



SA.No.869 of 2001

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2023

CORAM:

THE HON'BLE MS.JUSTICE P.T.ASHA

S.A.No.869 of 2001

1.Krishnan (Died)

2.K.Palani

3.Rajakumari

... Appellants

(appellants 2 & 3 are brought on
record as LRs of the deceased sole
appellant vide Court order dated
23.07.2019 made in CMP.No.825 to
827/2012 in S.A.No.869/2001)

Vs.

1.Subramaniam (Died)

2.Jayaraman

3.Sakthivel

4.Pachammal

5.Gunasekaran

6.Gunasundari

7.Senthamizhselvan

8.Amsalakshmi

9.S.Karthikeyan

10.S.Chandrakala

11.S.Minnal

12.S.Vijayamoorthy

... Respondents

(R1-died, RR4 to R12 brought on
record as legal heirs of the deceased
R1 vide Court order dated 13.09.2022
made in CMP.Nos.13929 to 13931/2022
in S.A.No.869 of 2001)



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PRAYER : Second Appeal filed under Section 100 of C.P.C., to allow the appeal and set aside the judgment and decree in A.S.No.149 of 1996 on the file of the Sub-Court, Panruti.

For Appellants : Mr.R.Sunil Kumar

For Respondents : Mr.A.Saravanan for R2 to R12
R1-Died

JUDGMENT

The plaintiff is the appellant before the Court challenging the judgment and decree passed by the Sub-Court, Panruti, in A.S.No.149 of 1996 in and by which, the learned Judge has reversed the judgment and decree passed by the District Munsif Court, Panruti in O.S.No.117 of 1993.

2. The facts which form the basis for the filing of the appeal is hereunder narrated and the parties are referred to with the same rank as before the trial Court.



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3. The plaintiff had filed a suit in O.S.No.117 of 1993 for a declaration of the plaintiff's title to the suit property and to pass a decree for permanent injunction infavour of the plaintiff as against the defendants and for injunction restraining the defendants from interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule property.

4. It is the plaintiff's contention that the suit schedule property belonged to one Chinnamuthu Padayachi. Chinnamuthu Padayachi had five sons viz., 1) Natesa Padayachi, 2) Thangavel Padayachi, 3) Arumugha Padayachi 4) Vadivel Padayachi and 5) Krishnan (Plaintiff). The said Chinnamuthu Padayachi died 60 years prior to the filing of the suit, leaving behind him, his wife and five sons. Thereafter, the wife of Chinnamuthu Padayachi, Valliammal also passed away within few years of her husband's death. The defendants 1 & 2 and one Ramalingam are the sons of the elder son Natesa Padayatchi and third defendant is the son of deceased Ramalingam. It is the case of the plaintiff that the suit property and other property were divided amongst the sons of



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Chinnamuthu Padayachi in the year 1935, by way of an oral partition.

The suit property and other property came to be allotted to the share of the plaintiff who has been in possession and enjoyment of the same. The plaintiff would further submit that patta No.1876 stands jointly in the names of K.Vadivel, C.Vadivel and T.Ramasamy and the plaintiff owns only the suit property. The plaintiff would further submit that he has been in possession of the properties since 1935 openly, continuously to the knowledge of the defendants without any interception and therefore, perfected title to the property by adverse possession. The defendants have no semblance of the right over the title to the suit property. On 05.02.1993, the defendants attempted to forcibly enter into the property which was suitably averted by the plaintiff and therefore, the plaintiff has come forward with the suit in question.

5. The first defendant had filed written statement which is adopted by the defendants 2 & 3 in which, they had *inter alia* denied the claim of the plaintiff. The defendants admitted the oral partition, in which the suit property, 1 acre of cashew nut grove and 1 acre of cultivable lands were allotted to the father of the first defendant Natesa



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Padayachi. Likewise, the other sons of Chinnadurai were allotted 2 acres of cashew nut grove and 1 acre of cultivable land in the oral partition.

The survey number of the suit property which stood in the name of the first defendant property was S.No.676 and the old patta was No.251. Thereafter 16 cents in S.Nos.676/1 was acquired for the Veeranam Canal project and the award amount was received by the first defendant's father. The remaining extent in S.No.676/2 stood in the names of the defendants' father and one Padmavathiammal, after the re-survey in the year 1974, the whole S.No.676/2 was clubbed with the new RS.Nos.544/8, 9, 10 & 544/10 which stood in the name of the plaintiff without enquiring the defendants. The defendants would submit that he was often away from the Village and taking advantage of the absence, the plaintiff has connived with the revenue officials and got the patta granted in his name. Prior to 1974, all the revenue records stood in the names of the defendants' father. The defendants would submit that they have taken steps to cancel the patta granted in the name of the plaintiff. Therefore, they sought to have the suit dismissed.



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6. The learned District Munsif, Panruti had framed the following issues:

1) Does the suit property belongs to the plaintiff?

2) Is the plaintiff entitled to the reliefs of declaration and injunction prayed for?

3) To what relief is the plaintiff entitled?

7. The plaintiff had examined himself as PW1 and one Chinnadurai and Kuppusamy as PW2 & PW3 and marked Exs.A1 to A9. The first defendant had examined himself as DW1 and one Kuppusamy, Kothandaraman and Arasayee as DW2 to DW4 and had marked Exs.B1 to B12. The copy of the sale deed dated 19.05.1972 and registration copy of the sale deed dated 08.11.1993 were marked as third party documents Ex.1 & Ex.2.

8. The learned District Munsif on considering the evidence on record decreed the suit as prayed for. The learned Judge observed that the suit property which measures 0.82 cents and which is now comprised in 544/10D has been allotted to the plaintiff and the patta in respect of this property stands in the name of the plaintiff. Prior to 1974, the extent that stood in the name of the defendants' father was an extent of 6 acres. The



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learned Judge had also observed that the Adangal in respect of the suit property which is marked as Ex.A3 clearly shows that the extent of 0.82 cents in S.No.544/10B stood in the name of the plaintiff. The learned Judge had also taken note of the fact that the defendants' father had been addressed as Natesan or Natarajan in the different revenue documents and this mistake has not been rectified.

9. Aggrieved by the judgment and decree of the trial Court, the defendants had filed an appeal in A.S.No.149 of 1996 on the file of the Sub-Court, Cuddalore. The learned Sub-Judge, by his judgment and decree dated 23.03.2001, proceeded to allow the appeal and reversed the judgment and decree passed by the trial Court.

10. The learned Judge observed that the plaintiff has produced the documents only from the year 1987-revenue records and therefore, the finding of the trial Court that the plaintiff is entitled to declaration of title was totally wrong and therefore, the learned Judge proceeded to allow the appeal in toto. The Appellate Court has failed to consider the fact that the defendants have admitted the possession of the plaintiff



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despite which the learned Judge had dismissed the suit seeking bare injunction.

11. Challenging the said judgment and decree, the plaintiff is before this Court. The above Second Appeal has been admitted on the following substantial questions of law:-

“1. Whether the learned Subordinate Judge was not in error in rejecting the evidential value of the patta and kist receipts in favour of the plaintiff as relevant piece of evidence to support his title especially when the property was claimed to be ancestral and allotted in an oral partition to the plaintiff?

2. Whether the Court below was not in error in failing to apply the presumption that the official act in the resurvey proceedings entering the name of the plaintiff was properly done and drawn an adverse inference against the defendants in not successfully assailing the proceedings in the resurvey?

3. Whether the proceedings of the Executive



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Magistrate were not irrelevant for deciding the questions of title relating to immovable property?”

12. Heard the counsels on either side.

13. The plaintiff's case is that in the oral partition that had been held after the death of their father, the suit property and other property has been allotted to his share. At the time of the partition, the plaintiff was just aged about 15 years and his mother had also passed away immediately after his father. It was the father of the defendants 1 & 2 who had been taking care of the property on behalf of the plaintiff. The defendants would contend that under the oral partition the suit property and other property has been allotted to the share of their father namely “Natesan” @ “Natarajan” and thereafter it is in the possession and enjoyment of the defendants.

14. Admittedly, the patta in respect of the suit property now stands in the name of the plaintiff as patta No.1876. The plaintiff has filed Ex.A3 which is the Adangal extract period.

15. A perusal of Ex.A3 would clearly show that the defendants'



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father seems to have his name included in respect of the property comprised in S.No.676/2 which is later sub-divided as S.No.544/1, 2, 8, 9 & 10. The patta thereafter was re-numbered as 1876 and it is standing in the name of one Vadivel and thereafter in the name of the plaintiff. The extent of the property in patta No.251 standing in the name of the first defendant's father was over and above an extent of 6 acres whereas the suit property measures 0.82 cents is now comprised in S.No.544/10 and stands in the name of the plaintiff. DW1 in his cross examination has stated that the patta had been changed in the year 1974 and a challenge by them to grant of patta to the plaintiff has also ended in dismissal and the same has not been further challenged. Therefore, the inclusion of the name of the plaintiff as the owner of S.No.554/10 is therefore implied to be accepted by the defendants. The plaintiff has also been in possession of the property ever since then and by having the patta changed in his name, the plaintiff has asserted an independent title to the property and his possession from that day has become adverse to that the defendants. Therefore, the substantial questions of law Nos.1 & 2 are answered in favour of the plaintiff.



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16. Considering the fact that the plaintiff has been able to show his continuous possession of the property also on the date of the filing of the suit, the plaintiff is entitled to a decree for injunction. The plaintiff has proved that he has prescribed title to the property and therefore, the substantial question of law No.3 becomes redundant. Consequently, the Second Appeal is allowed and the decree and judgment of the Lower Appellate Court is set aside and the decree and judgment of the trial Court is confirmed. No costs.

23.01.2023

Index : Yes/No
Internet : Yes/No
dna

To

- 1.The Sub-Court, Panruti
- 2.The District Munsif, Panruti.



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