govindasamy, who is the appellant/plaintiff, died on 12.09.2020, leaving behind him, his mother and two sisters as his legal heirs. After the death, in this second appeal they were impleaded as Appellants 2 to 5. It was further averred that the defendants 1 and 2 Devendran and Mani have changed the patta for suit properties in their name pending injunction application in the suit. In fact on 01.03.1995, it is one Nagarajan Subramaniam, S/o.Appadurai Udayar, executed a General Power of Attorney in favour of the appellant in respect to Survey Nos.226/1B1, 226/1B2, 226/1B3, 226/2B1, 226/2B2, 226/2B3 and obtained patta in their name. Now, after filing an application under RTI, the same has come to light and afterwards, the patta has been changed in the name of Govindasamy. Hence, it would be necessary to receive those documents as additional evidence.

13. In respect to the said application, the respondents/defendants by filing counter, raised objections stating that pending second appeal, the respondents herein applied for transfer of patta on 20.12.2017 and the Thasildhar at Cheyyar without any notice to the respondents, had erroneously considered the request made by the appellant and issued a patta bearing No.1379 on 19.10.2020 for 0.28 acres in SF No.222/2 in the name of Govindsamy. In fact, the said patta stand in favour of the Govindasamy was issued after his death on 12.09.2020. Immediately after coming to know the same, a statutory appeal dated 12.12.2020 was preferred before the Revenue Divisional Officer, Madurantakam and the same is pending and therefore, the documents now wanted to be received as additional evidence is not having any relevance to decide the second appeal. Accordingly, they prayed for dismissal of the said application.



14. Here is, while at the time the second appeal came up for admission, this Court formulated the following substantial questions of law.

“(i) Whether the Court below has failed to follow the principles regarding the adverse possession in favour of the appellant?

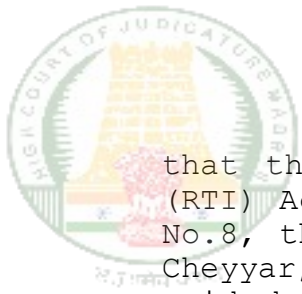
(ii) Whether the Court below has failed to appreciate the material evidence on record with reference to Ex.A1 to Ex.A18 and whether Ex.B1, Patta is acceptable?”

15. Heard Mr.T.V.Krishnamachari, the learned counsel appearing on behalf of the appellants and Mr.A.K.Kumarasamy, learned senior Counsel appearing on behalf of respondents 1, 2, 4 and 5 and perused the materials available on record.

16. Initially, on going through the merits of the application filed under Order 41 Rule 27, Document Nos.1 to 3 are the notices dated 10.4.2017, 08.05.2017 and 19.06.2017 respectively, issued by the Tahsildhar for the cancellation of patta in respect to S.No.222/2 of Nergunapattu Village, Cheyyur Taluk. Document No.4, is the patta in Sl.No.767 for Survey No.222/2 in the name of Mohanarangan. Document No.5, is the patta in Sl.No.455, for Survey No.222/2, in the name of Ramakrishna Reddiar, S/o. Raghava Reddiar. Document Nos.6 and 7 are also the notices sent by the Tahsildar, Cheyyur, to the respondents in respect to the cancellation of patta pertains to S.No.222/2. Document No.8, is a set of documents obtained from the RTI Officer, Cheyyar as OO.Moo.8443/2018/Aal/ dated 03.01.2019 and Document No.9, is the patta dated 19.10.2020 for survey No.222/2, which stands in the name of Govindasamy, S/o.Rajabather, the deceased appellant.

17. Now, on going through the relevancy of those documents, initially for accepting the said documents, the petitioner/appellant should comply with two conditions. Firstly, as stated in Order 41 Rule 27, CPC, it is not in dispute the said documents are all pertains to the year 2017, 2018 and 2019. After collecting the same only in the year of 2021, he has filed this application. It seems only during the pendency of the second appeal, the said documents were created and now filed before this Court, seeking permission to receive the same as additional documents.

18. Initially, in respect of Document No.8, it was admitted that the said documents were received by the appellant under Right to Information Act. In this regard, in a case of Ashish Kumar Saxena vs State of UP, our Hon'ble Apex Court has held



that the information obtained through the Right to Information (RTI) Act need not necessarily be reliable. Therefore, Document No.8, the entire set of documents obtained from the RTI Officer, Cheyyar, is not a reliable document and on that score alone, the said documents are not having any relevance to decide the issue. In other words, the other documents narrated in the petitions are in respect to the change of patta, pertain to Survey No.222/2.

19. As rightly pointed out by the learned counsel for the respondents/defendants that the said patta stands in the name of Govindasamy was issued after his death. Furthermore, against the order passed in respect to change of patta, appeal is pending. Therefore, in all, the order passed by the Thasildhar in respect to change of name in the patta, has not attained finality and thus, those documents cannot be accepted as additional evidence in this case. Accordingly, CMP No.15955 of 2021, is dismissed.

Substantial Questions of Law:

20. The present suit has been filed in respect to two items of the suit schedule property. Item No.1 is in respect of the property in Survey No.222/2, measuring an extent of 0.70 cents of Nergunapattu Village. Item No.2 is in respect of the property in Survey No.96/21, measuring an extent of 0.38 cents, situated in the same village.

21. It is the case of the plaintiff, that the suit property has been purchased by the plaintiff-Govindasamy, vide sale deed dated 19.12.1995 from one Rajasekaran Reddiar, son of Ramakrishna Reddiar and the said sale deed dated 19.12.1995 was marked as Ex.A1. It is the further case of the plaintiff that while at the time of purchasing the said land, the patta pertains to the land stood in the name of Ramakrishna Reddiar. But in order to prove the same, the alleged patta, which stands in the name of Ramakrishna Reddiar, has not been produced. On the other hand, the Inam Register extract was marked as Ex.A5. The said document would reveal the fact that S.No.222/2, which is Item No.1 of the suit schedule property stands in the name of Ramakrishna Reddiar. However, in respect to classification of land, it was mentioned in the said document, as the said land is a 'Anadhinam Land', which means 'waste land'. So, the document produced on the side of the plaintiff to show the title itself is against the case of the plaintiff that Item No.1 is not a 'Ryotwari land'.

22. Secondly, in respect to show the title of Item No.2 of the suit schedule property, on the side of the plaintiff, the copy of SLR Extract has been marked as Ex.A6. The details of the said document shows that the said Ramakrishna Reddiar, is



the owner to Survey No.96/21, which is Item No.2 of the suit schedule property. In otherwise, it was mentioned as the said land was purchased by the said Ramakrishna Reddiar from one Kandi Naicker, who is the father of the 1st defendant. In this occasion, in order to show his title, the sale deed alleged to be executed by the Kandi Naicker, has not been produced as an exhibit by the plaintiff, further, on the side of the plaintiff, the other one document stands in the name of Dharuma Naicker was marked as Ex.A7. Though the contents of the said document establish the fact that the same is a sale deed, the survey number and other details are not found in the said document and therefore, this Court is not in a position to believe the said document as through the said document, the plaintiff purchased the suit property. In this occasion, Section (9) sub-clause 2 notice issued by Tahsildar was marked as Ex.A12. The said document shows that Item No.2 of the property stands in the name of Ramakrishna Reddiar. Further, the said document was issued in the year of 1962.

23. Accordingly, through the plaintiff side documents, this Court comes to know that vide Ex.A1, the plaintiff purchased an Anadhinam land (item No.1). In otherwise, though the documents relied on by the plaintiff are all stand in the name of the vendor of the plaintiff, after admitting the fact that the land pertains to the suit is the Inam land, without seeing the Settlement patta granted in favour of the Ramakrishna Reddiar or in favour of his vendor, this Court cannot come to the conclusion that the vendor of the plaintiff is the absolute owner, having the right to sell the property to the plaintiff. In this regard, the trial Court held that once the land is classified as 'Anadhinam', then an individual cannot claim absolute right over the properties. More than that, it is a settled law, the revenue documents does not confer any right over the property and accordingly, in respect to Item No.1 of the suit schedule property, the plaintiff has not approached this Court with correct particulars.

24. In respect to Item No.2 of the suit schedule property, it is the case of the plaintiff that the 1st defendant's father Kandi Naicker is the absolute owner, and later, the same was transferred to the name of Ramakrishna Reddiar. Therefore, the said stand taken by the plaintiff shows that the 2nd Item of the suit schedule property is not the ancestral property of the Ramakrishna Reddiar. In the said occasion, in the plaintiff averments, the plaintiff narrated his case as the suit properties are the ancestral properties of the Ramakrishna Reddiar, which is against the recital found in the sale deed stands in the name of Ramakrishna Reddiar. In fact, the documents relied on by the plaintiff would go to show that Kandi Naicker sold the property to Ramakrishna Reddiar.



25. In this regard, the defendants have produced Settlement patta issued by the Settlement Officer in the year 1959 in favour of the 1st defendant's father Kandi Naicker as Ex.B1 and the same relates to the 2nd item of the suit schedule property. Though it was contended on the side of the plaintiff that Ex.B1 is having some correction, in order to establish the same, the plaintiff has not taken any steps to produce the original order to establish that Ex.B1 relied on by the defendants, is a fabricated one. All are aware after Inam Abolition Act, the Settlement patta issued by the Settlement Officer, is a competent document, to confer the right over the land, which was previously assigned as Inam Land. In this occasion, on comparing the entries made in Ex.B1, with the entries made in Ex.A6, it is confirmed that the Survey No.96/21 cannot be the ancestral property of the Ramakrishna Reddiar. Therefore, being the reason that the plaintiff filed the suit for the relief of declaration and recovery of possession, it is for him to show that Item No.2 is also a Inam land. But, here it is a case, in order to prove the same, the plaintiff has not produced the order passed by the Settlement Officer in respect to Item No.2 of the suit schedule property.

26. In general, if a suit is filed for the relief of declaration, it is for him to prove his case. In this occasion, it would be necessary to see the judgment in Union of India and Others Vs. Vasavi Cooperative Housing Society Limited and Others, reported in 2014 (2) SCC 269, wherein our Hon'ble Supreme Court has held as follows:

"It is trite law that, in a suit for declaration of title, the burden always lies on the plaintiff to make out and establish a clear case for granting such a declaration and the weakness, if any, of the case set up by the defendants would not be a ground to grant relief to the plaintiff. The legal position, therefore, is clear that the plaintiff in a suit for declaration of title and possession could succeed only on the strength of its own title and that could be done only by adducing sufficient evidence to discharge the onus on it, irrespective of the question whether the defendants have proved their case or not. Even if the title set up by the defendants is found against them, in the absence of establishment of plaintiff's own title, plaintiff must be non-suited."

27. Therefore, the principles set out in the above referred judgment is quite clear that the plaintiff alone is having the duty to prove his case. Here it is a case, the documents relied on by the plaintiff itself is sufficient to hold that the Item



No.1 of the suit schedule property is the Anadhinam land and Item No.2 of the suit schedule property is the Inam land.

28. As rightly pointed out by the learned counsel for the respondents, the Anadhinam land cannot be assigned to any other persons. In otherwise, being the reason that Item No.2 of the suit schedule property is an Inam land, the plaintiff failed in his attempt to prove that the Settlement Officer issued a patta either in his name or in the name of his vendor. Therefore, in the absence of those documents, this Court cannot conclude that the suit schedule properties are the absolute properties either of the plaintiff or the plaintiff's vendor.

29. Now, the learned counsel appearing for the appellant would contend that before the trial Court, defendants claimed that by way of adverse possession, they perfected title over the suit schedule property, but in order to show that they were in the possession of the suit property for more than the statutory period, they have not produced any document. Accordingly, in the absence of any material evidence to prove their adverse possession, dismissing the suit, filed by him, is an error committed by the Courts below.

30. Now, on considering the said submission with the relevant records, it is true in the written statement filed by the defendants they claimed the suit properties as they have perfected title by means of adverse possession. It is also true, in respect to the title, initially the defendants made a claim as the same belongs to them. In this regard, here it is a case, the suit 2nd item of the property is admittedly in the possession of the defendants. In this regard, the stand taken by the defendants, is nothing but mutually contradictory one. However, being the reason that the present suit has been filed by the plaintiff wherein he prayed for the relief of declaration, he alone could prove his case. The weakness found in the case of the defendants cannot be taken into account for considering the prayer sought by the plaintiff.

31. Therefore, the said submission made by the learned counsel appearing for the appellant/plaintiff is not in aid of the appellant/plaintiff's case.

32. The Courts below also traversed in the same lines and confirmed the case that the plaintiff has not proved his case. Herein also as already observed the documents exhibited on the side of the plaintiff as Ex.A1 to Ex.A18, are all might be in the name of the plaintiff, however, in the absence of an order passed by the Settlement Officer, this Court cannot hold that the other documents relied on by the plaintiff confer title to the plaintiff. Therefore, the concurrent judgment and decree



passed by the Courts below, do not warrant any interference and the same are confirmed. The substantial questions of law framed, are answered as above.

33. In the result, the second appeal fails and the same is dismissed. No Costs. Consequently, the connected Miscellaneous Petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

ars

To

1. The Subordinate Judge,
Madurantakam.

2. The District Munsif,
Madurantakam

Copy To

The Section Officer,
VR Section,
High Court,
Madras.

+1cc to M/s.K.Govi Ganesan, Advocate, S.R.No.21592

+2cc's to M/s.T.V.Krishnamachari, Advocate, S.R.No.21131

S.A.No.276 of 2010

RP(CO)
RN(12/04/2022)