



SA.No.1512 of 2010

**WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS**

RESERVED ON : 01.10.2024

PRONOUNCED ON : 18.10.2024

CORAM

**THE HONOURABLE MR.JUSTICE M. JOTHIRAMAN**

SA.No.1512 of 2010  
and MP.No.1 of 2010

Muthusamy ... Appellant / Plaintiff  
V.

Amudhavalli ... Respondent / Defendant

Prayer : This Second Appeal is filed under Section 100 of the Code of Civil Procedure 1908 against the judgment and decree dated 17.09.2010 passed in AS.No.24 of 2009 on the file of Principal District Judge, Namakkal reversing the judgment and decree dated 01.04.2008 passed in OS.No.1061 of 2004 on the file of the Principal District Munsif, Namakkal.

For appellant : Mr.T.Dhanyakumar

For Respondent : Mr.M.Sudhakar



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## **J U D G M E N T**

The instant second appeal has been filed at the instance of the plaintiff. The respondent herein is the defendant before the trial Court.

2. For the sake of convenience, the parties will be referred to according to their litigative status before the trial Court.

The brief facts which give raise to the instant second appeal are as follows:

3. The plaintiff filed the suit for permanent injunction restraining the defendant and his men, servants and agents from interfering with the possession and enjoyment of the property. It is stated that the property originally belongs to the Government and the plaintiff's forefathers occupied the land and constructed the house and they were in possession and enjoyment of the property. Originally the plaintiff's grandmother Maruthayeeammal was in possession and enjoyment of the property and the said Maruthayeeammal died 29years back and after the death of the Maruthayeeammal, the plaintiff's father succeeded and was in possession and enjoyment of the property and now the plaintiff is in possession and



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enjoyment of the property. For their enjoyment, Tahsildar, Rasipuram had issued patta vide patta No.226 in S.No.22/2 and the door number of the house is 5/45 and 5/46. The Government has built up “Thoguppu veedu” and the plaintiff is also paying house tax. The plaintiff found that in the patta issued on 24.01.1990, some mistake has been crept in and the plaintiff had made an application before the Tahsildar for making necessary corrections in the patta and fresh patta was issued on 09.09.2002. The defendant without having any right over the suit property, before two months the defendant wanted pathway in the land. The plaintiff refused to give any pathway and thereby the defendant outraged the plaintiff with the help of goondas and made an attempts to put a pathway over the land. Hence, the suit.

4. It is the case of the defendant that on 21.04.1990, the plaintiff was issued with patta and again made an application to Tahsildar to correct the patta and fresh patta was also issued on 09.09.2002 is not correct. The patta issued during the year 1990, it is mentioned on the southern side of S.No.22/2 as 10 meters and the same was corrected as 18 meters and the plaintiff himself committed forgery in correcting the patta.

On the eastern side of the plaintiff property there is a pathway and the



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plaintiff by committing forgery of patta, he wanted to annex the pathway to say that the pathway is not in existence. The plaintiff has filed the suit on the basis of forged patta and the plaintiff is not entitled for any reliefs.

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

“(i)Whether the plaintiff is entitled to permanent injunction to restrain the defendant their men servants and agents from interfering with the possession of the property?

(ii)Whether there is a pathway in survey number 22/2 and the defendant is having right over the pathway?

(iii)To what relief if any, the plaintiff is entitled to?”

6. Before the trial Court, on the side of the plaintiff, the plaintiff himself examined as PW1 and one Ramasamy was examined as PW2 and Ex.A1 to A5 were marked. On the side of the defendant, the defendant herself examined as DW1 and no documents marked. Ex.C1 - Advocate Commissioner report and Ex.C2 - Advocate Commissioner plan were



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marked as Court documents.

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7. Upon hearing either side and considering the materials available on record, the trial Court held that the plaintiff is in possession and enjoyment of the suit property, on the basis of Ex.A1 to Ex.A5 and through the oral evidence of PW1 and PW2, the plaintiff has proved his case and entitled to the relief as prayed for. Accordingly, the suit was decreed as prayed for with costs.

8. Aggrieved over the decretal of the suit, the defendant preferred an appeal before the first appellate Court, the first appellate Court finding that on perusal of Ex.A1 – patta shows that in S.No.22/2 on the southern side, the measurement is corrected as 10 meters to 18 meters. But so far as, this correction is concerned, the Tahsildar has not made any endorsement and counter signed as southern side measurement is 10 meters to 18 meters. Further finding that PW1 had corrected and committed forgery of document in Ex.A1. It is also finding that from the evidence of PW2 it is clear that on the eastern side of the plaintiff property, there is a pathway and all the persons were using the pathway.

Ex.A1-patta is a forgery document and based on Ex.A1 if injunction is



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granted it will produce serious consequences. The trial Court has not taken into consideration on this aspect and committed error by granting permanent injunction. The first appellate Court reversed the findings and dismissed the suit and allowed the appeal with cost. Aggrieved over the decree and judgment of the first appellate Court, the plaintiff is before this Court by way of this second appeal.

Substantial Questions of Law :

9. At the time of admission, this Court formulated the following substantial questions of law :-

*"(1)Whether the presumption of genuineness as set out in Section 79 of the Indian Evidence Act is not applicable to Ex.A1?*

*(2)Whether the Lower appellate Court is right in relying on the document which is not exhibited before Court by either of the parties?*

*(3)Whether the judgment of the Lower appellate Court is vitiated in not framing the point for consideration as prescribed under Order 41, Rule 31 of the CPC?"*



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10. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondent.

11. The learned counsel appearing on behalf of the plaintiff/appellant would contend that the first appellate Court failed to note that there is no pathway in S.No.22/2 and pathway is situated on the eastern side of the plaintiff property which has been clearly mentioned in Ex.C1 and Ex.C2. It is contended that the first appellate Court failed to note that the plaintiff is entitled for the suit property on the basis of Ex.A1 and he is in possession for several years and his predecessor were in possession of the suit property for several decades. It is also contended that Ex.A1 patta is a public document and the same is presume to be genuine as per Section 79 of the Indian Evidence Act and the burden of proof lies on the plaintiff was fully established. Even though, the defendant had taken a stand that Ex.A1 is the forged document, but she has not taken any steps to prove her case.

12. Per contra, the learned counsel appearing for the defendant/respondent would submit that Ex.A1/patta in which the



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measurement was corrected as 10 meters to 18 meters and there is no endorsement made by the concerned Tahsildar to that effect. The further contention is that as per Ex.A1, if eastern side measurement is 10 meters then the total measurement is 0.0125 sq.meter as mentioned in Ex.A1. Assuming if the eastern side measurement is taken as 18 meters, the total extent is 0.0177 sq.meter, which itself proves that the plaintiff had made corrections in the measurements and it is a forged document.

13. This Court considered the submissions made on either side and perused the materials available on record.

14. While considering the arguments put forth on either side counsels, it is pertinent to consider the general principle involving, when a mere suit for permanent injunction will lie. The trial Court finding that the plaintiff has proved his lawful possession and his continuous enjoyment over the suit property under Ex.A1 to A5 and through oral evidence of PW1 and PW2.

15. In this regard, it is relevant to refer to the judgment of the Hon'ble Apex Court reported in **(2008) 5 SCR 331** in the case of



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**Anathula Sudhakar V. P.Buchi Reddy (dead) by LRs and others,**

wherein it is held about the general principle, as to when, a mere suit for permanent injunction will lie, and when it is necessary to file a suit for declaration and/or possession with injunction as a consequential relief, are well settled. The relevant portion of the judgment is extracted hereunder :-

*“11.1) Where a plaintiff is in lawful or peaceful possession of a property and such possession is interfered or threatened by the defendant, a suit for an injunction simpliciter will lie. A person has a right to protect his possession against any person who does not prove a better title by seeking a prohibitory injunction. But a person in wrongful possession is not entitled to an injunction against the rightful owner.*

*13) In a suit for permanent injunction to restrain the defendant from interfering with plaintiff's possession, the plaintiff will have to establish that as on the date of the suit he was in lawful possession of the suit property and defendant tried to interfere or disturb such lawful possession.*



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17) (a)..... *Where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter."*

16. It is also relevant to refer to the judgment of the Hon'ble Apex Court in case of **A.Subramanian & Another V. R.Pannerselvam** reported in **(2021) 3 SCC 675**, wherein it is held that *the suit for injunction filed by the plaintiff deserved to be decreed on the basis of admitted and established possession of the plaintiff."*

17. On perusal of records, it is seen that Ex.A2 is the Kist receipt dated 27.10.1995, Ex.A3 is the house tax receipt dated 07.07.1999, Ex.A4 is the House tax receipts (9 numbers), Ex.A5 electricity charges receipt (5 numbers), all the above documents are stands in the name of plaintiff, were marked to prove the possession and enjoyment. It is seen from the evidence of PW2, on eastern side of the plaintiff's property, there is a pathway and all the general public are using the pathway. On the basis of



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the aforesaid documents, the plaintiff has proved his lawful possession and enjoyment over the suit property. This Court finds no fault in the findings given by the trial Court, on the basis of lawful possession and restraining the attempts made by the defendant by claiming that there is a pathway in the suit property has been established by the plaintiff.

18. While considering the arguments putforth by the learned counsel appearing for the respondent in respect of Ex.A1 – patta issued by the Head Quarters, Deputy Tahsildar, Namakkal, it is the submission that Ex.A1 – patta in which the measurement was corrected from 10 meters to 18 meters and there is no endorsement made by the concerned official to that effect and the same is forged one.

19. In order to find out the validity and reliability of Ex.A1, this Court deems it appropriate to consider Ex.A1, which is the original copy of the patta dated 09.09.2002 issued by the Head Quarters, Deputy Tahsildar, Namakkal stands in the name of the plaintiff in S.No.22/2 Old S.No.22/1 to an extent of 0.0125.0sq.meter. Ex.A1 has been issued by the revenue officials of the State Government.



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20. At this juncture, it is relevant to refer to **Section 79 of the Indian Evidence Act, 1872.**

*“79. Presumption as to genuineness of certified copies. — The Court shall presume [to be genuine] every document purporting to be a certificate, certified copy or other document, which is by Law declared to be admissible as evidence of any particular fact, and which purports to be duly certified by any officer [of the Central Government or of a State Government, or by any officer [in the State of Jammu and Kashmir] who is duly authorized thereto by the Central Government]:*

*Provided that such document is substantially in the form and purports to be executed in the manner directed by law in that behalf.*

*The Court shall also presume that any officer by whom any such document purports to be signed or certified, held, when he signed it, the official character which he claims in such paper.”*



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21. While considering the submissions made by the learned counsel for the respondent, in respect of Ex.A1, this Court deems it appropriate to consider, whether the burden of proof lies on the parties, properly discharges or not? At this juncture, it is relevant to refer the judgments of the Hon'ble Apex Court reported in (a) **2006 (5) SCC 558 - Anil Rishi vs Gurbaksh Singh** wherein, it is held that the initial onus is always on the plaintiff and if he discharges that onus and makes out a case which entitles him to a relief, the onus shifts to the defendant to prove those circumstances, if any, which would disentitle the plaintiff to the same.

(b) **(2008) 17 SCC 1 - Vaniyankandy Bhaskaran v. Mooliyil Padinhjarekandy Sheela** wherein, it is held that if a person pleads particular fact in support of his case, the burden lies on him to prove the same.

(c) **(2009) 2 SCC 606 - Uttar Pradesh State Electricity Board and another V. Aziz Ahmad** wherein, it is held that burden to prove the particular fact is always on person who alleges the same.

22. The plaintiff has pleaded that patta dated 21.04.1990 and patta



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dated 26.04.1990 have been issued in his favour. But the plaintiff did not produce the same before trial Court or before the first appellate Court. Before the trial Court, through Ex.A1 to Ex.A5, the initial burden of proof lies on the plaintiff was fully established, thereafter burden shifts on defendant side. But the defendant did not take any steps to examine any witness or to produce any documents to prove her case. Therefore, there is no force in the submission made by the learned counsel for the respondent. This Court finds no fault that the trial Court by accepting the validity of Ex.A1 – patta and other documents in Ex.A2 to Ex.A5, decreed the suit as prayed for. But the finding of the first appellate Court that Ex.A1, is a forged document, without any evidence adduced, on the side of the defendant, is legally unsustainable. In view of the above detailed discussions, all the substantial questions of law are answered in favour of the appellant/plaintiff and thereby, the interference of this Court is warranted.

23. In the result, the Second Appeal stands allowed by setting aside the judgment and decree of the first appellate Court passed in AS.No.24 of 2009 dated 17.09.2010 on the file of the Principal District Judge, Namakkal and by confirming the judgment and decree of the trial



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Court made in OS.No.1061 of 2004 dated 01.04.2008 passed by the

Principal District Munsif, Namakkal. There is no order as to costs.

Consequently, connected miscellaneous petition is closed.

**18.10.2024**

Index : Yes/No

Internet : Yes/No

Speaking Order/Non-Speaking Order

Neutral Citation : Yes/No

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To

1. The Principal District Judge, Namakkal

2. The Principal District Munsif, Namakkal

**M. JOTHIRAMAN, J.**



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Pre Delivery Judgment in  
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