



S.A.(MD) No.57 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 13.12.2023

PRONOUNCED ON : **22.11.2023**

CORAM:

THE HONOURABLE MR.JUSTICE **G.CHANDRASEKHARAN**

S.A.(MD) No.57 of 2021
and
C.M.P.(MD) No.610 of 2021

Chokkalingam

..Appellant

Vs.

1.Chokkalingapoobathi

2.Subramanian

...Respondents

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree dated 17.02.2020 passed in A.S.No.4 of 2017 on the file of the Sub Court, Ambasamudram confirming the judgment and decree dated 26.10.2016 passed in O.S.No.103 of 2012 on the file of the Principal District Munsif Court, Ambasamudram by allowing this second appeal.

For Appellant : Mr.V.Meenakshi Sundaram

for Mr.D.Nallathambi

For Respondents : Mr.R.J.Karthick

JUDGMENT



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Challenging the concurrent findings in A.S.No.5 of 2017 on the file of the Sub Court, Ambasamudram and O.S.No.103 of 2012 on the file of the Principal District Munsif Court, Ambasamudram, this second appeal has been filed.

2. The appellant / plaintiff filed a suit in O.S.No.103 of 2012 seeking the relief of permanent injunction against the respondents that they should not interfere with possession and enjoyment of the suit property. The case of the appellant / plaintiff, in brief, is that the suit property belonged to Papanaasa Swamy Kovil Pitcha Kattalai of Thiruvavadudhurai Aadheenam. This property is situated in Mannarkovil Village. The original survey number of the suit property is 542/2 and the total extent is 4 acres 81 cents. It was given on lease to one Sandhanam on 19.09.1972. The said Sandhanam was cultivating the land by raising crops. After 1973, S.No.542/2 was subdivided as 542/2A measuring 2 acres 40 cents and 542/2B measuring 2 acres 41 cents.

3. The further case of the appellant / plaintiff is that, during land reform, S.No.542/2A was wrongly classified as surplus land along with the land of one Sivanupandian. Thereafter, S.No.542/2A was assigned to Chockalingam Pillai, since he was an Ex-serviceman. Challenging the classification, Sivanupandian filed a writ petition before this Court and that was dismissed in the year 1993. After dismissal of the writ petition, Chockalingam Pillai tried to



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encroach the property in S.No.542/2A. One AVR MV Vahaiyara also tried to encroach the other portion. Sandhanam filed a suit against the AVR MV Vahaiyara, Chockalingam Pillai and Thiruvavadudurai Aadheenam in O.S.No.424 of 1994. In the meanwhile, the said Sandhanam filed revision appeal before the Land Reforms Tribunal against declaring the suit property as surplus land. That revision was allowed with a direction to authorised officer to conduct denovo enquiry. Thereafter, enquiry was conducted and it was decided that the declaration of part of the suit property as surplus land was not correct. Sandhanam was declared as lessee in the suit property. The suit in O.S.No.424 of 1994 was ended in dismissal.

4. Sandhanam had transferred the lease hold right to Subramanian on 29.04.1995. That was accepted by Thiruvavadudurai Aadheenam. From the year 1995, Subramanian was in possession and enjoyment of the suit property as lessee. Due to his old age, Subramanian's son, plaintiff is in possession and enjoyment of the suit property as lessee. Chockalingam pillai and his family members have no right in S.No.542/2A. However, the grandson of Chockalingam Pillai / first defendant / first respondent had executed a power of attorney deed in favour of the second respondent in respect of the suit property. The second defendant / second respondent is trying to disrupt the possession of the suit property by using bulldozer to level the ground. In such circumstances, the suit



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was filed.

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5. The defendants / respondents filed written statement denying the plaint averments. The averments that the suit property belonged to Papanaasa Swamy Kovil Pitcha Kattalai of Thiruvavadudhurai Aadheenam is denied as false. S.No.542/2A originally belonged to Sivanupandian. This was assigned to Chockalingam Pillai, for the reason that he was an Ex-serviceman. The averments with regard to the proceedings before the Land Reforms Tribunal are not true. It is true that Sandhanam filed a suit in O.S.No.424 of 1994 and it was held that Sandhanam was not a lessee. Thiruvavadudhurai Aadheenam has no right in the suit property especially in S.No.542/2A. Sandhanam is a worker of Sivanupandian. At the instigation of Sivanupandian's wife, Sandhanam filed false cases. Sandhanam has admitted that S.No.542/2A is in possession of Chockalingam Pillai. The defendants have no claim in respect of S.No.542/2B. The first defendant is not a necessary party to the suit. S.No.542/2A was assigned by the Government in favour of Chockalingam Pillai. Even in the earlier suit, Chockalingam Pillai, disputed the claim of Thiruvavadudhurai Aadheenam in the suit property. The suit property is in possession and enjoyment of Chockalingam Pillai's wife and children.

6. Before the trial Court, PW 1 to PW3 were examined and Exs.A1 to



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A10 were marked. DW1 was examined and Exs.B1 to B12 were marked. That apart, Exs.X1 to X10 were marked.

7. The short issue involved in this case is, whether the appellant / plaintiff is entitled for the relief of permanent injunction as prayed for. The learned trial Court Judge negatived the plaintiff / appellant's prayer and dismissed the suit. In appeal filed by the appellant / plaintiff in A.S.No.4 of 2017, the learned appellate Judge concurred with the judgment of the trial Court and the appeal was dismissed. Thus, this second appeal is filed.

8. The learned counsel appearing for the appellant submitted that sufficient evidence has been produced to show that the suit property belonged to Papanaasa Swamy Kovil Pitcha Kattalai of Thiruvavadudhurai Aadheenam. Sandhanam was a lessee in respect of the suit property under Thiruvavadudhurai Aadheenam. Exs.X1 to X10 documents proved this. S.No.542/2 to a total extent of 4 acres 81 cents was subdivided into S.No.542/2A measuring 2.40 acres and S.No.542/2B measuring 2.41 acres. S.No.542/2A was wrongly classified as surplus land during land reformation along with the lands of one Sivanupandian.

9. It is the further submission of the learned counsel appearing for the appellant that Sandhanam initiated proceedings before the Tamil Nadu Land



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Reforms Special Appellate Tribunal in Special Revision Petition No.66 of 1995 against Chockalingam Pillai, Thiruvavadudhurai Aadheenam represented by its Adheena Kartar, Sri-la-Sri Sivaprakasa Pandara Sannithigal, K.Sivanupandian, Assistant Commissioner (Land Reforms), Tirunelveli, and the Secretary to Government, Revenue Department. After enquiry, portion of Section 18(1) notification issued under Tamil Nadu Land Reforms (Fixation and Ceiling on Land) Act, 1961 dealing with half share in S.No.542/2 was set aside. The Authorized Officer was directed to conduct denovo enquiry after giving notice to Thiruvavadudhurai Aadheenam, Chockalingam Pillai, the assignee, Sivanupandian and other persons interested in the land. This order is marked as Ex.A6. In pursuance of the same, enquiry was conducted and order was passed by the authorized officer and Assistant Commissioner (Land Reforms), Tirunelveli in A4.MRI.20/S/AMB/58-61 dated 28.02.1997. As per this order, it was held that S.No.542/2 of Mannarkovil Village, Ambasamudram Taluk measuring 4.81 acres belonged to Pitcha Kattalai endowment of Papanaasa Swamy Kovil and there is no share to Sivanupandian in this land. Therefore, order for the deletion of S.No. 542/2A measuring 2.40 acres available in the surplus lands of land owner K.Sivanupandian was passed.

10. It is the further submission of the learned counsel appearing for the appellant / plaintiff that S.No.542/2A was assigned to Chockalingam Pillai only



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on the basis that it was a surplus land. When that notification declaring S.No. 542/2A measuring 2.40 acres as surplus land along with the lands of Sivanupandian was set aside and held that entire extent of 4.81 acres in S.No. 542/2 belong to Pitcha Kattalai endowment of Papanaasa Swamy Kovil, Chockalingam Pillai cannot claim any right on the basis of Ex.A7 assignment. Ex.A7 assignment has no validity. On the basis of the assignment order, Chockalingam Pillai or his legal heirs cannot claim any legal right in the suit property. When Pitcha Kattalai endowment of Papanaasa Swamy Kovil has title to the suit property, when it had inducted Sandhanam as tenant and when Sandhanam transferred the tenancy to Subramanian and the plaintiff, who is Subramanian's son is enjoying the suit property, the respondents / defendants cannot claim any right in the suit property.

11. The learned counsel appearing for the appellant / plaintiff further submitted that the trial Court without properly appreciating the evidence, dismissed the suit. One of the reasons given by the trial Court is that the plaintiff has not produced document executed by Sandhanam to the entire extent of 4.81 acres, but has produced Ex.A5 only to the part of the suit property. However, in the appeal, the appellant has filed an application for reception of additional document along with the lease document which relates to other portion of the suit



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property. The appellate Court has also not properly appreciated the evidence and not given any opportunity to produce the additional document in evidence. Without considering the petition to receive additional document, dismissed the appeal first and then dismissed the petition for reception of additional document. This procedure is not correct. This procedure prejudiced the appellant from proving his case. In such circumstances, the learned counsel appearing for the appellant prayed for setting aside the judgments of the Courts below and for decreeing the suit.

12. The learned counsel appearing for the appellant relied on the following judgments in support of his submissions:-

(a) ***Anathula Sudhakar vs. P.Buchi Reddy (dead) By LRs and Others [2008 (4) SCC 594]***, in which the Hon'ble Supreme Court has laid down the proposition that where a cloud is raised over the plaintiff's title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction, is the remedy.

(b) ***Arulmigu Velukkai Sri Azhagiya Singaperumal Devasthanam, Rep. by its Trustees vs. G.K.Kannan (Deceased) and Others [2020 (2) L.W. 317]***, where the this Court held that a mere denial by the defendant would not constitute a cloud on plaintiffs title, there must be evidence for the Court to conclude prima facie that the plaintiffs assertion of title to a legal character, or to a right over a



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property has come under the cloud.

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(c) *N.Ravi & Others vs. S.K.Thirunavukkarasu (died) & Others [2015 (2) MWN (Civil) 283]*, where this Court held that when an application for reception of additional evidence under O.41 R.27 of CPC in the Appellate Court is moved, Court after giving notice should hear the Application along with the Appeal on its merits so as to find out whether the documents and/or the evidence sought to be adduced have any relevance/bearing on the issues involved. Further, in case, the Court decides to allow the Application, a separate Order should be passed and proceed as under O.41 R.28 of CPC whereas if it decides not to allow, it can incorporate the Order with reasons in the Judgment itself and proceed with the pronouncement of the Judgment.

13. In response, the learned counsel appearing for the respondents submitted that the suit was filed for 4.81 acres. Ex.A5 relates only to 2.40 acres. In the earlier suit filed by Sandhanam in O.S.No.424 of 1994, it was held that Sandhanam was not in possession and enjoyment of the suit property. Sandhanam has not filed any appeal against the dismissal of the suit. To circumvent the dismissal of the suit, Sandhanam created documents in favour of Subramanian and this suit is filed by the appellant. S.No.542/2A is in possession and enjoyment of Chockalingam Pillai's wife and children and they prayed for dismissal of the second appeal.



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14. I have considered the rival submissions on either side and perused the materials placed before this Court.

15. The suit properties are S.No.542/2A and 542/2B measuring 4.81 acres. It is claimed by the plaintiff that this property belonged to Papanaasa Swamy Kovil Pitcha Kattalai of Thiruvavadudhurai Aadheenam. One Sandhanam is tenant under the Thiruvavadudhurai Aadheenam. He had transferred the lease hold right in favour of subramanian, father of the appellant / plaintiff and now, the appellant / plaintiff is in possession and enjoyment of the suit property. It is not in dispute that an extent of 2.40 acres in S.No.542/2A was declared as surplus and it was assigned to Chockalingam Pillai. The defendants have produced Exs.B1 to B12 documents in respect of assignment in favour of Chockalingam Pillai and that Chockalingam Pillai's wife and children are in possession and enjoyment of the suit properties.

16. Ex.A1 is the lease agreement in respect of the entire extent of 4.81 acres in S.No.542/2 between the Papanaasa Swamy Kovil Pitcha Kattalai of Thiruvavadudhurai Aadheenam and Sandhanam. Ex.A2 is the copy of the judgment in O.S.No.424 of 1994 and Ex.A3 is the decree. Ex.A6 is an important document in this case. This is an order passed in Special Revision Petition No.66



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of 1995 by the Tamil Nadu Land Reforms Special Appellate Tribunal. This revision petition was filed by Sandhanam against Chockalingam and four others mentioned above. Sandhanam filed this revision petition alleging that S.No.542/2 belongs to Papanaasa Swamy Kovil Pitcha Kattalai of Thiruvavadudhurai Aadheenam and he is a tenant. However, in the notification issued under Section 18(1) of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961, a part of this land ie., 2.40 acres was shown as the land of Sivanupandian and shown as surplus land along with other surplus lands of Sivanupandian. Infact, Sandhanam is lessee of entire extent of 4.81 acres in S.No.542/2.

17. The learned Tribunal finding that sufficient attention was not given to this claim, set aside the portion of the notification issued under Section 18(1) of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961, dealing with the half share in S.No.542/2. The remaining portion of notification was upheld. There was a direction issued to authorized officer to conduct a denova enquiry, after affording an opportunity to all the parties.

18. Accordingly, an enquiry was conducted and the authorized officer and the Assistant Commissioner (Land Reforms) Tirunelveli, passed an order in reference A4.MRI.20/S/AMB/58-61 dated 28.02.1997. In the said enquiry, all the parties including Chockalingam Pillai, the assignee, had participated. He



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contended that the land does not belong to Papanaasa Swamy Kovil Pitcha Kattalai of Thiruvavadudhurai Aadheenam and that as an assignee, he is entitled for the land assigned to him in S.No.542/2. On the basis of the evidence produced, ie., Exs.B1 to B4, the authorized officer held that the entire land in S.No.542/2 of Mannarkovil Village belongs to Pitcha Kattalai Endowment of Papanaasa Swamy Kovil and Sivanupandian had no share in this land. In fine, the authorized officer ordered deletion of S.No.542/2A ie., 2.40 acres available in the surplus land of land owner, Sivanupandian.

19. It is the submission of the learned counsel appearing for the appellant that Chockalingam Pillai was assigned the land in S.No.542/2 only on the basis of declaration of Sivanupandian's land as surplus land including half portion in S.No.542/2. When that notification is set aside, Ex.A7 assignment given in favour of Chockalingam has no legal validity and on that basis, he cannot claim any title to the suit property.

20. Exs.A8, A9, A10 and A11 are produced to show that the plaintiff is in possession and enjoyment of the suit property. Ex.A11 is the letter from the Papanaasa Swamy Kovil Pitcha Kattalai of Thiruvavadudhurai Aadheenam to show that the plaintiff is in possession and enjoyment of the suit property.

21. The defendants produced Ex.B5 to show that an extent of 2.40 acres



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in S.No.542/2A was assigned to Chockalingam. Ex.B1 is a patta in respect of S.No.542/2A in favour of Chockalingam. Ex.B2 is the proceedings of the Assistant Commissioner (Land Reforms) in MR4.153/B/Ambai to hand over the assignment of lands to various persons including Chockalingam. Ex.B4 are the receipts for the payments made by Chockalingam. Ex.B6 is the Form-E sent to Chockalingam. Ex.B7 is the notice issued under Section 8(2) of the Tamil Nadu Land Reforms (Disposal of Surplus Land) Rules, 1965. Ex.B8 are the kist receipts paid by Chockalingam. Ex.B9 is the patta in the name of Arumugathammal, w/o. Chokkalingam for S.No.542/2A. Ex.B10 is the patta in the name of Arumugathammal and her children in respect of S.No.542/2A. Ex.B11 are kist receipts in the name of Arumugathammal vahayara.

22. Exs.X1, X2, X3 are the copies of the receipts to show the receipt of lease amount by Papanaasa Swamy Kovil Pitcha Kattalai of Thiruvavadudhurai Aadheenam. Ex.X4 and Ex.X5 are the letters from Papanaasa Swamy Kovil Pitcha Kattalai of Thiruvavadudhurai Aadheenam, Superintendent and Inspector of Pitcha Kattalai. Ex.A6 is the copy of the surrender deed executed by Sandhanam to Pitcha Kattalai. Ex.A7 is the patta in the name of Papanaasa Swamy Kovil Pitcha Kattalai of Thiruvavadudhurai Aadheenam in respect of the entire extent of the suit property in S.No.542/2. Ex.X8 is the copy of the settlement register to show that the suit property is the property of Papanaasa



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Swamy Kovil Pitcha Kattalai of Thiruvavadudhurai Aadheenam. Exs.X9 and X10 are the copy of the register maintained by Papanaasa Swamy Kovil Pitcha Kattalai of Thiruvavadudhurai Aadheenam. Exs.X1 to X10 have been produced to show that the property in S.No.542/2 to an extent of 4.81 acres belongs to Papanaasa Swamy Kovil Pitcha Kattalai of Thiruvavadudhurai Aadheenam, it was leased to Sandhanam and then the plaintiff's father, Subramanian and now, the plaintiff is in possession and enjoyment of the suit property.

23. It is a case, where S.No.542/2A measuring 2.40 acres was declared as surplus on the assumption that it belongs to Sivanupandian. After its declaration as surplus land and after following necessary procedure, the land measuring to an extent of 2.40 acres in S.No.542/2A was assigned to Chockalingam, for the reason that he was an Ex-serviceman. As already discussed, documents have been produced by both claiming that they are in possession and enjoyment of the suit property. Only one can be in possession and not both.

24. Sandhanam has filed the suit in O.S.No.424 of 1994 against one Velayutham, Chockalingam Pillai and Papanaasa Swamy Kovil Pitcha Kattalai of Thiruvavadudhurai Aadheenam seeking for the relief of permanent injunction not to disturb his possession in respect of the entire extent of 4.81 acres in S.No.



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542/2. After contest, the suit was dismissed on 23.06.1997. The reason for dismissal of the suit is that there was no proof to show that the second defendant (Chockalingam) interfered with this possession. It was also held that Sandhanam had admitted that S.No.542/2A was assigned to Chockalingam Pillai and he was issued patta, he paid the necessary fee and he was handed over possession. From this judgment, what we can gather is that as per Ex.B5 assignment order, the property assigned to Chockalingam Pillai ie., 2.40 acres in S.No.542/2A was handed over to him.

25. However, this case is filed not for possession, but for the relief of injunction claiming that the plaintiff is in possession and enjoyment of the entire extent of the suit properties. Obviously, it is not correct for the reason that Chockalingam Pillai was handed over possession of 2.40 acres in S.No.542/2A. Apart from the issue of possession, it appears that the plaintiff has not produced lease agreement in favour of Sandhanam in respect of the entire extent of 4.81 acres before the trial Court, but has produced only Ex.A5 in respect of 2.40 acres in S.No.542/2A. In the appeal, he produced the lease deed in favour of Sandhanam to an extent of 2.41 acres in S.No.542/2B. As rightly pointed out by the learned counsel appearing for the appellant, the learned Appellate Judge after dismissing the main appeal dismissed the petition for reception of additional documents. This procedure is not correct while disposing the petition to receive



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additional documents along with the appeal, findings on the petition to receive additional documents should have been recorded first before recording the findings in appeal.

26. Another interesting aspect of this appeal is that Ex.B5 assignment was issued in favour of Chockalingam Pillai after following necessary procedure. Once the notification issued, declaring the land assigned to him was surplus land, is not correct and that part of the notification was set aside, it is expected that the government should have passed appropriate order cancelling the assignment given in favour of Chockalingam. Had that been done, very necessity of filing of this suit would not have arisen. Chockalingam has also paid necessary fee for the assignment. Patta has been issued in his name, subsequently to his wife and his children. Similarly, Papanaasa Swamy Kovil Pitcha Kattalai of Thiruvavadudhurai Aadheenam produced patta for the entire extent of the suit property in S.No.542/2. Now, it is subdivided into S.Nos.542/2A and 542/2B. Patta in respect of S.no. 542/2A stands in the name of Chockalingam's wife and children.

27. Unless the assignment in favour of Chockalingam is cancelled / set aside, legal heirs of Chockalingam cannot be prevented from stating that they have title to the suit property. The only way to resolve the dispute is to remand



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the matter to the first appellate Court for impleading the concerned Government department as a party defendant, amending the prayer for the relief of declaration of title and recovery of possession, etc., and for disposal of the case in the manner known to law.

28. In fine, this Second Appeal is allowed. The judgments of the Courts below are set aside for the purpose of remanding the suit to the file of the Sub Court, Ambasamudram for impleading the concerned Government department as party defendant, for amending the plaint for inclusion of the relief of declaration of title, recovery of possession etc., and for disposal of the case in the manner known to law. The parties are directed to bear their own costs respectively. Consequently, connected miscellaneous petition is closed.

Speaking : Yes / No
NCC : Yes / No
Internet : Yes / No
Index: Yes / No
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G.CHANDRASEKHARAN, J.

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To

- 1.The Sub Court, Ambasamudram.
- 2.The Principal District Munsif Court, Ambasamudram.
- 3.The Section Officer (2 Copies),
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

Pre-delivery judgment made in
S.A.(MD) No.57 of 2021

Dated:
22.11.2023