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SA. No.374 of 2003

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.09.2024

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

SA. No. 374 of 2003

1. Kaliya Padayachi
2. Amirthammal
3. Mannangatti Ammal (Died)

... Appellants

Vs.

1. Kuppu Padayachi
2. Ramu Padayachi
3. Balarama Padayachi
4. Paramasiva Padayachi
5. Mangathal
6. Shanmugam
7. Pachammal
8. Chellapangi
9. Jayalakshmi
10. Dhanabakkiyam Ammal
11. Kaliyaperumal
12. Kasilingam
13. Palaniyammal
14. Chinnapillai ammal
15. Sankar
16. Kuppusamy
17. Chinnaponnu ammal

(Recorded the second appellant and respondents 8 and 9 are legal



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representatives of the deceased third appellant vide order of the Court dated 02.02.2010 made in Memo in S.A No. 374 of 2003)

(Recorded R17 died, applications to bring on records her legal representatives in CMP Nos. 780, 781 & 782 of 2010 dismissed by order dated 14.06.2022.)

..Respondents

PRAYER : This Second appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 21.11.2002 made in A.S No. 21 of 2002 on the file of the Principal District Court, Vilupuram, reversing the judgment and decree dated 29.08.2001 made in O.S No. 169 of 1995 on the file of the II Additional District Munsif, Ulundurpet.

For Appellants : Mr.P.Dinesh Kumar, for
Sarvabhanman Associates

For R1 : Mr.K.Sudhakar

R2, R3,R4, R11 died

None appeared for R5 to R10, R12, 14 & R16

R13& R15 absent

JUDGMENT

Challenging the reversal findings, the defendants preferred this second appeal. The respondents/plaintiff filed the suit for declaration claiming that they are having title and ownership over the suit property as



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described in the plaint schedule more particularly in respect of B schedule property and also for mandatory injunction to remove the house put up by the second defendant.

2. The plaintiffs claiming title over the suit property based on the patta stands in the name of the of the Dhanappa Padayachi, who is the father of the plaintiffs 1 to 6 and grand father of plaintiffs 7 and 8. After his demise, the plaintiffs inherited the suit property as his heirs. On the other side, the defendants claiming title over the suit property based on the sale deed/Ex.B1 is of the year 1978. According to the plaintiffs, the said Natesa Padaychi has no right to sell the property to Madrole Padyachi/deceased husband of the third defendant so they filed the suit for declaration in respect of suit property as well as for mandatory injunction to remove the house in the suit property.

3. On considering the oral and documentary evidence, the Trial Court held that 1.07 cents was purchased by the defendant's predecessor through document dated 12.05.1948 which was marked as Ex.B1. Thereafter, he was in possession of the same and subsequently partition was effected between the family members wherein the legal heirs of Mandrole Padayachi enjoyed and constructed house to that effect the document was relied by them.



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Further, they proved the title of the Natasa Padayachi by relying mortgage deed. Accordingly, the Trial Court held that plaintiffs has failed to prove the title and dismissed the suit. Challenging the same the plaintiffs filed the appeal, the lower appellate Court independently analysed the oral and documentary evidence held that as per Ex.B1 the defendants traced the title through sale deed of the year 1978 executed by Natasa Padayachi but prior to that Dhanappa Padayachi father of the plaintiffs was in possession as the same is reveals from the Ex.A3 and other kist receipts stands in his name and relying those documents more particularly patta No.263 for 61 cents and also recitals of the mortgage deed/Ex.A71, prior to the year of 1975 no document was available in the name of Natasa Padayachi and the earliest document of patta stands in the name of Dhanappa Padayachi. Though they have no title deed but the earlier possession of Dhanappa Padayachi was established by the plaintiffs. Based on that the first appellate court concluded that the plaintiffs predecessor in title was having title over the property. Accordingly, the suit was decreed by setting aside the findings of the Trial Court and allowed the appeal.

4. Challenging the reversal findings of the Courts below, the defendants filed this second appeal.



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5. The learned counsel for the appellants submits that the first appellate Court erroneously concluded that plaintiffs proved their title through patta. In fact, in the year 1945 itself they perfected the title through sale deed executed by the Natasa Padayachi from that onwards they enjoyed the suit property and the plaintiffs were very well known about the said purchase and their enjoyment. In fact, in the year 1995 they come forward with the present suit and also there is no prayer to cancel the sale deed stands in their name which itself shows their entire possession and enjoyment of the property but the first appellate Court erroneously appreciated the patta relied by the plaintiffs, except that they have no other document to prove their possession and enjoyment of the property. On the other hand, the defendants produced the 1972 documents through which they established their title. But the first appellate Court erroneously allowed the appeal. Hence, he prayed to allow this appeal.

6. The learned counsel for the plaintiff/respondents submit that earliest document relied by the defendants/appellants is patta which is of the year 1935 and stands in the name of the Dhanappa Padayachi. Thereafter, Dhanappa Padayachi was paid kist to that effect they relied the receipts



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which were marked as Ex.A2 to Ex.A14 and Adangal extract also marked as

Ex.A14 from the said documents the first appellate Court rightly held that patta stands in the name of the Dhanappa Padayachi/father of the plaintiffs and they were enjoying property ancestrally. On the other hand, Natasa Padayachi, who sold the property to Manrole Padayachi/husband of the third defendant have no previous document from the year 1967, and the sale deed relied by the defendants not been acceptable. On the other hand, they produced the title deed.

7. By way of reply, the respondent counsel contended that earliest patta stands in the name of the Dhanappa Padayachi which is of the year 1937 but the documents/patta relied by the appellant is of the year 1947. Therefore, the first appellate Court rightly allowed the appeal which needs no interference.

8. Heard both sides.

9. This Court admitted the appeal on the following substantial questions of law:

i. Whether the lower appellate court is justified in laws in reversing the findings of the Trial Court without demonstrating that such finding of the Trial Court are wrong on the facts established by the rival parties ?



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ii. Whether the judgment of the lower appellate Court which has given credence to patta as document of title is correct in law ?

10. For the sake of convenience the parties are denoted as per suit.

11. Considering the submissions on both side, the plaintiffs have filed the suit for the relief of declaration and injunction in respect of 1.61 acres in B schedule properties. Out of 1.61 acres, the defendants claiming one acres seven cents which is said to be purchased in the year 1947 by the third defendant's husband. Thereafter, they are in possession and enjoyment of the property. To prove their claim the plaintiffs relied the patta is of the year 1937 which was marked as Ex.A1. On perusal of the said patta, which stands in the name of the Dhannappa Padayachi. Subsequently, in the year 1983 UDR proceedings was initiated, at that time patta granted only for 50 1/2 cents in favour of the plaintiffs. As on date, Adangal stands in name of plaintiffs in respect of S.No. 14- 4-C remaining extent stands in the name of the defendants family. Admittedly, after filing the suit, Advocate commissioner was appointed and the property was measured. As per Adangal, S.No. 14-4 C stands in the name of the plaintiffs which comes around 51 cents. S.No. 14-A, G, D, E, F are stands in the name of the defendants branch. Admittedly, S.No.14 - 4B sold to Elumalai, S.No. 14-4E



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purchased by the defendant wherein they are residing, remaining extent in S.No. 14-4A, G, F are with the other defendants. Further, the learned counsel for the plaintiffs/respondents herein raised objection stating that they are having documents which was marked as Ex.A14 it was pertaining to the year of 1372-1393 but extent marked as one acre 61 cents in the name of Dhanappa Padaychi. As sale deeds stands in the name of the defendants for 1.07 acres in S.No. 14-4 it was not been cancelled by any of the Court of law the plaintiff also not sought any other relief. The learned counsel for the appellants/defendants submitted that there is no necessity to cancel the sale deed but they are claiming title based on the patta and also disputing the title of the defendants hence they should have sought relief of declaration but they failed. On seeing the documents as well as Advocate commissioner report, which clearly shows that the first appellate court granted relief in favour of respondent/plaitiffs based on the patta. On seeing the entire records, in the year 1948, the Manrol padayachi/husband of third defendant purchased an extent of 1.07 cents in the suit property, as on date defendants/appellants herein having better title than the plaintiff, by relying the patta , revenue records they cogently proved that they are in continuous possession and enjoyment of the suit property. Adangal also shows that



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S.No. 14-4C is cultivating by them not in any other survey number therefore based on the patta relief granted in favour of the plaintiff/respondent herein as such is not maintainable and liable to be set aside. Accordingly, the findings of the first appellate Court is set aside. But, on considering the entire observation of the Courts below, in respect of the enjoyment of the property it has not been properly appreciated. Further, the Trial Judge dismissed the suit by holding that plaintiffs have not adduced the document to show that they are in possession and enjoyment of 51 cents. As per the sale deed relied by the defendants/appellant they are claiming only one acre seven cents in S.No. 14/4. As per the survey report along with commissioner report and revenue records, the plaintiffs/respondents herein have proved that they are in possession of 50 cents in S.No. 14-4C hence they are entitled for declaration in respect of S.No. 14-4C. The remaining extent in S.No.14-A, G, D, E, R are belongs to the defendants' branch/appellant. In respect of S.No. 14- 4C the suit is decreed in favour of the plaintiff/respondent herein. The commissioner report is the forming part of the decree. Accordingly, questions of law are answered.

12. R3, R4 died, notice served, name printed none appeared for R3,



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R4. Since, R1 is the brother of R3 and R4 and he contesting the case on behalf of other respondents and the estate was sufficiently represented.

Therefore, the steps for bring on legal heirs of deceased R3, R4 is dispensed with.

13. In the result, the appeal is partly allowed. No Costs.
Consequentially, connected miscellaneous petition is closed.

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T.V.THAMILSELVI,J.

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To

1. The Principal District Court, Vilupuram.
2. The II Additional District Munsif, Ulundurpet.
3. The Section Officer,
V.R Section,
High Court Madras.

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