



S.A.No.1286 of 2003

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.No.1286 of 2003

and

C.M.P(MD)No.2466 of 2006

1.Mariappa Naicker (Died)

2.Ramuthai (Died)

... Appellants/Appellants/
Defendants

3.Soundararaj

4.Sakunthala

5.Annalakshmi

6.Palpandiyammal

7.Indhirani

8.Jeyapandi

... Appellants 3 to 8

*(Appellants 3 to 8 are brought on record as LR's of deceased 1st &
2nd appellants vide order dated 20.02.2012 made in M.P(MD)Nos.
2,3,5 and 6 of 2011 in S.A.(MD)No.1286 of 2003 by RKJ)*

-Vs-

Krishnammal

... Respondent/Respondent/
Plaintiff



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PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, against the judgment and decree of the Subordinate Judge, Virudhunagar in A.S.No.23 of 2002 dated 08.04.2005 confirming the judgment and decree in O.S.No.250 of 2000 on the file of the District Munsiff Court, Virudhunagar, dated 12.04.2002.

For Appellants : Mrs.Lakshmi Gopinathan
for M/s.R.K.Associates

For Respondent : Mrs.G.Jessi Jeeva Priya

JUDGMENT

The defendants are appellants 1 and 2. The respondent herein filed a suit for declaration of title and for injunction in respect of the suit item No.1 and for mandatory injunction directing the appellants 1 and 2/defendants to remove the construction put up by them in the second item of the suit property, which is part of the first item. The suit was decreed by the trial Court and the findings of the trial Court were confirmed by the first Appellate Court. Aggrieved by the concurrent findings, appellants 1 and 2/defendants are before this Court. Pending second appeal, both the appellants have died and their legal representatives were brought on record as appellants 3 to 8.



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2. According to the respondent/plaintiff, the first item of the suit property which is a vacant site with an extent of 25 square meters belonged to her. In support of her title, the respondent relied on the patta issued by the Tahsildar on 10.07.1986 in her favour in respect of the first item of the suit property. It was also stated that the respondent had constructed a terrace house on the property on eastern side of suit first item. It was further averred that the respondent had been in possession and enjoyment of the suit vacant site by parking vehicles. It was also submitted that appellants 1 and 2/defendants, without having any manner of right, tried to disturb the possession of the respondent over the suit item No.1 and in fact, in the portion of the suit item No.1, appellants 1 and 2 had put up a superstructure horizontally and the said portion is shown as item No.2 of the suit property. On these averments, the plaintiff filed a suit for declaration of title and for injunction.

3. The suit was resisted by appellants 1 and 2/defendants by denying the title and possession of the respondent. According to the appellants, the suit property originally belonged to one Gopal Naickar, S/o. Sangava Naickar. One Chellamal purchased the suit property from Gopal Naickar on 21.11.1952 and



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subsequently sold the same to the second appellant on 23.07.1966. It was asserted by appellants 1 and 2 that from the date of purchase in the year 1966, they had been in possession and enjoyment of the suit property. It was further submitted that the patta for the suit property originally stood in the name of second appellant and the respondent by influencing Revenue Authorities got the patta in her name in the year 1997. After acquiring knowledge about the issuance of patta in the name of respondent, the second appellant filed an appeal before the Revenue Divisional Officer, Aruppukottai, for cancellation of the patta and when the said appeal was pending, the present suit was filed by the respondent. In view of the pendency of the suit before the civil Court, the appeal filed by the second appellant was dismissed by the Revenue Divisional Officer.

4. Before the trial Court, the husband of the respondent/plaintiff was examined as PW1 and yet another witness was examined as PW2. Eight documents were marked on the side of the respondent as Ex.A1 to Ex.A8. On behalf of appellants 1 and 2, the second appellant was examined as DW1 and four documents were marked as Ex.B1 to Ex.B4.



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5. Based on the evidence available on record, the trial Court came to the conclusion that appellants 1 and 2 failed to prove the prior possession and by recognizing the possession of the respondent, patta was given in favour of the respondent and consequently, granted a decree for declaration and also mandatory injunction. Aggrieved by the same, appellants 1 and 2 filed a first appeal and the first appellate Court also concurred with the findings and dismissed the appeal. Hence, appellants 1 and 2 are before this Court. As mentioned earlier, appellants 1 and 2 died pending second appeal and appellants 3 to 8 were brought on record as their legal representatives.

6. At the time of admission of the second appeal, the following substantial question of law was framed:

“Whether the decree of mandatory injunction for demolition of building could be granted solely on the basis of a patta?”

7. The learned counsel for appellants 3 to 8 submitted that the respondent cannot prove her title by relying on Ex.A1-Patta. The learned counsel submitted that patta is not a document of title and hence, the suit for declaration filed based on the patta, is not sustainable. The learned counsel, by taking this



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Court to the proceedings of the Tahsildar, dated 09.04.1997 annexed with Ex.A1, submitted that originally patta for the suit property stood in the name of the second appellant Ramuthai and subsequently, by virtue of the order dated 09.04.1997 patta for the suit property was transferred in the name of respondent without any basis, that too, without putting the second appellant on notice. Therefore, the learned counsel submitted that Ex.A1 – Patta is not at all binding on the appellants. The learned counsel further submitted that the suit property was purchased by the second appellant under Ex.B3 from one Chellammal, who in turn, purchased the same from Gopal Naickar under Ex.B1 and Ex.B2. Therefore, the learned counsel for appellants 3 to 8 submitted that the findings rendered by the Court below, as if the respondent proved her title and possession over the suit property, are liable to be set aside.

8. The learned counsel for the respondent submitted that Gopal Naickar is none other than the paternal uncle of the respondent and the second appellant purchased the property on the southern side of the suit property under Ex.B3 and hence based on Ex.B3, appellants 1 and 2 cannot claim title over the suit property. The learned counsel also had taken this Court to the boundary description found



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WEB in Ex.B1 to Ex.B3, wherein Gopal Naickar's property was shown as northern boundary of the property covered under those documents. The learned counsel further submitted that the second appellant as DW1 admitted that Ex.A1-Patta was issued to the respondent after due enquiry by the revenue officials and hence, it is not open to appellants 1 and 2 to say that Ex.A1 was issued without hearing the case of appellants 1 and 2. The learned counsel relied on the decision of the Hon'ble Apex Court in the case of *Arumugham (Dead) By LRs and Others Vs. Sundarambal and another* reported in (1999) 4 SCC 350, for the proposition that when both the parties adduce evidence, question of burden of proof loses its significance.

9. Heard the arguments of the learned counsel for appellants 3 to 8 and the learned counsel for the respondent and perused the typed set of papers and other records.

10. In the plaint averments, the respondent/plaintiff claimed title to the suit property only based on Ex.A1 - Patta. A perusal of Ex.A1 and the Tahsildar's proceedings annexed with Ex.A1 would make it clear that before issuance of patta



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in the name of respondent, the patta for the suit property stood in the name of second appellant Ramuthai. There is no reference in the proceedings of Tahsildar annexed with Ex.A1 that the patta transferred in favour of respondent was effected after putting the second appellant on notice.

11. The learned counsel by relying on the evidence of DW1 submitted that Ex.A1 - Patta was issued after due enquiry by the Revenue Officials. It is an admitted case of the respondent that even as per the boundary description found in the plaint, on the northern side of suit property, there is a land belonging to the respondent/plaintiff and she had put up a house thereon. Therefore, the evidence of DW1 to the effect that patta was given to the properties of appellants 1 and 2 and that of the respondent after due enquiry by the Revenue Officials cannot be treated as an admission that Ex.A1 - patta was issued after putting the second appellant on notice. It can only be a statement referring to issue of patta by Revenue Officials in respect of respective properties of parties. In the proceedings of Tahsildar, dated 09.04.1997 annexed with Ex.A1, there is no reference about notice to the original pattadhar namely the second appellant. Further, the copy of proceedings of Tahsildar, dated 09.04.1997 was not at all



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marked as despatched to the second appellant. Therefore, the contention made by the learned counsel for the respondent/plaintiff that Ex.A1 – Patta was issued in the name of respondent after hearing the objection of the second appellant, cannot be accepted. Therefore, Ex.A1 – Patta will not advance the case of the respondent to prove her title over the property.

12. Though at the time of arguments, an attempt was made to explain that the suit property was the ancestral property of the respondent and in recognition of long possession of the respondent's family, patta was given to her, there is no plea to that effect in the case. Further, perusal of Ex.A1 – Patta would make it clear that the original patta stood in the name of the second appellant. Therefore, the respondent's own document Ex.A1 proves prior possession of the second appellant and negatives the claim of respondent regarding her long possession over the suit property.

13. The learned counsel for the respondent by referring the northern boundary description found in Ex.B1 to Ex.B3 submitted that the second appellant herein purchased the property on the south of Gopal Naickar's property



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and the respondent being the brother's daughter of Gopal Naickar, inherited the property retained by Gopal Naickar. The said contention cannot be accepted.

14. In the light of the description of property found in the schedule to the plaint while describing the suit property, it is mentioned that the northern boundary of the suit property is property of the plaintiff. Therefore, if the contention of the learned counsel for the respondent is accepted, Ex.B1 to Ex.B3 will confer title to the second appellant, as she purchased the property on the south of the land retained by Gopal Naickar.

15. The learned counsel for the respondent relied on the decision of the Hon'ble Apex Court in the case of **Arumugham (Dead) By LRs and Others Vs. Sundarambal** and another reported in **(1999) 4 SCC 350**, for the proposition that when both the parties adduce evidence, question of burden of proof loses its significance.

16. In the case on hand, the respondent/plaintiff came to the Court with a prayer for declaration of her title. Except patta, she had not produced any other



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WEB COPY evidence in support of her claim for title. Even the patta produced by the respondent proved prior possession of the second appellant. In these circumstances, the case law relied on by the counsel for the respondent will not advance her case.

17. It is settled law “in a suit for declaration of title, the plaintiff has to succeed on the basis of his own case and not on the weakness of the case of the defendant's case”. In support of the said preposition, the learned counsel for appellants 3 to 8 relied on the judgment of the Hon'ble Apex Court in the case of **Union of India & Others Vs. Vasavi Co-op. Housing Society Ltd., & Others** reported in **(2014) 2 SCC 269**. The law laid down in the said judgment is taken into consideration.

18. The respondent having failed to lead any evidence to prove her title to suit property, cannot maintain a suit declaration of title and consequential reliefs. Hence, the judgment and decree passed by Court below are liable to be set aside.



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19. In view of the discussions made earlier that the respondent/plaintiff failed to lead any evidence in support of her claim for title over the suit property, the question of law framed at the time of admission is answered in favour of the appellant.

20. In fine,

a) this Second Appeal is allowed by setting aside the judgment and decree dated 08.04.2003 passed in A.S.No.23 of 2002, on the file of the Sub Court, Virudhunagar;

b) in the facts and circumstances of the case, there would be no order as to costs; and

c) consequently, connected Miscellaneous Petition is closed.

05.01.2023

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

- 1.The Subordinate Judge,
Virudhunagar.
- 2.The District Munsiff Court,
Virudhunagar.
- 3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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