



S.A.Nos.442 and 443 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.09.2024

CORAM:

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

S.A. Nos.442 and 443 of 2010

S.A.No.442 of 2010

1.Gopal Gounder
2.Munusamy Gounder
3.Kannu Gounder
4.Selvi
5.Rudranand
6.Minor Gopi
S/o Kannu Gounder
Minor rep by his mother 4th respondent Selvi
W/o Kannu Gounder

... Appellants

Vs.

1. Pandurangan
2.Sarasammal
3.Dayalan
4.Malar

... Respondents

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree dated 27.04.2006 passed in A.S.No.3 of 2003 on the file of the District Judge (Training) Additional Subordinate Judge II, Thiruvannamalai by allowing the appeal and set aside the judgment and decree dated 24.04.2002 passed in O.S.No.720 of 1990 on the file of the Court of the Principal District Munsif, Thiruvannamalai.

For Appellants : Mr.K.Govi Ganesan

For Respondents : Mr.G.Rajan for R1
No appearance for R2,R3 and R4



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7.Gopal Gounder
8.Munusamy Gounder
9.Manicka Gounder
10.Doraisamy Gounder
11.Narayanasamy Gounder
12.Kanniappan
13.Radha
14.Sivakumar
15.Minor Seetharaman
16.Minor Saradha
(Minor Appellants 9 and 10 are rep by
their natural and guardian
mother 7th appellant Radha)
11. Selvi
12. Minor Gopi
(Rep. by his natural Guardian mother
11th appellant Selvi)

... Appellants

Vs.

17.Poomalai
18.Pandurangan
19.Ramar
20.Sampath
21.S.Jaya
22.Sarasammal
23.Dayalan
24.Malar
25.

... Respondents

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree dated 27.04.2006 passed in A.S.No.4 of 2003 on the file of the District Judge (Training) Additional Subordinate Judge II, Thiruvannamalai by allowing the appeal and by modified as the suit has been decreed as prayed for Judgment and decree



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dated 24.04.2002 passed in O.S.No.879 of 1992 on the file of the Court of the Principal District Munsif, Thiruvannamalai.

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For Appellants	: Mr.K.Govi Ganesan
For Respondents	: Mr.G.Rajan for R2 No appearance for R1,R3,R4 and R5 to R9

COMMON JUDGMENT

These appeals have been filed to set aside the judgment and decree dated 27.04.2006 in A.S.Nos.3 and 4 of 2003 on the file of the District Judge (Training) Additional Subordinate Judge II, Thiruvannamalai setting aside the judgment and decree dated 24.04.2002 in O.S.No. 720 of 1990 and modify the judgment in O.S.No.879 of 1992 on the file of the Principal District Munsif, Thiruvannamalai.

2.For the sake of convenience, the parties are referred to as per their ranking in the suit in O.S.No.879 of 1992. Originally, O.S.No.879 of 1992 was filed by the plaintiff Vedi Gounder. Pending suit, he died and his legal heirs were impleaded as plaintiffs 2 to 5 and defendants 7 to 11. Defendants 1 to 3 in O.S.No.879 of 1992 filed O.S.No.720 of 1990 against the plaintiffs in O.S.No.879 of 1992. Both the suits tried together and disposed of by the common judgment by the Trial Court.



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3. At the time of trial, the 5th plaintiff in O.S.No.879 of 1992 was examined as P.W.1 and marked three documents. The 2nd, 5th defendants in O.S.No.879 of 1992 were examined as D.W.1 to D.W.3 and marked twenty nine documents and Exs.C1 to C4 were also marked. Upon consideration of oral and documentary evidence, the Trial Court decreed the suit in O.S.No.720 of 1990 as prayed for to an extent of 3.22 acres lying on the eastern side of the Panam Salai. As far as suit in O.S.No.879 of 1992 is concerned, the learned Trial Judge decreed the suit thereby granting permanent injunction against the defendants not to interfere with the possession and enjoyment of the Panam Salai and not to cut the trees situate in the Panam Salai. Aggrieved by the same, the defendants in O.S.No.720 of 1990 and the plaintiffs in O.S.No.879 of 1992 preferred appeals in A.S.Nos.3 and 4 of 2003 on the file of the District Judge (Training) Additional Subordinate Judge II, Thiruvannamalai and the learned First Appellate Judge allowed the appeals by setting aside the findings of the learned Trial Court Judge. Challenging the reversal findings of the First Appellate Court, the defendants have filed these Second Appeals.

4. The case of the plaintiffs in O.S.No.720 of 1990 is that their grand father Mottaiya Gounder purchased 6 acres out of 11 acres 72 cents under



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the registered sale deed dated 24.06.1925. From the date of purchase, the said Mottaiya Gounder had been in possession and enjoyment of the property to an extent of 6.44 acres. After his death, his two sons Muthu Gounder and Kuppusamy Gounder had divided the properties by way of oral partition and the suit property was allotted to the share of the plaintiff's father Kuppusamy Gounder. The plaintiff's father was in possession and enjoyment of 3.22 acres and after his demise, the plaintiffs are absolute owner and they were in possession and enjoyment of the suit property and also perfected title by adverse possession. The defendants are the neighbouring land owners having lands on the western side of the suit property. There was a well formed ridge called Panam Salai having a row of more than 20 Palmirah trees and neem trees aged about 60 years standing in between the lands of the plaintiffs and the defendants. Thus, the plaintiffs and their predecessors have been in possession and in enjoyment of the land lying on the western side upto the Panai solai. The Revenue Authorities had also issued patta under the UDR scheme to the plaintiffs for an extent of 3.22 acres. Now, the first defendant and his sons, the defendants 2 to 4 have recently apprehended the plaintiffs and demanded the plaintiffs to give up 46 cents out of the suit property claiming that they are entitled to the extent of 44 cents in the plaintiff's land. The plaintiffs have been in continuous possession and enjoyment of the extent of 44 cents. The defendants claim



even if true, but it has become extinguished by efflux of time. Hence, the plaintiffs filed the suit for declaration and injunction.

5. The defendants in O.S.No. 720 of 1990 filed their written statement stating that the original owner of the suit property was one Mottaiya Gounder and he alienated 6.00 acres in favour of the plaintiffs' grand father under the sale deed dated 24.06.1925. Similarly, the said Mottaiya Gounder had alienated the balance of 5.72 acres of land in favour of the Vellaiya Gounder and they would show that the plaintiffs predecessors in title was entitled to only 6.00 acres and the defendants were entitled to 5.72 acres. The allegation regarding oral partition and the allotment of 3.22 acres of land is incorrect. The plaintiffs cannot plead against the terms of the registered instruments and they are not perfected title by adverse possession to an extent of 3.22 acres. The defendants are having lands on the west side of the plaintiff's land. The Panai Solai is in a zig-zag manner and moreover, it cannot in any way from the basis of division. The plaintiffs never aware of the facts that they are entitled to 3.22 acres of land. The said panai solai belongs to the defendants and at the time of UDR scheme, they removed the ridges and shown the entire property lying in the east side of panai Solai which belongs to the plaintiffs and got patta to an extent of 3.22 acres from the Revenue Authorities. The defendants purchased the land to



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an extent of 5.72 acres from one Vellaiya Gounder under the registered sale deed dated 04.08.1960. The patta for the suit property has been standing jointly in the name of the plaintiffs and the defendants. During the UDR Scheme, patta has been split and independent patta was issued to the plaintiffs and the defendants. Taking advantage of the larger extent mentioned in the patta, the plaintiffs have now falsely claimed for excess extent. The defendants are in possession and enjoyment of 5.72 acres as per the sale deed dated 04.08.1906. The defendants effected partition deed dated 22.04.1988 and the properties have been allotted to the share of Kanni Gounder and Sarkarai Gounder and Panduranga Gounder. The defendants have given objection to the revenue authorities for the transfer of patta in the name of the plaintiffs which is also pending. The plaintiffs have not even chosen to send a notice to the defendants prior to the filing of the suit.

6. Based on the oral and documentary evidence, the Trial Court held that the plaintiffs have filed the suit in O.S.No.879 of 2022 which was filed on the basis of the threat made by the defendants therein and the defendants are trying to cut the trees in the Panam Salai. The Trial Court also held that apart from proving their possession over Panam salai, the plaintiffs therein also proved the attempt made by the defendants to cut the trees and therefore, they are entitled to the relief of permanent injunction restraining the defendants in O.S.No.879 of 1992 not to cut the trees in



Panam Salai. The learned Trial Judge further held that the defendants in O.S.No.879 of 1992 had proved their possession to an extent of 3.22 acres which includes the disputed portion of 44 cents which lies on the eastern side of the Panam salai. The defendants had also proved their possession on the basis of admission made by PW1 and the joint patta issued in favour of the plaintiff and the father of the defendants 1 to 3 would show that the defendants' father is in possession and enjoyment of excess of 44 cents and proved his title and the defendants in O.S.No.879 of 1992 and the plaintiffs in O.S.No.720 of 1990 are entitled for the decree of declaration in respect of 3.22 acres and also for permanent injunction. In the same way, the defendants in O.S.No.879 of 1992 had not claimed title and possession over the Panam Salai and the plaintiffs in O.S.No.879 of 1992 are entitled to the decree of permanent injunction in respect of Panam Salai which lies in between the plaintiffs' and the defendants' lands.

7. Accordingly, the learned Trial Judge decreed the suit in O.S.No.720 of 1990 to an extent of 3.22 acres, the land lying on the eastern side of the Panam Salai. As far as suit in O.S.No.879 of 1992 is concerned, the learned Trial Judge decreed the suit by granting permanent injunction against the defendants not to interfere with the possession and enjoyment of the Panam Salai and not to cut the trees situated in the Panam Salai.



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8. Aggrieved by the said findings, the defendants in O.S.No.720 of 1990 and the plaintiffs in O.S.No.879 of 1992 preferred appeals in A.S.Nos. 3 and 4 of 2003 and the learned First Appellate Judge after analysing the oral and documentary evidence held that there is no sufficient documents produced to show that the respondents are in possession of the property. As per Ex.B4, the property was not demarcated and the patta was issued in the name of the original owner Mottaiya Gounder in the year 1974. Ex.B3 partition deed of the year 1992 and Ex.B5 patta pass book of the year 1994 were created after the filing of the suit. The Kist receipts also show the extent of enjoyment of the property. Hence, the learned First Appellate Judge held that the patta is neither a document of title nor can it be accepted to uphold the title. it is atleast an evidence for payment of kist and thus, it is nothing but a Bill of cost. Hence, the respondents have not prescribed title by adverse possession and the suit filed by the respondents have to be dismissed and allowed the appeal in A.S.No.3 of 2003.

9. As far as A.S.No.4 of 2003 is concerned, the appellants are entitled to possession of 5.72 acres in S.No.2 Kunniyandal Village and allowed the appeal.

10. Challenging the judgment of the First Appellate Court, the plaintiffs in O.S.No.720 of 1990 have preferred these second appeals on the following grounds:



11.The learned Appellate Judge erred in holding that the respondents

have no knowledge about the enjoyment of the property by the appellants.

The learned First Appellate Judge failed to consider the fact that the deposition of PW1 in O.S.No.879 of 1992 on the file of Principal District Munsif, Thiruvannamalai in which he deposed that prior to the filing of the suit, the respondents had known that the appellants have been in possession of the excess of 44 cents which unambiguously shows the animus of the respondents regarding the possession of the appellants over the suit property.

(ii). The learned First Appellate Judge failed to consider Ex.B28 document -the chitta issued to the extent of 1.29.0 Hectares which is equivalent to 3.22 acres in the name of plaintiffs and their mother.

(iii). The learned First Appellate Judge failed to consider the fact that in Ex.C2 and C4, it has been clearly mentioned that the appellants are in enjoyment of Panam Salai and east of Panam Salai.

(iv).The Courts below failed to consider the fact Ex.A1 documents plaintiffs title over Panam Salai was not specifically mentioned.

(v). The Courts below erred in holding that the plaintiffs are entitled for the relief of injunction when they didn't claim the relief of declaration of their title.

(vi). The Courts below failed to consider the deposition of PW1 that Panam Salai is located between the plaintiffs and defendants properties and



the plaintiffs and the defendants properties were divided by Panam Salai which shows that the plaintiffs property did not include the Panam Salai.

12. Learned counsel for the respondents submits that in respect of the adverse possession of the property, there is no pleadings and therefore, the findings rendered by the Trial Court is erroneous. However, the first Appellate Judge rightly agreed with the claim of the respondents which needs no interference.

13. Heard the learned counsel on either side and perused the materials placed before this Court.

14. A perusal of the record would go to show that in respect of the title over the subject property, the respondents are having the title in respect of the subject property to an extent of 5.72 acres and as per Ex.B1 sale deed, the appellants' grand father purchased only 6 acres. Though the UDR patta and the patta pass book were of the year 1992 and 1994, prior to said years, there are no documents or records to show that the appellant were in enjoyment of the property to an extent of 6.44 cents. Moreover, it is also settled law that patta is not a document of title to prove title and possession of the property. Therefore, based on the UDR patta, the claim made by the appellants is not sustainable one, since the respondents possessed the better title ever since from the year 1960 and also in possession of sale deed to an



extent of 5.72 acres in S.No.2 Kunniyandal Village, therefore, the findings rendered by the learned First Appellate Judge needs no interference. Indeed, the respondents not pleaded the relief of declaration in the suit. However, they are entitled to get relief of permanent injunction since the owner have proved their title over the suit property by producing the title deed marked as Ex.A1. Thus respondents/plaintiffs are entitled to get relief of injunction which was rightly appreciated by the learned First Appellate Judge which needs no interference.

15. It also reveals that at the time of UDR scheme, when the property was measured, parties came to know the real extent. Therefore, without any animus they enjoyed the property and even real owner also not known that his part of the properties were enjoyed by his neighbour and the neighbour also is under hostile possession of the property. Therefore, the 1st appellate Court rightly considered and held that without any animus and without any hostile possession, the possession cannot be termed as adverse possession against true owner and that too when the property owner himself not known that his property was enjoyed by somebody. In such circumstances, possession cannot be deemed as adverse possession. To that effect, the first appellate Judge relied on the proposition laid down in 1995 (2) MLJ 295, as such, is well reasoned and requires no interference. It is also settled



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proposition that mere usage of a property does not constitute a denied assertion of ownership.

16. When the appellants do not know that they are enjoying someone else's land, it cannot be said that they are claiming adverse possession. Besides, it requires that they must have known of using the property adversely against true owner for more than a statutory period. But all these requirements were not found in favour of the appellants herein. Therefore, the 1st appellate Judge has rightly allowed the appeal by setting aside the order of the Trial court. Accordingly, the findings of the Court requires no interference.

17. Accordingly, questions of laws are answered and findings of the 1st appellate Court is confirmed. The Second Appeals are dismissed. No costs.

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Index: Yes/No
Internet: Yes/No
Speaking order: Non-speaking order
Neutral Citation: Yes/No

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To

- 1.The District Judge (Training) Additional Subordinate Judge II, Thiruvannamalai
- 2.The Principal District Munsif, Thiruvannamalai.
- 3.The Section Officer, V.R.Section, High Court, Madras.



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T.V.THAMILSELVI, J.

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