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S.A.No.658 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 24 / 09 / 2024

JUDGMENT PRONOUNCED ON : 19 / 11 / 2024

CORAM:

THE HON'BLE MR.JUSTICE R.SAKTHIVEL

S.A.NO.658 OF 2021

1.P. Rukmani
2.R.Vasanthaal *alias* Vasanthi
3.M.Paruvatham
4.A.Selvi

... Appellants /
Respondents /
Plaintiffs

(For themselves and for the House
Site Pattadhars in Survey
Nos.400/1, 402/2, 371/1B,
371/2B, and 371/1C3 of
Veeranampalayam Panchayat at
Veeranampalayam)

Versus

1.Eswaramoorthy
2.Mani

3.The President
Veeranampalayam Panchayat,
Veeranampalayam, Kangayam Taluk,
Tiruppur District.

... Respondents 1&2 /
Appellants /
Defendants 2&3

... 3rd Respondent /
5th Respondent /
1st Defendant



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PRAYER: Second Appeal filed under Section 100 of Code of Civil Procedure, 1908, praying to set aside the Judgment and Decree dated 9th September, 2019 passed in A.S.No. 71 of 2017 on the file of the Subordinate Court, Kangayam, Tiruppur District reversing the Judgment and Decree dated 21st September, 2017 passed in O.S.No. 290 of 2010 on the file of the District Munsif Court, Kangayam, Tiruppur District.

For Appellants : Mr.P. Navaneethakrishnan

For Respondents 1 & 2 : Mr.P.Santhosh
for Mr.K.Govi Ganesan

For Respondent 3 : Mr.N.Nithianandam
(No Appearance)

J U D G M E N T

This Second Appeal is directed against the Judgment and Decree dated 9th September, 2019 passed in A.S.No.71 of 2017 by the 'learned Subordinate Judge, Kangayam, Tiruppur District', [hereinafter 'First Appellate Court' for the sake of brevity and convenience], wherein and whereby the Judgment and Decree dated 21st September, 2017 passed in O.S.No.290 of 2010 by the 'learned District Munsif, Kangayam' [henceforth 'Trial Court' for the sake of brevity and convenience] was reversed.

2. For the sake of convenience, hereinafter, the parties will be



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referred to as per their array in the Original Suit.

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CASE OF THE PLAINTIFFS:

3. In the year 1995-1996, the Government acquired 21 Acres of land in Survey Nos. 400/1, 402/2, 371/1B, 371/2B, 371/1C3 of Veeranampalayam Village, for the purpose of giving Assignment House Site Patta to the Adi Dravidar people. Accordingly, the 1st to 4th plaintiffs along with 671 other persons were granted House Site Pattas in the aforesaid survey numbers. All the Patta holders built thatched huts in the Suit Properties and resided there. Due to lack of basic facilities and amenities like water and electricity, all the Patta holders left the place and moved to rented houses. The thatched huts and boundaries of the Suit Properties were ruined over time. Thereafter, plaintiffs approached the Government authorities once again to measure the Suit Properties and fix the boundaries. Accepting the request, on 28th May, 2010, and on 1st July, 2010, the revenue officials measured the Suit Properties in the said survey numbers, and obtained signatures from the plaintiffs and other Patta holders after marking the boundaries. When the plaintiffs and other Patta



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holders cleared the Suit Properties and rebuilt the huts, the revenue officials raised no objection.

3.1. The 1st defendant, is the President of Veeranampalayam Panchayat and the 2nd defendant is her son while the 3rd defendant is their associate. With a view to obtain Patta for their supporters, they three attempted to evict the plaintiffs from the Suit Properties. Pursuantly, on 24th July, 2010, the defendants approached the Tahsildar, Kangayam, seeking to issue Patta for the Suit Properties. However, their request was declined. The plaintiffs filed a complaint against the defendants on 27th July, 2010 before the District Collector, Tiruppur, but no actions were taken due to the defendants' political influence. On 6th September, 2010, the defendants and their men attempted to evict the plaintiffs from the Suit Properties and tried to settle their men on the Suit Properties. Hence, the Suit for permanent injunction restraining the defendants from trespassing into the Suit Properties, from evicting the plaintiffs, and from disturbing their peaceful possession and enjoyment of the Suit Properties.



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CASE OF THE DEFENDANTS:

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4. The 1st defendant filed a Written Statement, which was adopted by the 2nd and 3rd defendants. The Suit filed by the plaintiffs is not maintainable. Each Patta holder ought to have been added as a party to the Suit, and separate court fees ought to have been paid for each and every Suit Property. Hence, the Suit is not maintainable under Order I Rule 8 of the 'Code of Civil Procedure, 1908' ('CPC' for short).

4.1. The Suit survey numbers were acquired by the Government to provide House Site Pattas to poor people who do not have a house. The plaintiffs fraudulently obtained Patta in their names. The 1st defendant, as Panchayat President, discovered this fraudulent act and took necessary action, after which the Government, upon due inquiry, found defects in the issuance of Patta. The plaintiffs never resided on the Suit Properties nor were in possession and enjoyment thereof. The plaintiffs never constructed thatched huts as alleged. Defendants 2 and 3 are in no way connected with the Suit. The defendants never entered or attempted to trespass into the Suit Properties. Further, the Government is a necessary party to the Suit. Defendants 2 and 3 are unnecessary parties to the Suit.



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Therefore, the Suit is bad for mis-joinder and non-joinder of parties.

Accordingly, they prayed for dismissal of the Suit.

TRIAL COURT:

5. On the basis of the above pleadings, the Trial Court framed issues. During the trial, on the side of the plaintiffs, P.W.1 to PW5 were examined and Ex-A.1 to Ex-A.13 were marked. On the side of the defendants, D.W.1 to D.W.3 were examined and Ex-B.1 to Ex-B.5 were marked. Ex.X1 was marked through D.W.3, who is the Tahsildhar for Adi Dravidar Welfare, Kangayam.

6. After completion of trial and after hearing both sides, the Trial Court came to the conclusion that the plaintiffs' possession of the Suit Properties was established and no objections regarding possession were raised by Government. Hence, the Trial Court held that Government is not a necessary party and hence, without impleading the Government, the Suit is maintainable. Further held that, since the plaintiffs established their possession of the Suit Properties, they are entitled to the relief of permanent injunction. Accordingly, the Suit was decreed and permanent injunction was granted in favour of the plaintiffs and against the



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defendants.

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FIRST APPELLATE COURT:

7. Feeling aggrieved with the Trial Court's Judgment and Decree, the defendants preferred an appeal in A.S.No.71 of 2017 before the First Appellate Court. The First Appellate Court after hearing both sides held that the plaintiffs did not obtain leave under Order I Rule 8 of CPC. Hence, the Suit cannot be proceeded further as a representative Suit. Further the Court determined that the plaintiffs were not in possession and enjoyment of the Suit Properties and observed that there is a reasonable doubt that the plaintiffs could not be beneficiaries under the Government Scheme providing house sites to landless homeless poor people belonging to Adi Dravidar community. The Court further held that the District Collector is a necessary party to the Suit and the Suit as framed by the plaintiffs is not maintainable. Accordingly, the First Appellate Court allowed the appeal and dismissed the Suit.

SUBSTANTIAL QUESTIONS OF LAW:

8. Feeling aggrieved by the First Appellate Court's Judgment



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and Decree, the plaintiffs preferred this Second Appeal which was admitted on 9th August, 2024 on the following substantial questions of law:

- “(a) Whether the lower appellate court is right in law in setting aside the judgment and decree passed by the trial court without assigning any reason as to how the findings of the trial court is wrong?*
- (b) Whether the lower appellate court is right in law in casting the burden upon the plaintiff to prove that they have been in continuous possession when patta granted to them itself is a proof of possession and when the plaintiff have discharged the burden by marking the pattas in Exhibit A1 to A5, A11 and A13?*
- (c) Whether the lower appellate court is right in law in concluding that the plaintiff are not entitled to file the suit in a representative capacity when the plaintiffs have satisfied the ingredients of Order 1 Rule 8 of C.P.C?*
- (d) Whether the lower appellate court is right in law in not drawing an adverse inference against the defendants, when the defendants have failed to produce the order of cancellation though they pleaded that the pattas were cancelled and were able to produce only show cause notice?”*



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ARGUMENTS:

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9. Mr.P.Navaneethakrishnan, learned Counsel for the appellants / plaintiffs would argue that in the year 1995 – 1996, the government acquired an extent of 21 Acres in Survey Nos. 371/1B, 371/2B, 371/1C, 400/1, and 402/2 from the original land owners and in the year 1996 – 1997, issued House Site Assignment Pattas in favour of 675 beneficiaries under an Adi Dravidar welfare Scheme. The Suit has been filed in representative capacity under Order I Rule 8 of CPC and the same was allowed by Trial Court. Further, the plaintiffs produced Ex-A.1 to Ex-A.5, Ex-A.9, Ex-A.11 and Ex-A.13 which are original Assignment Pattas issued by the special Tahsildhar for Adi Dravidar Welfare. Likewise, 675 Assignment Pattas were issued in respect of Suit Properties in favour of various beneficiaries under the said Scheme. The said documents are in force and not cancelled by any authorities. In these circumstances, law presumes that the plaintiffs are in lawful possession and enjoyment of the Suit Properties. This Suit is for injunction simpliciter and it is filed as the defendants attempted to interfere with the plaintiffs' peaceful possession and enjoyment of the Suit Properties. Neither the District Collector nor any Revenue officials interfered with the plaintiffs



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possession and enjoyment of the Suit Properties and hence, they are not necessary parties to the Suit. Hence, the Suit is not bad for mis-joinder and non-joinder of necessary parties. The Trial Court after considering the facts and circumstances in the right perspective, decreed the suit. The First Appellate Court in a wrong notion allowed the appeal and dismissed the Suit by observing that the Pattas issued in favour of the plaintiffs were cancelled and that the Government is a necessary party to the Suit. Further, the First Appellate Court failed to consider the fact that Ex-B.5 is merely a Show Cause Notice. Since the defendants failed to establish that the Assignment Pattas issued in favour of the plaintiffs are cancelled, the plaintiffs are entitled to reliefs sought for. Accordingly, he prayed to allow the Second Appeal, set aside the Judgment and Decree of the First Appellate Court and restore the Judgment and Decree of the Trial Court.

9.1. He would rely on the following decisions in support of his contentions:

- (i) ***Anathula Sudhakar's Case*** - Judgment of Hon'ble Supreme Court in *Anathula Sudhakar -vs- P.Buchi Reddy*, reported in (2008) 4 SCC 594;



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(ii) ***Rahmathullah's Case*** - Judgment of this Court in *Rahmathullah Shuthari @ Peer Hazzrath -vs- Muslim Jamath of Eachampatti*, reported in *CDJ 1997 MHC 1253*;

(iii) ***Krishnamoorthy's Case*** - Judgment of this Court in *Krishnamoorthy -vs- G.Ramakrishnan*, reported in *CDJ 2024 3228*.

10. In response, Mr.P.Santhosh for Mr.K.Govi Ganesan, learned Counsel on record for the Respondent Nos.1 & 2 / Defendant Nos.2 & 3 would argue that the Suit is not maintainable since according to the plaintiffs 675 Pattadhars are there. All the 675 Assignment Pattas have not been filed and the details of the Pattadhars are also not available. Moreover, there is no house or hut as alleged by the plaintiffs in the Suit Properties to prove their possession and enjoyment. Since the plaintiffs and others violated the terms and conditions embedded in the Assignment Pattas, the government cancelled the same vide Ex-B.5 – Gazette Notification. The said fact has been proved by the defendants through examination of D.W.3 – Tahsildhar for Adi Dravidar Welfare. Further, the defendants 2 and 3 are in no way connected to the Suit. They are



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unnecessary parties to the Suit. Further, the first defendant, the Panchayat President never entered and interfered with the Suit Properties. The first defendant being the Panchayat President represented to the District Collector bringing to light the irregularities in the issuance of Assignment Pattas. Pursuant enquiry is pending before the District Collector. Hence, the Government is a necessary party to the Suit. The First Appellate Court rightly dismissed the Suit. There is no warrant to interfere with the same. Accordingly, prayed to dismiss the Second Appeal and confirm the Judgment and Decree of the First Appellate Court.

DISCUSSION:

11. This Court has heard on either side and perused the materials available on record in light of the Substantial Questions of Law.

12. Ex-A.1 to Ex-A.4 are the Assignment Pattas issued in the year 1995-1997 in favour of the Plaintiff Nos.1 to 4 respectively. One of conditions stipulated in the Assignment Pattas is that within 36 months, the beneficiaries shall construct a house thereupon, violation of which may lead to cancellation of Patta and resumption of possession and enjoyment by the Government. Evidence of P.W.1 to P.W.5 would show that the



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plaintiffs did not construct a house as per the said condition of the Assignment Pattas. It would further show that they are residing elsewhere from the Suit Properties. In these circumstances, it is up to the Government to cancel the Assignment Pattas issued in their favour. According to the plaintiffs, the Assignment Pattas issued in their favour are not cancelled and still in force. The defendants, relying on Ex-B.5 as well as the evidence of D.W.3 – Tahsildhar for Adi Dravidar Welfare, would contend that the Assignment Pattas were cancelled. This Court has perused Ex-B.5 which is an Erode District Gazette published on 28th August, 2008, whereby the District Collector issued Show Cause Notice as to why the Assignment Pattas issued in respect of the Suit Properties and other similar properties should not be cancelled for violation of conditions thereof. D.W.3 in her evidence deposed that the Assignment Pattas issued were cancelled in 2008. In such a scenario, the burden is upon the plaintiffs to prove that the Assignment Pattas issued to them were not cancelled. In other words, the defendants have *prima facie* proved their assertion that the Assignment Pattas were cancelled in the year 2008 and now the onus shifts onto the plaintiffs to prove that the Assignment Pattas are in force and are valid. In this case, the plaintiffs miserably failed to discharge the said burden.



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Further, if really they put up any hut or any sort of construction and were residing there, they would have house tax receipts, water tax receipts, *etc.*

Their own evidence *viz.*, the evidence of P.W.1 to P.W.5 as well as Ex-A.6 to Ex-A.9, Ex-A.11 and Ex-A.12, which are all family cards of the plaintiffs issued in the year 2005 to 2009, works against them as they prove that the plaintiffs are living elsewhere from the Suit Properties which means they are not in possession and enjoyment of the Suit Properties.

13. The Suit is for injunction simpliciter. Though there is no necessity to decide title here, the plaintiffs have to *prima facie* establish title since their case is based on Assignment Pattas. Absolutely there is no evidence on record to prove their possession and enjoyment of the Suit Properties as well as the validity of their title. Hence, the Government is a necessary party to the Suit. Therefore, the Suit is bad for non-joinder of necessary party. Further, the case of the plaintiffs is that the defendants interfered with the plaintiffs' peaceful possession and enjoyment of the Suit Property. In such a scenario, the Suit is not bad for mis-joinder of parties.



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14. According to the plaintiffs, the Government issued Assignment Pattas to 675 persons including the plaintiffs. As admitted by the plaintiffs in their evidence, there is no construction upon the Suit Properties and they are all vacant. In these circumstances, the plaintiffs ought to have filed the Assignment Pattas or at least the details of the Pattadhars. To be noted, the Assignment Pattas were issued on different dates to various people. There is no record to show when the Assignment Pattas were issued and to show that there are 675 beneficiaries and who are those beneficiaries. Just because the plaintiffs have filed Assignment Pattas issued in favour of them, this Court cannot presume that all the other alleged beneficiaries were also issued Assignment Pattas. When the plaintiffs have not adduced any evidence in respect of particulars about the beneficiaries and the Patta issued to them, they must have at least added the Government as a party which is competent to provide such information. The Suit being a representative Suit, such particulars and the presence of the Government is essential to come to a just conclusion. In view of the Ex-B.5 – Gazette Notification, in the absence of the Government and in absence of proof of possession and enjoyment, bare injunction cannot be granted against the defendants. Moreover, the



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defendants categorically asserted that they did not enter into the Suit Properties and that the first defendant brought notice to the Government about the irregularities occurred in the issuance of Assignment Pattas. Hence, there is a fair chance that the plaintiffs have filed this Suit hoping to obtain a Decree in their favour which would act as an evidence to establish their case before the District Collector. To be noted, the plaintiffs have miserably failed to establish their case.

15. The First Appellate Court in Paragraph Nos.20 to 23 has assigned various reasons and concluded that the Suit must fail in various angles and that the Trial Court's Judgment is an erroneous one. The First Appellate Court has reasoned that the Government is a necessary party; that the Tahsildar was just a witness and not a party to the Suit; that the Trial Court failed to consider these aspects; that while the defendants *prima facie* established the Assignment Pattas were cancelled, the plaintiffs failed to prove the validity of their Assignment Pattas and hence, the Trial Court's finding that the Assignment Pattas are the deed of title and title follows possession is wrong. Accordingly, it held that the Trial Court's Judgment and Decree are liable to be set aside. The First Appellate Court has assigned satisfactory reasons for its conclusions. Substantial



Questions of Law 'a' is answered accordingly.

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16. As stated *supra*, the defendants have *prima facie* proved their assertion that the Assignment Pattas were cancelled. In such a scenario, the onus is upon the plaintiffs to prove the validity of Assignment Pattas *viz.*, Ex-A.1 to Ex-A.5, Ex-A.9, Ex-A.11 and Ex-A.13 or at least their possession and enjoyment, which they have failed to prove. Substantial Questions of Law 'b' is answered accordingly.

17. As narrated above, title and possession have not been proved. Further, no evidence providing the particulars about the alleged other beneficiaries and their Assignment Pattas were adduced. In such a scenario, the Suit is not maintainable in representative capacity as the plaintiffs have not satisfied the ingredients of Order I Rule 8 of CPC. It is settled law that if the Court concludes that the Suit is not maintainable under Order I Rule 8 of CPC, the Suit can still be proceeded further under the plaintiff's individual capacity. Hence, this Court is of the view that the present Suit is maintainable under the plaintiffs' individual capacity. Substantial Questions of Law 'c' is answered accordingly.



18. As stated *supra*, Ex-B.5 – Gazette Notification as well as the evidence of D.W.3 *prima facie* establish that the Assignment Pattas were cancelled. Thus, the onus shifts onto the plaintiffs. Therefore, no adverse inference can be drawn against the defendants. Substantial Questions of Law ‘d’ is answered accordingly.

19. The learned Counsel for the appellants / plaintiffs, would rely on Paragraph No.21 (a) of the Judgment [as per SCC] in ***Anathula Sudhakar’s Case***, which reads thus:

“21.To summarise, the position in regard to suits for prohibitory injunction relating to immovable property, is as under:

(a) Where a cloud is raised over the plaintiff’s title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction, is the remedy. 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 the plaintiff’s lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter.”



19.1. From the above, it can be understood that only when the lawful possession is interfered, Suit for injunction simpliciter is maintainable. Hence, lawful possession has to be established by the plaintiffs but they have failed to do so. Therefore, ***Anathula Sudhakar's Case*** does not come to the aid of the plaintiffs.

20. In ***Krishnamoorthy's Case***, unlike the case on hand, the lawful possession of the plaintiff therein was proved. Hence, it is distinguishable and not applicable to the case on hand.

21. In the Order passed in I.A.No.1269 of 2010, the Trial Court has observed that though objectors were present before the Trial Court, they did not choose to file any objection or affidavit. In these circumstances, the Trial Court closed I.A.No.1269 of 2010 and framed an additional issue in the main Suit as to whether the Suit is maintainable in representative capacity under Order I Rule 8 of CPC. Later, the Trial Court answered the issue affirmatively *i.e.*, it held that the Suit is maintainable under Order I Rule 8 of CPC. The First Appellate Court disagreed by observing that no evidence providing the particulars about the alleged other beneficiaries and their Assignment Pattas were adduced. As stated *supra*,



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this Court concurs with the view of the First Appellate Court as regard maintainability of the Suit under Order I Rule 8 of CPC. In this regard, learned Counsel for the appellants would place reliance on Paragraph No.34 of the Judgment in *Rahmathullah's Case*. While there may not be any quarrel with regard to the proposition of law put forth therein, *Rahmathullah's Case* would not come to aid of the plaintiffs, in view of the facts and circumstances of the case.

CONCLUSION:

22. Resultantly, the Second Appeal stands dismissed as devoid of merits. Keeping in mind the facts and circumstances of the case, there shall be no order as to costs.

19 / 11 / 2024

Index	:	Yes
Internet	:	Yes
Neutral Citation	:	Yes
Speaking Order	:	Yes
MSM/TK		



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To
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- 1.The Subordinate Judge
Kangayam,
Tiruppur District.
- 2.The District Munsif Court
Kangayam,
Tiruppur District.



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R.SAKTHIVEL, J.

MSM/TK

PRE-DELIVERY JUDGMENT MADE IN
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