



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

JUDGMENT RESERVED ON : 21.02.2022

JUDGMENT PRONOUNDED ON : 23.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

S.A. (MD) .No.311 of 2019

and

CMP (MD) .No.6309 of 2019

WEB COPY

1.P.Appasamy

2.P.Sankaran

3.P.Murugan

4.Rajeswari

...Appellants/Appellants/Plaintiffs

Vs

1.State of Tamil Nadu
represented by its
District Collector
Collectorate Office
Tuticorin District

2.The Tahsildar
Beach Road
Trichendur Taluk
Tuticorin District

3.Arulmigu Mutharamman Temple
Represented by its Executive Officer
Kulasekarapattinam
Trichendur Taluk
Tuticorin District

...Respondents/Respondents/Defendants

PRAYER : Second Appeal is filed under Section 100 of C.P.C, against the judgment and decree passed in A.S.No.32 of 2017 dated 14.09.2018 on the file of the Sub Court, Trichendur confirming the judgment and decree passed in O.S.No.1192 of 1995 dated 23.03.2010 on the file of the Additional District Munsif Court, Trichendur.

For Appellants : Mr.S.Kumar

For R3 : Mr.M.Muthugeethayan

For R1 & R2 : MR.G.Sivaraj
Government Advocate



JUDGMENT

The plaintiffs are the appellants.

2.The plaintiffs filed O.S.1192 of 1995 before the Additional District Munsif Court, Trichendur for declaration of title over the suit schedule property and for consequential injunction restraining the third defendant from disturbing the possession of the plaintiffs of the second schedule property. They further prayed for mandatory injunction for grant of manaivari patta for the entire first schedule property. The suit was dismissed by the trial Court. The plaintiffs filed A.S.No.32 of 2017 before the Sub Court, Trichendur. The learned appellate Judge on independent assessment of the oral and documentary evidence, dismissed the appeal. As against the concurrent findings, the plaintiffs have filed the above second appeal.

3.The plaintiffs had contended that the suit schedule properties were originally owned by one Ramasamy Asari who is a Court auction purchaser. The said legal heirs of the Ramasamy Asari have executed a sale deed under Exhibit A3 dated 24.09.1943 in favour of one Sornathammal. The legal heirs of the said Sornathammal have executed a registered sale deed under Exhibit A4 on 16.06.1961 in favour of one Chinnakannu Asari. The Chinnakannu Asari had executed a registered sale deed in favour of the plaintiffs' father under Exhibit A1 on 29.04.1985. According to the plaintiffs, they are in possession of the entire first schedule property. The second schedule property is the eastern portion of the first schedule property. The plaintiffs had contended that the entire suit schedule properties and other properties were originally natham properties. The second defendant in the suit had issued a patta for the entire extent of the first schedule property originally. Thereafter, the said patta was cancelled and new patta was issued with a reduced extent. The reduced extent is shown as the second schedule property which is now alleged to be classified as a pathway. Hence, he prayed for declaration of title and consequential injunction over the suit schedule properties.

4.The revenue authorities namely defendants 1 and 2 have filed a written statement admitting that the old Survey No.186/1 of Kulasekarapatinam is classified as a natham. According to the defendants, the Special Tahsildhar (Natham settlement) has conducted settlement proceedings and patta was granted to Survey No.582/24 in favour of the plaintiffs. Thereafter, by proceedings dated 18.08.1995, the extent of patta was reduced from 0.01.60 hectare to 0.01.44 hectare and the reduced portion was classified as a pathway and a new sub division was assigned as 582/27. Hence, the defendants contended that the plaintiffs cannot make a claim over the pathway. The third defendant has also filed a written statement disputing the claim of the plaintiffs.



5.The trial Court on consideration of the oral and documentary evidence arrived at a finding that the plaintiffs have not established their title over the second schedule property and hence, dismissed the suit.

6.The First Appellate Court considering the boundary recital in each of the documents arrived at a finding that Exhibit A3 document reflects the lesser extent of north-south measurement, but a larger north-south measurement has been sold in favour of the plaintiffs' vendor under Exhibit A4. The same higher measurement is carried out in Exhibit A1 sale deed also. Hence, the First Appellate Court arrived at a finding that the plaintiffs have not established how they are entitled to a larger extent than found in Exhibit A3, the parent document. The First Appellate Court also arrived at a finding that the plaintiffs have not proved how the larger extent given in the original patta was reduced to a lesser extent in a fresh patta. Based upon the independent consideration of the oral and documentary evidence, dismissed the appeal. As against the same, the present second appeal has been filed.

7.The second appeal is admitted on the following substantial questions of law:

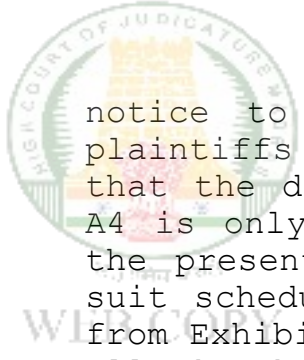
"(i)Whether the Courts below were right in appreciating Exhibits A1 to A4 properly?

(ii)Whether the Courts below were right in not granting a lesser relief to the plaintiff as contemplated under Order 7 Rule 7 C.P.C?

(ii)Whether the First Appellate Court is right in holding the suit is bad for non-joinder of parties when the sister of the plaintiff is shown as one of the defendants in the suit?"

8.The learned counsel for the appellants contended that the trial Court as well as the First Appellate Court have not properly appreciated the title deeds filed on the side of the plaintiffs from Exhibits A1 to A4. He further contended that the revenue authorities have admitted in their written statement that the suit schedule properties are natham properties. Hence, the patta should have been granted based upon the extent of occupation. When the plaintiffs have established their title through Exhibits A1 to A4, the defendants cannot contend that they will grant patta for a lesser extent. He further contended that during the settlement proceedings, they were granted patta for an extent of 0.01.60 hectare in the year 1987. But suddenly, the defendants 1 and 2 without conducting any enquiry or giving an opportunity to the plaintiffs, reduced the extent to 0.01.44 hectare by proceedings dated 18.8.1995.

9.The reduced extent was given a new subdivision as Survey No.582/27 and it was classified as a pathway. The reclassification of a portion of property done by the revenue authorities without

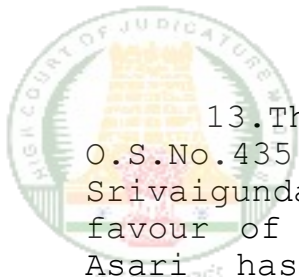


notice to the plaintiffs will not take away the title of the plaintiffs over the first schedule property. He further contended that the discrepancy in the measurement is between Exhibits A3 and A4 is only with regard to north-south measurement. The dispute in the present suit is relating only to east-west measurement of the suit schedule properties. The Courts below have failed to see that from Exhibit A2 of the year 1935 till exhibit A1 of the year 1985 in all the documents, east-west measurements is shown as 60 carpenter cubic feet without any change. According to the learned counsel for the appellants, the First Appellate court without considering the east-west measurement, which is the bone of contention between the parties, has relied upon the discrepancy in the north-south measurement and erroneously non-suited the plaintiff.

10.The learned counsel for the appellants further contended that the First Appellate Court has erroneously arrived at a finding that the plaintiffs have not produced any document to show the reduction in extent while issuing a fresh patta in the year 1995. In fact, the reduction of extent has been admitted even in para No.4 of the written statement filed by the defendants 1 and 2. When the plaintiff established their right title and possession over east-west measurement of 60 carpenter cubic feet from the year 1935 onwards, the defendants 1 and 2 cannot rely upon a subdivision made by them in the year 1998 to contend that the new subdivision 582/27 is a pathway. Hence, he prayed for allowing the second appeal.

11.Per contra, the learned counsel for the respondents contended that under Natham Settlement Scheme, patta is being issued only based upon the extent of possession of a party. Since the plaintiff had possession only for a lesser extent, he was granted patta to an extent of 0.01.44 hectare. Hence, the plaintiffs cannot rely upon a patta that was issued on an earlier occasion based upon an erroneous extent of possession of the plaintiffs. The case of the plaintiffs that attempt is being made to remove a shop in the second schedule property is absolutely false on the ground that the defendants have admitted in their written statement that the shop is located within the Natham patta granted by the Government for Survey No.582/24. Since 582/27 has been classified as a pathway, the plaintiffs cannot make a claim over the said subdivision and hence, the plaintiffs are not entitled for any right over the second schedule property which is alleged to be the eastern portion of the first schedule property. He further contended that the trial Court as well as the First Appellate Court have concurrently found that the plaintiffs are not entitled to a decree for declaration of title and permanent injunction and hence, this Court may not exercise the Power under Section 100 of C.P.C. Hence, he prayed for dismissal of the second appeal.

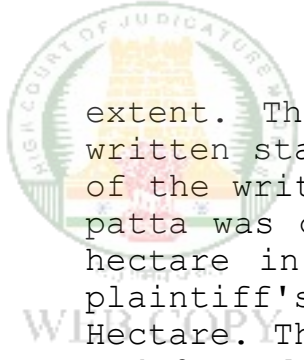
12.I have considered the submission made on either side.



13.The suit schedule properties have been subject matter of O.S.No.435 of 1930 on the file of the District Munsif Court, Srivaigundam. In the said suit, there was an order of delivery in favour of one Ramasamy Asari under Exhibit A2. The said Ramasamy Asari has taken delivery of the suit schedule property on 11.02.1935. The said Exhibit A2 delivery note reflects the east-west measurement of the suit schedule property as 60 carpenter cubic feet and north-south measurement as 5 $\frac{1}{4}$ carpenter cubic feet. Thereafter, the legal heirs of the said Ramasamy Asari have alienated the suit schedule property in favour of one Sornathammal under Exhibit A3 dated 24.09.1943. Even under the said document, the east-west measurement and the north-south remains same. Thereafter, the legal heirs of the Sornathammal have executed a registered settlement deed in favour of one Chinnakannu Asari under Exhibit A4 dated 16.06.1961. In the said document, the east-west is shown as 60 carpenter cubic feet and north-south measurement of 5 $\frac{3}{4}$ carpenter cubic feet excluding 12/24 carpenter cubic feet of north-south measurement. Thereafter, the said Chinnakannu has executed a registered sale deed in favour of the plaintiffs' father under Exhibit A1 dated 29.04.1985. In the said document, the east-west is maintained at 60 carpenter cubic feet, but north-south measurement is 5 $\frac{3}{4}$ carpenter cubic feet without excluding 12/24 carpenter cubic feet which is owned by one Shanmugam Asari.

14.The reduction in the north-south measurement made in Exhibits A4 is not reflected in Exhibit A1 sale deed under which the plaintiffs' father has purchased the suit schedule property. This discrepancy with regard to the north-south measurement has been found fault with by the First Appellate court to non-suit the plaintiffs. Any shortage or reduction in the north-south measurement is not going to alter the east-west measurement of the suit schedule property which is being maintained as 60 carpenters cubic feet right from the year 1935 onwards. The dispute in the present suit is only with regard to the east-west measurement and there is no dispute with regard to the north-south measurement of the suit schedule property. In fact, according to the plaintiffs, the second schedule is the eastern portion of the first schedule property. The defendants have also not questioned the north-south measurement of the plaintiffs in their written statement. The said discrepancy in the north-south measurement with regard to the reduction of north-south measurement, would not in any way materially affect the case of the plaintiffs from claiming declaration of title and consequential injunction. The First Appellate Court could have very well granted a decree for a lesser extent in the north-south measurement instead of non-suiting the plaintiffs for the entire extent of the suit schedule properties.

15.The First Appellate Court has also arrived at a finding that the plaintiffs have not established that originally for a larger extent, patta was granted in favour of the plaintiffs, but later a



extent. The First Appellate court has not carefully analyzed the written statement filed by the defendants 1 and 2. In paragraph No.4 of the written statement, it has been specifically admitted that the patta was originally issued in favour of the plaintiffs for 0.01.60 hectare in the year 1987 and by proceedings dated 18.08.1995, the plaintiff's enjoyment over the site was corrected as 0.01.44 Hectare. The averments in the written statements of the defendants 1 and 2 would make it clear that the plaintiffs were granted a patta for a larger extent during the Natham settlement proceedings, but later in the year 1995, a fresh patta was issued for a lesser extent. The extent reduced from patta of the plaintiffs has been assigned Survey No.582/27 and reclassified as pathway. Admittedly, this reduction in the extent has not been carried out after giving notice to the plaintiffs or conducting any enquiry. Any subdivision made by the revenue authorities would only be a self serving document, if they are not made after giving due notice to the person affected by the said subdivision.

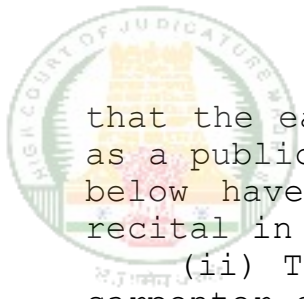
16. In the present case, the plaintiffs have suffered reduction in the extent of property. All the more, it is required, the revenue authorities have subdivided or reduced the extent only after giving notice to the aggrieved parties. It is seen from the written statement of the defendants 1 and 2, the proceedings dated 18.08.1995 are relied upon by the defendants to claim that the eastern portion of the first schedule property is a pathway. The western boundary in all the documents filed by the plaintiffs namely Exhibits A1 to A4 are shown as public road. Hence, it is evident that in order to widen the road, defendants 1 and 2 have made this attempt of creating a subdivision out of a patta land and converted it as a pathway. Hence, the reclassification of the year 1995 and reduction in extent made in the said proceedings could not be relied upon by the defendants to non-suit the plaintiff. The third defendant is not making any claim over the suit schedule property except contending that it is a pathway.

17. In view of the above said discussion, this Court can safely come to a conclusion that excluding half carpenter cubic feet in the north-south measurement and for the east-west measurement of 60 carpenters cubic feet, the plaintiffs will be entitled to a decree as prayed for.

18. In short, the plaintiffs will be entitled to a decree for north-south measurement of 5 $\frac{1}{4}$ carpenter cubic feet and east-west measurement of 60 carpenter cubic feet in the first schedule property.

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

(i) The Courts below have not considered the fact that the east-west measurement is maintained at 60 carpenter cubic feet from the



that the eastern boundary of the plaintiffs' property is maintained as a public road right from the year 1935 onwards. Hence, the Courts below have not properly appreciated the measurement and boundary recital in Exhibits A1 to A4.

(ii) The plaintiffs have prayed for east-west measurement of 60 carpenter cubic feet and north-south measurement $5\frac{3}{4}$ carpenter cubic feet. This Court has arrived at a finding that the plaintiffs are not entitled to north-south measurement of $5\frac{3}{4}$ carpenter cubic feet, but only to an extent of $5\frac{1}{4}$ carpenter cubic feet. Under Order 7 Rule 7 of C.P.C, the Court is empowered to grant a lesser relief than what was prayed by the plaintiffs. Hence, this Court can grant a decree for north-south measurement of $5\frac{1}{4}$ carpenter cubic feet instead of $5\frac{3}{4}$ carpenter cubic feet as prayed for by the plaintiffs.

(iii) The plaintiffs' sister has already been impleaded as fourth plaintiff in the suit and the mother of the plaintiffs has not evinced any interest in the suit schedule property and any decree in favour of the plaintiffs will also enure to the benefit of the legal heirs of the Poonampallam Pillai. The First Appellate Court was not right in holding that that the suit is not bad for non joinder of parties.

20. In view of the above said discussion, all the substantial questions of law are answered in favour of the plaintiffs. The judgement and decree of the Courts below are set aside. The second appeal is allowed. The plaintiffs shall be entitled to a decree for east-west measurement of 60 carpenters cubic feet from the west of the public road and north-south measurement of $5\frac{1}{4}$ carpenters cubic feet in the first schedule property. The authorities shall maintain the public road, free from any encroachment. No costs. Consequently, connected, miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

msa

To

1. The Subordinate Judge,
Trichendur

2. The Additional District Munsif
Trichendur



3.The Section Officer
V.R.Section
Madurai Bench of Madras High Court
Madurai (2 copies)

+1 CC to M/s.M.MUTHU GEETHAYAN, Advocate (SR-8216[F] dated 23/02/2022)

+1 CC to M/s.S.KUMAR, Advocate (SR-8519[F] dated 24/02/2022)

+1 CC to M/s.SPL GP (SR-8767[F] dated 25/02/2022)

S.A. (MD) .No.311 of 2019
and
CMP (MD) .No.6309 of 2019
23.02.2022

RK(08/03/2022) 8P 8C