



S.A No.126 of 2013

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED: 25.07.2023**

**CORAM:**

**THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI**

**S.A No.126 of 2013**

**M.P No. 1 of 2013**

Indirani

... Appellant

Vs.

1.Ameer Sayabu (Deceased)

2.Munna

3.Noorunna.

4.Riyana

5.Mushtaq Ahmed

(Respondents 4 and 5 are brought as Legal heirs of the deceased first respondent vide Court order dated 23.06.2016 made in CMP No. 4367 of 2016 in S.A No. 126 of 2013 by KRCBJ.)

...Respondents

**PRAYER:** This Second appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 28.02.2011 passed in A.S No. 22 of 2010 on the file of learned Subordinate Judge, Vaniyambadi, Vellore District, confirming the judgment and decree dated 12.12.2007 passed in O.S No. 164 of 2005 on the file of the learned Principal District Munsiff, Ambur, Vellore District.

For Appellants: Mr.J.R.K.Bhavanantham



WEB COPY



S.A No.126 of 2013

R1 died  
For R2 to R5 : Mr.P.A.Sudesh Kumar

### **JUDGMENT**

The appellants herein/plaintiff filed suit O.S No. 164 of 2005 on the file of the learned Principal District Munsiff, Ambur, Vellore District, for the relief of declaration and permanent injunction against the defendants/respondent herein.

2. The contention of the plaintiffs is that she purchased 1,413 square feet with Wall in Natham survey No. 234/7 at Pallur Village, Vellore District, through sale deed dated 27.06.2005 from one Kumaravel before that said Kumaravel acquired the suit property through sale agreement dated 06.05.1999 from one Appai Naidu. From the date of sale agreement dated 27.06.2005 till the plaintiff was in possession and enjoyment of the property which described as suit property in the schedule with four boundaries, on the Souther side of the suit property an extent of 4X45 square feet with Wall was given to one Kanniappan to run Palkova business in a thatched shed. Thereafter, he stopped his business and vacated the premise subsequently when the plaintiff was trying to remove the 2X45 square feet in that place the defendant raised objection and attacked her besides he unlawfully



S.A No.126 of 2013

removed 4X45 square feet situated near defendant's house thereafter the complaint also lodged even then the defendant claimed that an extent of 2X45 square feet on the plaintiff's Southern side portion which is adjacent to the defendant's property. Hence the suit for declaration and permanent injunction with regard to disputed A,B,C,D portion.

3. On the other side the defendant denied the plaintiff's claim over the said A,B,C,D portion submitted that neither the plaintiff nor her predecessors in title having right over the said property and also denied that it was not enjoyed by one Kanniappan by doing Palkova business. In fact the suit property is a Natham vacant site on the North of the defendant's property and plaintiff is not their neighbour but she claimed right over the property without any valid title. In fact nature of the property is vacant site, house plot with Wall but it was not properly described. Hence the defendant prayed to dismiss the suit as no merits.

4. Before the Trial Court both side parties adduced their oral and documentary evidence. Besides, the advocate commissioner was appointed and his report was marked as Ex.C1, Ex.C2. On the side of the plaintiff Ex.A1 to Ex.A4 documents were marked and on the side of the defendant Ex.B1 to Ex.B2 was marked.



S.A No.126 of 2013

5. On considering the oral and documentary evidence the Trial

Court held that as per the advocate commissioner's report the plaintiff is claiming more extent than in her document besides she has not produced any evidence to prove the title over the property and also non production of copy of the document is fatal to the suit accordingly dismissed the suit as plaintiff not proved her claim.

6. Aggrieved over the judgment of the Trial Court the plaintiff preferred an appeal in A.S No. 22 of 2010 before the Subordinate Judge, Vaniyambadi, Vellore District, which independently analysed the facts and evidence finally concluded that as per the sub division land belongs to the plaintiff allotted as 235/45 the defendant property allotted as survey No. 234/46 and disputed property is 2X45 square feet but the plaintiff not produced any document to show that disputed property is belongs to her. Accordingly the appeal was dismissed by confirming the findings of the Trial Court.

7. Challenging the same, the plaintiff preferred this second appeal. This Court admitted the second appeal with the following substantial questions of law:

1. Whether the patta is a document of title in the absence of



S.A No.126 of 2013

WEB COPY

establishment of title to the suit property?

2. Whether the lower Court right in finding that the extent of subject matter of sale in Ex.A1 as 1477 square feet should be proved by the examination of vendor of the appellant ?

8. The learned counsel for the appellant submitted that the Court below error in drawing adverse inference for non production of Patta granted in favour of the appellant event though there is no dispute with regard to sub division of survey No. 234/45 assigned in favour of the plaintiff and Survey No.234/46 belongs to the respondents herein. Further, it was submitted that Trial Court failed to taken into note of the fact that Patta is not a document of the title and also failed to appreciate the partition deed, sale deed adduced on the side of the plaintiff to prove her title and claim over the property but without appreciating all these facts the Court below erroneously dismissed the suit as such is liable to be set aside and to substantiate his claim he relied the judgment of this Court in the case of Poochi Servai (died) and others Vs Rajendaran and Others reported in 2019 (2) MLJ 148.

9. Per contra, the learned counsel for the defendants submitted that the plaintiff filed the suit for the relief of declaration and permanent injunction but she has not produced her ancestors title over the property nor she produced Patta which was assigned to her after sub division of the



S.A No.126 of 2013

property that apart she claimed more extent then as what she was entitled.

On the other hand, the defendant proved his title by way of Patta which was rightly appreciated by the Court and dismissed the suit which needs no interference.

10. Considering the submissions on either side and also on perusal of records, the plaintiff claimed that she has entered into a sale agreement with her vendor Kumaravel on 06.05.1999 for the suit property with an extent of 1,417 square feet with Wall and purchased the same in the year of 2005 through sale deed/Ex.A1 dated 27.06.2005 thereby she has absolute right over the property. Further she contended that small portion of extent 4X45 square feet (out of which 2X45 square feet belongs to plaintiff another 2X45 belongs to defendant) was given to one Kanniappan for purpose of running Palkova business in thatched shed as he vacated the same, subsequently the defendant removed thatched shed 2X45 square feet in his property but when the plaintiff attempting to remove her share 2x45 square feet in the thatched shed which is on the Northern side of defendant's property was objected by the defendant. Hence the dispute arose between the plaintiff and the defendant. According to the plaintiff, entire suit property including disputed property along with Wall is belong to her and in order to



S.A No.126 of 2013

prove her vendor's predecessor's in title she relied the documents Ex.A1 and Ex.A4. Admittedly, Ex.A4 is partition deed dated 17.06.1976 entered between one Raja Naidu and Kandasamy Naidu. One Kumaravel and her son in that partition Kaliasammal A schedule was allotted to mother of Kumaravel second item of the A schedule is described as follows:

" பழார் கிராம நத்த சர்வே எண். 126 சிலோமான் சாய்பு வீட்டிற்கு தெற்கு, அம்மாயி அம்மாள் காலி வீட்டுக்கு வடக்கு, ஒடுக்கத்துர் போகும் ரோட்டுக்கு மேற்கு, கோதண்டராமநாயுடு வீட்டுக்கு கிழக்கு, இதன் மத்தியில் கிழ மேல் அடி 45, தென்வடல் அடி 31 1/2 சதுரஅடி உள்ள காலி இடம். அவர்களுக்கு ஒதுக்கப்பட்டுள்ளதாக சொல்லப்பட்டுள்ளது. மேற்படி சொத்து விவரம் குறித்து இதே ஆவணத்தில் சொல்லப்படும் வேளையில் மேற்படி பகுதியில் செங்கல் மற்றும் சுண்ணாம்பு கலந்த 25 ஆண்டுகள் வயதுடைய கட்டிடம் இருப்பதாகவும், கிணறு இல்லை என்றும் சொல்லப்பட்டுள்ளது....

11.It is an admitted fact that Kumaravel is vendor of the plaintiff and Kumaravel's mother is Kaliasammal. After the said partition the suit property along with other property was enjoyed by the plaintiff's vendor Kumaravel and his mother Kaliasammal. Thereafter the said Kumaravel entered into a sale agreement with the plaintiff on 06.05.1999 subsequently on 27.06.2005 the sale deed was executed in favour of the plaintiff in respect of entire suit property to the extent of 1,417 square feet. Based on partition deed/Ex.A4, the plaintiff established her vendor Kumaravel's title and



S.A No.126 of 2013

possession over the suit property. Admittedly, the said partition deed is executed among the joint family members of Kumaravel in the year 1976 but the Court below erroneously concluded that title of the plaintiff was not properly proved. Hence with the above material evidence the plaintiff proved his vendor's predecessor's title, apart from that the suit property situated in Grama Natham. Furthermore, on considering the boundaries, the Southern boundary of the plaintiff mentioned as ( சிலோமான் சாய்பு வீட்டிற்கு தெற்கு.) It is admittedly related with ancestors of the defendant's property so the defendant's ancestor's property was shown as Southern boundary of the suit property. From the above document it reveals the boundaries was in existence at the time of partition entered between the plaintiff's vendor family. Therefore, Ex.A4 clearly established that plaintiff's vendor having property on the Southern side of the defendant's ancestor's Silaman Saibu's property. Therefore the objection of the defendant that the plaintiff not possessed any property adjacent to their property as such is totally false and not acceptable one. But the both the Court below without properly appreciate Ex.A4 erroneously concluded that the plaintiff has not established as to how her vendor Kumaravel having right over the property. Therefore, the fact reveals that Kumaravel and his mother Kaliammal have



S.A No.126 of 2013

title over the suit property and Kumaravel sold property to the plaintiff.

Therefore, purchased made by the plaintiff cannot be disputed by the defendants their only objection is with regard to her vendor Kumaravel's title over the property. Now, the plaintiff's vendor's title proved through Ex.A4 by the plaintiff. But the Court below concluded that Patta granted in favour of the plaintiff was not produced thereby she failed to prove her title. It is settled proposition that Patta is not document for title, if the plaintiff proved her title, she need not rely any revenue records for the reason that title deed is the better document than the revenue records like Patta. Even non production of said Patta is not a fatal to the plaintiff's claim. Further, the Judgments relied by the appellants is squarely applicable to the facts of the present case. Besides, the plaintiff proved his vendor's title over the property through Ex.B4.

12. Normally this Court is not interfere with the concurrent findings of the Courts below but with regard to the facts of the present case both the Court below failed to appreciate the above facts hence this court can interfere. Accordingly findings of the Court below is set aside. Accordingly first question of law 1 is answered.



S.A No.126 of 2013

13. As per the Advocate Commissioner's report, it clearly reveals that he visited the property but not measured the property belongs to the defendant but his report reveals that the entire extent of the property is Grama Natham in Survey No. 234/7 after sub division 234/45 was allotted to the plaintiff and 234/46 was allotted to the defendants. Hence, the advocate commissioner's report also reveals that defendant's Wall situated in disputed portion and 3/4 portion of the Wall along with land was under the enjoyment of the plaintiff and 1/4 portion of the Wall situated adjacent to the defendants house. Based on Patta the defendant's claiming right over the disputed property. As discussed above, in the year 1976 when the property was partitioned among the plaintiff's vendor and his family members the Southern boundaries of her vendor's property is mentioned as on the south of one Silaman Saibu's property. As per the evidence of P.W.5 Patta was issued in the year of 2005 in favour of the defendant/ Amir Saibu for survey No. 234/46 (Patta No. 8). Though he is stated that there is Wall

belongs to one Amir Saibu but no document was produced before the Court



S.A No.126 of 2013

to show that it belongs to Amir Saibu at the time of issuance of Patta. As observed above, Wall was belongs to the plaintiff's predecessors in title and it is joint family property even much prior to the year of 1976 hence the plaintiff able to establish that Wall belongs to their Vendor's ancestors subsequently issued Patta in the year of 2005 including Wall in favour of defendant would not bind her for the reason that Patta is not document of title. Therefore the plaintiff proved her title over the suit property, the report of the Advocate Commissioner has no value in respect of possession of the property in dispute. Accordingly question of law 2 is answered.

14. Accordingly, as per Ex.A4 plaintiff is having title over the suit property but the Trial Court failed to appreciate those facts. Accordingly, findings of the Court below is set aside. The plaintiff is having better title than the defendant as such suit is decreed as prayed for.

15. In result, this second appeal is allowed. No cost.



S.A No.126 of 2013

Consequentially, connected miscellaneous petition is closed.

WEB COPY

.2023

pbl

**T.V.THAMILSELVI,J.**

Pbl



S.A No.126 of 2013

WEB COPY **To**

1. The Subordinate Judge, Vaniyambadi, Vellore District.
2. The Principal District Munsiff, Ambur, Vellore District.
3. The Section Officer,  
V.R Section.

**SA.No.126 of 2013**

**25.07.2023**