



S.A.No.1542 of 2003

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.12.2023

CORAM

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

S.A.No.1542 of 2003

Ramnad Chemical Works Private Limited,
Through its Director,
N.V.Ajay, s/o.Late N.Vikraman

...Appellant

(Name of Appellant Company Amended as per
order of this Court 31.07.2023 in C.M.P.(MD)
No.12782 of 2022 in S.A.No.1542 of 2003)

VS.

1.Abimath Sheriba
2.Habfe Ahmed Sulaiman
3.Mohamed Sahir
4.Husair
5.M/s.Sahayamatha Salt Refineries Ltd.,
Rep. by its Managing Director,
Mr.Michael Motha,
No.13-A/1, Meenakshipuram,
West Pillayar Koil Street,
Tuticorin - 628 002.

... Respondents

(R5 impleaded vide order dated 07.09.2009 and
in M.P.(MD)No.1 of 2009 in S.A.No.1542 of 2003)

Prayer: Second Appeal filed under Section 100 of the Code of Civil
Procedure against the Judgment and Decree dated 31.10.2002 in
A.S.No.86 of 1999 on the file of the Principal District Judge,



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Ramanathapuram confirming the Judgment and Decree dated 24.03.1999 in O.S.No.249 of 1995 on the file of the District Munsif cum Judicial Magistrate, Mudhukulathur.

For Appellant : Mr.P.V.S.Giridhar,
Senior Counsel
for Mr.M.P.Senthil

For Respondents : Mr.S.Srinivasa Raghavan

JUDGMENT

Aggrieved by the concurrent findings of the learned District Munsif cum Judicial Magistrate, Mudhukulathur in O.S.No.249 of 1995 and the learned Principal District Judge, Ramanathapuram in A.S.No.86 of 1999 in favour of plaintiffs, the defendants No.1 and 2 have preferred this Second Appeal.

2. The appellants names were deleted, substituted and amended by orders of this Court dated 26.04.2004, 08.12.2020 and 31.07.2023.

3. For the sake of convenience, the parties are referred to hereunder according to their litigative status shown before the Trial Court.



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4. Originally, Ahmed Iqbal, s/o.Abdulkani Sahib instituted the suit for declaration of title and for permanent injunction in respect of the punja lands in S.No.114/1A of Vaalinokkam Village of Kadaladi Sub Division (Mudhukulathur Circle of Ramnad District), southern side, an extent of 56.15 acres of land and the trees thereon.

5. The plaint reads that the plaintiff Ahmed Iqbal along with Abdul Kadhar and Mehtul Khan purchased an extent of 97 acres 84 cents in S.No.114/1 of Valinokkam Village from Arumugam Servai, Muthu Umaiyanan Servai, Subbiah Servai and Veerapa Thevar.

6. Upon the death of the sole plaintiff, his legal heirs namely his wife and three children have been brought on record who are arrayed as respondents no.1 to 4 in this appeal.

7. According to the plaintiff, originally the land in S.No.114/1A and the adjacent lands to an extent of 88 1/2 acres were in one block. Before Zamin Abolition, the lands were in possession of the then land holders as per Ramnad estate revenue records in Pymash Nos.1081 - 1089. During the Estate Period, the properties belonged to Arumugam



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Servai, Muthu Umaiyanan Servai, Subbiah Servai and Veerapa Thevar were in enjoyment of their respective portions under the patta Nos.10, 14, 144, 185 and 292 under the Estate Land Act 1 of 1908. After the Tamil Nadu Zamindari Abolition Act 26 of 1948, during the Settlement Survey, the total 88 1/2 acres of land was surveyed as Survey No.114/1 and patta was granted in favour of Arumugam Servai, Muthu Umaiyanan Servai and in favour of their pangalis under Patta No.162. At present, on enquiry, it is found that the names of the persons who are not in possession of the said property have been mistakenly added in Patta No.162.

8. By a Sale Deed dated 26.07.1917, Syed Mohammed Maraikayar (father of above said Mehbul Khan), purchased 3 kurukkam (2 acres 70 cents - 90 cents per kurukkam) from Velayutham Servai. Arumugam Servai and Subbaiya Servai. From the pangalis of the above said persons, (i) K.T.M.S.Abdul Kadhar Sahib, s/o.Puhari, (ii) Mehbul Khan, s/o.Mohammed Sultan Sahib and (iii) Ahmed Iqbal (plaintiff) on 09.09.1962, through a registered sale deed, purchased the total land - 97 acres 84 cents and they were in joint possession and enjoyment.



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9. The plaintiff further claims that upon consideration of joint possession and enjoyment in S.No.114/1, for an extent of 88 acres 42 cents in entirety, joint patta in Patta No.162 was granted in the name of K.T.M.S.Abdul Kadhar, Mehbul Khan and Ahmed Iqbal (plaintiff) in the year 1979 and based on the same, in 1980, Patta Pass Book was granted and in 1987, patta was granted under UDR Scheme in Patta No.254.

10. One of the joint purchaser, K.T.M.S.Abdul Kadhar Sahib with the consent of the plaintiff Ahmed Iqbal got separated the land to an extent of 29 1/2 acres in the southern side, which he sold to third parties. Thereafter, on the northern side, remaining 59 acres (23.88.0 hectares) are in possession and enjoyment of the plaintiff and Mehbul Khan. The above said extent of land namely 29 1/2 acres in the southern side, which was sold, was sub divided as S.No.114/1B.

11. The plaintiff further claims that in S.No.114/1A, after the death of Mehbul Khan, his legal heirs sold to an extent of 2.85 acres on the northern side to Tamil Nadu Magnesium and Marine Chemicals Limited and the said property is in possession and enjoyment of the said



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Company. The remaining land to an extent of 56.15 acres belongs to the legal heirs of Mehtul Khan and the plaintiff. As per the request of the legal heirs of the Mehtul Khan, as they are out of station and abroad, the entire suit property to an extent of 56.15 acres is in the possession and enjoyment of the plaintiff and his men and power agents, by paying the tax, etc.

12. The plaintiff has also claimed that because of the separate, continuous and uninterrupted possession, the plaintiff has also prescriptive title to the suit property. The defendants have no right or enjoyment in the suit property at any point of time. The first defendant intended to obtain a Patta in the name of his Company, the second defendant. Hence, the suit.

13. Whereas, the second defendant Company would object as to the extent of land shown in the suit Survey Number and the four boundaries shown therein. Land to an extent of 40 acres in S.No.114/1 belongs to the first defendant by way of sale is purposely hidden by the plaintiff: the said property cannot be identified separately: during the Settlement Period, land in S.No.114/1 was surveyed and the extent was



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calculated as 88 acres and 48 cents: it is incorrect to state that during the Estate Period, the property belonged to Muthu Umaiyanan Servai, Arumugam Servai and Veerapa Thevar: during the Settlement Period, at the time of grant of patta, the suit property shown in the name of Karuthamuthu Servai, Subbiah Servai, Velu Servai, Rengaiah Servai, Chidhambaram Servai, Rettai Thevar, Ponnu Servai, Muthu Servai and Ramu Servai (9 persons): joint patta was granted under Patta No.162 in the names of above said 9 persons: the defendants do not know that an extent of 29 1/2 acres of land was sold to third persons and remaining extent is sub divided: it is incorrect to state that in S.No.114/1A, an extent of 2.35 acres, northern side land was sold to Tamil Nadu Magnesium and Marine Chemicals Limited and they are in exclusive possession and enjoyment: it is not acceptable to state that in the settlement patta, the names of the persons who do not have any right or title have been added: after effecting sale of land to an extent of 2.35 acres in favour of Tamil Nadu Magnesium and Marine Chemicals Limited Company, the remaining extent of 56 acres 15 cents land belongs to the legal heirs of Mehtul Khan and the plaintiff: without adding the legal heirs of Mehtul Khan, the plaintiff has filed the suit for the relief of declaration and permanent injunction and the same is not at



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all maintainable in law.

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14. The first defendant put forth a rival claim, that in the total extent of 88 acres 48 cents in S.No.114/1, out of joint pattadharars, from the legal heirs of Muthu Servai, s/o.Kaattaiya Servai and Ramu Servai, S/o.Muthu Servai, the first defendant purchased an extent of 40 acres of land through a registered sale deed on 19.03.1964: the proceedings in respect of the first defendant's application for patta transfer was intimated to the plaintiff by notice dated 29.12.1992 by the Taluk Office through registered post: thereafter, revenue records were mutated and his name is registered as one of the joint pattadharars and he has been paying the tax and through his predecessor in title, he has also **prescriptive** title for the said extent of 40 acres of land: the suit is bad for non joinder of necessary parties namely Tamil Nadu Magnesium and Marine Chemicals Limited and Godhavari Demolition and Salvage Engineering Private Limited.

15. Based on the rival pleadings, the Trial Court framed the following issues:

"1. Whether the plaintiff is entitled for the relief



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of declaration and permanent injunction as sought for?

2. Is the suit property is not identified properly?

3. Is the suit is bad for non-joinder of parties?

4. Is it true that 40 acres in S.No.114/1 belong to the first defendant by way of sale?

5. Is it true that 9 persons were granted joint patta in respect of S.No.114/1?

6. What other reliefs is the plaintiff entitled to?"

16. At Trial, one Thangavelu and Subbiah have been examined as PW1 and PW2. Exs.A1 to A18 were marked. The certified copy of the sale deed in the name of the plaintiff and 2 others dated 09.09.1962 is Ex.A3. On the defendants' side, one Kannusamy and Kuppusamy were examined as DW1 and DW2. Exs.B1 to B8 were marked. Settlement Land Register Extract is Ex.A4 / B2. The certified copy of the sale deed in the name of the second defendant dated 19.03.1964 is Ex.B4 in respect of 40 acres of land in suit Survey Number.

17. The Trial Court after evaluating the evidence, concluded that from the pangalis / owners, K.T.M.S.Abdul Kadhar, Mehbul Khan and the plaintiff Ahmed Iqbal by a Sale Deed dated 09.09.1962, purchased the suit property. It was further held that the plaintiff has filed the kist



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receipts from Exs.A9 to A18, whereas, the defendants have not filed any kist receipts in order to prove their possession and enjoyment. The plaintiff has been in possession and enjoyment of the suit property over and above 12 years and he has prescriptive title by adverse possession is also acceptable and held that the plaintiff is in possession of the suit property since 1962 and the suit was decreed in favour of the plaintiff by granting the relief of declaration and consequential permanent injunction.

18. Aggrieved, the defendants preferred first appeal in A.S.No.86 of 1999 before the Principal District Court, Ramanathapuram

19. After hearing both sides, the first Appellate court came to the conclusion that the entire extent in suit S.No.114/1 was purchased by the plaintiff and from the documents filed by the plaintiff, it was concluded that the legal heirs of plaintiff and legal heirs of Mehtul Khan are having absolute right and title. With regard to the rival claim of the defendants, it was held that the vendors of the first defendant had been wrongly included in Patta No.162 at the time of settlement and the first defendant had no semblance of right in the suit Survey Number and



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dismissed the appeal by confirming the Judgment and Decree of the Trial Court.

20. Against the said concurrent findings of the Trial Court as well as the first Appellate Court, the defendants have preferred this second Appeal. Pursuant to the orders of this Court dated 31.07.2023, Ramnad Chemical Works Private Limited, through its Director, N.Vijay has been brought on record as the present Appellant.

21. The learned Senior Counsel Mr.P.V.S.Giridhar appearing for Mr.M.P.Senthil, learned counsel appearing for the appellant strenuously argued that the first Appellate Court has observed that the vendors of the first defendant had been wrongly included in Patta No.162 and the same is totally incorrect: that the plaint reads that Abdhul Kadhar sold 29 1/2 acres to third persons, but no document is filed to prove the same: that the plaint pleadings are vague as per Order IV Rules 1 and 3 of the Code of Civil Procedure: therefore, the plaintiff's case gets collapsed at the level of pleadings itself: that in the UDR patta Ex.A8 which stands in the name of Abdhul Kadhar Sahib, Mehbul Khan and Ahmad Iqbal, an extent of 35 acres 80.5 cents is shown: the plaintiff has



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not dislodged the defendants: the defendants need not prove their case: and that there is no cause of action for the suit.

22. *Per contra*, Mr.S.Srinivasa Raghavan, learned counsel appearing for the respondents vehemently argued that the suit property namely land in S.No.114/1A and adjacent part of lands, about 88 1/2 acres, was found as one block: before the Zamin Abolition, the lands were in Pymash Numbers 1081 to 1089: during the Estate Period, property belonged to Muthu Umaiyanan Servai, Arumugam Servai, Subbiah Servai and Veerapa Thevar: as per Tamil Nadu Estate Land Act 1 of 1908, the above said persons were in possession of the said properties under Patta Nos.10, 14, 144, 185 and 292: after the introduction of Tamil Nadu Zamin Abolition Act, 1948, during Settlement Survey, the entire 88 1/2 acres of land was surveyed and S.No.114/1 was assigned: patta was granted to the above said persons names under Patta No.162: and the names of persons who were not in possession were mistakenly added in the Patta No.162.

23. The learned counsel would further contend that as per Ex.A2, sale deed, father of Mehtul Khan, Syed Mohammed Marikayar



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purchased from Velayudham Servai, Arumugam Servai and Subbiah Servai, an extent of 2 acres 70 cents (3 kurukkam): it is his further arguments that the plaintiff Ahmed Iqbal along with Abdhul Kadhar Sahib and Mehbul Khan purchased an extent of 97 acres 84 cents from Chidhambaram Servai and others by way of sale deed dated 09.09.1962: Abdhul Kadhar Sahib with the consent of plaintiff got partitioned southern 29 1/2 acres of land and sold his share to third persons: thereafter, the share which was sold to the third persons was sub divided as S.No.114/1B and the remaining northern 59 acres was sub divided as 114/1A: the legal heirs of Mehbul Khan sold northern 2.85 acres of land in S.No.114/1A to the Tamil Nadu Magnesium and Marine Chemicals Limited and the said property is in possession and enjoyment of the said Company: the remaining 56.15 acres of land in S.No.114/1A belongs to the legal heirs of Mehbul Khan and the plaintiff: it is his further argument that the plaintiff has prescriptive title by adverse possession: and that the defendants without any right or title tried to obtain patta and tried to disturb the possession of the plaintiff. Hence the suit.



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24. The following substantial questions of law arise for consideration.

(i) Whether the findings of the Courts below are vitiated by its failure to consider, in the absence of any evidence correlating the suit property to the property claim, on the basis of Exs.A2 and A3 and the absence of any evidence regarding the identification of the property claimed?

(ii) Whether the Courts below are right in relying upon the Land Register Extract to uphold the claim of the respondents in the absence of any corroborative evidence?

25. Pursuant to the Tamil Nadu Estate Land Act 1908, Estate Abolition Act, 1948 came into force. Before settlement, lands were in Pymash numbers. During settlement period, settlement offices were established in the important places. Lands were re-assailed and lands details and whose possession the land was in enjoyment, after enquiring, orders were passed and the particulars were kept in Settlement Land Register.



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26. As per Ex.A4 / B2 Survey Settlement A-Register in respect of S.No.114/1, patta originally stood in the name of Arumugam Servai in Patta No.185, Muthu Umaiyanan Servai in Patta Nos.10 and 14, Subbiah Servai in Patta No.292 and Veerapa Thevar in Patta No.144. The said four persons' Legal Representatives details have been given in Column No.29 in Ex.A4. The total extent of 88 acres 48 cents were in possession of Arumugam Servai, Muthu Umaiyanan Servai, Subbiah Servai and Veerapa Thevar. Based on Ex.A4 / B2 Survey Settlement Register, the said four persons were in possession as follows:

Name	Extent of Land
Arumugam Servai	18.90 acres
Muthu Umaiyanan Servai	41.40 acres
Subbiah Servai	8.10 acres
Veerapa Thevar	5.40 acres

As per Ex.A3 Sale Deed dated 09.09.1962, the plaintiff Ahmed Iqbal along with Abdhul Kadhar and Mehbul Khan have claimed to have purchased from the five persons connected to the above said persons, an extent of 97 acres 84 cents in S.No.114/1. It is relevant to note that as per Ex.A4 Survey Settlement Register, the total extent in S.No.114/1 is 88 acres 48 cents. On the other hand, in Ex.A3 Sale Deed, over and



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above the said extent, 97 acres 84 cents is dealt with. The plaintiff has stated that Abdhul Kadhar with the consent of the plaintiff vagayara has partitioned his share and sold southern 29 1/2 acres of land to the third persons. In order to substantiate the said details, no document is filed by the plaintiff. In which date, year, sale has taken place is also not disclosed in the plaint.

27. However, it is the evidence of PW2 Subbiah that Abdhul Kadhar sold his share in the year 1983. In the year 1979 and in the year 1980, Exs.A6 and A7 patta were granted to all the three persons namely plaintiff Ahmed Iqbal, Abdhul Kadhar Sahib and Mehbul Khan for an extent of 88 acres 48 cents. The suit is filed for an extent of southern 56 acres 15 cents in S.No.114/1A. Whereas in Ex.A8, under UDR Scheme, patta was granted for all the three persons for an extent of 35 acres 80.5 cents. In 1983 itself, Abdhul Kadhar had sold his share of southern 29 1/2 acres of land. Kist receipts in the names of all the three persons for the years 1980, 1982 and further period were filed as Exs.A9 to A18.



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28. The defendants have claimed to have purchased through Ex.B4 Sale Deed dated 19.03.1964, an extent of 40 acres in suit survey number. Subsequent to the Ex.B4 sale deed also patta stood in the names of the plaintiff Ahmed Iqbal, Abdhul Kadhar Sahib and Mehtul Khan. Only through Ex.B5 Patta Transfer Order dated 18.04.1992 Ramnad Chemicals name was added as Co-owner in Patta No.254 and 347. Though Abdhul Kadhar was said to have sold southern 29 1/2 acres of land to the third persons, his name is found in Ex.B6 Patta dated 17.08.1992.

29. The suit is filed for declaration of title and for permanent injunction. When a declaration of title is sought for, as per the entitlements found in Ex.A4, the plaintiff has to establish that he purchased the suit property from the legal heirs of Arumugam Servai, Muthu Umaiyanan Servai, Subbiah Servai and Veerapa Thevar according to their respective holdings.

29. Originally, during the Pymash period, the total extent of 88 acres 48 cents were in possession of the said four persons and what is the extent of land in each person's possession is also found in Ex.A4.



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The said details have been mentioned supra in page No.15 in a Table.

The four persons' legal heirs details are mentioned in Column No.29 in Ex.A4. First of all, the plaintiff has to prove the said details. According to the plaintiff, as per Ex.A3 Sale Deed, the plaintiff including the other two persons are said to have purchased an extent of 97 acres 84 cents. But for what reason the plaintiff has limited the extent of property to 88 acres 48 cents and filed the suit for the limited extent is not known. The plaintiff Ahmed Iqbal has filed the suit for land to an extent of 56 acres 15 cents stating that on behalf of one of the vendee Mehbul Khan also he has filed the suit, for which he is not entitled to. At the best, the plaintiff Ahmed Iqbal would have filed the suit only for himself.

30. The defendants have set up a rival claim stating that they have purchased in the name Ramnad Chemicals an extent of 40 acres in suit Survey Number through Ex.B4 Sale Deed dated 19.03.1964 from Muthaiya Servai s/o Kattiah Servai, Ramu Servai s/o Thavasiandi Servai, Ramu Servai s/o Muthu Servai, Udhaya kal w/o Muthu Irulandi Servai, Thangavelu s/o Muthu Irulandi Servai and Periamarathi w/o Kuppusamy. Ramnad Chemical's name is added in Patta Nos.254 and 347 on 18.04.1992 by Patta Transfer Order Ex.B4. The joint Patta Ex.B7



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was granted on 20.04.1992.

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31. When the plaintiff has filed the suit for declaration of title and for permanent injunction for an extent of southern 56 acres 15 cents in S.No.114/1A through Ex.A3 Sale Deed dated 09.09.1962 (certified copy), the original sale deed is not filed. The base document is Ex.A4 / B2 Survey Settlement Register. On the risk of repetition, this Court is of the considered view that the plaintiff by producing the original sale deed should have clearly explained who are the original land holders and through whom Sale Deed Ex.A3 came to be effected. However, it was not done so.

32. Unfortunately, though the plaint itself is bereft of very many material particulars and the original Sale Deed Ex.A3 was also not filed, the Trial Court has decreed the suit, which was also not taken note of seriously by the first Appellate Court. For the said basic reasons, this Court is left with no option except to non-suit the plaintiff. In the facts and circumstances, the substantial questions of law are answered against the plaintiff.



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33. Based on the aforesaid discussions, the Second Appeal stands allowed. The Judgment and Decree dated 31.10.2002 in A.S.No.86 of 1999 on the file of the Principal District Judge, Ramanathapuram and the Judgment and Decree dated 24.03.1999 in O.S.No.249 of 1995 on the file of the District Munsif cum Judicial Magistrate, Mudhukulathur are set aside. There is no order as to costs.

22.12.2023

NCC:Yes/No
Index:Yes/No
Speaking/Non-speaking order

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To

- 1.The District Judge, Ramanathapuram
- 2.The District Munsif cum
Judicial Magistrate, Mudhukulathur
- 3.The Section Officer,
Vernacular Records Section,
Madurai Bench of Madras High Court,
Madurai.



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