



S.A.(MD).No.160 of 2017

WEB COPY

THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.11.2023

CORAM:

THE HONOURABLE **MRS.JUSTICE S.SRIMATHY**

S.A.(MD).No.160 of 2017

1.Madhanakumari

2.Senthil Kumar

... Appellants

/Vs./

Periyamuniyandi @ Kuppusamy

...Respondent

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code against the Judgment and Decree passed in A.S.No.30 of 2014 on the file of the Subordinate Judge, Uthamapalayam, dated 20.07.2015, concurring with the Judgment and Decree passed in O.S.No.143 of 2012 on the file of the District Munsif, Uthamapalayam, dated 27.06.2014.

For Appellants : Mr.V.Chandrasekar

For Respondent : Mr.K.Guhan

JUDGMENT

The plaintiffs are the appellants herein. The plaintiffs have filed suit for bare injunction restraining the defendant from disturbing the plaintiffs peaceful enjoyment and possession of the suit scheduled property.



S.A.(MD).No.160 of 2017

WEB COPY

2. The plaintiffs are claiming right over the suit property through Ex. A1, which is Natham patta granted to the plaintiffs. In the Natham patta, the survey number is mentioned as 1203/66 and the extent of land is mentioned as 4.6 metre north to south on eastern side and western side, east to west on northern side 3.6 metre and southern side 3.4 metre totally to an extent of 178.18 square feet. Further the plaintiffs claim right over the property by relying on Ex. A2 as well, which is Gift Settlement Deed. The extent mentioned in the settlement deed is 2150 square feet. There is a discrepancy in Exhibits A1 and A2 in the measurement of the suit mentioned property. The defendant is also in possession of Natham patta for the survey No.1203/64. Even according to the plaintiffs and the defendant, the suit property in survey No. 1203/66 is on the western side of survey No.1203/64. In other words, the survey No.1203/64 on the eastern side lies the disputed property of the plaintiffs.

3. The Trial Court after elaborate consideration has held that the plaintiffs are having right over the property as per Exhibit A1, which



S.A.(MD).No.160 of 2017

WEB COPY

is Natham patta. Since the plaintiffs are claiming right over the suit property through Exhibit A2, which is a gift settlement deed but there is discrepancy in the measurement wherein in the settlement a larger extent is shown as the property belonging to the plaintiffs, hence the Court below declined to grant injunction. When the Natham patta is assigned to the plaintiffs, then the plaintiffs cannot claim over and above the land granted in Natham patta and cannot rely on the gift settlement. Hence, the Trial Court declined injunction and the same was confirmed by the Appellate Court as well.

4. While admitting the second appeal, this Court has admitted on the following three substantial questions of law:

“(1) Whether the dismissal of the suit in entirety is perverse when the Courts below found that the appellants are entitled to 178.18 sq. feet in survey No.1203/66, which was also admitted by the respondent in the written statement and also during the trial?

(2) Whether the approach of the Courts below are right in dismissing the suit when the appellants are entitled to a lesser extent of the land which was also not disputed by the respondent?



S.A.(MD).No.160 of 2017

WEB COPY

(3) Whether the suit for permanent injunction is maintainable without seeking the relief of declaration of title?"

5. The Courts below had held that the plaintiffs were granted Natham patta under Exhibit A1 and the extent of the property as 178.18 square feet. Even the defendant had admitted in their writ statement that the plaintiffs were granted Natham Patta. The only discrepancy arise is the gift settlement deed where a larger extent is shown. When the patta is granted only for 178.18 square feet, then the gift settlement deed cannot be executed over and above 178.18 square feet. Both the Courts having held the patta granted to the plaintiffs are legally sustainable ought to have modified the prayer and granted bare injunction based on exhibit A1. But both the Courts have declined injunction for a lesser extent, which the plaintiffs are entitled to.

6. The only contention raised by the defendant is that the plaintiffs have stated that the cause of action arises based on the settlement deed, wherein, the plaintiffs are claiming larger extent. It is



S.A.(MD).No.160 of 2017

not the case of the defendant that Natham patta in S.No.1203/66 was not issued to the plaintiff at all. In such circumstances, both the Courts have erred in not granting bare injunction against the defendant for the lesser extent shown in Exhibit A1. Therefore, the suit which was dismissed in entirety is incorrect and the plaintiffs are entitled to bare injunction for lesser extent. Therefore, the substantial questions of law (1) and (2) are answered in favour of the plaintiffs.

7. The next contention that was raised is that the plaintiffs have not filed a suit for declaration, hence the bare injunction suit is not maintainable. When the defendant is not questioning the Natham patta exhibit A1, then there is no cloud over the suit property and hence prayer for declaration is not necessary. In other words, when the defendant is not raising any issue questioning the title of the land through exhibit A1 then declaration prayer is not necessary. Therefore, the 3rd substantial question of law which the defendant has raised that permanent injunction is not maintainable without seeking declaration of title is also answered in favour of the plaintiffs.



S.A.(MD).No.160 of 2017

WEB COPY

8. Therefore, all the substantial questions of law are answered in favour of the plaintiffs. Hence, the Judgment and Decree passed by both the Courts are set aside to the extent stated supra. The plaintiffs are entitled to patta to a lesser extent which is shown in Exhibit A1 Natham Patta. Hence, the second appeal is allowed in above terms. No costs.

17.11.2023

Index : Yes / No

NCC : Yes / No

Tmg



S.A.(MD).No.160 of 2017

WEB COPY

TO:

1. Subordinate Judge, Uthamapalayam.
2. District Munsif, Uthamapalayam.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



S.A.(MD).No.160 of 2017

S.SRIMATHY, J.

Tmg

Judgment made in
S.A.(MD)No.160 of 2017

Dated:
17.11.2023