



S.A.No.8 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.10.2023

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.8 of 2021
and
C.M.P.No.203 of 2021

Shathither

... Appellant

Vs.

1.Kanaka
2.Viswanathan
3.Bharathi
4.Sarada
5.Rani
6.Natarajan

... Respondents

PRAYER: Second Appeal filed under section 100 of the Civil Procedure Code to set aside the judgment and decree dated 28.02.2020 passed in A.S.No.19 of 2016 by the Principal Subordinate Judge, Krishnagiri and decree the suit in O.S.No.180 of 2006 as prayed for the appellant reversing the Judgment and Decree dated 22.12.2015 passed by the District Munsif Court, Krishnagiri in O.S.No.180 of 2006.

For sole appellant : Mr.C.Chokkalingam

For respondents 1-5 : M/s.C.Prabakaran

For respondent 6 : No appearance



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JUDGMENT

The plaintiff is the appellant before this Court challenging the judgment and decree passed by the Principal Subordinate Judge, Krishnagiri in A.S.No.19 of 2016, in and by which, the learned Judge reversed the judgment and decree passed by the District Munsif Court, Krishnagiri in O.S.No.180 of 2006.

2. For the ease of understanding, the parties are referred to in the same litigative status as before the Trial Court.

FACTS OF THE CASE:

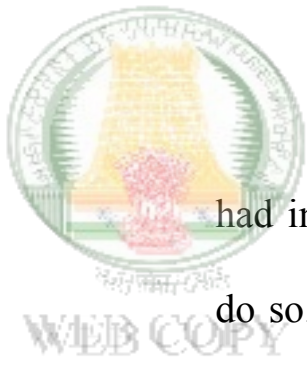
2.1. It is the case of the plaintiff that the suit property belonged to one Mir Afsal Husain and Mir Faiyaz Hussain, from whom, he had purchased the suit property for a valuable consideration of Rs.1,30,000/- under a registered sale deed dated 17.10.2001. Since the date of the purchase, he as the absolute owner is in lawful possession of the same.



2.2. It is the further case of the plaintiff that 20 years prior to his purchase of the property, the first defendant had entered into possession of the property with the permission of Mir Jawvad Hussain who is the father of his vendors. The first defendant had installed a petty shop and had been running a tea stall therein. Thereafter, the first defendant with the permission of the plaintiff's vendors had removed this petty shop and put up a thatched shed with 3 feet high wall.

2.3. The plaintiff would submit that the first defendant had been paying a rent of Rs.25/- per month to the plaintiff's vendors and after the purchase of the property by the plaintiff, the tenancy was attorned to the plaintiff and the first defendant had agreed to be a tenant and pay a monthly rent of Rs.25/- to the plaintiff. It is the further case of the plaintiff that the first defendant had been regular in payment till October 2004 and thereafter, he had defaulted in the payment.

2.4. In the light of the default by the first defendant, the plaintiff had called upon him to vacate the property. Though the first defendant



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had initially agreed to vacate the property, thereafter, he had failed to do so. The plaintiff learned that the first defendant was taking steps to get a sale deed executed in respect of the suit property from one Mir Zamir Ali and Mir Fazal Ali who had no right, title or interest in the suit property. Therefore, the plaintiff had issued a notice to the first defendant and the said Mir Zamir Ali and Mir Fazal Ali, to which, thereafter, they had not sent any reply which had constrained the plaintiff to file the above suit.

2.5. After the demise of the first defendant, his legal heirs, defendants 2 to 5 are impleaded and with the demise of the 5th defendant, the defendants 6 to 9 are impleaded as her legal heirs.

2.6. The defendants had denied the allegation contained in the plaint and contended that the plaintiff's vendors themselves have no right to the suit schedule property and therefore, the plaintiff does not derive any right, title or interest to the suit schedule property. It is the case of the defendants that the suit property is a Natham Poramboke



site. The first defendant had entered into possession of the same in the year 1974, and thereafter, he had put up a shed upon the said site and had been running a tea stall. The first defendant had never been a tenant under anyone, much less, the plaintiff and his vendors.

2.7. The defendant had further contended that the patta filed along with the plaint has been fraudulently obtained since the persons named in the patta viz., Shahidadia Begam, Mir Abdul Hussain and Mir Faiyaz were never in possession and enjoyment of the property. The first defendant would submit that all the documents filed by the plaintiff were fabricated.

TRIAL COURT:

3. The Trial Court had framed the following issues:

“1. Whether the Plaintiff is entitled to get the relief of declaration of title into the suit property?”

2. Whether the Plaintiff is entitled to get the relief of delivery of possession?”



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3. Whether the mandatory injunction can be granted as prayed by the Plaintiff?

4. Whether the Plaintiff entitled to get the relief of Permenent Injunction?

5. Whether the Defendants have to pay a sum of Rs, 500/- to the plaintiff as arrears of rent?

6. Whether the Plaintiff is entitled to get the benefits under Order 20 Rule 12 of CPC to determine mesne profits from the suit proprty?

7. To what other reliefs? ”

4. The plaintiff had examined himself as P.W.1 and Mir Afsal Husain and K.Murugan as P.W.2 and P.W.3 respectively, and marked exhibits A1 to A17. On the side of the defendants, the first defendant had examined himself as D.W.1 and Lakshmanamoorthy, K.Sankar and Kannan as D.W.2, D.W.3 and D.W.4 respectively. The evidence of D.W.4, Kannan or Nagarajan has been eschewed.



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5. The Advocate Commissioner's report was originally marked as Exs.C1 and C2, but, thereafter, by an order dated 06.12.2019 in I.A.No.01 of 2019, the said documents were deleted from the list of exhibits.

6. The learned District Munsif had proceeded to hold that the plaintiff had proved his title and possession to the suit property since the Grama Natham patta had been granted to him, by producing the Ex.A2 - patta. The learned Judge observed that the revenue records would clearly prove the plaintiff's possession and enjoyment of the suit schedule property and proceeded to disbelieve the documents filed by the first defendant and held that the defendants by filing Exs.B4 to B6 have not established their long possession of the suit schedule property.

LOWER APPELLATE COURT:

7. Challenging the said judgment and decree, the defendants had filed A.S.No.19 of 2016 on the file of the Principal Subordinate Court, Krishnagiri. The learned Judge has relied upon Ex.B7 which is



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the consumer ledger copy and also Exs.B5 and B6 to show that the first defendant is in possession of the suit property since 1970. The learned Judge also observed that there were several discrepancies in the pleadings of the plaint and at one instance, the plaintiff would submit that the defendant was in possession for over 20 years and on the other end, that the defendant was in possession for over 10 years. The plaintiff who had come forward with the specific case that the defendant was a tenant on a monthly rent of Rs.25/-, which amount he was paying to the plaintiff till October 2004, has not produced any shred of evidence to substantiate the same.

8. The learned Judge had also taken note of the overwriting in the Ex.A17- criminal complaint, which would go to show that the signature of the defendant was first obtained and FIR was filled thereafter. The learned Judge, ultimately, held that the plaintiff had come forward to file a suit for declaration and has not proved his title over the suit property and therefore, not entitled to declaration of title.



9. Challenging the same, the plaintiff is before this Court.

10. Heard the learned counsel on either side and perused the materials available on record.

11. Mr.C.Chokkalingam, learned counsel appearing on behalf of the appellant would lay emphasis on the fact that the Appellate Court has proceeded to dismiss the suit only on the basis of the exhibit which is not even marked viz., Ex.B7 - consumer ledger copy, and therefore, once it is seen that the documents is not available, this Court should reverse the judgment and decree passed by the Appellate Court and restore the judgment and decree passed by the Trial Court.

12. He would also submit that the plaintiff had produced Exs.A8 to A16 to show his possession of the suit schedule property. Therefore, the learned counsel would further submit that since the land in question is a Natham Poramboke land, the person in possession is the owner of the property. He would also contend that Exs.A8 to A16



would prove the plaintiff's possession and title of the property. He would further argue that the defendants have not produced any document whatsoever to prove their contention.

13. Mr.C.Prabakaran, learned counsel appearing on behalf of the defendants would submit that the plaintiff has to win or lose on the strength of the case and not on the weakness of the defence. He would submit that the plaintiff has not filed any documents whatsoever to show that the first defendant was inducted as a tenant under the father of the vendors of the plaintiff. He would further submit that the reading of the Ex.A1 would clearly show that the contents of the plaint were an absolute falsity. He would therefore, plead that the Court should confirm the judgment and decree of the lower appellate court and dismiss this appeal.

14. This Court had admitted the second appeal on the following substantial questions of law on 08.01.2021.

“a) Whether the First Appellate Court was right in



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relying on Ex.B7 which was not pleaded nor exhibited before the Trial Court and making it as the main ground for allowing the Appeal Suit?

b)Whether the First Appellate Court's finding to reject all revenue records in favour of the appellate marked as Ex.A3, A8, A15 and A16 is perverse when the respondents have not challenged the same and failed to produce any record to show that they applied for patta based on their possession of the suit property?"

DISCUSSION:

15. The appellant/plaintiff has filed the suit contending as follows:

(15.1) The plaintiff has purchased the suit property for a valuable consideration from Mir Afzal Hussain and Mir Faiyaz Hussain. Even prior to the purchase by the plaintiff, the father of his



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vendors, Mir Jawvad Hussain, has inducted the defendant as a tenant for a valuable consideration of Rs.1,30,000/-. He would also contend that the first defendant had been put in permissive possession of the suit property by the said Mir Jawvad Hussain, where the first defendant is running a tea stall. After the demise of Mir Jawvad Hussain, the first defendant had attorned tenancy in his favour under the plaintiff's vendors.

16. However, a perusal of the sale deed under which the plaintiff had purchased the property in question, would reveal that what was conveyed was a vacant site and it was reiterated in the two places apart from the schedule. The sale deed is in respect of the vacant house site “வீடு மனை காலியிடம்”. That it is a vacant site is once again reiterated as follows:

“கீழ்க்கண்ட காலி இடத்தில் கட்டிடங்கள் எதுவும் இல்லை.”

Once again the schedule would clearly indicate the 2835 sq.ft as

“காலியிடம்”.



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17. The second part of the property is also described as a vacant site measuring 612 sq.ft. A perusal of Ex.A2 - patta would show that it relates to an extent of 5.62.50 hectares as per the revenue records and 0.02.85 hectares as per the updating settlement register. The document by itself is only a temporary patta.

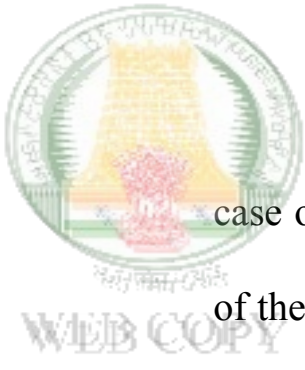
18. Further, the patta is issued jointly to one Shahidadia Begam, Mir Abdul Hussain and Mir Faiyaz Hussain, sons of Mir Jawvad Hussain. The measurement in this patta does not correlate to the suit schedule property. However, a perusal of the Exs.A3 and A8 would indicate that the property is described as Ryotwari Mannai (Housing Plot). Therefore, the contention of the plaintiff that this property is a Natham Poramboke is not reflected in the revenue record except for Ex.A2 which once again relates to the ledger copy and it is only temporary patta as it is mentioned as Manai Vari Thoraya Patta.

19. The plaintiff had stated that even prior to his purchase, the defendant was a tenant in the suit property. However, from reading of



Exs.A1 to A3 and A8, it is clear that what has been sold to the plaintiff is a vacant site and there is no reference to the defendant or existence of the building in the property. Therefore, the allegation of the plaintiff that the defendant had attorned tenancy in his favour appears to be a after thought and made with an intent of staking a claim over the suit property.

20. The argument of the learned counsel for the plaintiff that the Court below has erred in relying on an exhibit which has not been marked to show the defendant's possession and tenancy does not overturn the defendant's claim since the defendant who claimed to be in possession of the property (which is also accepted by the plaintiff) and running a tea stall has produced the house tax receipts paid by the defendant in respect of the said suit property. The plaintiff had himself admitted that the defendant was running a tea stall in the premises. However, from the evidence of the plaintiff, it is seen that the plaintiff has only purchased a vacant site and there is no mention about the defendant running a tea stall and this assumes significance as it is the



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case of the plaintiff that the defendant was a tenant under the vendors of the plaintiff.

21. Therefore, the substantial questions of law have to be answered in favour of the respondents/defendants.

Accordingly, this second appeal is dismissed. Consequently, connected C.M.P. stands closed. No costs.

16.10.2023

Index : Yes/No
Speaking order/non-speaking order
ssa

To

1. The District Munsif,
Krishnagiri.
2. The Special Sub Judge,
Krishnagiri.
3. The Section Officer,
V.R. Section,
High Court, Madras.

15/16



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P.T.ASHA, J.,

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