



S.A.(MD)No.212 of 2010

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 01.09.2022

CORAM: JUSTICE N.SESHASAYEE

S.A(MD).No.212 of 2010
and C.M.P(MD)Nos.6669, 6670 and 3943 of 2022

- 1.R.M.Arumugam (Died)
- 2.Selvameenal
- 3.Annadurai
- 4.Chellapandian
- 5.Thamilarasi
- 6.Malaiselvi
- 7.Valarmathi
- 8,Muthu

... Appellants/Appellants/lrs of Defendant

(Sole appellant died. Memo recorded, Vide order dated
4.10.2010 made in SA(MD)No.212 of 2010)

(Appellants 2 to 8 are brought on record as lrs of the
deceased sole appellant Vide Court order dated
07.03.2022 made in CMP(MD)Nos.1850, 1852,
and 1853 of 2022 in SA(MD)No.212 of 2010)

Vs

- 1.D.Chandrasekaran ...Respondent/Respondent/Plaintiff
- 2.The State of Tamil Nadu,
Rep. By the District Collector,Sivagangai. ..2nd Respondent

(2nd Respondent is *suo moto* impleaded as per order



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dated 28.07.2022 made in SA(MD)No.212 of 2010)

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Prayer : Second Appeal is filed under Section 100 of Code of Civil Procedure, against the judgment and decree dated 08.02.2006 in A.S.No.35 of 2004 on the file of the Subordinate Court, Devakottai, confirming the judgement and decree dated 29.03.2004 in O.S.No.22 of 2001 on the file of the District Munsif cum Judicial Magistrate, Karaikudi.

For A2 to A8	: Mr.A.V.Arun Mr.C.Meenakshi Rama Prabu
For R1	: M/s.M.Rajeswari
For R2	: Mrs.Christy Theboral Additional Government Pleader

JUDGMENT

The first defendant in a suit for declaration of title and injunction is the appellant. The suit came to be decreed by the trial court which was later confirmed by the First Appellate Court. After his demise, his legal heirs were impleaded in this appeal. For narrative convenience, the parties are referred to by their rank before the trial court.

2. The case of the plaintiff is that the property measuring 7.03 acres in Sy.No:



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883 originally belonged to the Government. In the settlement proceedings under the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948 (Tamil Nadu Act 26 of 1948), it was settled in the name of plaintiff's father and one Palanichamy Servai, but it was later cancelled by the Government and classified the property as assessed waste. However, the plaintiff's mother Pappammal was in possession and enjoyment of 4.05 acres in S.No. 883, and hence this property was assigned to her and patta was granted to her by the Tahsildar, Karaikudi, after necessary approval from RDO, Devakottai. This 4.05 acres was sub-divided and was brought under Sy. No.883/1. This is the suit property here. The further case of the plaintiff is that:

- A certain Sornakalai, cousin of the plaintiff, had filed a partition suit in O.S. No.12 of 1989 against the plaintiff's father and the 1st defendant for his 1/3rd share in the family properties after issuing a pre-suit notice for the purpose. It was responded to with a reply notice from the plaintiff's father wherein he had disclosed the assignment to plaintiff's mother, and thereafter no claim was made to the suit property by Sornakalai in O.S. No.12 of 1989.
- The plaintiff's mother died in the year 1982 and subsequently plaintiff was



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in possession and enjoyment of the suit property. While so, in 1987, the 1st defendant clandestinely transferred the patta of the suit property to his name. When this fact came to his knowledge, the plaintiff preferred a petition to Tahsildar, and by an order dated 22.11.1995, the status quo ante was restored and the plaintiff was re-issued patta. Challenging this order of the Tahsildar, the defendants preferred an appeal to the RDO, Devakottai, and he vide his proceedings dated 24.05.1999 remanded the matter back to Tahsildar. As a result a fresh enquiry was conducted yet again and an order was passed again in favour of the plaintiff on 27.03.2000. The defendants then preferred an appeal to the Sub-Collector, Devakottai who however, reversed the order of the RDO, and passed an order in favour of the defendants.

- The suit property is not an ancestral property of Ramasamy Servai and is not liable for sub-division. Indeed the defendants did not disclose the fact that Sy. No. 883 was sub-divided after assignment made to plaintiff's mother.

It is in these circumstances, the plaintiff has laid the suit for declaration of his title and for other ancillary reliefs.



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3. In his written statement, the first defendant has pleaded:

- The suit property was never in the names of plaintiff's father and Palanichamy Servai nor was in their possession, nor was the suit property ever assigned to plaintiff's mother.
- The suit property was ancestrally in the possession of the defendants. There was never a sub-division of Sy.No:883. While so, on 23.05.1985 there was a family partition among the plaintiff's father and the first defendant, in which the property in question was allotted to the share of the first defendant, and that there was subsequent patta transfer in his name. Ever since, the defendants have been in continuous possession of the suit property and has been paying the tax. The 1st defendant's sons for a period 1995 to 1996, has obtained loan for the suit property from a cooperative bank and does farming there. Relying on those documents presented by them before the Sub-collector, he has granted patta to one Selvapandian, Annadurai and Muthu based on possession. They are the necessary parties to the suit, however without impleading them, the relief prayed by the plaintiff cannot be granted.



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- Patta to the property was granted to the plaintiff without due enquiry by the Tahsildar, and hence he appealed to the RDO, Devakottai, and the matter was remanded back to the Tahsildar. On a fresh enquiry, order was passed again in the favour of the plaintiff's mother without probing the 1st defendant who has been issued the patta during UDR. Aggrieved by that order, the first defendant made an application to the Sub-Collector, Karaikudi who cancelled the patta issued in favour of the plaintiff mother and granted patta in the name of the 1st defendant. The plaintiff has instituted this suit by concealing these facts.
- The defendant states that there is no merit in the suit and the plaintiff has not valued the suit properly. Hence, the plaintiff is not entitled to any reliefs and the suit has to be dismissed with cost.

4. The dispute went to trial and before the trial Court, both sides adduced oral and documentary evidence. For the plaintiffs, the plaintiff examined Sornakalai as P.W.2 and also an independent witness as P.W.1 and they have produced Ext.A.1 to Ext.A.10. For the defendants, the first defendant entered the box and deposed as D.W.2 and he also examined three other independent witnesses as D.W.1, D.W.



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3 and D.W.4, and they have produced Ext.B.1 to Ext.B.8.

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5. The trial Court upon appreciation of evidence and records before it, granted a decree for declaration of title and permanent injunction. Aggrieved by the decree of the trial Court, the defendants preferred a first appeal in A.S.No.35/2004 before the Sub Court, Devakottai. The appellate Court concurred with the findings of the trial Court and dismissed the first appeal. Hence, the present second appeal at the instance of the defendants.

6. This Second Appeal is admitted for considering the following substantial questions of law:

- i) Were not the Courts below egregiously erred in presuming title in favour of the plaintiff's mother when the alleged assignment document dated 30.04.1964 was not produced by the plaintiff?*
- ii) Were not the Courts below erred in not drawing an adverse inference against the plaintiff in not producing the assignment document dated 30.04.1964?*
- iii) When the plaintiff claims title based on an assignment made by the Government, and also feels aggrieved over grant of patta to*



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the second defendant under Ext.A-9, can the plaintiff sustain the suit for declaration of title without challenging Ext.A.9?

iv) Inasmuch as patta was granted under Ext.A.9 to more persons other than the second defendant, is not the suit bad for non-joinder of necessary parties? And

v) Were not the courts below erred in not taking on file the list of partition dated 23.05.1985?

7. Heard both sides. The learned counsel for the appellants/defendants submitted that:

- The positive case of the plaintiff is that his mother Pappammal was assigned 4.05 acres in S.No.883/1. This assignment deed was not marked. However, the plaintiff had produced Ext.A.1 settlement land register extract, which shows that this property stands in the name of Pappammal, but this is opposed as *post litem motam* document and it cannot be relied on. The source of entry for Ext.A.1 SLR is the original assignment document and that has not been produced.

8. During the pendency of the appeal, the plaintiff had taken return of all the



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documents that he had produced before the courts below, and pursuant to the direction of this Court, only few of those documents were produced but the critical Ext.A.1 was not produced. During the early part of the hearing of this appeal, the plaintiff did not participate in this appeal to ascertain the facts relating to the title of the parties. Therefore, this Court *suo moto* impleaded the State of Tamilnadu, represented by the District Collector, Sivagangai District as the second defendant/second respondent. Mrs.Christy Theobral, the Additional Government Pleader has entered appearance for the Government.

9. The learned Additional Government Pleader had since filed a status report but the entries therein are essentially based on the proceedings of the revenue authorities covered under Ext.A.6 to Ext.A.9. What is important in this case is that the State had to now file its written statement, and also should make a positive statement as to whether it assigned any land to Pappammal.

10. While the burden is on the plaintiff, the court below literally shifted the burden on the defendants and it requires to be corrected. To prove the suit property has already been in continuous possession and enjoyment of the family



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of the defendants, the defendants has produced the partition list before the trial court, and the trial court for the reasons best known to it, did not receive it in evidence. The learned counsel for the first respondent/plaintiff alerts that the same is in paragraph No.5 of the trial court's judgment/ground.

11. Per contra, the learned counsel for the appellants submitted but with an apology, that some of the documents which have been taken in return by the plaintiff could not be produced and the plaintiff is in the process of searching them. However, the learned counsel for the first respondent/plaintiff admitted that the plaintiff sold the property to third parties.

12. This Court finds that the situation now presented before the Court does not provide it with the complete set of all material evidence necessary to dispose the case. Therefore, the case is remanded back to the trial court. Accordingly, the judgment and decree dated 08.02.2006 in A.S.No.35 of 2004 on the file of the Subordinate Court, Devakottai, confirming the judgment and decree dated 29.03.2004 in O.S.No.22 of 2001 on the file of the District Munsif cum Judicial Magistrate, Karaikudi, is set aside. No costs. On receiving the papers, the first



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appellate court is required to issue notice to the parties. The newly impleaded second respondent is required to file its written statement,

13. So far as the application filed under Order 41 Rule 27 C.P.C in C.M.P (MD) No.3943 of 2022 is concerned, inasmuch as the matter is remanded back to the trial court, the receipt of documents may be canvassed before the trial court and accordingly this petition stands closed. The plaintiff is at liberty to produce the balance documents that are required to be produced by him. And, if the same could not be produced, necessarily adverse inference had to be drawn against the plaintiff. In view of this, the counsel for the petitioner in C.M.P(MD)Nos.6669 and 6670 of 2022 has made necessary endorsements in withdrawing them, and accordingly these petitions are dismissed as withdrawn.

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Index : Yes/No
Internet: Yes/No
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N.SESHASAYEE, J.,

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To
1.The Subordinate Judge, Devakottai.

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- 2.The District Munsif cum Judicial Magistrate, Karaikudi.
3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court, Madurai.

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