BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.12.2022

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No.263 of 1998

Arokiyam	... Appellant/Respondent/ Plaintiff

Vs

1.Elias (Died)	
2.Devadoss	
3.Masilamani (Died)	... Respondents 1 to 3/ Appellants/Defendants
4.Arokiyadoss @ Mokkan	
5.Saveriyaar	
6.Hema	... Respondents 4 to 6

[Respondents 4 to 6 were brought on record as LRs of the deceased 1st respondent vide order dated 16.11.2022 made in C.M.P.(MD) Nos.9450 to 9453, 9455 and 9456 of 2022 in S.A.No.263 of 1998]

7.Mangayakarasi	
8.Rani	
9.Raja	
10.Devi	
11.Ravi	... Respondents 7 to 11

[Respondents 7 to 11 were brought on record as LRs of the deceased 3rd respondent vide order dated 16.11.2022 made in C.M.P.(MD) Nos.9450 to 9453, 9455 and 9456 of 2022 and the consequential order dated 22.12.2022 made in C.M.P.(MD) No.9264 of 2022 in S.A.No.263 of 1998]

Prayer:- Appeal filed under Section 100 of Civil Procedure Code to set aside the judgment and decree dated 17.07.1997 made in A.S.No.64 of 1997 on the file of the Sub Court, Thanjavur and to confirm the judgment and decree dated 25.09.1996 made in O.S.No.20 of 1996 on the file of the District Munsif's Court, Thiruvaiyaru.

For Appellant	:	Mr.T.Padmanabhan
For Respondents	:	No appearance

JUDGMENT

The plaintiff is the appellant. He filed a suit for bare injunction against respondents 1 to 3. The suit was decreed by the trial Court and aggrieved by the same, respondents 1 to 3/defendants filed an appeal in A.S.No.64 of 1997 on the file of the Sub Court, Thanjavur and the same was allowed in their favour. Aggrieved by the same, the plaintiff/appellant is before this Court.

2. According to the appellant, the suit property is a natham land with an extent of 1.75 ares situated in R.S.No.335/5, Old S.No.335/1 pt in Vishnampettai Village, Thanjavur. The appellant was issued with Manaivari Thoraya Patta in Patta No.121 under Ex.A.1 in recognition of his possession

over the suit property. It was also claimed by the appellant that he put up a house in the suit property and the same is assessed to tax by the Village Panchayat. The house tax receipts paid by the appellant were produced as Ex.A.2 and Ex.A.3. It was further claimed by the appellant that respondents 1 to 3 have no right over the suit property and they tried to interfere with the peaceful possession of the appellant and hence, he was constrained to file the above suit for bare injunction.

3. Respondents 1 to 3/defendants filed a written statement and resisted the suit by denying the right and possession of the appellant over the suit property. It was specifically pleaded by respondents 1 to 3 that the patta, which was originally issued in the name of the plaintiff was cancelled by the Special Tahsildar, Natham Nilavari Thittam, Thiruvaiyaru, and a joint patta was issued in the name of the appellant and respondents 1 to 3. It is the specific case of respondents 1 to 3 that both the appellant and respondents 1 to 3 have been in joint possession of the suit property and hence, the appellant is not entitled to maintain the suit for bare injunction as against the co-owners.

4. In order to prove his case, the appellant examined himself as P.W.1 and the retired Village Administrative Officer was examined as P.W.2. The appellant marked the patta issued in his name as Ex.A.1 and the house tax receipts paid by him were marked as Ex.A.2 and Ex.A.3. The certificate issued by the Ex-Village Administrative Officer, who was examined as P.W.2 endorsing the possession of the appellant, was marked as Ex.A.4. On behalf of respondents 1 to 3/defendants, the 2nd respondent Devadoss was examined as D.W.1 and the present Village Administrative Officer was examined as D.W.2. The joint patta issued in the name of the plaintiff and respondents 1 to 3 was marked as Ex.B.1. The order passed by the Special Tashildar, Natham Nilavari Thittam, cancelling the patta issued in the name of the plaintiff under Ex.A.1 was marked as Ex.B.2. The proceedings issued by the Town Surveyor, Thanjavur were marked as Ex.B.3 to Ex.B.5. The adangal extract was marked as Ex.B.6.

5. After considering the oral and documentary evidences available on record, the trial Court came to the conclusion that the appellant/plaintiff proved his exclusive possession over the suit property based on Ex.A.1

patta in the name of the appellant and tax receipts produced by the appellant under Ex.A.2 and Ex.A.3. The suit was decreed by the trial Court. Aggrieved by the same, respondents 1 to 3 filed an appeal in A.S.No.64 of 1997 on the file of the Sub Court, Thanjavur. The first appellate Court reversed the findings of the trial Court on the ground that the patta produced by the plaintiff was cancelled under Ex.B.2 and thereafter, a joint patta was issued in the name of the appellant and respondents 1 to 3 recognising the joint possession. Therefore, the first appellate Court found that both the appellant and respondents 1 to 3 were in possession of the suit property and consequently, the suit filed by the appellant was dismissed. Aggrieved by the said judgment, the appellant/plaintiff is before this Court.

6. At the time of admitting the appeal, this Court framed the following substantial questions of law:

> *"(i) Whether the Appellate Court failed to note that the patta in Survey No.335/5 in the name of the appellant is cancelled without the knowledge of the appellant? and*
>
> *(ii) Whether it is open to the Appellate Court to rely upon the joint patta issued during the pendency of the suit?"*

7. The appellant/plaintiff filed the suit for bare injunction claiming exclusive possession over the suit property. As a plaintiff, it is for the plaintiff to prove his exclusive possession and entitlement to maintain a suit for bare injunction against respondents 1 to 3. In order to prove his exclusive lawful possession, the appellant/plaintiff produced Ex.A.1 patta issued in his name and the house tax receipts issued to him under Ex.A.2 and Ex.A.3. The patta issued in the name of the appellant under Ex.A.1 was with a core document under which the appellant claimed exclusive possession over the suit property. It is seen from Ex.B.2, the order passed by the Special Tahsildar, that Ex.A.1 patta issued in the name of the appellant/plaintiff was cancelled as early as on 06.01.1995 even prior to the filing of the suit. Even in Ex.A.1, it is clearly mentioned that in respect of entries under Ex.A.1, there will be an enquiry on 06.01.1995 at Vishnampettai Village Panchayat Office and any person having objections, may record their objections before the Special Tahsildar on that date. Ex.B.2 is the consequential order passed by the Special Tahsildar wherein it was stated that respondents 1 to 3 made objection to the entry in Ex.A.1 and in pursuance of the same, the Tahsildar conducted local inspection in the

presence of the appellant, respondents 1 to 3, Surveyor and Village Administrative Officer. It was mentioned in Ex.B.2 that based on the enquiry made in the locality, it came to the knowledge of the officer concerned that the appellant and respondents 1 to 3 had been in joint possession and enjoyment of the property in question for quite a long time. Therefore, the patta issued exclusively in the name of the appellant was cancelled and a joint patta was ordered to be issued in the name of the appellant and respondents 1 to 3.

8. A close scrutiny of Ex.B.2 would make it clear that Ex.A.1 patta issued in the name of the appellant was cancelled as early as on 06.01.1995, after local inspection by the Special Tahsildar, Natham Nilavari Thittam. The present suit was filed by the appellant only on 13.02.1996, after one year from the date of cancellation of Ex.A.1. Ex.A.2 and Ex.A.3 tax receipts were issued to the appellant based on Ex.A.1 patta. When the original patta issued in the name of the appellant has been cancelled, we cannot give any importance to Ex.A.2 and Ex.A.3 tax receipts which were issued based on Ex.A1 patta. Therefore, the appellant failed to prove his

exclusive possession over the suit property. Ex.A.1 to Ex.A.3 are the documents relied on by the appellant to prove his exclusive possession. When Ex.A.1 based on which Ex.A.2 and Ex.A.3 were issued cancelled even prior to the filing of the suit, it is not open to the appellant to rely on the cancelled document and attempt to prove the possession. Though an attempt was made by the learned counsel for the appellant to show that Ex.B.2 was passed without the knowledge of the appellant, a perusal of Ex.A.1 and Ex.B.2 make it clear that even in the patta issued under Ex.A.1, there is a reference about the enquiry contemplated on 06.01.1995 with regard to the objections by any person as against Ex.A.1. In pursuance of the same, an enquiry was conducted on 06.01.1995 and Ex.A.1 was cancelled and a joint patta was issued in the name of the appellant and respondents 1 to 3. Further, even in Ex.B.2, there is a reference that at the time of local inspection, the appellant was present. Therefore, it is not open to the appellant to say that he was not aware of the order cancelling the patta under Ex.A.1. Though the learned counsel for the appellant argued that Ex.B.2 was passed behind the appellant's back, the said argument cannot be accepted for the simple reason that Ex.B.2 was marked before the trial Court in the year 1996, but till date, the appellant has not taken any steps to challenge the same.

9. In view of the discussions made earlier, both the substantial questions of law are answered against the appellant and the second appeal fails. It is made clear that the present suit is dismissed, as the appellant failed to prove his exclusive possession based on acceptable evidence. The same will not prevent the appellant from filing a comprehensive suit to establish his title, if so advised. With these observations, this Second Appeal is dismissed by confirming the judgment and decree passed by the first appellate Court.

10. In nutshell, (i) the second appeal stands dismissed by confirming the judgment and decree passed by the first appellate Court; and (ii) in the facts and circumstances of the case, there will be no order as to costs.

22.12.2022

(2/2)

NCC: Yes
Index:Yes/No
abr

S.SOUNTHAR, J.

abr

To

1.The Sub Judge,
Thanjavur.

2.The District Munsif,
Thiruvaiyaru.

3.The Section Officer, VR Section,
Madurai Bench of Madras High Court,
Madurai.

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(2/2)