



A.S.(MD)No.96 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 19.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

A.S.(MD)No.96 of 2020
and C.M.P(MD)Nos.3357 of 2020 and 2917 of 2023

D.Srinivasan

... Appellant/Plaintiff

Vs.

1.K.Amavasai

2.V.Sundaram

3.The Sub Registrar,
Chekkanoorani,
Sub Registration Office at
Chekkanoorani, Madurai.

... Respondents/Defendants

PRAYER: This Appeal Suit is filed under Section 96 of C.P.C against the judgment and decree dated 04.01.2020 made in O.S.No.133 of 2018 on the file of the I Additional District Judge, Madurai.

For Appellant : Mr. S.Srinivasa Raghavan

For R1 & R2 : Mr.V.Balaji

For R3 : Mr.D.Sasikumar
Additional Government Pleader



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This Appeal suit has been filed against the judgment and decree dated 04.01.2020 made in O.S.No.133 of 2018 on the file of the I Additional District Judge, Madurai. The appellant herein is the plaintiff in the suit. The respondents are the defendants.

2. For the sake of convenience, the parties are referred to as per their litigative status in the suit.

3. The suit was filed by the plaintiff for declaration of his title to the suit properties and for permanent injunction restraining the defendants 1 and 2 from interfering with the possession of the plaintiff in the suit properties and also to declare the sale agreement dated 15.03.2007 as null and void.

4. The case of the plaintiff is described as follows:

i) The suit property originally belonged to one Seeniammal and Ramuthai Ammal by virtue of an assignment deed executed by the Government on 30.08.1983. Challenging the assignment, one Pappammal and Muthupillai @ Sivanammal filed separate petitions before the Sub Collector, Usilampatti.



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However, the said petitions have been dismissed by the Sub Collector, Usilampatti, on 09.06.1986. Challenging the said order, Muthupillai @ Sivanammal alone filed a revision petition before the District Revenue Officer, Madurai. However, the said revision was allowed on 06.10.1987. Challenging the same, an appeal has been filed before the Commissioner, Land Administration, Madras, and the same was allowed on 28.07.1993 and the matter was remanded back to the District Revenue Officer, Madurai, to decide the matter after giving an opportunity to the assignees. After remand, the District Revenue Officer has passed the order confirming the assignment in favour of Seeniammal and Ramuthai Ammal. That order came to be passed on 13.08.1994.

ii) Ramuthai Ammal, who was an assignee in respect of 2nd item of property, executed a settlement deed on 26.02.1998 in favour of Seeniammal, who is none other than her mother. Therefore, Seeniammal became the absolute owner of both survey numbers and as such, Seeniammal, being the paternal mother of the plaintiff, had executed a settlement deed dated 18.06.2003 in respect of the suit property in favour of the plaintiff. The defendants 1 and 2 are the son and the grand son of Muthupillai @ Sivanammal. After the death of the said Muthupillai @ Sivanammal, the defendants 1 and 2 attempted to interfere with the possession of the plaintiff on 21.04.2018 and the defendants 1 and 2 told that they executed a sale agreement in favour of one Mani. It is the contention of the plaintiff that the



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sale agreement is not valid and not binding on the plaintiff. The plaintiff is the absolute owner of the property and he is entitled to the relief as prayed for.

5. The defendants 1 and 2 have filed written statement, wherein it is contended by the defendants 1 and 2 that the assignment orders granted to Seeniammal and Ramuthai Ammal were not valid in the eye of law and the same are in violation of the Board's standing orders. Admitting that there were proceedings before the District Revenue Officer and the Commissioner of Land Administration, it is the further contention of the defendants 1 and 2 that the suit properties are originally classified as Maichal poramboke (மேய்ச்சல் புறம்போக்கு). The maternal grand-father of the plaintiff was the Bank Officer and by his influence, the plaintiff obtained assignment unlawfully. A portion of the property is cultivated by the defendants 1 and 2 and the remaining portion of the land is lying fallow. The plaintiff has produced the fake document as if he is cultivating the property and the defendants 1 and 2 had disputed the title of the plaintiff.

6. On the side of the plaintiff, the plaintiff himself was examined as P.W.1 and 24 documents were marked as Ex.A.1 to Ex.A.24. On the side of the defendants, 3 witnesses were examined as D.W.1 to D.W.3 and 4 documents were marked as Ex.B.1 to Ex.B.4.



7. On the basis of the pleadings, the trial court has framed the following issues:

- i) Whether the plaintiff is the absolute owner of the suit schedule properties?
- ii) Whether the plaintiff is in possession and enjoyment of the suit schedule properties?
- iii) Whether the plaintiff is entitled to the relief of declaration of his title to the suit schedule properties?
- iv) The plaintiff is entitled to permanent injunction as against the defendants?
- v) To what relief the plaintiff is entitled to?

8. On a perusal of oral and documentary evidence, the trial court dismissed the suit mainly on the ground that Ex.A.6, the order of the District Revenue Officer, has not been served on the defendants 1 and 2 and the defendants 1 and 2 were not heard at the relevant point of time. However, the trial court also observed that the plaintiff has not established the possession over the suit property. By holding so, the suit in entirety was dismissed. Challenging the same, the present Appeal Suit came to be filed before this Court.



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9. Heard the learned counsel appearing on behalf of the appellant, the learned counsel appearing on behalf of the respondents 1 and 2 and the learned Additional Government Pleader appearing for the 3rd respondent.

10. It is the contention of the learned counsel for the appellant/plaintiff that the assignment orders granted in favour of Seeniammal and Ramuthai Ammal reached finality. In fact, the Government has not questioned the assignment orders granted in their favour. The said assignment orders were subject matter of challenge before the Sub Collector, Usilampatti, and the District Revenue Officer, Madurai, and the Commissioner of the Land Administration, Madras, by the forefathers of the defendants 1 and 2. The matter has been elaborately heard by the District Revenue Officer. The District Revenue Officer held that the assignment orders granted in favour of Seeniammal and Ramuthai Ammal are valid in the eye of law and the said order reached finality.

11. According to the learned counsel for the appellant/plaintiff, though the defendants 1 and 2 claimed that they were not aware of those proceedings, it is clearly admitted in their evidence that the assignment order is confirmed by the revenue proceedings on 13.08.1994 and without challenging the same in the



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manner known to law, now the defendants 1 and 2 cannot deny the title of the plaintiff.

12. It is the further contention of the learned counsel for the appellant/ plaintiff that it is the admitted case of the plaintiff that the suit property is a vacant land. Such being the position, the title has been rightly proved and possession follows title and therefore, the trial court, without any pleading with regard to non participation before the District Revenue Officer, has found fault with the order passed by the District Revenue Officer and the entire approach of the trial court is not based on the well settled principles of law.

13. Whereas, the learned counsel for the respondents 1 and 2/the defendants 1 and 2 would submit that the assignment orders have been originally issued by the Government to the persons, who are residing in the Village namely, Karaikkal Village. According to him, the assignees are the residents of different villages at the relevant point of time and one of the relative of the assignees was working as the Bank Officer at Tirumangalam, where the present suit property lies. According to him, without making the Government as a necessary party to the suit, the plaintiff cannot establish his title.



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14. It is the further contention of the respondents 1 and 2/the defendants 1 and 2 that originally the order passed by the District Revenue Officer under Ex.B.2 dated 06.10.1987 makes it very clear that the assignment orders have been granted with the influence of the person related to the assignees. However, subsequent orders of the District Revenue Officer has confirmed the assignment orders and the same has not been served to the defendants 1 and 2. According to the defendants 1 and 2, they are enjoying the property and derived the possession from their ancestors. Hence, it is their contention that when the assignment itself is issued in violation of Board's standing orders, the same cannot be valid in the eye of law and the plaintiff has not produced any document to show that he is in continuous possession of the property. Adangal has not been filed to prove that ever since the date of the order the plaintiff was enjoying the possession of the property.

15. In support of his submissions, the learned counsel for the respondents 1 and 2 has relied on the following judgments:

i) In **A.Manickam Vs. Jayakumar and others** [2019 SCC Online Madras 9522];

ii) In **V.G.P.Prem Nagar. Minvariya Kudi Erupor Nala Sangam,** represented by its Secretary and Treasurer V.Sivadasan and one another Vs.



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The State of Tamil nadu rep. By the Secretary to Government, Revenue Department, Chennai – 9 and 9 others [2010 (3) CTC 845]';

iii) In Union of India and others Vs. Vasavi Co-op. Housing Society Ltd., and others [2014(4) CTC 471];

iv) In Annamalai Mudaliar and others Vs. Krishna Mudaliar (Died) and others [2021 (0) Supreme (Mad) 1366].

16. In the light of the above submissions, the points for consideration arise in this Appeal Suit are as follows:

i) When the issue of grant of title has already been decided in the revenue proceedings where the grand-father of the defendants 1 and 2 is a party to the proceedings and the said proceedings has not been challenged in the manner known to law, whether the assignment orders granted in favour of Seeniammal and Ramuthai Ammal are bad in law and violate any procedure?

ii) Is it required to prove the possession in respect of vacant land despite the fact that the title has been proved?

iii) To what relief the appellant is entitled to?

16. The suit has been proceeded on the basis of the assignment orders of the land in favour of Seeniammal and Ramuthai Ammal. The fact that the



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assignment orders were issued under Ex.A.1 and Ex.A.2 dated 31.08.1983 granting the suit property in the name of Seeniammal and Ramuthai Ammal is not disputed. Only challenge made for such assignment before the Sub Collector by one Muthupillai @ Sivanammal and one Pappammal is that the assignees are the residents of a different Village and therefore, the assignment orders are bad in law. However, the said revision has been dismissed by the Sub Collector, Usilamapatti, by order dated 10.06.1986 under Ex.A.3 and Ex.A.4. One of the parties, who challenged the said assignment, has not filed any revision or appeal. On the other hand, one Muthupillai @ Sivanammal filed a revision before the District Revenue Officer under Ex.B.2. By order dated 06.10.1987, the District Revenue Officer has allowed the revision and thereby set aside the order of the Sub Collector, Usilampatti, confirming the assignment. Challenging the same, an appeal before the Commissioner of Land Administration, Madras has been filed. The Commissioner of Land Administration, Madras, by order dated 28.07.1993 under Ex.A.5 observed that despite the adangal for pasali years 1394 to 1397 has been filed before the District Revenue Officer, the District Revenue Officer has not considered the same and therefore, the Commissioner of Land Administration has set aside the order and the matter has been subsequently remanded to the District Revenue Officer to examine the assignees alone and pass further orders. Pursuant to the appeal order, the District Revenue Officer once again enquired the matter



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and passed the detailed order on 13.08.1994 under Ex.A.6.

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17. On a perusal of Ex.A.6, it is seen that the District Revenue Officer has issued notice to the assignees as directed in the appeal order passed by the Commissioner, Land Administration, Madras. The assignees have given their explanation, in which, they have stated that from the pasali year 1394, they have cultivated the land. The District Revenue Officer has also found that there are entries in the adangal for pasali years 1394 to 1397 and further, in his order it is recorded that the assignment orders have been validly given after following the proper procedure and there was no influence from anyone for issuing such assignment orders in favour of the original assignees. Further, it is also recorded that from the date of assignment, the land assigned was not subjected to any encumbrance. This order has been passed on 13.08.1994 with regard to the assignment order was passed in the year 1983. After 10 years, the District Revenue Officer has found the lands originally assigned were not subjected to any encumbrance and the lands were only with the assignees.

18. It is not the case of the parties that the assigned lands are 'Panjami' lands or earmarked for particular Schedule Castes and Scheduled Tribes. Therefore, it is normal in any assignment order, the period of prohibiting the sale will be 10 years. When the order passed on 13.08.1994, the District Revenue



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Officer found that the properties have not been subjected to any encumbrance.

Ultimately, the District Revenue Officer confirmed the orders of assignment.

19. Though an argument has been advanced before this Court that the copy of the order dated 13.08.1994 which confirmed the assignment orders has not been served on the defendants 1 and 2 and the defendants 1 and 2 have also not been heard at the time of passing of the orders by the District Revenue Officer, it is relevant to note that it is a specific plea of the plaintiff in the plaint that the orders came to be passed on 13.08.1994. In the entire written statement there was no plea whatsoever raised either as to non-hearing of the defendants 1 and 2 or non-service of copy of the order to them. Whereas in the evidence of D.W.1, he has categorically admitted that he was also aware of the finality reached under Ex.A.6, the order passed by the District Revenue Officer. When the defendants 1 and 2 were also aware of the said order and their grand-father was participating in the proceedings right before the Sub Collector, Usilampatti upto the Appellate Authority, the Commissioner of Land Administration, now it cannot be said that no such order has been served and that they have no knowledge at all.

20. One more submission has been raised by the learned counsel for the respondents 1 and 2 that the order appears to have been sent to the defendants 1



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and 2 in the year 1997. Even such a contention is taken as true, the defendants 1 and 2 having suffered such order ought to have filed an appeal itself in the year 1997 whereas no such appeal whatsoever was filed challenging the said order.

21. It is relevant to note that the Government passed an order assigning certain lands and the said assignment orders have been confirmed in the subsequent proceedings. Now the challenge has been made by the defendants 1 and 2, being the third parties to the assignment order, they cannot question the assignment of the Government at this stage.

22. It is the contention of the defendants 1 and 2 that they are in possession of the property and the possession is derived from their ancestors. To establish their possession, no document whatsoever was filed. No adangal whatsoever was filed and when this Court queried the learned counsel for the respondents 1 and 2/the defendants 1 and 2 that in what right they are in possession, it is replied that they are paying "B" memo receipts. However, the said receipts are not seen the light of the day. Therefore, merely on the basis of the SLR which is preferred for the purpose of survey, the Court cannot assume that the defendants 1 and 2 are in possession of the property. Once the orders issuing the assignment have reached finality, the title vests with the original assignees and



they are free to deal with the properties. Admittedly, the settlement deed has been executed by one of the assignees to other person, who is none other than the mother under Ex.A.7 in the year 1998 i.e after more than 10 years of assignment. Thereafter, Seeniammal became the absolute owner of both survey numbers. However, Seeniammal executed settlement in favour of the plaintiff under Ex.A.8 in the year 2008. Therefore, the plaintiff derived title from the settlor, who has acquired title from the assignment as well as the settlement deed settled by the other assignee. Such being the position, the defendants 1 and 2, without any other documents cannot contend that it is their ancestral property and question the assignment orders at this stage, that too, when the orders of assignment have been upheld by the Government and reached finality in the year 1994 itself.

23.i) In a judgment in **Annamalai Mudaliar and others Vs. Krishna Mudaliar (Died) and others** [2021 (0) Supreme (Mad) 1366], this Court dismissed the suit filed by the plaintiff since he has not established the title. Therefore, the above judgment is not applicable to the facts of the present case.

23.ii) Similarly, the judgment of the Apex Court In **Union of India and others Vs. Vasavi Co-op. Housing Society Ltd., and others** [2014(4) CTC 471]; has been relied upon by the learned counsel for the respondents 1 and 2 to show



that only the plaintiff has to prove his case and cannot take advantage of the weakness of the defendant's case. Absolutely, there is no dispute with the settled preposition of law but, whereas the fact remains in this case is that the plaintiff has established his title and how they acquired title has also been established not only by the assignment which is executed by the Government but in the subsequent proceedings which reached finality. Hence, the aforesaid judgment is also not applicable to the present case.

23.iii) The judgment of a Division Bench of this Court in **V.G.P.Prem nagar. Minvariya Kudi Erupor Nala Sangam, represented by its Secretary and Treasurer V.Sivadasan and one another Vs. The State of Tamil nadu rep. By the Secretary to Government, Revenue Department, Chennai – 9 and 9 others [2010 (3) CTC 845]** would show that as per the Board's standing order such lands cannot be alienated to any person for 10 years from the date of assignment. It is relevant to note that the above judgment is relating to the land specifically classified as 'Panchami' lands. It is not the case in this matter. In such view of the matter, the aforesaid judgment is also not helpful to the defendants 1 and 2.

23.iii) In another judgment in **A.Manickam Vs. Jayakumar and others**



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[2019 SCC Online Madras 9522], this Court held that despite the title of the suit properties remained with the defendants, patta has been given by the revenue authorities. Only in such scenario, this Court held that patta granted is not valid in the eye of law. This judgment is also not helpful to the case of the defendants 1 and 2.

24. Considering the above, it is seen that title has been established and admittedly, it is the case of both sides that lands are vacant lands. Such being the position, only tax receipts have been filed and no documents have also filed by both sides to show that they are in actual and exclusive possession of the property. In such view of the matter, when title has been established as far as vacant land is concerned, it is settled law that possession follows title. The plaintiff established the title of the vacant land and therefore, he is entitled to injunction also.

25. When the defendants 1 and 2 have not established title, execution of any agreement or encumbrance will not be binding on the plaintiff. Such documents will not convey any right whatsoever to the party to the contract. Accordingly, the points are answered in favour of the appellant/plaintiff.



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26. In the result, the judgment and decree dated 04.01.2020 made in O.S.No.133 of 2018 on the file of the I Additional District Judge, Madurai, is set aside and this Appeal Suit is allowed and the suit is decreed for declaration as sought for and permanent injunction. Considering the nature of relief sought for by the parties, there is no order as to costs.

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Index : Yes/No
Internet : Yes/No
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To

- 1.The I Additional District Judge, Madurai.
- 2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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N.SATHISH KUMAR, J.

CM

**Judgment made in
A.S.(MD)No.96 of 2020
and C.M.P(MD)Nos.3357 of 2020
and 2917 of 2023**

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