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S.A.No.1772 of 2



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Order Reserved on : 17.04.2023
Order Pronounced on : 07.06.2023

CORAM :

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

S.A.No.1772 of 2002
and
C.M.P.No.15123 of 2002

1. P.Raman

2. Nachan

... Appellants

vs.

1. C.Ammasi

2. Raman @ Thottan

3. Vellairaman @ Raman

4. Gnaseelan

... Respondents

(Respondents 3 and 4 are not pressed)

Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree dated 28.11.2001 in A.S.No.170 of 1999 on the file of the Court of Principal District Judge at Sivagangai reversing the judgment and decree dated 30.07.1999 in O.S.No.180/98 on the file of the Court of Principal District Munsif at Sivagangai.

For Appellants : Mr.S.Srinivasa Raghavan
For Respondents : No appearance



JUDGMENT

The appellants are plaintiffs in O.S.No.180/98 on the file of the Principal District Munsif at Sivagangai. The said suit was decreed by judgment and decree dated 30.07.1999, against which, the respondents herein filed appeal in A.S.No.170/99 on the file of the Principal District Court, Sivagangai. The said appeal was allowed by judgment and decree dated 28.11.2001, setting aside the judgment and decree passed by the trial Court. As against the judgment and decree passed by the lower appellate court, the appellants/plaintiffs filed the present second appeal. While admitting the second appeal, this Court has formulated the following substantial questions of law:-

"1. Whether the first appellate Court is correct in reversing the judgment of the trial Court, especially the original patta stood in the name of Thothanangiri's son Lakshmanan and the defendants who relied upon the certified copy did not claim that their forefather's name is Thothanagiri?

2. Whether the first appellate Court is correct in reversing the judgment of the trial Court on an erroneous consideration of the original settlement patta Ex.A7 and the certified copy of the same settlement patta issued by the same office in respect of the same extent of the property in S.No.22/5 in Kayankulam Village?



3. Whether the reasons given by the first appellate Court in not relying upon Ex.A7 is correct in law and fact of the case?"

2. The case of the appellants is that the suit properties are their ancestral properties originally belonged to one Sorakkattai @ Thothanagiri @ Raman. After his demise, his son Lakshmanan inherited the suit properties and after the death of the said Lakshmanan, his sons namely, Perumal/father of the 1st appellant and Nachan/2nd appellant inherited the suit properties. After the demise of his father, the 1st appellant inherited his share. Thereafter, the appellants 1 and 2 were jointly enjoying the suit properties by oral partition, by which, eastern portion of the suit properties was allotted to the 1st appellant and western portion was allotted to the 2nd appellant. After the said oral partition, the appellants were enjoying their respective portions separately and they have also prescriptive title by adverse possession. According to the appellants, except them, no other persons are having any right and title over the suit properties. However, without their knowledge, wrongly, the name of A.Lakshmanan Vagaiyara was mentioned in the patta instead of mentioning the names of the grandfather of the 1st appellant and father of the 2nd appellant and taking advantage of the



same, the respondents 1 to 3 executed a sham and nominal sale deed in respect of the suit properties in favour of the 4th respondent.

Thereafter, on 07.10.1998, all the respondents tried to interfere with the peaceful possession and enjoyment of the appellants over the suit properties. Therefore, the appellants issued a notice to the respondents on 26.10.1998. On receipt of the same, the respondents sent a reply dated 11.11.1998 with false allegations. Subsequently, the respondents tried to interfere with the peaceful possession and enjoyment of the appellants from 15.11.1998. Therefore, the appellants were constrained to file the suit initially for permanent injunction subsequently the same was amended for declaration and permanent injunction. After trial, the trial Court appreciated both oral and documentary evidence and decreed the suit. However, when the respondents filed appeal before the first appellate court, the first appellate court dismissed the suit and allowed the appeal. Therefore, the appellants filed the present second appeal by raising the substantial questions of law as mentioned above.

3. The case of the respondents is that the suit properties are ancestral properties of the respondents 1 to 3 and therefore, there



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was no document of title. The respondents denied the relationship of the appellants and their predecessors in interest. The suit properties originally stood in the names of Alagan and Lakshmanan and it is their ancestral properties. During the settlement period, a patta was also issued in the name of one of the ancestors namely, Lakshmanan. However, Lakshmanan and Alagan jointly enjoyed the suit properties. Lakshmanan is the son of Alagan. After the demise of Alagan, Lakshmanan enjoyed the suit properties. The 2nd respondent/2nd defendant is the son of the said Lakshmanan. After the demise of the settlement pattadhar Lakshmanan, his another son Chinnaiah enjoyed the suit properties. The respondents 1 and 3/defendants 1 and 3 are the sons of Chinnaiah and the pattadhar Lakshmanan was not the grandfather of the 1st appellant. Taking advantage of the similarity of the names, the appellants are claiming the suit properties as their ancestral properties, however, they have not established either genealogy or their rights and enjoyment over the suit properties. After the settlement period, during the UDR scheme, a joint patta was issued in the names of the father of the 2nd respondent/2nd defendant namely, Lakshmanan and the father of the respondents 1 and 3/defendants 1 and 3 namely, Chinnaiah vide joint patta No.925. Therefore, the respondents and their



predecessors were openly and continuously enjoying the suit properties as their ancestral properties. The suit properties are punja lands and it is only during the rainy reason, it can be cultivated. The appellants never enjoyed the suit properties at any point of time and it is false to state that the patta was wrongly mentioned as Lakshmanan and others. Even otherwise, the said Lakshmanan is not the ancestors of the appellants, whereas, he is only grandfather of the predecessors of the respondents. At no point of time, the patta stood in the names of the appellants and there was no oral partition between the appellants. The appellants were never in possession of the suit properties. The respondents were in possession and enjoyment of the suit properties and therefore, the 3rd respondent executed a sale deed in respect of his share to his wife by name, Muthu Irulayee for a valuable sale consideration of Rs. 22,020/- under a registered sale deed dated 23.10.1997. The said fact was also informed in the reply notice. Though the trial Court failed to appreciate the oral and documentary evidence and erroneously decreed the suit, the respondents approached the first appellate court and the first appellate court rightly re-appreciated the evidence and set aside the decree and judgment passed by the trial Court and dismissed the suit by allowing the appeal. Therefore,



there is no substantial question of law involved in this appeal as raised by the appellants and appeal is liable to be dismissed.

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4. Learned counsel for the appellants would submit that the suit properties are ancestral properties of the appellants and it originally stood in the name of one Sorakkattai @ Thothanagiri @ Raman. After his demise, his son Lakshmanan inherited the suit properties. Lakshmanan has got two sons by name, Perumal, father of the 1st appellant and 2nd appellant Nachan. Thereafter, both the appellants divided the suit properties by oral partition and enjoyed the same, however, in the patta issued during UDR scheme, the name was wrongly mentioned as Lakshmanan Vaigayara. Taking advantage of the same, the respondents 1 to 3 tried to interfere with the enjoyment of the appellants and executed a sham and nominal sale deed, based on which, the learned counsel sought interference. Further, the learned counsel would submit that Ex.A7 is a certified copy of the settlement register in respect of Survey No.22/5 of Kayankulam Village, in which, the particulars are given in detail. In Ex.A7, it is clearly stated that the original settlement patta No.466 was issued in favour of Lakshmanan son of Thothanagiri @ Raman. The respondents claimed that the original settlement register issued



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in their favour was lost in the fire accident and hence they produced the certified copy of the same which was issued on 11.03.1999 and the same was marked as Ex.B2. According to the learned counsel, the said document did not contain the vital particulars that the original patta stood in the name of Lakshmanan son of Thothanagiri @ Raman, but survey number, extent, village etc., are same in both the documents. Though the trial Court rightly appreciated the said documents, the first appellate court brushes off the vital document namely, Ex.A7 and erroneously stated that except Ex.A7, the appellants did not file any other documents. The settlement Tahsildar is the competent authority to decide the issues of settlement patta and the same cannot be decided by the civil court. The respondents never claimed that their forefather's name is Lakshmanan son of Thothanagiri @ Raman and if there is no one by such name in the family of the respondents, the settlement patta could not have been issued in his favour and consequently, the respondents also could not have in possession of such patta in respect of the suit properties. Even if they may not have any document of title deeds, however, they should have got possession of original patta in the name of their ancestors. However, without considering the same, the first appellate court refused to accept the



genealogy of the appellants and erroneously accepted the genealogy of the respondents.

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5. According to the learned counsel, Exs.A7 and B2 are one and the same and Ex.A7 clearly shows that the suit properties are ancestral properties of the appellants and their predecessors' names have been shown in the settlement patta. However, the lower appellate Court erroneously held that the appellants have not proved the fact that the suit properties are their ancestral properties and Ex.A7 is before resurvey and Ex.B2 is after resurvey. The said resurvey theory was not proved and both the documents are in respect of the same property. The resurvey theory is invented one and the same is not supported by any document or evidence. Therefore, the appellants have proved that the suit properties are their ancestral properties and they are in possession and enjoyment of the same continuously for more than the statutory period and they have divided the suit properties through oral partition and enjoyed their respective portions. Even though the appellants have proved their case through oral and documentary evidence, and the trial Court also rightly considered the same and decreed the suit, however, the first appellate court failed to re-appreciate the evidence



in proper perspective and erroneously dismissed the suit by allowing the appeal which warrants interference by this Court.

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6. The learned counsel for the respondents would submit that the appellants have not proved that the suit properties are their ancestral properties and the genealogy has not been proved. Even during the cross examination, the appellants were not in a position to say about their ancestors and prove the genealogy. Though the appellants have produced the kist receipts which are only 40 years before the suit and even the appellants admitted during the cross examination that they do not have any document to show more than 40 years of their possession and enjoyment over the suit properties. Further, he would submit that the appellants have not proved through oral and documentary evidence that the suit properties originally belonged to Sorakkattai @ Thothanagiri @ Raman and he had only one son by name, Lakshmanan and after his death, the appellants are enjoying the suit properties. The appellants have produced only kist receipts paid in the year of 1957 and no patta number was mentioned in the kist receipts and it is not correlated to the suit properties. PW1 himself admitted in his evidence that there is no documentary evidence to prove his possession for more than



40 years. Ex.B3-amended UDR patta was issued to the respondents as early as in 1985 and no fruitful attempt was made by the appellants to change the patta in their names. If really the appellants are entitled to the suit properties as their ancestral properties, they ought to have examined any one of the villagers to prove the genealogy and also the ancestral character of the suit properties and the possession of the suit properties by them, but they have not done so.

7. According to the learned counsel, the trial Court has not properly appreciated Ex.B2-copy of the settlement 'A' Register for the suit properties, in which, the suit properties are shown only in the name of Lakshmanan who was the father of the 2nd respondent and even the boundaries have not been properly mentioned. Normally, the property has got four boundaries, whereas, in the suit properties, it is mentioned as if the suit properties have got five boundaries which itself clearly shows that the appellants have not proved the title and enjoyment of the suit properties. In the absence of any document either before or after settlement to prove the title of the appellants over the suit properties, the trial Court ought to have dismissed the suit, but erroneously decreed the suit.



Therefore, the first appellate court rightly re-appreciated the oral and documentary evidence and dismissed the suit by allowing the appeal. No documentary evidence has been produced to prove that prior to the filing of the suit, the appellants were continuously enjoying the suit properties as their own.

8. Learned counsel for the respondents further submitted that if really the appellants are having title and possession of the suit properties, they ought to have produced the cultivation records namely, kist receipts and Adangal. Even assuming in the patta, the name was wrongly mentioned, still, the appellants can prove their possession by way of producing the cultivation records namely, kist receipts and Adangal. Therefore, the judgment of the trial Court is mutually contradictory. While in Ex.A7, patta number is mentioned as 446, in Ex.A8-kist receipts, patta number is shown as 466. Therefore, Exs.A7 & A8 are suspicious documents. The appellants have not given explanation or given correlation certificate also. The trial Court hypothetically mentioned that Ex.B3 is the amended patta. Further, there is no relevancy to the documents Exs.A3, A12 and A13 which have no direct or indirect relevancy to the suit properties and especially, the appellants have not filed any



correlation certificate by producing old patta and new patta to show that their predecessors in title were enjoying the suit properties under old patta and the appellants are enjoying the suit properties under new patta. Except Ex.A8-kist receipt that too was of the year 1957, no other document was produced by the appellants and no witness was examined to prove the genealogy or the relationship of the ancestors or predecessors of the appellants in title. Though the trial Court failed to appreciate the oral and documentary evidence in the right perspective, however, the first appellate court rightly re-appreciated the evidence and followed the settled proposition of law that the plaintiffs have to prove their case on its own strength and they cannot take advantage of the weakness of the defendants. Though the trial Court failed to appreciate the oral and documentary evidence, the lower appellate court rightly re-appreciated the evidence and dismissed the suit by setting aside the judgment and decree passed by the trial Court and therefore, there is no merit in the second appeal and there is no substantial question of law regarding re-appreciation of evidence. There is no perversity in re-appreciation of evidence by the lower appellate court. Therefore, the second appeal is liable to be dismissed.



9. Heard the learned counsel for the parties and perused the materials available on record.

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10. Admittedly, the appellants have filed the suit initially for permanent injunction and subsequently, the same was amended for declaration and permanent injunction. The specific case of the appellants are that the suit properties originally belonged to one Sorakkattai @ Thothanagiri @ Raman. After his demise, his son Lakshmanan enjoyed the same by inheritance and got settlement patta under patta No.466. After the death of Lakshmanan, his sons namely, Perumal who is the father of the 1st appellant and 2nd appellant herein both jointly enjoyed the suit properties and after the death of Perumal, his only son namely, Raman/1st appellant got his father's share. The appellants orally partitioned the properties as per the customs, by which, eastern side was allotted to the 1st appellant and western side allotted to the 2nd appellant. After the oral partition, they separately cultivate the land under their possession. During UDR scheme, without following due process and against the natural justice and even without issuing notice to the appellants, the suit properties and other two properties bearing different survey numbers merged with the patta of another one



Lakshmanan son of Raman bearing patta No.722. Since the appellants are illiterates, they were not aware of the fact that their property is under the patta of another one Lakshmanan son of Raman. The respondents taking advantage of their innocence, tried to create a sham and nominal documents in order to prevent peaceful possession of the appellants. Therefore, the appellants issued a notice and despite that, the respondents created a sham and nominal documents. Therefore, in order to protect their interests, the appellants filed the suit initially for permanent injunction subsequently amended for declaration.

11. The specific case of the respondents is that the suit properties are not ancestral properties of the appellants, whereas, it is the ancestral properties of the respondents and settlement patta also stood in the name of their ancestors and UDR patta also shows that the patta stands in their names. Even assuming that the appellants' names have been wrongly mentioned in the UDR patta, still, the appellants can prove that the possession is with them by producing the original patta and also Adangal showing that they are in possession of the property by cultivating the land and nature of the cultivation. However, neither they produced such document nor



examined any oral evidence to that effect. None of the villagers or neighbours of the suit properties were examined to prove the relationship of the appellants with their ancestors and genealogy produced by them. Without even admitting that the suit properties are not ancestral properties of the respondents, at least, from the date of issuance of patta under UDR scheme in the name of the respondents' ancestors in the year of 1985 till the filing of the suit in the year of 1998, for more than the statutory period, they were enjoying the suit properties as their own hostile to the appellants. Therefore, even otherwise, the respondents are entitled to prescriptive title by adverse possession. Even the oral and documentary evidence clearly shows that the respondents are in possession and enjoyment of the suit properties over and above the statutory period. Therefore, they have prescriptive title by adverse possession. Admittedly, the respondents also sold some of the property to the third party.

12. From the oral and documentary evidence, it is clearly seen that the appellants filed the suit for declaration and injunction. Though the appellants claimed title to the suit properties stating that it is their ancestral property and therefore for proving the ancestral



property, no document of title deed needs to be produced, but however, the patta is the document of title for the ancestral property. Though they have filed the patta which was issued in the year 1957, they have not produced any subsequent document to show that they were in possession of the suit property after the said period. It is a settled proposition of law that a plaintiff who filed the suit for declaration and injunction has to prove his title and he cannot take advantage of the weakness of the defendants. Though the appellants attempted to show some genealogy and mentioned the names of their ancestors, no document like, birth certificate, death certificate, legal heirship certificate have been produced nor villagers have been examined to prove the same. Even the appellants admitted that subsequently during UDR scheme, the patta was wrongly given in the name of the respondents and their ancestors and even though the appellants have stated that in Ex.A7-settlement register, his predecessor's name is mentioned, they claim that the said Lakshmanan is their ancestor, whereas, the respondents claim that the name of Lakshmanan mentioned in the said settlement patta is their ancestor. If any dispute arises, the plaintiffs who have filed the suit, have to prove that the name mentioned in the settlement patta is their ancestor and they cannot take advantage of



the weakness of the defendants. Though the appellants have specifically stated that the said Lakshmanan was their ancestor, no document was produced to prove the same except by filing Ex.A9-note book relating to details of cash gift received towards the funeral ceremony. Mere marking of the document is not necessary. It has to be proved in the manner known to law. The appellants have not proved the said fact specifically without any iota of doubt, when respondents specifically denied the fact and further even assuming that the patta issued in the year 1957 stood in the name of the ancestor of the appellants and only in the UDR patta issued in the year 1985, the respondents' names have been wrongly mentioned, admittedly, from the year 1985 till filing of the suit in the year 1998, the appellants have not taken any steps to change or cancel the patta issued in the name of the respondents. Though the appellants filed appeal before the Revenue Divisional Officer, Sivagangai, in Roc.No.B1/339/99 to change the patta, it is only subsequent to the filing of the suit. Though the appellants have stated that they are illiterates and they were not aware of the issuance of patta in the name of the respondents, if at all the appellants are in possession of the suit properties, at least, they can prove their possession.



13. Though the appellants stated that they divided the suit properties equally by means of oral partition, they have not given any specific date on which they entered into oral partition and what steps they have taken to change the patta through the sub division in their names. Therefore, it is for the appellants to prove first that the suit properties are ancestral properties and there is a patta in the names of their predecessors which was periodically changed in the name of the successors through inheritance or still stands in the names of the original ancestors and also prove that they are still continuously in possession and enjoyment of the suit properties. Even as per the admitted case of the appellants, the patta only stands in their ancestor's name till 1957. Though the appellants contended that settlement patta was issued in the name of their ancestor Lakshmanan, but subsequently, in the UDR patta, the name was wrongly mentioned as Lakshmanan Vaigayara and other two property bearing different survey numbers got mixed up with the patta, there is no evidence to show that the appellants have approached the revenue authority to de-link those properties or amend or cancel the patta issued in the name of Lakshmanan vagayara, whereas, they allowed the patta to stand in the name of the respondents for more than the statutory period. The appellants



have not proved that even from the period of Ex.A7-settlement register until filing of the suit, they were in possession and enjoyment of the suit properties.

14. Admittedly, the suit properties are cultivable punja lands if the rain falls. Therefore, it will be made entry in the Adangal register. However, no such copies of Adangal register has been produced to prove continuous possession of the appellants till the filing of the suit from 1957. Though the trial Court decreed the suit, the lower appellate court rightly re-appreciated the entire evidence and allowed the appeal and set aside the judgment and decree passed by the lower appellate court and dismissed the suit. In the second appeal, the power of this Court is very limited. This Court can interfere only on the substantial questions of law. A perusal of the entire materials and oral and documentary evidence coupled with the judgment of both the courts and the substantial questions of law framed by this Court show that the appellants have not proved their case in the manner known to law that the suit properties are ancestral properties and they are in possession and enjoyment of the suit properties till the date of filing of the suit. Therefore, in the absence of the same, the appellants are not entitled to decree of



declaration and injunction. Though the trial court decreed the suit, the lower appellate court rightly re-appreciated the evidence and dismissed the suit which does not require any interference. Under these circumstances, there is no merit in the said second appeal. The substantial questions of law are answered accordingly. The second appeal fails and it is accordingly dismissed. No costs. Connected miscellaneous petition is closed.

07.06.2023

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Internet : Yes
Neutral Citation : Yes / No
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To

1. The Principal District Judge,
Sivagangai.
2. The Principal District Munsif,
Sivagangai.



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S.A.No.1772 of 2

P.VELMURUGAN, J.

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PRE-DELIVERY JUDGMENT MADE IN
S.A.No.1772 of 2002
DATED : 07.06.2023