



S.A.(MD) No.6 of 2006

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Judgment Reserved On 20.12.2022	Judgment Pronounced On 23.12.2022
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THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.(MD) No.6 of 2006
and
M.P.(MD) Nos.1 to 3 of 2006

Jebastin Selvaraj

.. Appellant/Appellant/
Defendant

-vs-

Chellasamy (Died)

.. Respondent/Respondent/
Plaintiff

2.Chellammal
3.Jayanthi
4.Vaikunda Shiba
5.Vaikundanathan
6.Vaikunda Raja
7.Vaikunda Jothi
8.Vaikunda Perumal

.. Respondents 2 to 8

[Respondents 2 to 8 – brought on record as LRs of the deceased sole respondent vide order dated 15.12.2016 made in M.P.(MD) No.1 of 2011 in S.A.(MD) No.6 of 2006]

Prayer: Appeal filed under Section 100 of Civil Procedure Code to set aside the judgment and decree dated 21.02.2001 made in A.S.No.199 of 1997 on



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the file of the Sub Court, Padmanabhapuram, confirming the judgment and decree dated 24.11.1997 made in O.S.No.894 of 1991 on the file of the Additional District Munsif Court, Padmanabhapuram.

For Appellant : Mr.S.S.Thesigan

For Respondents : Mr.C.Godwin for R2 to R8

JUDGMENT

The defendant in the suit is the appellant. The suit was laid for declaration of title and for consequential injunction restraining the appellant/defendant from trespassing into the suit property or committing act of waste. The suit was decreed by the trial Court and confirmed in the first appeal and hence, the appellant is before this Court.

2. According to the plaint averments, the suit property was originally belonged to the father of the deceased 1st respondent/plaintiff viz., Chellian. After death of his father, the deceased 1st respondent/plaintiff inherited the suit property and he has been in possession and enjoyment of the same. It was also averred that patta to the suit property was obtained by the 1st respondent and he has been paying tax to the Government regularly. It



was specifically averred in the plaint that the appellant/defendant tried to commit trespass into the suit property and also commit act of waste and hence, the respondent was constrained to file the suit for the above said relief. Pending second appeal, the 1st respondent/plaintiff passed away and his legal representatives were brought on record as respondents 2 to 8.

3. The appellant/defendant filed a written statement and contested the suit. In the written statement filed by the appellant/defendant, the title and possession of the plaintiff was specifically denied. It was averred in the written statement that originally the property was belonged to one Chellian and he died leaving behind his wife, Thankamma Nadachi; son, Selvaraj; and daughter, Chellammal. There was an oral arrangement in their family and the property was allotted to the share of Thankamma Nadachi and Selvaraj. The said two persons sold the suit property to the appellant/defendant under Ex.B.7, dated 10.01.1981. Accordingly, the appellant traced his title to the suit property and he also claimed possession over the same. It was further claimed that the appellant had put up a building in the suit property and has been residing thereon. Subsequently, the building got damaged in the rain and the appellant sought for approval



of the plan for putting up new construction in the suit property and now there is a thatched house in the suit property.

4. Before the trial Court, the deceased 1st respondent/plaintiff was examined as P.W.1 and he marked 20 documents as Ex.A.1 to Ex.A.20. On behalf of the appellant/defendant, one Chellammal and Ponnian Nadar were examined as D.W.1 and D.W.2 and the appellant marked 16 documents as Ex.B.1 to Ex.B.16.

5. The trial Court, on consideration of oral and documentary evidences, came to the conclusion that the 1st respondent/plaintiff proved his title and possession over the suit property and consequently, granted a decree for declaration and injunction as prayed for. Aggrieved by the same, the appellant/defendant filed an appeal in A.S.No.199 of 1997 before the Sub Court, Padmanabhapuram. The first appellate Court concurred with the findings rendered by the trial Court and dismissed the first appeal. Aggrieved by the concurrent judgments of the Courts below, the appellant/defendant is before this Court.



6. As mentioned earlier, the 1st respondent died pending second appeal and respondents 2 to 8 were brought on record as his legal representatives.

7. This Court, at the time of admission, formulated the following substantial questions of law:

“(i) Whether the Courts below are correct in granting a judgment and decree for declaration of title and enjoyment and injunction in favour of the plaintiff, when the plaintiff has not produced any title deed for the property in favour of himself or his alleged predecessor-in-title?”

“(ii) Whether the plaintiff is entitled to a decree for declaration and injunction, when he has not located the suit property on the basis of any plan accompanying Exhibit A1 and even Exhibit A1 is not in the name of his father Chellian, but the same is in the name of one Chellakkan, and the same is not accompanied by any plan to locate the property claimed by the plaintiff? and

“(iii) Whether the judgments and decrees of the Courts below in the absence of sufficient evidence on the side of the plaintiff are correct and sustainable on account of the legal position that the plaintiff must succeed on the strength of his own case and not on the weakness of the case of the defendant?”



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8. Elaborating the substantial questions of law framed at the time of admission, the learned counsel for the appellant contended that the 1st respondent/plaintiff has not produced any title document to prove his title over the suit property. He submitted that Ex.A.1 M-Form notice produced by the plaintiff was not issued to the plaintiff or his father. The learned counsel further contended that the settlement proceedings under Ex.A.11, whereunder patta for Old S.Nos.5127/2 and 5127/8 was granted in the name of the plaintiff, will not bind the appellant, as he was not a party to the said proceedings. The learned counsel further submitted that the appellant had proved his title by producing his title document Ex.B.7 along with its parent documents Exs.B.1, B.3 and B.4.

9. The learned counsel for the appellant relied on the judgment in ***Chairman, Board of Trustee Vs S.Rajyalaxmi (Dead) & Ors.*** reported in ***[2019 (1) Civil Court Cases 598 (S.C.)]*** for the proposition that the plaintiff has to win or lose on his own strength. The learned counsel further relied on the decision in ***Jitendra Singh Vs State of Madhya Pradesh & Ors.*** reported in ***[LL 2021 SC 430]*** for the proposition that entry in revenue record will not confer title.



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10. Per contra, the learned counsel for respondents 2 to 8 submitted that the 1st respondent/plaintiff proved his continuous enjoyment over the suit property from the time of his father by producing Exs.A.2 to A.8. The learned counsel mainly relied on the admission made by D.W.1 that Old S.Nos.5127/2 and 5127/8 were allotted to the plaintiff. It is the contention of the learned counsel for the respondents that admission is the best evidence. The admission made by the appellant's own witness viz., D.W.1 proves the title and possession of the 1st respondent/plaintiff over Old S.Nos.5127/2 and 5127/8, relevant to R.S.No.6/1. The learned counsel also by taking this Court to Ex.A.20, correlation register submitted that Old S.Nos.5127/2 and 5127/8 were given new survey number as R.S.No.6/1, which is the suit property. The learned counsel further placed his reliance on the order passed by the Settlement Officer under Ex.A.11 and patta issued in the name of the plaintiff under Ex.A.12 in support of his contention to sustain the judgments passed by the Courts below.

11. Heard the arguments of the learned counsel for the appellant and the learned counsel for respondents 2 to 8 and perused the records and typed set of papers.



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12. It is settled law that in a suit for title, the plaintiff has to win on his own strength and he cannot rely on the weakness of the case of the defendant. In the case on hand, the 1st respondent/plaintiff had made a specific plea in the plaint that the property originally belonged to his father Chellian and upon his death, he has been in possession and enjoyment of the property. In order to prove that the suit property was enjoyed by the 1st respondent/plaintiff's father, he produced tax receipts in the name of his father under Exs.A.2 to A.8 relevant to the period from 1955 to 1969. Some of the tax receipts produced by the 1st respondent/plaintiff are not readable or legible and in some receipts, the name of the plaintiff's father was not mentioned. Ex.A.5 was a tax receipt issued in the name of the 1st respondent/plaintiff's father Chellian and it was of the year 1960. Ex.A.5 is a tax receipt standing in the name of the plaintiff's father dated 24.05.1960. It is sufficiently an old document and the same could not have been procured for the purpose of the case, which was filed in the year 1991. Ex.A.5 is a 30 years old document. It was issued in the name of the plaintiff's father wherein Old S.Nos.5127/2 and 5127/8 were mentioned. Ex.A.11 is an order passed by the Settlement Officer, which proves that



patta for S.Nos.5127/2 and 5127/8 was given to the present plaintiff.

Ex.A.12 is a patta issued in the name of the present plaintiff Challasami.

Moreover, the appellant's own witness viz., D.W.1, during the course of examination, clearly deposed that Old S.Nos.5127/2 and 5127/8 were allotted to the plaintiff Chellasamy. The relevant admission of D.W.1 in vernacular is extracted below:

“சர்வே 5127 மொத்தம் 38 சென்ட் உண்டு. அதில் நடந்த ஊறுகூர் வழக்கில் என் அப்பாவிற்ரு 1வது கண்டமாக 3 சென்ட் கிடைத்தது. என் அப்பாவுக்கு வேறு கண்டங்களில் அவகாசம் கிடையாது. 2வது கண்டமும் 8வது கண்டமும் வாதியின் தகப்பனாருக்கு கிடைத்தன.”

13. Therefore, a perusal of D.W.1's evidence make it clear that there is a clear admission on the part of the appellant's own witness that the property comprised in Old S.Nos.5127/2 and 5127/8 was allotted to the plaintiff's father. By producing Ex.A.20 correlation register, the 1st respondent/plaintiff proved that new survey number relevant to Old S.Nos.5127/2 and 5127/8 is 6/1, which is the suit property. Hence, there is a clear admission on the part of the appellant's own witness that the suit property was allotted to the plaintiff's father. This admission should be read along with documentary evidence available on record viz., Ex.A.5 tax



receipt in the name of the plaintiff's father issued in the year 1960 and Settlement Officer's order under Ex.A.11 whereunder patta was granted in the name of the plaintiff and actual patta under Ex.A.12 stands in the name of the plaintiff. Though an entry in the revenue records will not confer title to the property, in cases where properties are claimed by inheritance from ancestors, registered document may not be available in all cases. Only the revenue documents in the name of ancestor and the long enjoyment would prove the title.

14. In the case on hand, first of all, there is an admission on the part of the appellant/defendant's own witness D.W.1 that the suit property was allotted to the father of the plaintiff. The said admission coupled with revenue documents Exs.A.5, A.11 and A.12 prove the title of the plaintiff by preponderance of probabilities. There is no evidence available on record on the part of the appellant/defendant to outweigh the title proved by the plaintiff by preponderance of probabilities. The appellant/defendant traces his title under Ex.B.7. A perusal of Ex.B.7 would make it clear that under the said document, the appellant purchased only three cents in S.No.5127/1, which is not the suit property. Therefore, there is nothing on record to



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outweigh the documents produced by the 1st respondent/plaintiff to prove his title. Therefore, in the light of the discussions made above, the judgments relied on by the learned counsel for the appellant would not help him to advance his case. Accordingly, all the substantial questions of law are answered against the appellant and the second appeal fails.

15. In nutshell, (i) the second appeal is dismissed by confirming the judgments and decrees passed by both the Courts below; (ii) in the circumstances of the case, there will be no order as to costs; and (iii) connected miscellaneous petitions are closed.

23.12.2022

Index: Yes/ No
Internet: Yes

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S.SOUNTHAR, J.

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To

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

Pre-delivery Judgment made in
S.A.(MD) No.6 of 2006

23.12.2022