



S.A.(MD).No.574 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 23.02.2023

Pronounced on : 02.03.2023

CORAM

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

S.A.(MD).No.574 of 2019

E.Natesan

... Appellant/ Appellant/1st Plaintiff

Vs.

1.V.Chokkalingam

2.C.Sekar

... Respondents / Respondents / Defendants

Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code, to set aside the judgement and decree dated 07.08.2019 made in A.S.No.67 of 2015 on the file of the Sub Judge, Palani (Kodaikanal Camp) confirming the judgment and decree dated 27.07.2015 made in O.S.No.180 of 2011 on the file of the District Munsif cum Judicial Magistrate Court, Kodaikanal and allow this Second Appeal.

For Appellant : Mr.S.Srinivasa Raghavan
for Mr.N.Mohan

For Respondents : Mr.Veerakathiravan
Senior Counsel
for M/s.Veera Associates



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JUDGMENT

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The Second Appeal is filed to set aside the judgement and decree dated 07.08.2019 made in A.S.No.67 of 2015 on the file of the learned Sub Judge, Palani (Kodaikanal Camp) confirming the judgment and decree dated 27.07.2015 made in O.S.No.180 of 2011 on the file of the learned District Munsif cum Judicial Magistrate, Kodaikanal.

2. The first plaintiff is the appellant in the above Second Appeal. It is the case of the plaintiffs that the suit schedule property is a Government poromboke land and that they were in occupation of the suit schedule property for more than 30 years. They had constructed houses in the suit schedule property and had obtained electricity connection for the houses. They had sought for a patta in the year 1989 and their request was rejected since the District Collector sent an order dated 19.08.1989 stating that patta cannot be granted in the hill station. While so, the defendants/respondents were attempting to disturb their peaceful possession. They are influential persons and hence, the plaintiffs had filed a suit for bare injunction. The suit schedule property consisted of four items. The first item pertained to the first plaintiff. Likewise, items 2 to 4 pertained to the plaintiffs 2 to 4.



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3. The defendants/respondents filed a written statement denying the averments in the plaint. They submitted that the property belonged to them absolutely and it was not a Government poromboke land. The defendants further claimed that they had obtained patta for the suit property from the Kodaikanal Municipality and they are in possession of the property since 1995. Having stated thus, the defendants/respondents also admitted that the plaintiffs are in occupation of the suit schedule property and prayed for declaration of title and recovery of possession as a counter claim from the appellant and three others.

4. Before the Trial Court, the plaintiffs examined P.W.1, the first plaintiff and marked exhibits A1 to A22. The defendants/respondents examined the first defendant as D.W.1 and marked exhibits B1 to B14. The Trial Court framed the following issues:

(i) Whether the suit property is a Government poromboke land as claimed by the plaintiffs or a patta land as claimed by the defendants?

(ii) Whether the plaintiffs had built a house and residing in the suit schedule property for more than 30 years?

(iii) Whether the plaintiffs are entitled to relief of permanent injunction?



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(iv) Whether the defendants are entitled to the counter claim of declaration and recovery of possession made by them?

(v) Whether the plaintiffs are entitled to any other relief?

5. The Trial Court found that the defendants had established that they had obtained patta in their names based on the documents filed by them and held that the suit schedule property was a patta land . The Trial Court further held that there is no material to show that the plaintiffs were in possession of the suit property for more than 30 years. The Trial Court also held therefore that the plaintiffs were not entitled to relief of permanent injunction. As regards issue Nos.(iv) and (v), the Trial Court found that the defendants were entitled to the relief of declaration of title based on Ex.B1 and Ex.B3 sale deeds, Ex.B4 and Ex.B5 patta, Ex.B6 Chitta and Ex.B7 Adangal. The Trial Court further granted the decree of declaration and for recovery of possession based on the counter claim only for the first defendant and rejected the claim so far as the second defendant is concerned. The Appellate Court confirmed the findings of the Trial Court.

6. This Court had admitted the Second Appeal on the following substantial questions of law:



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(A) Whether the Courts below erred in granting decree of Declaration and possession in favour of the Defendants on their counter claim while no Description of property was mentioned which is mandatory under Order 7 Rule 3 R/w Order 8 Rule 6A of Civil Procedure Code?

(B) Whether the Courts below erred in failing to frame Additional issue with regard to the mode of valuation of the Counter claim while the appellant raised a specific plea by filing I.A.No.55 and 56 of 2015 for framing an additional issue to decide the value of counter claim to pay the appropriate Court Fee and the same was allowed by the trial Court?

(C) Whether the Courts below erred in vigilance over the value the suit and Court Fee paid by the Defendants on their Counter Claim under Section 25(b) of Tamilnadu Court Fees and suits Valuation Act-1955 whereas they ought to have preferred section 25(a) and to determine the Market value of the properties they claim under Section 7 of the said Act 1955 while they have been paying taxes under Urban Land Tax Act?

(D) Whether the Courts below are right in deciding the issue of ownership based on patta mutation while the parent documents produced by the Defendants do not substantiate their title with respect to T.S.No.44 which is a Government FreeHold Land related to Ex.A22 'A' Register Adangal?

(E) Whether the Courts below are right in decreeing the suit for possession while the title deeds of the Defendants are not



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correlated with the four boundaries, Survey Numbers and Extent also while Ex.A21 conveys 50 cents, Ex.B1 conveys 80 cents and Ex.B2 and B3 conveys 77.5 cents within same four boundaries?

(F) Whether the Courts below erred in denying injunction in favour of the plaintiffs in spite they proved their possession and the same was accepted by the Defendants and the First Appellate Court's Findings?

7. (i) Mr.S.Srinivasa Raghavan, learned counsel for the appellant/first plaintiff would submit that the defendants/respondents have not clearly spelt out the description of the property in the counter claim made by them. The counter claim is akin to a suit and hence the defendants ought to have described the property for which they claimed declaration of title. The counter claim therefore is in violation of the mandate under Order 7 Rule 3 r/w Order 8 Rule 6A of CPC.

(ii) The learned counsel for the appellant further submitted that the defendants/respondents have admitted the plaintiffs' possession and in view of their admission, the plaintiffs are entitled to a relief of bare injunction since the defendants have failed to establish their title in the manner known to law.



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(iii) The learned counsel further submitted that the Trial Court did not frame any issue as regards the title of the defendants in respect of the suit schedule property.

(iv) The defendants have produced various documents in order to establish title and none of the documents would show that they pertained to the suit schedule property. The survey numbers mentioned in the documents relied upon by the defendants did not correlate with T.S.No.44 which is in possession of the plaintiffs.

(v) The defendants did not state in their pleadings as to how they were entitled to the suit schedule property in the written statement. In the absence of pleadings, the evidence let in by them producing all the documents is of no use and the evidence has to be eschewed from consideration. The present claim of the defendants that they had purchased the property by Ex.B1 and Ex.B3 sale deeds were not stated by them in their written statement which would have given an opportunity to the plaintiffs to explain the discrepancy in the survey numbers.



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(vi) The defendants also conveniently did not produce Ex.A21 Will, which was executed by one G.C.Arockiasamy bequeathing 50 cents of land in favour of one George Taylor. The boundaries in the Will and the boundaries in the sale deed dated 16.05.1979 were the same. However, the extent was shown as 80 cents in the subsequent sale deed. This is sufficient to establish that the defendants' case has not been established.

8. Mr.Veerakathiravan, learned Senior Counsel for the respondents/defendants would submit that both the Courts below have concurrently held on facts that the property belonged absolutely to the defendants/respondents. The defendants in their counter claim are restricting their claim only in respect of the land occupied by the plaintiffs and therefore, there is no dispute with regard to the identity of the property. They have not claimed declaration in respect of the entire extent of land belonging to them. The patta and other proceedings would show that T.S.No.44 measuring 0.31 hectares stands in the name of the defendants. The patta coupled with the title documents would establish the defendants' title over the suit schedule property and there is no error in the findings of the Courts below. The learned Senior Counsel took us through the findings of the Courts below in which the Courts below had on the basis of the documents marked on the side of the defendants



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held that the defendants/respondents were entitled to a relief of declaration and recovery of possession.

9. Heard the learned counsel for the appellant and the learned Senior Counsel for the respondents and perused the judgments of the Courts below and other records.

10. Though this Court had at the time of admission had formulated as many as six substantial questions of law as enumerated above, this Court finds on hearing the submissions of the learned counsels on either side and on perusal of records, that except the two questions of law extracted below, the other questions are not really the substantial questions of law involved in this appeal.

(i) Whether the Courts below are right in deciding the issue of ownership based on patta mutation while the parent documents produced by the Defendants do not substantiate their title with respect to T.S.No.44 which is a Government FreeHold Land related to Ex.A22 'A' Register Adangal?

(ii) Whether the Courts below erred in denying injunction in favour of the plaintiffs in spite they proved their possession and the same was accepted by the Defendants and the First Appellate Court's Findings?



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11. The fact that the plaintiffs are in possession of the suit schedule property is not in dispute. The plaintiffs 2 to 4, who jointly claimed to be in possession of 4 ½ cents, have not challenged the judgments of the Courts below. It is only the first plaintiff who is before this Court in the above Second Appeal. The property, according to the appellant/first plaintiff, is situated in T.S.No.44 out of a total extent of 80 cents measuring 4 ½ cents. The possession of the appellant is not in dispute. The respondents claimed title over the said property based on documents which were marked as exhibits B1 to B7. However, strangely there is no pleading in their written statement about as to how they acquired the suit schedule property. None of those documents have been pleaded in the written statement. Their only claim about the ownership is based on Patta Nos.1514 to 1517 and 845 in paragraph 5 of the written statement. It is trite that no evidence can be let in in the absence of pleadings. It is also well settled that the Courts cannot be hypertechnical and reject the case merely because the pleadings are insufficient. But in the facts of the instant case, this Court finds that the defendants/respondents ought to have pleaded as to how they acquired title based on those documents. This would have given an opportunity for the first plaintiff to deny or explain the circumstances of those documents in response to the counter claim.



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12. This assumes significance since the appellant has produced Ex.A21 Will in favour of the vendor in Ex.B1 sale deed. In Ex.A21 Will, the extent of land bequeathed to the vendor one George Taylor is only 50 cents, whereas, the vendor had sold 80 cents by Ex.B1 document. That apart, the survey number shown in Ex.B1 document is Old Survey No.18B. The appellant/first plaintiff relied upon an extract of 'A' Register marked as Ex.A22 which reveals that new T.S.No.44 corresponds to Old Survey Nos.17A and B.

13. This Court has perused the document which is a certified copy issued by the District Munsif cum Judicial Magistrate Court, Kodaikanal, which according to the learned counsel for the appellant was marked as Ex.A23. However, the records as stated earlier indicate that the said document was not marked. But the certified copy of the document reveals that Old Survey No.18/B measuring 0.24.50 hectares pertains to T.S.Nos.14 to 18. There is no reference to T.S.No.44. This Court is not considering the said document as it is not part of the record.

14. On the side of the respondents, they relied upon the sale deeds, exhibits B1 to B3, Ex.B4, which is a document recommending issuance of patta in the names of the respondents by the Revenue Divisional Officer and exhibits



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B5 to B7 patta and other revenue records issued in the name of the respondents.

In Ex.B1 sale deed, there is no reference to T.S.No.44. The schedule of the property mentions only about Old Survey No.18/B. In Ex.B2 and Ex.B3 sale deeds, though there is a reference to T.S.No.44, there is no basis for connecting T.S.No.44 with Old Survey No.18/B. In Ex.B4, a direction is given by the Revenue Divisional Officer to the Tahsildar to issue patta in the names of the respondents. In Ex.B4 also, there is no correlation of Survey No.18/B to T.S.No.44. On the other hand, the old survey numbers and new T.S. Numbers have been mentioned in various places without clearly mentioning as to which old survey number corresponds to T.S.No.44. In the cause title of Ex.B4, it is stated that the dispute is with regard to Survey No.18B measuring 77.5 cents. In another portion, there is a mention while extracting the contentions of the rival claimants to the respondents about T.S.No.44, which reads as follows:

□1969 முதல் 1998 வரையுள்ள காலத்தில் புல எண்.19 பி வார்டு.சி, பிளாக்.20, டி.எஸ்.எண்.44க்குரிய வில்லங்கச் சான்று தாக்கல் செய்யப்பட்டுள்ளது. மேற்படி வில்லங்கச் சான்றில் ஜார்ஜ் டெய்லர் மற்றும் இருவர் ஆவண எண்.174/79ன்படி ஜேசுமணி நிக்கோலஸ் பெயரில் பதிவு செய்யப்பட்ட விபரம் குறிப்பிடப்படவில்லை.□

The above would show that Survey No.19B corresponds to T.S.No.44. It is also a fact that pursuant to Ex.B4 order, the other revenue records were issued in



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favour of the respondents. Thus, the revenue records cannot be the basis for holding that the respondents are entitled to a relief of declaration of title in respect of the property comprised in T.S.No.44. As stated earlier, Ex.A21 and Ex.A22 throws a serious doubt on the claim made by the respondents with regard to T.S.No.44. Further, the extent of land also varies. The suit schedule property in respect of the appellant is shown as 4 ½ cents out of 80 cents, whereas, Ex.B4 and other documents pertain to 77 cents.

15. Thus, this Court is of the view that the judgments of the Courts below in declaring that the suit schedule property in T.S.No.44 belongs to the respondents on the basis of exhibits B1 to B7 are not correct. That apart, Ex.A22 produced on the side of the appellant, which shows that T.S.No.44 corresponds to Old Survey Nos.17 A and B and the same is shown as free hold land, has not been controverted in any manner by the respondents. The respondents have also not pleaded about the documents in their written statement. For all the above reasons, this Court is of the view that the judgments of the Courts below in allowing the counter claim made by the respondents/defendants have to be set aside.

16. It is an admitted case of the respondents that the appellant is in



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possession of the suit schedule property. Though the appellant had claimed that he had perfected title over the property by adverse possession, the same has not been established by him. However, the fact that the appellant is in possession is not in dispute. In the light of our finding that the respondents have not established title, the appellant is entitled to the relief of injunction as prayed for.

17. In the result, the Second Appeal is allowed by setting aside the judgments of the Courts below. Hence,

a) the suit filed by the appellant in O.S.No.180 of 2011 is allowed and decreed as prayed for.

b) the counter claim made by the respondents is dismissed.

There shall be no order as to costs.

02.03.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
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To

- 1.The Sub Court,
Palani (Kodaikanal Camp).
- 2.The District Munsif cum Judicial Magistrate Court,
Kodaikanal.
- 3.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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SUNDER MOHAN, J.

Lm

Judgment made in
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