



S.A.(MD) No.843 of 2009

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.10.2022

CORAM : JUSTICE N.SESHASAYEE

S.A.(MD) No.843 of 2009

Ayyalusami (Died)

... Appellant/1st Respondent/
1st Defendant

2.Amsaveni

3.Achanna

4.Renugadevi

... Appellants 2 to 4/
LRs of deceased sole appellant

*[Appellants 2 to 4 brought as LRs of deceased sole
appellant vide order dated 06.11.2015 made in M.P.
(MD) No.1 of 2015 in S.A.(MD) No.843 of 2009]*

Vs

1.Krishnammal (Died)

... 1st Respondent/Appellant/
Plaintiff

[Memo recorded as per order dated 12.03.2019]

2.Narayanasamy

3.Dhanasekaran

4.Pushparaj

5.Pushpathai

6.Rani

7.Sankaraj

... Respondents 2 to 7/
Respondents 2 to 7/Defendants 2 to 7



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Prayer:- Appeal filed under Section 100 of Civil Procedure Code to set aside the judgment and decree dated 20.07.2009 made in A.S.No.10 of 2009 on the file of the Sub Court, Kovilpatti reversing the judgment and decree dated 26.03.2007 made in O.S.No.242 of 2005 on the file of the Principal District Munsif Court, Sankarankovil.

For Appellants	:	Mr.M.P.Senthil for appellants 2 to 4
For Respondents	:	Mrs.M.Maria Vinola for R2 to R7

JUDGMENT

1. The first defendant in O.S.No.242 of 2005 on the file of the District Munsif Court, Sankarankovil, is the appellant herein. The suit was laid for permanent injunction to protect the plaintiff's possession over the suit property. The suit was dismissed by the trial Court, but the plaintiff was successful in her first appeal in A.S.No.10 of 2009 before the Sub Court, Kovilpatti. Hence, the first defendant is before this Court with this appeal. For narrative convenience, parties are referred to by their rank before the trial Court.



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2.1. The case of the plaintiff is that:

- The suit property is described as dry agricultural land measuring about 67 cents in S.No.417/2 of Ilayarasanenthal Village, Sankarankovil Taluk.
- According to the plaintiff, this property originally belonged to a certain Shankarappa Naickar, that on his demise, it devolved on his son Perumalsami Naickar, that the property stood mutated in his name, that based on his possession Ext.A.2-patta was granted, and that on 17.05.1998, Perumalsami Naickar passed away leaving behind him surviving his wife, the plaintiff herein, and his children defendants 2 to 7.
- The further case of the plaintiff is that on the demise of her husband Perumalsami Naickar, the property devolved on the plaintiff and defendants 2 to 7, that they have been jointly carrying out agricultural activities in the property. Alleging that the first defendant has properties adjacent to the suit property, the plaintiff has laid the suit for injunction, when she faced certain threat to her peaceful



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2.2 (a) Defendants 2 to 7 remained ex-parte and the first defendant alone contested the suit. The defence is two-pronged: (a) the plaintiff's husband has never been the owner of the property and that she is trying to misuse the similarity in name of the owner of the property and the name of her husband, and trying to create a title that never was in her husband; and (b) that he is a purchaser under certain unregistered sale deed from the heirs of that Perumalsami Naickar, who according to the first defendant is the original owner of the property.

2.3 (b) Expatiating his case, the first defendant has alleged that:

- There are two Shankarappa Naickar, one is known by the name Kanganala Shankarappa Naickar and the other is Kannam Shankarappa Naickar. Kanganala Shankarappa Naickar was married to certain Krishnammal and through whom he had two sons viz., Perumalsami Naickar and Krishnasami Naickar. The plaintiff claims herself to be the wife of Perumalsami Naickar through whom she



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alleges that she had begotten defendants 2 to 7. Turning to the other Shankarappa Naickar, he is Kannam Shankarappa Naickar and he was married to Rangammal and he had two sons viz., Perumalsami Naickar and Rangasamy Naickar.

- The original owner of the suit property is Kannam Shankarappa Naickar and not Kanganala Shankarappa Naickar under whom the present plaintiff claims.
- While so, this defendant had purchased the suit property from the heirs of Perumalsami Naickar, son of Kannam Shankarappa Naickar, vide Ext.B.1-sale deed dated 07.09.1991. This document is an unregistered document, but came to be admitted in evidence as the first defendant had paid the requisite stamp duty. In essence, the contention is that the plaintiff has no title to the property in the manner she claims.

3.1 The dispute went to trial and during trial, the plaintiff examined herself as P.W.1. So far as the first defendant is concerned, he himself has examined as D.W.1 and he has also examined D.W.2, an attester to Ext.B.1,



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and significantly he examined certain Krishnasami as D.W.3, who claims that he is the brother of the plaintiff's husband Perumalsami Naickar. The plaintiff has produced Ext.A.1 to Ext.A.5, and the first defendant had produced Ext.B.1 to Ext.B.7. The trial Court, on its part, appointed an Advocate Commissioner whose report and plan were marked as Ext.C.1 and Ext.C.2.

3.2 After appreciating the evidence before it, the trial Court chose to dismiss the suit, and it's line of reasoning is that:

- The first defendant is shown to be in possession of the property in terms of Ext.B.1-sale deed which though was not registered can be acted upon for collateral purposes or finding possession.
- In the Commissioner's report, the Commissioner has reported that the first defendant had laid a pipeline beneath the soil in the suit property connecting his own property that lies to the south of the suit property to the one in the east of the suit property. This pipeline cut across diagonally through the suit property, and that water is used for irrigating the suit property.



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4. When the matter reached the first appellate Court, it chose to reverse the decree of the trial Court. It relied on Ext.A.1-patta passbook and Ext.A.2-patta in the name of Perumalsami Naickar. In addition, the first appellate had also held that the first defendant had not proved title to the property. Hence, the second appeal at the instance of the first defendant.

5. The appeal was admitted for considering the following substantial questions of law:

“i. Whether the lower Appellate Court is correct in holding that the appellant as defendant failed to establish the title of the predecessors in title of the appellant especially when the respondent as plaintiff failed to discharge the initial burden of the proving title or possession?

ii. Whether the lower Appellate Court is correct in relying upon the undated settlement register under Ex.A.1 and the encumbrance certificate under Ex.A.3 and Kist receipts especially when the appellants produced the documents of title under Ex.B.1 and B.4 corroborating the evidence of DW. 1 to DW.3? and



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iii. Whether the lower Appellate Court is correct in not advertng to the genealogy of the ancestors of the respondents under Ex.B.6 are totally different from the genealogy of the appellants predecessors in title under Ex.B.5 for the purpose of sale deed for possession?”

6. Heard both sides. The learned counsel for the appellants submitted that:

- The case of the first defendant is that the suit property belonged to certain Kannam Shankarappa Naickar, that he had a son by name Perumalsami Naickar and he claims title or at least possession to the suit property under this Perumalsami Naickar. However, the plaintiff claims that the title to the suit property originally vested in certain other Shankarappa Naickar whose son is also known by the name Perumalsami Naickar, and taking advantage of the similarity of the names between a set of father and son, the plaintiff has now instituted the suit. He added that to show that the plaintiff's husband never had any property, the first defendant had examined D.W.3, who is the brother of plaintiff's husband. This apart, the suit is for bare



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injunction where possession is the dominant factor to be weighed.

- The suit property lies to the south of a channel. To the east, south and west of the suit property lies the property of the first defendant. For irrigating his property to the east and south of the property, he had laid a pipeline through the suit property that runs beneath the soil of the suit property connecting his own eastern property and southern property, and he also made use of this pipeline for irrigating the suit property as well. This was noted by the Commissioner, but the plaintiff has not filed any objection to the Commissioner's reports. In addition, the Commissioner has found that the suit property as well as the properties of the first defendant surrounding the suit property on east, south and west are all under corn cultivation and they are ripe for harvesting. It may be true that Ext.B.1 under which the first defendant claims title might be unregistered, but it can always be looked into for the collateral purpose of establishing possession of a property covered under such document. Therefore, notwithstanding the fact that Ext.B.1 is unregistered, it can be utilised for substantiating the possession of the plaintiff over the suit property.



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7. Per contra, the learned counsel for the first respondent/plaintiff would submit that to prove title and possession, the plaintiff has produced the original patta passbook bearing No.709 that stood in the name of her father-in-law Shankarappa Naickar. She had also produced Ext.A.2-computerised patta in her husband Perumalsami Naickar's name. In addition, she has produced Ext.A.5-series of tax receipts all relate to Patta No.709 and that the earliest of the tax receipts is of the year 1982. It is, precisely taking these documents into consideration, the first appellate Court has held that the plaintiff is in lawful possession of the suit property. So far as the cultivation aspect is concerned, the plaintiff indeed has alleged that the property is under her cultivation.

8. Refuting the same, the learned counsel for the appellants would now submit that even the first defendant had produced Ext.B.2-series of tax receipts in his name, and it also discloses Patta No.709 relation to the property covered therein, the tax is paid.



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9. There are two aspects to this litigation: (a) first is the legitimacy of the title the manner averred by the plaintiff; and (b) the legitimacy of possession of the suit property for the purpose of ascertaining if plaintiff be protected with the decree of prohibitory injunction.

10. So far as title is concerned, the very identity of the original owner of the property is seriously disputed, and to prove which the first defendant has examined D.W.3, who is said to be the brother of the husband of the plaintiff. But the existence of D.W.3 itself has become a matter of dispute. This could be seen from the fact that when the plaintiff was in the witness box, she was cross examined about D.W.3, but she denied that her husband Perumalsami Naickar ever had a brother by name Krishnasamy Naickar, but Krishnasamy Naickar as D.W.3 would assert that he is the brother of Perumalsami Naickar. Therefore, this requires consideration and that can be done conveniently only in a suit for declaration of title and it is only appropriate that this Court confines its enquiry to the second part viz., whether the plaintiff is in possession of the property to require a decree of injunction.



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11. Here, an evidentiary fact stares on the plaintiff's face. Even if the plaintiff is assumed to be in possession of the property, she still need to demonstrate before the Court that she along with her children are in actual physical possession of the property, and that they were carrying on cultivation activities as she has alleged in the pleadings. The tax receipt at the best may indicate certain act of ownership done in assertion of title, but it is never conclusive. Here, two facts tilt the balance against the plaintiff and this can be traced to the Commissioner's report. As pointed out by the learned counsel for the appellants, the Commissioner finds that the first defendant has laid pipeline cutting across the suit property and that he is also irrigating the suit property by using the said pipeline. The second fact is that all the properties of the first defendant that surrounds the suit property and the suit property are under corn cultivation and they are ripe for harvest, which implies the entire block of property that surrounds the suit property and the suit property were under cultivation of identical crop and they were in identical stage of cultivation. Coupled with the fact that the suit property is irrigated by a pipeline laid by the first defendant



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connecting his property on the south and east of the suit property and given the fact that there is corn cultivation in the property, it may have to be held that the first defendant is in possession of the property, and this possession necessarily had to be traced to Ext.B.1, since even an unregistered document can be looked into for collateral purposes of ascertaining the possession of property. Added to this is Ext.B.2 where the first defendant is also seem to have paid tax for the property covered under Patta No.709, the same as the patta under which the plaintiff claims title. If the Court looks for any rebuttal evidence on the side of the plaintiff, it spots none. The plaintiff merely makes a sweeping statement in the plaint, and in her affidavit of chief examination that the property is under cultivation, but in the context of the Commissioner's report, she should have travelled more pointedly in this regard. Secondly, she also claims that she enjoys the property along with her children viz., defendants 2 to 7. Even though in her plaint she says all the children stay elsewhere, in her examination she did depose that couple of her children are with her. At least she could have examined one of them not only for establishing the title to the suit property at least incidentally, but also for establishing the identity of the person in dispute under whom the



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plaintiff claims title, on which P.W.1's credibility comes under the scanner in view of D.W.3's testimony. The plaintiff, if so desirous, she may have to file a suit for declaration of title and recovery of possession.

12.1 In conclusion, this Court finds that the first appellate Court appears to have short-circuited its enquiry and ignored the other aspects of material facts available on record.

12.2 In fine, this Second Appeal is allowed, the judgment and decree dated 20.07.2009 made in A.S.No.10 of 2009 is set aside and the judgment and decree dated 26.03.2007 made in O.S.No.242 of 2005 is restored. No costs.

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Index: Yes/No

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To

- 1.The Sub Judge, Kovilpatti.
- 2.The Principal District Munsif,
Sankarankovil.
- 3.The Section Officer, VR Section,
Madurai Bench of Madras High Court,
Madurai.



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N.SESHASAYEE, J.

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