



S.A(MD).No.427 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 01.08.2022

CORAM:

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

S.A(MD).No.427 of 2012
and M.P(MD).No.2 of 2012

1.Ayyasamy
2.Muthumani
3.Govindan

.... Appellants/Appellants/Defendants

Vs

1.A.Ganesan
2.A.Mariammal
3.G.Thenmozhi

... Respondents/Respondents/Plaintiffs

Prayer : Second Appeal filed under Section 100 of Code of Civil Procedure, against the judgment and decree dated 30.10.2010 in A.S.No.29 of 2010 on the file of the Sub Court, Pattukottai confirming the judgment and decree dated 16.02.2010 in O.S.No.7 of 2006 on the file of the District Munsif cum Judicial Magistrate, Orathanadu.

For Appellants : Mr.V.Meenakshi Sundaram
For Respondents : Mr.K.Vaithialingam



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JUDGMENT

The defendants in O.S.No.7 of 2006, which the plaintiff had laid for declaration of their title to the suit properties as well as for an ancillary relief of injunction are the appellants herein. For the narrative convenience, the parties would be referred to as per their rank before the trial court.

2. The facts fall within a narrow compass, and they are bullet pointed:

- There are 7 items of properties detailed in the Schedule II of the plaint, each of which are in different survey numbers with a combined total extent of 3.93 acres. According to the plaintiffs, this block of property was a natham poramboke, and that it was originally situated in S.No.53. Later, it was assigned R.Sy.No.167, and the Government parcelled it into several blocks and made allotment to various occupants of the property.
- Accordingly, a certain Appavu was granted patta Vide Ext.A.1, dated 28.02.1990 as regards the property in S.No.167/27. Subsequently, the Government made allotment under Ext.A.2, Ext.A.3, Ext.A.4 all dated 09.03.1994 respectively in favour of the plaintiffs 1, 3 and 2



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which respectively deal with the properties in item Nos.3, 4 and 2 of the plaint. The second plaintiff is the widow of Appavu. The first plaintiff is his son, and the third plaintiff is the wife of the first plaintiff. The plaintiffs also claim right over the remaining 3 items i.e item Nos.5 to 7 and when they faced some opposition to their title, they filed a suit for title and injunction.

3. The suit was contested by the defendants 1 to 3. Their primary line of defence is on two fold:

- a) that under Ext.B.7 and Ext.B.8 dated 09.03.1994, they were allotted the properties in items 5, 6 and 7.
- b) as to the rest, they rely on Ext.B.1, mortgage deed of the year 1896 executed by the forefathers of the plaintiffs, and a sale deed dated 31.07.1901 which is marked as Ext.B.10.

4. Before the trial Court, the plaintiffs have produced Ext.A.2 to Ext.A.4, proceedings of the Government and they are pertaining to item Nos.1,3 and 4 in the plaint. By these proceedings, the plaintiffs' title over item Nos.1,3 and 4 were upheld by the trial Court, and as to the remaining 4 items of properties, the suit came to be dismissed. As outlined earlier, this was later



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came to be confirmed by the first appellate Court as well. The defendants now challenged the decree declaring the title of the plaintiffs to item Nos. 1,3 and 4 of the suit properties in this Second Appeal.

5. The trial Court partially decreed the suit and declared the title of the plaintiffs to suit items 1,3 and 4, as to the rest, the trial Court dismissed the suit. So far as the plaintiffs' title is concerned, the trial court rejected the claim of title over items 5 to 7 by relying on Ext.B.7 and Ext.B.8 relied on by the defendants. As to the remaining 4 items of properties, the trial court rejected the title of the second plaintiff based on Ext.A.4. This relates to plaint item No.2. The trial court has reasoned that so far as Ext.A.4 is concerned, this is seen allotted to certain Mariyammal, W/o Veeraiyan whereas the second plaintiff is Mariyammal, W/o Appavu. Turning to the allegation based on Ext.B.1, mortgage deed, and Ext.B.10, sale deed on the basis of which the defendants asserted a rival claim of title over the property, the Court found that the defendants indeed have derived some right over that, and that Ext.B.10 deals with 7 cents of property for which patta has already been given to them.



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6. Aggrieved by the decree, both sides preferred separate appeals. While the plaintiffs had filed A.S.No.29 of 2010, the defendants had filed A.S.No. 21 of 2010. Both these appeals came to be dismissed by the first appellate Court. The First Appellate Court had substantially adopted the line of reasoning of the trial Court, and proceeded to expatiate its reasoning when it held that both sides accepted the assignment-patta granted to the plaintiffs under Ext.A1 to Ext.A.3 and also the patta granted to the defendants under Ext.B.7 and Ext.B.8 and held that there is nothing on record to show that they were in possession except Ext.B.1.

7. While the plaintiffs contented with the decree of the First Appellate Court, the defendants had preferred this Second Appeal against A.S.No.29 of 2010. This Second Appeal is not yet admitted. Heard the learned counsel for the appellants/defendants and the learned counsel for the respondents/plaintiffs.

8. The learned counsel for the appellants/defendants argued that:

- Both the Courts below have found that the predecessor-in-title of the defendants would be entitled to 7 cents under Ext.B.1 read along with Ext.B.10. Indeed, this property is covered under Ext.B.1=Ext.B.10.



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- This property now, falls in R.Sy.Nos.167/22 and 167/23, which has combined total extent of 7 cents. The plaintiffs were granted patta for S.Nos.167/26 and 167/27, and these defendants have no qualms about it. So far as R.S.No.167/22 and 167/23 are concerned, R.S.No.167/22 is further divided into R.S.Nos.167/22/1, 167/22/2 and 167/22/3 and R.S.No.167/23 is divided into R.S.Nos.167/23/1 and 167/23/2.
- Under Ext.B.7, the defendants have been granted patta for whole of R.S.Nos.167/22/1, 167/22/2 and 167/22/3, but in R.S.No.167/23, they were granted patta only for R.S.No.167/23/1 and not for R.S.No. 167/23/2. So far as R.S.No.167/23/2 is concerned, the plaintiffs were granted patta under Ext.A.3.
- The trial Court had held that the boundary description of the property in Ext.A.3 reconciles with that of the property covered in Ext.B.10. But this was over looked by the first appellate court, and hence this Court might have to consider it, and should proceed to deny the plaintiffs their claim to the extent they seek title based on Ext.A.3.

9. Per contra, the learned counsel for the respondents/plaintiffs argued that:

- The property is a *natham* property, and that the Government Vide its proceedings dated 09.03.1994, not only granted patta to the plaintiffs



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but also to the defendants, and when once the defendants also admitted to their title based on the proceedings of the Government, it is impermissible for them to ignore it. In short, the defendants are estopped from challenging the proceedings of the Government, dated 09.03.1994 as it supersedes all earlier position.

- The suit is laid by the plaintiffs based on Ext.A.3. The plaintiffs claimed title to the property, and also seek protection of their possession based on Ext.A.1 to Ext.A4. Of the four documents, the Courts below have rejected their claim based on Ext.A.4. What is now in dispute is the correctness of Ext.A.3, patta. It is not the case of the defendants/appellants that the plaintiffs have fabricated Ext.A. 3 to claim title. Here, this Court cannot loose sight of the fact that even the defendants have not ignored the assignment proceedings of the Government, dated 09.03.1994 as they themselves claimed title to all except the disputed property in R.S.No.167/23/2 under Ext.B.7. The point is whether on the strength of Ext.B.10, the defendants would be entitled to have patta for R.S.No.167/23/2.

10. This argument may look attractive, but as rightly contended by the learned counsel for the plaintiffs that the defendants have not challenged the



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proceedings of the Government. Given this scenario, inasmuch as the defendants have not been able to prove that the plaintiffs have been in unlawful or illegal possession as of today, and since the plaintiffs trace their right to be in possession based on a certain proceedings of the Government, and since the defendants have not challenged such proceedings of the Government in the manner known to law, this Court cannot countenance the submissions of the learned counsel for the defendants. If at all they have right to R.S.No.167/23/2 based on Ext.B.10, then they ought to have shown that they have been in actual physical possession and should have approached the appropriate authority at the appropriate time. Here, it has to be underscored that it is 28 years since the Government had passed the proceedings, dated 09.03.1994. They are free to do it even now, but subject to law and the legal principles governing this area.

11. So far as the present appeal is concerned, given the nature of dispute which the appellants have raised here, this Court does not find any merit in it. If at all the defendants have a remedy, it lies elsewhere.

12. It may have to be stated, this appeal was heard and dictated in open Court on 15.07.2022 and this Court dismissed the appeal. However, before



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the judgment was made ready and was placed for signing, the learned counsel for the defendants/appellants made a mention before the Court that he needs to address the Court on certain points. This Court thought it fit to grant the opportunity. Accordingly, the case was posted under the caption 'for clarification' today (i.e., on 01.08.2022).

13. Heard both sides and the point, which the learned counsel for the defendants/appellants raised, as may be seen earlier, notwithstanding the hearing now given, the Court finds that there is nothing to interfere and confirmed the earlier conclusion, except that it has now provided a window for the defendants/appellants to work out their remedies within the framework of law.

14. In fine, this Second Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is also dismissed.

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Index : Yes/No

Internet: Yes/No

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N.SESHASAYEE, J.,

Rmk

To

- 1.The Sub Judge, Subordinate Court, Pattukottai.
- 2.The District Munsif cum Judicial Magistrate, Orathanadu.
- 3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

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