



S.A.No.34 of 2002

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.06.2023

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

S.A.No.34 of 2002

M.Azhagarsamy (died)
1.M.Marimuthu

...Appellants/Appellants/Plaintiffs

Vs.

Kullalar Community of
Mettupatti Village
of Rajapalayam Taluk,
rep. by its President
and Representative Rasu

...1st Respondent/Respondent/Defendant

2.A.Alagarsamy
3.A.Murugan
4.Lakshmi

....Respondents 2 to 4

(Respondents 2 to 4 are brought on
record as Lrs of deceased 1st appellant
vide Court order dated 02.12.2019
made in M.P.Nos.1 to 3 of 2008)



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PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the decree and judgment dated 14.06.2001 rendered in A.S.No.43 of 2000, on the file of the Subordinate Judge, Srivilliputhur confirming the decree and judgment dated 29.09.2000 rendered in O.S.No. 82 of 1999 on the file of the Principal District Munsif, Srivilliputhur.

For Appellants : Mrs.P.Jessi Jeeva priya

For R1, R2 & R4 : Mr.A.Sivaji

J U D G M E N T

The plaintiffs in O.S.No.82 of 1999, on the file of the Principal District Munsif Court, Srivilliputhur are the appellants in the present appeal. The deceased appellant and the first appellant filed the above said suit against the respondent for partition and separate possession of 1/2nd share in the suit property. The said suit was dismissed. Aggrieved by the said judgment and decree passed by the trial Court, the deceased appellant and first appellant herein filed an appeal in A.S.No.43/2000, on the file of the Sub-Court, Srivilliputhur. The learned Sub-Judge, Srivilliputhur after



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hearing the arguments and after considering the materials, dismissed the appeal. Aggrieved by the same, the appellants in the said appeal filed the present second Appeal.

2. The specific case of the plaintiffs as per the plaint is that the suit property is a vacant site measuring an extent of 16 cents situated in Mettupatti Village, Sethur, Rajapalayam Taluk. The suit property is grama Natham situated in old Survey No.391/1, new survey No.409/42. The property has been shown in the rough sketch annexed to the plaint. In the said plan, the suit property is shown as 'ABEF' in which ABCD $\frac{2}{3}$ rd portion of the suit property is ancestral properties of the appellants and they were doing ancestral business of making the clay pots. In the said rough sketch, the northern portion was shown in red colour CDEF portion which is $\frac{1}{3}$ rd of the suit property. The above said $\frac{2}{3}$ rd of ABCD portion was under the enjoyment of the appellants and their ancestors by making the clay pots and the northern portion of CDEF portion, the respondent villagers were using as a waste dumping place. The respondent's community people were



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enjoying the said northern side 1/3rd portion of the suit property. There is no boundaries to divide both the portion and the entire suit property is vacant site and during updating the scheme in the year of 1996, a joint patta was given for the entire property in the name of the both appellants and respondent. Since during updating scheme, entire property was kept as the vacant site. Therefore, joint patta was given. From 1996 till date the suit property was under the joint patta and there is no separate patta was given either for the appellants or the respondent. During the updating scheme, the Tahsildar under the said scheme should enquire the persons, who are in actual possession and grant the separate patta. Without doing so, the Tahsildar issued the Joint patta. Since both the appellants and the respondent were enjoying the suit property jointly and therefore, joint patta was given. Hence, the property was shown in joint patta, both the appellants and respondent are the joint owners and they are enjoying the property as joint property. Therefore, the appellants mortgaged the said property and mortgagee enjoying the property. Since the respondent causing disturbance to the appellants and their mortgagee from enjoying the



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property, therefore, the deceased appellant filed the suit in O.S.No.568/1996 on the file of the Principal District Court, Srivilliputhur for permanent injunction. After trial, the said suit was dismissed. While dismissing the suit, the trial Court made certain observations in para-12 of the judgment the appellants could be entitled to $2/3^{\text{rd}}$ share. Based on the said observations, the appellants filed present suit and the same was dismissed there against filed first appeal, the appeal was also dismissed. Therefore, the present second appeal.

3. The case of the respondent's community is that they denied the right of the appellants in the suit property. Even, the plaint plan was also disputed. The northern part ABCD $2/3^{\text{rd}}$ portions are not enjoyed by the appellants predecessor. The suit schedule property not belongs to the appellants and their predecessor. By mistakenly during updating scheme the name of the deceased appellant was included in the joint patta as if both are jointly enjoying the suit property. Admittedly, the respondent is in possession of the property in Old S.No.391/1 and New Natham Survey No.



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409/42 which originally belongs to the Chethur Jaminthar and the same was not in possession of the appellants for ever. The respondent enjoyed the property in question by doing pottery business over and above the statutory period. The fact that northern portion of the suit property was enjoyed by the appellants and the southern portion was enjoyed by the respondent is denied. The deceased appellant and first appellant filed a suit in O.S.No. 568 of 1996 with the pleading that the possession of the plaintiffs in the suit property was disturbed by one Rasu, head of the defendant's community and the same was dismissed on merit. The deceased appellant and first appellant who were the head of the defendant's community in the earlier point of time, used that position they included their name in the patta and taking advantage of it they filed the present suit with false facts. The appellants are not having any right over the suit property and it is clear from the fact that they filed suit claiming 2/3 share in the suit property and the same was dismissed by the trial Court. The appellants have not filed any document to prove the fact that the suit property was in possession and enjoyment of them. The suit filed by the appellants was hit by the principle of res-



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judicata. The appellants have under valued the suit property and it worth about several lakhs. They have under valued the suit property for the purpose of paying the lessor court fees. As the suit filed by the plaintiffs was dismissed by the trial Court and the first appellate Court also dismissed the appeal and no merit in the second appeal, hence, the second appeal has to be dismissed with costs.

4. The suit property originally belonged to the Sethur Jaminthar and they have given the suit property to the defendant's community. Some point of time plaintiffs were also the office bearers of the defendant's community and as a President and Secretary of the community and they have taken over the charge of the property and they were not having any personal right and interest over the property. While they were in the said position in the community taking advantage of the same, they got joint patta as if they have got personal right in the suit property. During the updating scheme joint patta was issued both in the name of plaintiffs and defendant's community. Therefore, prior to 1996 the UDR scheme, they had no



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document to show that they have any right in the suit property much lessor 2/3rd portion of the property. The respondent made objection for including their name in the patta during updating scheme and to remove the name of the appellants and in the meanwhile the deceased appellant created a document as if he mortgaged the property, the alleged mortgagee is none other than the son-in-law of the deceased appellant and they also filed the suit against the respondent's community.

5. Since already they filed the suit in O.S.No.568/1996 therefore, the Tahsildar could not decide the petition filed by the respondent regarding the issuance of joint patta. The deceased appellant name has not been included in the joint patta as they are the owner of the properties and due to some reasons which is un-explained and even without giving any prior notice to include the name in the joint patta, however, the suit filed by the appellants was not maintainable, since the suit was filed for bare injunction as if they were in exclusive possession of the suit property as owners of the suit property. Now, they filed the suit for partition of 2/3 share, therefore,



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the present suit is hit by res-judicata and also estopped from taking the different stands and therefore the present suit is liable to be dismissed.

6. Based on the pleadings, the trial Court framed the following issues:-

- (I) Whether the plaintiffs have right over the suit properties?
- (ii) Whether the suit is barred by principle of res-judicata?
- (iii) Whether the suit is barred by principle of estoppel?
- (iv) Whether the plaintiffs are entitled to the relief as sought for in the plaint?
- (v) What are the relief plaintiffs are entitled to?

7. After completing the pleadings and framing of issues, on the side of the plaintiffs, first plaintiff was examined as P.W.1 and the second plaintiff was examined as P.W.2 and 13 documents were marked as Ex.A1 to A13. On the side of the defendant, one Rasu was examined as D.W.1 and one Ayyanar was examined as D.W.2 and 13 documents were marked as Ex B1 to Ex.B13.



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8. Considering both oral and documentary evidence, the trial Court found that the appellants have not established that the suit property is their ancestral property and they are in possession of the property as owner of the property. They have admitted that the suit properties are Natham poramboke and the plaintiffs and their predecessor since enjoyed 2/3rd of the suit property as mud part clamp and during updating scheme joint patta has been given along with the respondent. There is no sub-division or earmark and therefore, joint patta was given. They have not proved the said fact and the documents Ex.A1 to Ex.A13 have also not referred to in the above said suit property and they have not proved the right and title over the property. Therefore, the suit was dismissed and hence, the appellants filed an appeal before the Subordinate Court and the lower appellate Court also re-appreciated the evidence and dismissed the appeal. Therefore, the appellants have filed the present second appeal by raising the following substantial questions of law:-



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“(a) Whether a finding rendered over the rights of the parties in the earlier suit would operate as a resjudicata, in the later suit though ultimately the suit would have been ended in favour of the person.

(b) Whether any judgment rendered in the earlier suit in respect to the title of the parties will be binding upon them though the defendant did not file any appeal on the basis that the final result of the suit had ended in his favour.

© Whether the lower Appellate Court is right in finding the title of the respondent over the suit property though there was no correlation of the old survey number found in the patta with reference to the present survey number.

(d) Whether the report of the Advocate Commissioner filed in one suit can be received in evidence in another suit without the examination of the Advocate Commissioner.

(e) Whether the report of the Advocate Commissioner filed in a suit is a public document under Section 35 of the Evidence Act?.

9. While admitting the second appeal, this Court has formulated the following substantial questions of law.



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“1. Whether a finding rendered over the rights of the parties in the earlier suit would operate as a res-judicata, in the later suit though ultimately the suit would have been ended in favour of the person.

2. Whether any judgment rendered in the earlier suit in respect to the title of the parties will be binding upon them though the defendant did not file any appeal on the basis that the final result of the suit had ended in his favour”

10. Learned counsel appearing for the appellant would submit that the suit property is situated in Grama Natham in Sethupatti Village new Natham No.40.942 and the southern portion of the $\frac{2}{3}$ rd portion of the suit property belonged to the appellants and the northern side of the $\frac{1}{3}$ rd belonged to the respondent's community. In the year 1996 UDR scheme, the revenue officials treated the entire property as common and they issued joint patta and therefore, the appellants are entitled to $\frac{2}{3}$ rd share. Since appellants property is covered under the joint patta with respondent's



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property, they filed the suit for injunction and the trial Court dismissed the suit. On the dismissal of the suit, an observation was made by the trial Court in that suit, therefore cause of action for the present suit was arisen for partition and separate possession of 2/3rd of the suit property. Further, he would submit that the judgment rendered in O.S.No.568/1996, on the file of the Additional District Munsif Ex.A5 will not operate as res-judicata as against the appellants herein.

11. The judgment in O.S.No.568/1996 was marked as Ex.A5 in which the trial Court made observation that based on the joint patta appellant only can file a suit for partition. He would further submit that the present suit is maintainable even through the suit was admittedly dismissed still the respondent has not prefer any appeal against the observation made in that judgment. Ex.B1 not confers any right upon the respondent over the suit property.

12. The respondent did not file any correlation certificate that survey No.391/12/3 is related to the survey No.409/12 and has illegally



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holding that the respondents would be entitled to the suit property on the strength of Ex.B1. The evidence of D.W.2 forced to admit that the survey no.409/12 is correlated survey No.391/1 part and likewise survey no.409/42 also correlated to the survey No.391/1.

13. The admission in the evidence of D.W.1 has clearly elucidated in survey No.391 has correlated with the survey No.409. The trial Court failed to consider the evidence of D.W.2 and also Ex.B1 is not admissible evidence since the report of the Advocate Commission cannot be received as evidence without examining the Advocate Commissioner.

14. The learned counsel for the respondents would submit that the suit property is a Grama Natham originally belong to Sethur Jamin and he gave the suit property to the respondent's community for their common enjoyment and subsequently, the respondent alone enjoyed the entire suit property for and on behalf of the entire community as office bearers of the community. As they are using for dumping the waste in one portion and in



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other portion the community peoples were doing business by making clay pots. Over and above the period, the community was represented by the president of the community and the property was administered the office bearers of the community. Even the deceased appellant and the first appellant also at one point of time were office bearers of the community and they look after the property as they are the President and Secretary and they are not enjoying the property in individual capacity and did not produce any document to show that the suit property is ancestral property of the family of the appellants and not the defendants community.

15. The respondent would submit that only during the UDR scheme the joint patta was issued and the name of the appellants were mistakenly included. Since it is a property of the respondent's community and the community represented by the office bearers of the community and each turn one of the members taken possession of the property as office bearers of the community. The deceased appellant taking advantage of that during their tenure as office bearer, they included their name as if they have



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some right in the suit property. Even they created a mortgage deed as if they mortgaged the suit property but the mortgage deed itself clearly shows that the mortgage deed is in the name of the son-in-law. Though in the documents, the respondent is not the party and mere joint patta will not give any right in the property, admittedly which is a grama natham. The respondent's community has denied the right and entitlement of the appellants but they have not taken any steps to get the title to be declared. In the earlier suit, they filed the suit for permanent injunction and the same was dismissed by making some observations in that suit. Now he is trying to get the portion of the property. Unless they establish their right and title in the property merely because their name included in the patta and they are not entitled to get preliminary decree for partition therefore, both the trial Court as well as the appellate court rightly appreciated and dismissed the suit and there is no merit in the second appeal and the same is liable to be dismissed.

16. Heard the learned counsel appearing on either side and perused the materials available on record.



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17. The substantial questions of law are answered as follows:-

The specific case of the appellants is that the suit property is a Grama Natham in Survey Old.No.391/1 and new Survey No.409/42, Mettupatti Village, Sethur, Rajapalayam Taluk, which is an ancestral property and they are enjoying the property as a place of making the clay pots and in the year 1996 UDR scheme joint patta was given with the adjacent property of the respondent and since the respondent causing disturbance, they filed the earlier suit in O.S.No.568/1996, on the file of the District Munsif Court, Srivaikundam for bare injunction, though the said suit was dismissed on the ground that there is a joint patta in Ex.A1, therefore, the appellants cannot get an injunction against the co-owner or joint pattathar. At the best they can filed the suit for partition. The respondents have not filed any further appeal against the findings or observation made by the Court. Therefore the earlier suit would not operate as res-judicata for the present suit. The respondents did not file any appeal or cross-objection against the observation made in that suit, therefore, now



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the respondent cannot deny the title of the appellants.

18. The case of the respondent/defendant is that the property originally belonged to Jamindhar of Chettupatti and they have given the property to the defendant's community and they have enjoyed the property as a communal property and the community was represented through the President. In one point of time the deceased appellant was President of the respondent community and the first appellant herein was Secretary of the community, they were looking after the community property. At the time, the deceased appellant name was included in the patta and taking advantage of the joint patta they are claiming right in the property. The respondent filed petition before the Tahsildar to remove the name of the appellant in the patta. Since the earlier suit filed by the appellant was pending, the Tahsildar directed the petitioner community therein to work out their remedy in the civil Court. The respondent has not accepted the right and title of the appellants. Therefore, both the courts rightly observed and dismissed the suit and there is no merit. Admittedly the suit property is a grama natham



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and the earlier documents Ex.B5 also clearly shows that the properties are under enjoyment of the respondent.

19. A perusal of the entire records shows that the deceased appellant filed a earlier suit for bare injunction against the respondent. The said suit was dismissed and the appellants did not establish their right and possession over the suit property and dismissed the suit. In the earlier suit the respondent clearly denied the right, title and possession of the appellants in the suit property, they could have amended the plaint for declaration and injunction and did not do the same and accepted some of the observations made by the trial Court and filed the suit for partition. Even in this case also the respondents have denied the right and title of the appellants, therefore, the appellants simply cannot seek for partition unless they established the right and title over the suit properties. A careful perusal of the entire evidence and documents, the appellants have admitted that though Ex.A1 is a joint patta, except Ex.A1 no other documents have been filed to show their rights and enjoyment of the suit property prior to 1996, UDR scheme and



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they have admitted that in Ex.A2 to Ex.A-13 there is no reference of the suit property. Therefore, under these circumstances, the settled proposition of law that the plaintiffs have to prove their case on their own strength and they cannot take advantage of the weakness of the defendant. Earlier the appellants filed suit only for bare injunction and the said suit was dismissed, there is no further appeal and the appellants have not filed any document to prove their case and establish the ownership and shift onus of proof. The specific case taken by the respondents is that the appellants at one point of time were in charge of the community as office bearers at the time they had taken advantage of their position included their names in the patta as joint owners. A careful perusal of the materials and also the earlier suit and the present suit and the oral and documentary evidence, the appellants have clearly admitted that there is no documents to show that they got the patta in their name prior to 1996 UDR scheme and no document to show that they are having any right in the suit property and they have enjoyed the property as their own and they have admitted that during the issuance of joint patta there was no enquiry and the respondent/defendant filed an application



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before the Tahsildar to remove the name of the appellants from joint patta and issued the notice. The appellants had stated before the Tahsildar that they have already filed the suit, therefore, the Tahsildar could not pursue with the enquiry and issued the separate patta in favour of the respondents/defendants. Therefore, once the respondent denied the title and enjoyment of the property it is for the appellants as plaintiffs to prove their title and enjoyment and therefore, it is well settled proposition of law that the patta is not a document of title, no doubt for grama natham there may not be any documents like sale deed, but however for proving long possession patta may be one of the document for title. In this case, the appellants have failed to prove that prior to 1996 there was a separate patta for the suit property or the portion of the suit property was exclusively in the name of the appellants/plaintiffs and subsequently during the UDR scheme some of the names have been included as joint pattathar and he can file an application before the competent authority to conduct an enquiry and remove the name. In case, name of the original owner were wrongly omitted or some of the new names wrongly included after enquiry, the



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competent authority should rectify the same and issue fresh patta. In this case there is no such material available that the appellants have established that prior to 1996 the property stood exclusively in the name of the appellants. Subsequently in the UDR scheme the respondent's property was wrongly inserted and joint patta was given, but whereas the respondent community have not admitted the title and enjoyment of the appellants as their individual capacity. As already stated that it is for the plaintiffs have to establish title and right of possession over the property and in this case, a careful perusal of the entire pleadings oral and documentary evidence, this Court found that the appellants/plaintiffs have not established their exclusive rights, title and possession over the property before issuing joint patta during UDR scheme.

20. Therefore, it is for the plaintiffs have to establish the title, right and enjoyment over the suit property and not by the respondent. Therefore, even assuming that based on the observation made in the judgment in earlier suit in O.S.No.568/1996 the suit is not barred by



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resjudicata and the respondent has not filed any appeal on the observation still the appellants have to prove title and possession in the said property as the plaintiffs filed the suit for partition and separate possession based on the ownership, when especially respondent has denied the ownership of the property,. This Court does not found any perversity in appreciation of evidence of the trial Court and re-appreciation of the evidence by the first appellate Court and the substantial questions of law are answered accordingly and there is no merit in the second appeal.

21. Accordingly, the second appeal is dismissed. No costs.

Index : Yes / No

Speaking Order : Yes / No

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To

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



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P.VELMURUGAN, J.

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