



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

JUDGMENT RESERVED ON : 22.11.2021

JUDGMENT PRONOUNDED ON : 05.01.2022

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

S.A. (MD)No.1229 of 2005

1.Palaniammal (died) ..Appellant/Appellant
/Plaintiff

2.Periyaswamy
3.K.Rajathi
4.P.Chandra

5.Chinnasamy @ Rajangam (died)

6.M.Panchavarnam

7.P.Chinnaponnu ...Proposed Appellants/.../..

8.Ponnuthai

9.Ranjith

10.Rajapandi

(Appellants 2 to 7 brought on record as
legal heirs of the deceased appellant
vide order dated 13.10.2019)

(Appellants 8 to 10 as suo motu impleaded
as legal heirs of the deceased 5th appellant
vide Court order dated 17.09.2021)

Vs

1.K.M.Natarajan (died) ...Respondent/Respondent
/Defendant

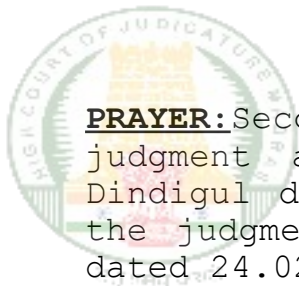
2.Santhammai

3.Sukaniya

4.Kumarappan

5.Deepika ... Proposed Respondents

(Respondents 2 to 5 are suo motu
impleaded as legal heirs of the
deceased sole respondent vide
Court order dated 17.09.2021)



PRAYER: Second Appeal is filed under Section 100 of C.P.C, against judgment and decree of the Additional District Court Cum FTC Dindigul dated 25.02.2003 in A.S.No.53 of 2000 partially modifying the judgment and decree of the District Munsif Court, Nilakkottai dated 24.02.1999 in O.S.No.202 of 1995.

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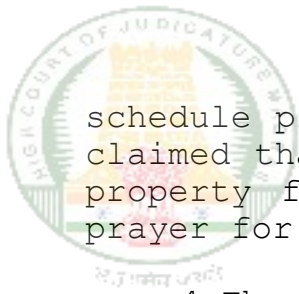
For Appellants : Mr.T.S.R.Venkat Ramana
Advocate
For R2 to R5 : Mr.PT.S.Narendravasan
Advocate

JUDGMENT

The plaintiff is the appellant.

2.The plaintiff filed O.S.No.202 of 1995 before the District Munsif Court, Nilakottai for declaration of title and permanent injunction or in the alternative for a prayer for recovery of possession with regard to the suit A and B schedule properties. The suit was dismissed by the trial Court. The plaintiff filed A.S.No.53 of 2000 on the file of the Additional District Court (FTC), Dindigul. The learned District Judge was pleased to partly allowed the appeal and granted a decree for 29 $\frac{3}{4}$ cents to the southern portion of the suit schedule property. As against the same, the present second appeal has been filed by the plaintiff.

3.The plaintiff had contended that the suit schedule property originally belonged to one Kuppan Samban and after the life time of Kuppan Samban, his three sons namely Raman, Alagumalai and Muthukaruppan have partitioned the properties among themselves. The plaintiff had further contended that the suit A schedule property was allotted in favour of Raman and B schedule property was allotted to Alagumalai. She further contended that the brothers Raman and Alagumalai had executed a registered othi deed under Exhibits A2 and A4 in favour of one Chellathayammal. Thereafter, they have redeemed the same in the year 1971 which is reflected in the endorsement made in Exhibits A2 and A4. The plaintiff further contended that the brothers Raman and Alagumalai had sold the suit schedule property in favour of the plaintiff under Exhibits A1 and A3 both dated 24.03.1970. According to the plaintiff, she has taken possession of the suit schedule property and had changed the patta in her name. The plaintiff further contended that she was forced to be away from the town when her son got implicated in a murder case. During the said period, the defendant and his vendor have created some documents encumbering the suit schedule property and have created some revenue records in their favour. In the year 1994, the plaintiff had approached the revenue authorities for rectifying the revenue records, but there was no response. In the year 1995, the defendant attempted to prevent the plaintiff from enjoying the suit



schedule property. Since the defendant in his written statement has claimed that he is in possession and enjoyment of the suit schedule property from 15.03.1991, the plaintiff had sought an alternative prayer for recovery of possession from the defendant.

4.The defendant filed a written statement contending that the suit schedule property was never owned by Kuppan Samban. On the other hand, the suit schedule property originally belonged to the family of one Alagumalai, Son of Solaimalai. According to the defendant, Alagumalai's son Ramasamy had executed a registered sale deed under Exhibit B1 dated 15.03.1991 for an extent of 71 $\frac{3}{4}$ cents. Based upon the said sale deed, the defendant has mutated the revenue records under Exhibit B3 and paid tax under Exhibits B6 to B10. According to the defendant, the plaintiff is not in possession of the suit schedule property and the plaintiff has purchased some lands with false description from the persons who have no right over the suit schedule property.

5.The trial Court after considering Exhibits A5 and A6, arrived at a finding that the plaintiff has not proved her possession from the year 1970 onwards. The plaintiff has not produced any revenue records pertaining to the possession of the suit schedule property. The trial Court also arrived at a finding that the defendant has disputed the description of the suit schedule property in his written statement. In view of the said objection, the plaintiff ought to have prayed for appointment of Advocate Commissioner to establish the lie and location of the suit schedule property. Since the plaintiff has not established the four boundaries and correlation of the suit survey number with the present survey number, the plaintiff is not entitled to a decree for declaration of title. The trial Court also arrived at a finding that Exhibit B11 refers to the fact that the vendor of the defendant is also one of the family members of Kuppan Samban. The trial Court also arrived at a finding that the plaintiff has approached the Court after a period of 24 years from the date of Exhibits A1 and A3 and hence, the present suit is barred by limitation.

6.The First Appellate Court considered the written statement filed by the defendant wherein in paragraph No.4, the defendant has admitted that Survey No.4/1 has been sub-divided into 4/1A having an extent of 71 $\frac{3}{4}$ cents and Survey No.4/1B with remaining extent and Survey No.4/1B has been allotted to the plaintiff. Based upon the said admission in the written statement, the First Appellate Court modified the decree granted by the trial Court. The First Appellate Court granted a decree for southern 29 $\frac{3}{4}$ cents in suit survey number in favour of the plaintiff excluding northern 72 $\frac{3}{4}$ cents. Aggrieved over the same, the plaintiff has filed the present second appeal.

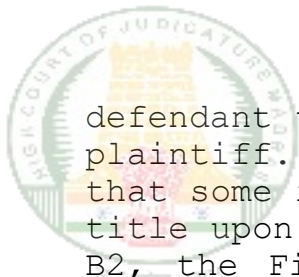
7.The second appeal has been admitted on the following substantial question of law:



"1.Having found that the property belonged to Kuppan Samban, the father of appellant's vendor, whether the lower Appellate court was right in not decreeing the suit in full?

2.Is not respondent/defendant estopped from saying that the suit property did not belong to Kuppan Samban in view of Exhibit A5, A6, B2, B4 to B7 all stand for patta 228 which belong to Kuppan Samban and can be allowed to plead against his own document?

8.The learned counsel for the appellants contended that the suit schedule property originally belonged to one Kuppan Samban. He died leaving behind his three sons namely Raman, Alagumalai and Muthukaruppan who partitioned the property among themselves. As per the said partition, the suit A schedule property was allotted to the share of Raman having an extent of 54 ½ cents in Survey No.4 and suit B schedule property was allotted to the share of Alagumalai having an extent of 54 ½ cents in the same survey number. The brothers Raman and Alagumalai have executed a registered othi deed in favour of one Chellathayammal under Exhibits A2 and A4 on 24.03.1967. The said mortgage have been redeemed in the year 1971 which is reflected in the endorsement made in Exhibits A2 and A4. The learned counsel further contended that the brothers Raman and Alagumalai have executed a registered sale deed under Exhibits A1 and A3 on 24.03.1970 in favour of the plaintiff each for an extent of 54 ½ cents. According to the learned counsel of the appellants, the plaintiff had mutated the revenue records and is in enjoyment of the suit schedule property. But in the year 1991, the plaintiff's son was implicated in a murder case and she was forced to be away from the Town. During the said period, one Ramasamy, S/o.Alagumalai had got his name inserted into the patta that was standing solely in the name of Kuppan Samban. Based upon the said joint patta, the said Ramasamy had executed a registered sale deed under Exhibit B1 on 15.03.1991 in favour of the defendant. Based upon the said sale deeds, the defendant had started mutation of the revenue records in his name and attempted to disturb possession of the plaintiff. The learned counsel for the appellants further contended that the First Appellate Court having arrived at a finding that the plaintiff is the absolute owner of the suit schedule property on the basis of Exhibits A1 and A2, ought to have decreed the suit as prayed for. The learned counsel further contended that the defendant has not produced any document with regard to the ownership of Ramasamy except joint patta under Exhibit B2 along with Kuppan Samban. The defendant has not produced any document that is anterior to Exhibit B2 dated 01.06.1989. Except a vague plea that the suit schedule property is the ancestral property of Ramasamy, no other registered document or revenue records has been produced to establish the title or possession of the said Ramasamy or his father Alagumalai. When the defendant has not established his title, the First Appellate Court ought not to have excluded the extent purchased by the first



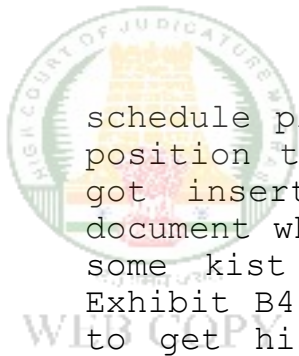
defendant under Exhibit B1 while granting a decree in favour of the plaintiff. The learned counsel for the appellant further contended that some interpolation made in the revenue records would not confer title upon the defendant's vendor. Just relying upon Exhibits B1 and B2, the First Appellate Court so liberal in excluding 72 $\frac{3}{4}$ cents said to have been purchased by the defendant. The learned counsel for the appellant further contended that by granting a decree for 29 $\frac{3}{4}$ cents in favour of the plaintiff, the First Appellate court has literally rejected the claim of the defendant that they have acquired title by adverse possession.

9. According to the learned counsel for the appellants, when the plaintiff has established her title and possession over the entire extent of the suit schedule property, the First Appellate Court erred in restricting the decree to an extent of 29 $\frac{3}{4}$ cents.

10. Per contra, the learned counsel for the respondents contended that the suit schedule properties are the ancestral properties of one Solaimalai and the said suit schedule properties devolved upon his Son Alagumalai and after the death of Alagumalai, it devolved upon his son Ramasamy who is the vendor of the defendant under Exhibit B1. The learned counsel further contended that under Exhibit B2, a joint patta has been granted on 01.06.1989 in favour of Kuppan Samban and his vendor Ramasamy for Survey Nos.4/1 and 4/2. Based upon the said joint patta, Ramasamy had executed a registered sale deed under Exhibit B1 on 15.03.1991 in favour of the defendant. He further contended that Exhibit B4 is the anterior document which is kist receipt standing in the name of his vendor. Exhibit B3 is the patta granted in favour of the defendant after his purchase. According to the defendant, he has paid tax under Exhibits B6 to B10. The learned counsel further contended that if really the plaintiff has purchased the suit schedule property in the year 1970, she would not have kept quiet till 1995 without seeking mutation for revenue records in her name. This will clearly disclose that the plaintiff is not in possession of the suit schedule property. Hence, he prayed for dismissal of the second appeal.

11. I have carefully considered the submissions on either side.

12. Exhibits A2 and A4 mortgage deeds are of the year 1967 said to have been executed by the brothers namely Raman and Alagumalai who are the sons of Kuppan Samban. These documents were not been disputed by the defendant. The said brothers have executed Exhibits A1 and A3 sale deeds in favour of the plaintiff on 24.03.1970 each for an extent of 54 $\frac{1}{2}$ cents in Survey No.4. The plaintiff has produced Exhibit A5, Adangal for the fasli year 1397 reflecting the name of Kuppan Samban and also filed Exhibit A6 Chitta for the fasli year 1392 standing in the name of Kuppan Samban. Exhibit B2 is a joint patta issued in the name of Kuppan Samban and the defendant's vendor Ramasamy for Survey Nos.4/1 and 4/2. Hence, the contention of

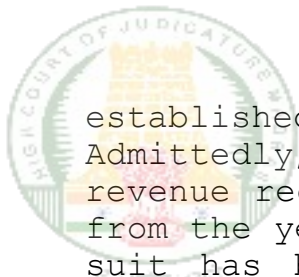


schedule property is factually incorrect. The defendant is not in a position to prove how the name of the defendant's vendor Ramasamy got inserted in the patta along with Kuppan Samban. The only document which stands in the name of Ramasamy prior to Exhibit B4 is some kist receipt for fasli year 1397 dated 17.04.1988. Except Exhibit B4 kist receipt, the defendant's vendor has no other reason to get his name entered into the joint patta along with Kuppan Samban. The defendant has not pleaded or produced any registered document to establish the title or possession of his vendor Ramasamy or Ramasamy's father Alagumalai. These facts will clearly indicate that the plaintiff is the absolute owner of the suit schedule property based upon Exhibits A1 to A4 and the defendant has not proved or traced his title through Ramasamy or Alagumalai. In fact, the First Appellate Court has arrived at a finding that the plaintiff has established her title based on Exhibits A1 and A3 sale deeds.

13.The defendant in his written statement has specifically pleaded that the said Kuppan Samban is no way connected with the suit schedule property but the suit schedule properties are ancestral properties of one Alagumalai, S/o.Solaimalai. But the defendant has not produced any document to establish the right of Alagumalai or Solaimalai. The defendant has just produced Exhibit B4 kist receipt dated 17.04.1988 as the anterior document to Exhibit B2 joint patta dated 01.06.1989. Except Exhibits B2 and B4, all other documents are after Exhibit B2 patta. Except the kist receipt issued by the revenue authorities, the defendant is not in a position to establish his title to the suit schedule property. In fact, in paragraph No.4 of the written statement, the defendant has admitted that Survey No.4/1 has been sub-divided into 4/1A belonging to the defendant and 4/1B belonging to the plaintiff. The defendant claims that Survey No.4/1A is having an extent of 72 $\frac{3}{4}$ cents and 4/1B is having an extent of 29 $\frac{3}{4}$ cents. Totally an extent of 1 acre and 2 $\frac{1}{2}$ cents which is actual extent of A and B schedules put together.

14.As discussed earlier, the defendant has not established his title over the suit schedule property except producing some revenue records. On the other hand, the plaintiff has established his title over the suit schedule property by producing Exhibits A1 to A4. The defendant in his written statement has not pleaded adverse possession, in fact the defendant has admitted the title of the plaintiff to an extent of 29 $\frac{3}{4}$ cents in the suit schedule property. When the plaintiff has established his title to the suit schedule property and the defendant has not pleaded adverse possession over the suit schedule property, the plaintiff is entitled to a decree for declaration of title for the entire extent.

15.The First Appellate Court has partly decreed the suit of the plaintiff with regard to 29 $\frac{3}{4}$ cents excluding the alleged purchase made by the defendant for 72 $\frac{3}{4}$ cents. This Court has already come to the conclusion that the defendant has not traced his title or



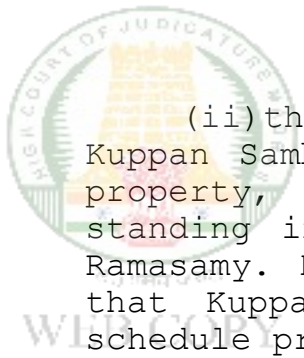
established his title over 72 $\frac{3}{4}$ cents in the suit schedule property. Admittedly, the suit schedule properties are vacant site. The revenue records produced on the said of the defendant, emanate only from the year 1988 under Exhibit B4 and not before that. The present suit has been filed on 31.08.1995. Hence, the defendant has not acquired title by adverse possession. On the other hand, the plaintiff has produced Exhibit A5 which is Adangal account standing in the name of Kuppan Samban for the fasli year 1397 relating to Calender year 1987. The plaintiff has also produced Exhibit A6 chitta for the fasli year 1392 relating to the Calender year 1982. These two documents will establish the possession of the plaintiff over the suit schedule property. When Adangal account and Chitta were standing in the name of Kuppan Samban in the year 1987 and 1982 respectively, without notice or enquiry, the defendant's vendor name has been included in the patta along with Kuppan Samban on 01.06.1989 under Exhibit B2 which has resulted in series of mutations on the side of the defendant. The learned counsel for the appellant has relied upon a judgment of the Hon'ble Supreme Court reported in **AIR 1997 SC 2089** in Paragraph No.16 has held as follows:

"16.... Entries in revenue records is the paradise of the patwari and the tiller of the soil is rarely concerned with the same. So long as his possession and enjoyment is not interdicted by due process and course of law, he is least concerned with entries. It is common knowledge in rural India that a raiyat always regards the lands he ploughs, as his dominion and generally obeys, with moral fiber the command of the intermediary so long as his possession is not disturbed. Therefore, creation of records is a camouflage to defeat just and legal right or claim and interest of the raiyat, the tiller of the soil on whom the Act confers title to the land he tills"

16.In view of the above said judgment, as long as the plaintiff is in possession of the suit schedule property and the same has not been disturbed by the defendant, creation of certain records by the defendant would not confer any title or right of possession on the defendant. Hence, this Court can safely come to a conclusion that the plaintiff has proved her possession over the suit schedule property.

17.In view of the above discussion, the substantial questions of law are answered as follows:

i)after having arrived at a finding that the suit schedule properties are owned by the plaintiff based on Exhibits A1 and A3, the First Appellate Court had grossly erred in not granting a decree for entire extent wrongly relying upon Exhibit B1 sale deed which is invalid in the eye of law.



(ii)the defendant had pleaded in the written statement that the Kuppan Samban has no connection whatsoever with the suit schedule property, but has chosen to produce Exhibit B2, a joint patta standing in the name of Kuppan Samban and the defendant's vendor Ramasamy. Hence, the defendant is clearly estopped from contending that Kuppan Samban has no connection whatsoever with the suit schedule property.

18.In view of the above said discussion, the judgment and decree of the Courts below are set aside. Both the substantial questions of law are answered in favour of the appellants. The plaintiff is entitled to a decree for declaration of title and permanent injunction with regard to the suit schedule properties. The second appeal stands allowed. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

msa

To

1.The Additional District Judge (FTC)
Dindigul

2.The District Munsif,
Nilakkottai

COPY TO:-

The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court, Madurai. (2 Copies)

+1 CC to M/s.T.S.R.VENKAT RAMANA, Advocate (SR-306[F]
dated 05/01/2022)

+1 CC to M/s.PT.S.NARENDRAVASAN, Advocate (SR-485[F]
dated 05/01/2022)

Judgment made in
S.A(MD) .No.1229 of 2005
05.01.2022

VR(CO)
GC(18.02.2022) 8P 7C