



S.A No.431 of 2013

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.01.2023

CORAM:

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

S.A No.431 of 2013

& M.P No.1 of 2013

1.K.Pachaimuthu
2.P.Shanmuganath

... Appellants/Respondents 1 & 2/Defendants 1& 2

Vs.

1. D.Senthil
2. The Tahsildar,
Velappadi Taluk,
Salem District.

...Respondent/Appellant/Plaintiff

...Respondent/3rd respondent/3rd defendant

PRAYER: This Second appeal filed under Section 100 of the Code of Civil Procedure against the Judgement and decree passed by the I Additional Subordinate Judge, Salem in A.S No.70 of 2011 dated 09.03.2012 allowing the appeal and setting aside the judgment and decree passed by the I Additional District Munsif Court, Salem in O.S No.948 of 2008 dated 06.04.2011, allowing the suit for declaration filed by the 1st Respondent herein.



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S.A No.431 of 2013

For Appellants: Mr.M.Vijayan
for T.Dhanasekaran

For R1 : Mr.Krishna Prasad
for M/s Sarvabhauman Associates
For R2 : Mrs.E.Indhumathi
Government Advocate.

JUDGMENT

The appellants herein is the defendants in the suit O.S No. 948 of 2008, on the file of the District Munsif Court, Salem, filed the by first Respondent/plaintiff for the relief of declaration and injunction in respect of suit properties as described in the plaint schedule with an extent of 540 square feet in S.F No. 99/3 belongs to him absolutely. The contention of the plaintiff is that he purchased the suit property from one Chellamal who is the mother of the first defendant through sale deed/Ex.A1 dated 20.03.1992. Thereafter, he obtained patta in HSD 1263/1992 and she enjoyed the same as absolute owner excluding 540 square remaining 1530 square feet land was purchased by the first defendant's wife Anjalam on the same date of plaintiff's purchase but she obtained patta including plaintiff's property 540 square feet. Thereafter the defendant's caused interference to the plaintiff's enjoyment of the property. Hence the suit.



S.A No.431 of 2013

2. The defendants denied the plaintiff's claim that he purchased the suit property from one Chellamal. Originally the land was situated in Kattuvappillaipatti in old survey No. 99/3 new survey No. 260/4 is Grama Natham. The extent of land in said S.No. 260/4 is 02224.5 square metre and the patta was granted in respect of the said survey number in favour of the first defendant's father in the year 1994 with the condition that not to transfer the same to any one for 10 years. But the plaintiff said to be purchased the same as such is not maintainable. Hence the plaintiff is not entitle for the same and prayed to dismiss the suit.

3. The Trial Court after considering the oral and documentary evidence held that suit property is belongs to the first defendant family and the extent claimed by the plaintiff in respect of Ex.A1 and the patta issued by the revenue officials Ex.A2 is not dealt with each other. Accordingly, the plaintiff not proved the case and the suit was dismissed.

4. Aggrieved and dissatisfied over the same the plaintiff preferred an appeal in A.S No. 70 of 2011 before the subordinate Court, Salem, which independently analysed the facts and held that the plaintiff has proved his title through as per Ex.A1 and his enjoyment hence the



S.A No.431 of 2013

plaintiff is entitle for 540 square feet even though the patta was issued for 434 cents and the defendant not entitle to the property based on his patta.

Accordingly the appeal was allowed and decreed the suit in favour of the plaintiff.

5. Challenging the said findings the defendant preferred this second appeal this Court admitted the second appeal with the following questions of law:

i. Whether the First Appellate Court was right in allowing the suit when the plaintiff claimed title over the suit property based on two different documents, viz., one a sale deed (Exhibit A1) and another the order of Assignment (Exhibit A2) which are self-contradictory and does not prove clear title over the suit property in favour of the plaintiff?

ii. Whether the First Appellate Court was right in presuming that possession follows title in the present case especially when the title itself is defective and when there was not evidence to prove the possession so claimed?

iii. Whether the First Appellate Court was right in allowing the suit without going into the issue of limitation when the plaintiff purchased the property in 1992 and filed the suit in 2008 simultaneously when the defendant 1 and 2 claimed title in possession right from 1994 and also marked Exhibits B2-B14?

6. Heard both sides.

7. It is admitted fact that the old survey number of the suit property is 99/3 and new survey number is 260/4 and also it is Village Natham. The plaintiff claiming 540 square feet in that suit property through



S.A No.431 of 2013

sale deed/Ex.A1 and the patta/Ex.A2. The objection of the defendant is that an entire extent of the suit property is 2070 square feet including suit property belongs to him through patta issued by the revenue officials which marked as Ex.B1 dated 20.11.1994. Furthermore, he contended that the first defendant's father was in enjoyment of the entire extent 2070 square feet, considering his long possession the revenue authorities assigned patta in his favour. As per the assessment order from the date of Pata for about 10 years the properties should not be conveyed to anyone but after the demise of his father his mother Chellamal conveyed portion of the property i.e.,540 square feet in favour of the plaintiff in the year 1992 through Ex.A1/sale deed as such is invalid. But Subsequently in the year 1994 revenue officials issued patta in favour of the first defendant including suit 540 square feet hence the defendant is entitle for the suit property and also contend that by violating rules assessment order the property was conveyed in favour of the mother as such is invalid and he denied plaintiff's title over the property. Besides on perusal, Ex.A1 which it reveals that plaintiff purchased the property through sale deed dated 20.03.1992 from mother of the first defendant one Anjalam. Thereafter the first defendant's wife purchased the remaining extent of 1530 square feet from the Chellamal through sale deed/Ex.A10. Therefore, on the



S.A No.431 of 2013

date of the plaintiff purchase the first defendant's wife also purchased the remaining extent of the property from the first defendant's mother Chellamal but the first defendant not raised any objection with regard to sale of his mother to his wife. On contrary, he objected purchase made by the plaintiff. Admittedly, it is Grama Natham land it is meant for the villagers' habitation the land holders may able to use as house site and reside to that effect he relied Judgement reported in 2011 (4) TNLJ Paragraph 269 the above said proposition is squarely applicable to the facts of the present case. Therefore the plaintiff is entitle for the suit property as claimed in the suit though he had patta only for 434 square feet, he proved his title for 540 square feet through sale deed. The lower appellate Court rightly granted relief in favour of the plaintiff as such is maintainable need no interference.

8. Admittedly, through Ex.A10 first defendant's wife is entitle for remaining extent of 1070 square feet hence she is only entitle for the extent which she purchased through sale deed/Ex.A10 not through patta. The lower appellate Court rightly appreciate this aspects which needs no interference. Even though plaintiff has not relied any document but he owned the suit property as per ExA1 same is rightly appreciated by the Court below which needs no interference. Accordingly question of laws are



S.A No.431 of 2013

answered.

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9. In result, the second appeal is dismissed. No costs. The suit is decreed as prayed for. Consequentially connected Miscellaneous petition is closed.

25.01.2023

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To

1. The I Additional Subordinate court, Salem
2. The I Additional District Munsif Court, Salem.
3. The Section Officer,
V.R Section,



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S.A No.431 of 2013

T.V.THAMILSELVI,J.

Pb1

SA.No.431 of 2013
& M.P No.1 of 2013

25.01.2023