



S.A.(MD) Nos.712 of 2010 & 459 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 07.09.2022

CORAM : JUSTICE N.SESHASAYEE

S.A.(MD) Nos.712 of 2010 and 459 of 2012

and

M.P.(MD)Nos.1 of 2010 and 4 of 2012

S.A.(MD)No.712 of 2010:

Duraipandian

... Appellant/Appellant/3rd Defendant

-VS-

1.C.Veerappan (died)

...1st Respondent/1st Respondent/Plaintiff

2.The State of Tamil Nadu rep by
District Collector,
Ramanathapuram.

3.The Thasildar,
Tahsildar Office,
Thiruvadanai.

...Respondents 2 &3/Respondents 2 &3/
Defendants 1 & 2

4.V.Pandi

5.Indhira

6.Rajeswari

7.M.Chitra

... Respondents

*[Respondents 4 to 7 are brought on record as legal
representatives of the deceased first respondent vide
order dated 10.06.2022]*

S.A.(MD)No.459 of 2012:

C.Veerappan (died)

1.V.Pandi



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2.Indhira
3.Rajeswari
4.M.Chitra

... Appellants/LRs of Appellants /
LRs of Plaintiff

-VS-

1.The State of Tamil Nadu
Rep by District Collector,
Ramanathapuram,
Ramanathapuram District.

2.The Thasildar,
Taluk Office,
Thiruvadanai,
Ramanathapuram District.

3.Duraipandian ... Respondents/Respondents/Defendants

PRAYER in S.A.(MD)No.712 of 2010:- Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree dated 30.04.2010 in A.S.No.13 of 2010 (Cross Appeal in AS No.30 of 2009) on the file of the Sub Court, Ramanathapuram, confirming the judgment and decree dated 24.04.2009 in O.S.No.157 of 1995, District Munsif Court, Thiruvadanai.

PRAYER in S.A.(MD)No.459 of 2012:- Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree dated 30.04.2010 in A.S.No.30 of 2009 on the file of the Sub Court, Ramanathapuram, confirming the judgment and decree dated 24.04.2009 in O.S.No.157 of 1995, District Munsif cum Judicial Magistrate Court, Thiruvadanai.



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in S.A.(MD)No.712 of 2010:

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For Appellant	:	Mr.V.R.Shanmuganathan
For R2 to R4	:	Mr.Villavan Gothai
		Additional Government Pleader
For R4 to R7	:	No Appearance

in S.A.(MD)No.459 of 2012:

For Appellants	:	No Appearance
For RR1 & 2	:	Mr.Villavan Gothai
		Additional Government Pleader
For R3	:	Mr.V.R.Shanmuganathan

COMMON JUDGMENT

1.1 The appellants herein are both the legal heirs of the plaintiff and the third defendant in suit in O.S.No.157 of 1995 was laid for declaration of plaintiff's title over 2.33 acres in S.No.207/3 at Arasur Village, Thiruvadanai Taluk, Ramanathapuram District.

1.2 There are three defendants to the suit. The first defendant is the State of Tamil Nadu. The second defendant is Tahsildar and the third defendant is a private individual. When the plaintiff found certain obstruction to his assertion of title over the suit property, he laid the suit. The suit was contested by all the defendants and principally by the third defendant. The



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trial Court dismissed the suit, since it found that the plaintiff has not established his title to the property. However, in the course of it so doing, the trial Court has also rendered a finding that the third defendant is not entitled to the extent of property over which he asserts right.

1.3 Aggrieved by the decree of the trial Court, the plaintiff preferred A.S.No.30 of 2009 and the third defendant had preferred A.S.No.13 of 2010 challenging the finding against him. By a common judgment of the First Appellate Court, both the appeals came to be dismissed, against which the third defendant has now preferred S.A.(MD)No.712 of 2010. The plaintiff on his part had preferred S.A.(MD)No.459 of 2012.

1.4 For narrative convenience, the parties are referred to by their rank before the trial Court.

2. The case of the plaintiff is that the suit property is an estate subjected to the Tamil Nadu Estate (Abolition and Conversion into Ryotwari) Act, 1948 (Act 26 of 1948). He however, concedes that in the settlement proceedings under the Act, no patta was issued either to him or to any of his ancestors,



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and that the property was classified as an '*anadheenam land*'. While so, this land was assigned by the Government to plaintiff's wife Vide proceedings dated 21.07.1985. However, this assignment came to be cancelled subsequently when the Government realized that the plaintiff's wife was not landless and hence was not eligible for assignment. The plaintiff asserts that notwithstanding the aforesaid facts, he is in possession and enjoyment of the property from time immemorial, and seeks declaration of title when he faced obstruction to his title from the third defendant.

3. The third defendant would contend that S.No.207/1 had a larger extent of 1.87.5 hectares. Be that as it may, during settlement proceedings, his father Karuppannan Ambalam was granted Ext.B5, patta dated 31.01.1977 for an extent of 60 ares or 1.48 acres in S.No.207/1. It appears that subsequently the extent granted under Ext.B5 came to be reduced Vide Ext.B6, proceedings dated 21.10.1977. The third defendant would plead that Ext.B6, proceedings was issued without notice to his father. Subsequently the differential extent as between Ext.B5 and Ext.B6 was assigned to the third defendant Vide proceedings of the Revenue Divisional Officer concerned, dated 09.11.1991 Vide Ext.B.7.



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712 of 2010 against the decree in A.S.No. 13 of 2010. Both the appeals are admitted for considering the following substantial questions of law:

SA(MD)No.712 of 2019	SA(MD)No.459 of 2012
(a) Whether the courts below have exceeded their jurisdiction in giving finding and decision on the title of the defendant, in a suit for declaration of title by plaintiff? (b)Whether the courts below have erred in rendering a finding on other property (Ext.B6), where as the suit relate to another property (S.No.207/3)? (c)Whether the courts, after having found that the plaintiff has failed to prove his case and after having dismissed the suit, is empowered to go into the title of defendant and render a finding and decision thereon, which would be totally an irrelevant issue?	(a) Whether in law the courts below are correct in holding that onus of proof is one the plaintiff to prove the matter in issue when the same was admitted by the third defendant in respect of the pymash number of the suit property and the suit property belonged to Athangudi Estate? (b)Has not the learned Appellate Court committed an error in holding that plaintiff had not applied for patta when settlement officer can also grant patta even without application on verifying the revenue records available to them? (c)Whether in law the courts below are correct in holding that adverse inference under Section 118 of the Indian Evidence Act cannot be taken against government when the Settlement Land Register (SLR) would establish the possession of the person before the settlement?

7. The learned counsel for the appellants/legal representatives of the plaintiff in O.S.No.157 of 1995 filed a memo reporting no instructions.



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However this Court finds it necessary to consider the merit based on the submissions of the learned counsel for the third defendant/appellant in S.A. (MD)No.712 of 2010.

8. This Court heard the learned counsel for the third defendant. The learned counsel essentially focused on how the Courts below have overlooked Ext.B7 and that the defendant's right based on Ext.B7 was ignored.

9. Heard the learned Additional Government Pleader appearing for the Government, who supported the third defendant.

10. Ordinarily, when the learned counsel for the appellant reports no instructions, this Court may have to issue Court notice on the parties concerned. However, when this Court perused the entire pleadings and also the judgments of the Courts below, it is satisfied that the plaintiff has not even raised a triable cause. Perusal of all the evidence available on record nowhere indicates that the plaintiff had come anywhere near to establish the claim of title over the suit property.



11. Turning to the third defendant's case, the trial Court has essentially entered an observation *vis-a-vis* the third defendant. This observation regarding the extent is unwarranted, for the trial Court is only faced with a dispute as to whether the plaintiff has title over the suit property. When the burden is entirely on the plaintiff to prove it, and having found that the plaintiff has not established it, the trial Court need not to have ventured to make certain observations that too contrary to Ext.B7.

12. Turning to the first appeal against the observation, firstly, an appeal is not maintainable against an observation merely. Secondly, the first appellate Court had not only entertained the appeal but also dismissed it giving a finding on the observations of the trial Court *vis-a-vis* right of the third defendant and granted the observation of the trial court a sanctity of a decree.

13. This Court is satisfied that there is no basis for the Courts below to reject the claim of the third defendant for an extent of 60 ares equalling 1.48 acres in S.No.207/3. As already indicated, there is also an error in jurisdiction both by the trial Court and as well as by the First Appellate Court. This also needs to be interfered with.



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14. In conclusion, this Court allows S.A.(MD)No.712 of 2010 and dismisses S.A.(MD)No.459 of 2012 for non-prosecution. No costs. Consequently, connected Miscellaneous Petitions are closed.

07.09.2022

Internet: Yes
Index: Yes/No
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To

1.The Sub Court, Ramanathapuram

2.The District Munsif Court, Thiruvadanai.



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N.SESHASAYEE, J.

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