



S.A.(MD)No.963 of 2010

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A.(MD)No.963 of 2010

Natarajan ... Defendant / Appellant / Appellant

-Vs-

Kalimuthu ... Plaintiff / Respondent / Respondent

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code to set aside the judgment and decree of the lower appellate court in A.S.No.81 of 2006 passed by the Subordinate Judge, Pudukkottai, dated 09.03.2007 by confirming the judgment and decree passed by the District Munsif Court, Aranthangi in O.S.No.191 of 1999 dated 22.01.2004.

For Appellant : Mr.Porkodi Kannan

For Respondent : Mr.D.Ramesh Kumar

for Mr.S.Deenadhayan

JUDGMENT

The defendant in the suit is the appellant in this second appeal. He had lost before both the courts below.



2.Kalimkuthu the respondent herein filed O.S No.191 of 1999 on the file of the District Munsif Court, Aranthangi seeking the relief of declaration in respect of suit items. The consequential relief of injunction was sought in respect of the first item and the relief of recovery of possession was sought in respect of the second item. The suit item No.1 is comprised in Survey No.89/1C and measures an extent of 1 acre and 60 cents out of the total extent of 1 acre and 64 cents. The suit item No.2 is also comprised in the very same number and measures an extent of 4 cents in the north eastern portion.

3.According to the plaintiff, the suit properties were the ancestral properties of his father and that he was in possession and enjoyment of the same. After his demise, the property devolved on him and patta was also mutated in his favour. His mother and sisters did not lay any claim. The defendant had to leave his native village and move to plaintiff's village. The plaintiff permitted the defendant to construct a small thatched roof in the suit second item sometime in the year 1990. When the plaintiff called upon the defendant to vacate, the defendant not only refused but proclaimed that he will prevent the plaintiff from enjoying the suit first item also. That led to the filing of the present suit.



S.A.(MD)No.963 of 2016

WEB COPY

4.The defendant filed written statement controverting the plaintiff's averment. Based on the divergent pleadings, the trial court framed the necessary issues. The plaintiff examined himself as P.W.1. Exs.A1 to A14 were marked. The defendant examined himself as D.W.1. Two other witnesses were examined on his side. Exs.B1 to B24 were marked. After consideration of the evidence on record, the trial court by judgment and decree dated 22.01.2004 decreed the suit as prayed for. Aggrieved by the same, the defendant filed A.S.No.81 of 2006 before the Sub Court, Pudukkottai. By the impugned judgment and decree dated 09.03.2007, the first appellate court confirmed the decision of the trial court and dismissed the appeal. Challenging the same, this second appeal came to be filed.

5.The second appeal was admitted on the following substantial questions of law:-

“(1) Whether the judgment of the lower appellate court (being the final court on appeal on facts) is legally sustainable insofar as it has failed to identify necessary issues as points for determination in the appeal?

(2) Whether the courts below have committed an error in law in finding the issue of non-joinder of necessary party against the appellant / defendant in favour of the respondent / plaintiff ?

(3) Whether the courts below have rendered a perverse finding that the property comprised in S.No.89/1-C belongs to the respondent /



S.A.(MD)No.963 of 2013

plaintiff when the respondent / plaintiff was not able to produce any document in proof of title, whereas the appellant / defendant has produced Ex.B3-U.D.R Patta?

(4) Whether the courts below have rendered a perverse finding that the appellant / defendant is a permissive occupant?"

6.The learned counsel appearing for the appellant reiterated all the contentions set out in the memorandum of grounds. She submitted that the plaintiff as well as the defendant are relatives. The property originally belonged to one Vaithi S/o.Chinna Avudai. Vaithi had two sons, namely, Avudai and Muthuveeran. The defendant traces his lineage to Aavudai. The plaintiff traces his lineage to Muthuveeran. Over the suit property, Avudai and Muthuveeran had equal shares. While Avudai was allotted western portion, Muthuveeran was allotted eastern portion. The defendant's family were for a while in Srilanka and returned to India in the year 1979. Taking advantage of their absence, the plaintiff's father managed to obtain patta in his favour. Such mutation made in the revenue record behind the back of the defendant is not legal or binding. The appellant also contested the claim of the plaintiff that he was a permissive occupant.

7.The learned counsel for the appellant called upon this Court to have regard to Exs.B23 and B24. It can be seen therefrom that that the



genealogy projected by the appellant was more probable and correct.

When the trial court found that the plaintiff had failed to prove his case, the result must have been one of dismissal of the suit. Instead, on the strength of the revenue documents, decree was granted. Entries in the revenue records cannot determine title. The first appellate court also mechanically endorsed the reasons adopted by the trial court. The burden was erroneously cast on the defendant. The learned counsel for the appellant called upon this Court to answer the substantial questions of law in favour of the appellant and set aside the judgment and decrees of the courts below and dismiss the suit filed by the respondent/plaintiff.

8.Per contra, the learned counsel for the respondent/submitted that no substantial questions of law arises for determination and that no case for interference has been made out.

9.I carefully considered the rival contentions and went through the evidence on record. The plaintiff having sought the relief of declaration was obliged to establish his case. Ex.A1 is the extract of “A” Register in respect of Mangudi Village where the suit property is located. The extract was issued in the year 1999. But the Register was prepared long ago. It is seen therefrom that the suit property is in the name of Periahiah @



S.A.(MD)No.963 of 2013

Periyasamy who is none other than the plaintiff's father. Ex.A2 (Chitta)

which pertains to the suit property also stands in the name of the plaintiff.

Though in respect of a portion of the suit property, patta was issued in favour of the defendant, it was cancelled vide order dated 14.02.2003 by the Revenue Divisional Officer, Aranthangi. This order was marked as Ex.A14 by the plaintiff. The appellate authority had mentioned that the defendant failed to show in whose name the property was standing before Ex.B2 was issued. When both the parties adduced evidence, the question of burden of proof pales into insignificance.

10.On the side of the plaintiff, Adangal records have been marked. The courts below have carefully considered the evidence on record. They have concurrently come to the conclusion that the plaintiff has by a preponderance of probabilities established his case compared to that of the defendant. On the side of the defendant, except Ex.B2, there is a complete paucity of evidence. Ex.B2 had also been subsequently cancelled. The entry in the "A" Register as well as the fact that patta was in the name of the plaintiff's father, persuaded the courts below to uphold the claim of the plaintiff. When the plaintiff filed the suit, he was aged about 52 years. His father died some twenty years before filing of the suit. The patta was standing in his name. Ex.A1 is a very old record. The plaintiff has established that the suit property has been in the possession of their father



for decades together. The defendant also concedes that he was away in Sri Lanka and had come back to India only in the year 1979. The courts below have concurrently rendered a finding that on a balance of probabilities, the case of permissive possession projected by the plaintiff is probable. Interference in exercising jurisdiction under Section 100 of CPC is permissible only if it can be shown that the findings rendered by the courts below are perverse. That is not the case here.

11. Merely because the first appellate court had not framed the correct points for determination, that by itself cannot be a ground for interference. This is because the first appellate court had discussed all the contentions canvassed by the defendant/appellant. The claim of the plaintiff over the suit property has been challenged only by the defendant and therefore, the plaintiff has sought relief only against the defendant. The declaration and the consequential reliefs decreed in favour of the plaintiff are binding only on the defendant. The defendant has not established that necessary parties have not been impleaded. Since Ex.B2 had already been set aside vide proceedings dated 14.12.2003 on the file of the RDO, Aranthangi (Ex.A14) the courts below rightly brushed aside Ex.B2. All the substantial questions of law are answered against the appellant.



S.A.(MD)No.963 of 2013

WEB COPY

12.On instructions, the learned counsel for the respondent submits that if the appellant does not challenge the decree standing in favour of the plaintiff, the plaintiff would not press for possession of suit second item during the lifetime of the appellant and his wife. This undertaking made by the learned counsel for the respondent is recorded. After the lifetime of the appellant and his spouse, the plaintiff or his legal heirs are at liberty to enforce and execute the decree for possession of suit second item.

13.The judgments and decrees of the courts below are confirmed.
The second appeal is dismissed. No costs.

16.03.2022

Internet : Yes/No
Index : Yes/No
rmi/Skm

To

- 1.The Subordinate Judge, Pudukkottai.
- 2.The District Munsif, Aranthangi.

Copy To
The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



S.A.(MD)No.963 of 2010

G.R.SWAMINATHAN, J.

rmi/Skm

**Judgment made in
S.A.(MD)No.963 of 2010**

16.03.2022