



S.A. Nos.1375 & 1376 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.06.2024

CORAM:

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

S.A. Nos.1375 & 1376 of 2013

and

M.P.Nos. 2 of 2013 and 1 of 2014

S.A.No.1375 of 2013

1. Kalyanasundaram
2. Kamalaveni
3. K.P.Duraisamy

P.Kathirvelu (died)

... Appellants

Vs.

1. Annapooraniamma
2. C.Mahesh
3. S.Maruthachalam
4. Rajamani
5. K.Poorani
6. K.Senthilkumar

.. Respondents

PRAYER in S.A.No. 1375 of 2013 : Second Appeal filed under Section 100 of Code of Civil Procedure, to set aside the judgment and decree dated 18.07.2013 passed in A.S.No.63 of 2012 on the file of I Addl. Sub-Judge, Coimbatore in reversing judgment and decree dated 31.01.2012 passed in O.S.No.296 of 2008 on the file of III Addl. District Munsif, Coimbatore.



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S.A.No.1376 of 2013

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1. Kalyanasundaram
2. Kamalaveni
3. K.P.Duraisamy

P.Kathirvelu (died)

... Appellants

Vs.

1. Annapooraniamma
2. C.Mahesh
3. S.Maruthachalam
4. Rajamani
5. K.Poorani
6. K.Senthilkumar

.. Respondents

PRAYER in S.A.No.1376 of 2013 : Second Appeal filed under Section 100 of Code of Civil Procedure, to set aside the to set aside the judgment and decree dated 18.07.2013 passed in A.S.No.62 of 2012 on the file of I Addl. Sub-Judge, Coimbatore in reversing judgment and decree dated 31.01.2012 passed in O.S.No.315 of 2008 on the file of III Addl. District Munsif, Coimbatore.

For Appellants in
both S.A.s

: Mrs.V.Srimathi

For Respondents in
both S.A.s

: Mr.Karthik Ranganathan
for R1 and R2
Mr.S.Kumara Devan
for R3 and R4
R5 – No appearance
R6 – Refused



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COMMON JUDGMENT

The appellants herein are the plaintiffs in O.S.No. 296 of 2008 and they are the defendants 2, 1 and 3 in the suit in O.S.No.315 of 2008 on the file of III Addl. District Munsif Court, Coimbatore. The respondents 1 to 4 herein are the defendants in the suit in O.S.No.296 of 2008 and the respondents 1 and 2 herein are the plaintiffs 1 and 2 in the suit in O.S.No.315 of 2008 on the file of III Addl. District Munsif Court, Coimbatore.

2. Before the trial court, the suit in O.S.No.296 of 2008 was filed by the appellants herein for the relief of declaration and permanent injunction and the suit in O.S.No. 315 of 2008 was filed by the respondents herein for the relief of permanent injunction. Both parties and the suit properties are one and the same and both suits were jointly tried and a common judgment was passed by the trial court. Before the trial court, the suit filed by the appellants herein in O.S.No.296 of 2008 was allowed except the prayer (a) for declaration and the suit filed by the respondents herein in O.S.No. 315 of 2008 was dismissed. Against the common judgment, the respondents



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preferred the appeals in A.S.Nos.62 and 63 of 2012 before the I Addl. Sub-Judge, Coimbatore. The first appellate judge independently analysed the facts and reversed the findings of the trial court and finally allowed both Appeal Suits. Now, challenging the reversal findings of court below, the Appellants herein have preferred these Second Appeals.

3. The subject matter of the suit property in O.S.No. 296 of 2008 is in Survey No.198/2A1A1, Patta No.573, Vilankurichi Village, Coimbatore Taluk, an extent of 1.12 acres (8188 sq.m.). The suit property in O.S.No.315 of 2008 is denoted as S.F.Nos.198/1A and 198/3, total extent of 1.05 acres at Vilankurichi Village, Coimbatore Taluk. Parties are identified as denoted in both suits.

4. For the sake of convenience, the appellants and respondents herein are called as plaintiffs and defendants as per ranking in the suit in O.S.No.296 of 2008.

5. The 4th plaintiff Kathirvelu is the hereditary manager of Choultry firm at Kovilpalayam. The plaintiffs 1 to 3 are the purchasers of the suit property with four boundaries in two different sale deeds from the 4th plaintiff. Based on the purchase, the plaintiffs 1 to 3 have claimed that they



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are the absolute owners of the suit properties. The defendants 1 and 2 have purchased the suit property from the defendants 3 and 4, who have no right and title over the suit property, but they have illegally obtained patta in respect of the suit property as if it is assigned as S.F.Nos.198/1A and 198/3 and they conveyed the property in favour of defendants 1 and 2. The said alleged subdivision of the property is not tallied with the suit property. Therefore, the plaintiffs filed a suit to declare the Patta stands in the name of defendants as null and void and also sale deed stands in the name of defendants 1 and 2 and consequential relief of permanent injunction. Contrary to that, the defendants 1 and 2 have filed a suit in O.S.No.315 of 2008 claiming themselves as absolute owners of the suit property based on the purchase made from their vendor Maruthachalam and Rajamani, in which, the plaintiffs having no right and title over the property, but they are causing interference. Hence, they have filed a suit for the relief of permanent injunction.

6. Brief facts of the case is as follows :-

The suit property and other properties in Survey No.198, wherein inam lands are originally belongs to Dharmodhaya Inam granted to choultry



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at Kovilpalayam. After coming into force of Madras Inams (Abolition and Conversion into Ryotwari) Act, the properties were vested with the Government under Sec.3(6) of the aforesaid Act. According to 4th plaintiff, who is Manager of the said Choultry states that the Government of Madras held an enquiry, thereby, it has not received any claims for the grant of Ryotwari patta in respect of the suit property during the enquiry conducted by the Settlement Tahsildar IV, Gobichettipalayam in SR.98/68/M.I. Act dated 18.12.68. Accordingly, the patta was granted in favour of Choultry, wherein the suit property in S.F.No. 198/2 is shown as 'A' schedule property. As per the settlement order dated 18.12.1968, Kathirvelu, 4th plaintiff herein, who is hereditary manager of Choultry at Kovilpalayam has derived absolute right and title over the suit property and patta was also issued in favour of him. Against the order of Settlement Tahsildar, no appeal was preferred. Therefore, the settlement order dated 18.12.1968 becomes final. Accordingly, the 4th plaintiff Kathirvelu perfected pucca title and as a owner, he sold the property to plaintiffs 1 to 3 in the year of 2007. In the meanwhile, the 4th plaintiff filed a suit in OS.No.1728 of 1996 and the same was decreed in his favour. Therefore, his right is also declared in



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the court of law. Hence, the plaintiffs 1 to 3 claiming absolute right over the property based upon the purchase made from the 4th plaintiff.

7. The defendants 1 and 2 have filed a suit in O.S.No.315 of 2008 claiming themselves as absolute owners of the suit property to an extent of 1.05 acres in Survey No.198/1A and 198/3 stating that they have conferred right and title over the property through a Gift Settlement deed executed by one Narayana Gounder (grandfather), who purchased the property from one Palani Gounder on 12.03.1958 and the said Palani Gounder acquired the suit property through court auction held in E.P.R.No.1898 of 1940 in O.S.No.621 of 1937 vide court auction sale deed dated 12.12.1941. Therefore, from the court auction purchaser, the 3rd and 4th defendants have purchased the property in the year of 1958 and they perfected the gift deed in the year of 1959. Thereafter, they have enjoyed the suit property till the year 2005. Subsequently, they have sold the same to defendants 1 and 2 and after their purchase, sub-division was taken place and a Patta No.729 and the number was assigned as Survey Nos. 198/1A and 198/3. Accordingly, from the year of 1937 onwards, the vendors of 3rd and 4th defendants were



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in possession and enjoyment of the property. Subsequently, in the year of 1959 through a gift deed, the defendants 3 and 4 perfected the title as absolute owners, thereby, they have denied the right of 4th plaintiff, who claimed right over the property based on the Settlement Tahsildar order. Hence, they have filed a suit seeking for the relief of permanent injunction.

8. The learned counsel for plaintiffs would submit that the plaintiffs 1 to 3, who have claimed right based upon the purchase made from hereditary manager Kathirvelu stating that during the Inam Settlement Tahsildar enquiry, the vendors of defendants 3 and 4 have not appeared inspite of notice and some of the person, who enjoyed the land appeared and claimed Ryotwari patta. In that enquiry, the 4th plaintiff as a hereditary manager of Choultry also participated. On hearing the parties, who appeared for the enquiry, the Settlement Tahsildar passed an order in respect of suit property in Survey No.198 along with other Survey numbers on 18.12.1968. Based upon that order, the 4th plaintiff conferred with absolute title for the said Survey Nos. 198/2 and 198/3. Having approached the court for the relief of declaration, the plaintiffs 1 to 3, more particularly,



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the 4th plaintiff bound to prove the perfected title over the suit property based upon the Settlement Tahsildar order marked as Ex.A8. But, the court below failed to appreciate the said order and the first appellate judge erroneously dismissed the suit ignoring the fact that the original vendors of the defendants 3 and 4 have not appeared for the said enquiry. In spite of that, the title of defendants 1 and 2 was not accepted by the first appellate judge, as such is erroneous one and the same is liable to be set aside.

9. By way of reply, the learned counsel for defendants would submit that though proper notice was served to their vendors, even then, they were in possession of the suit property even at the time of filing the suit from 1937 onwards and until the year of 2005, when they have sold the property, they are in continuous possession and enjoyment of the suit property and the revenue records to that effect also produced, which was rightly appreciated by the first appellate judge. On the other hand, the 4th plaintiff was not assigned with absolute right in the Settlement Tahsildar order in Ex.A8, since because he was only a hereditary manager to look after the property and he has no right to convey the property even as per the



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Settlement Tahsildar Order in Ex.A8 and the same was rightly appreciated by the first appellate judge, which needs no interference. Hence, he prayed to dismiss this second appeal as no merit. 11. Before the lower court, the trial judge concludes that the 4th plaintiff, hereditary manager of Choultry was conferred with absolute right and title over the property as per Settlement Tahsildar order in Ex.A8. On the other hand, the vendors of defendants 3 and 4 have no right over the property, thereby the purchase made by defendants 1 and 2 was not binding on the plaintiffs 1 to 3. Accordingly, the suit filed by the plaintiffs except the relief of Patta and other reliefs, decree granted in favour of plaintiffs. The suit filed by the defendants for injunction was dismissed holding that they have no right and title over the property.

10. Considering the facts and circumstances and on considering the submissions of both sides, both the Second Appeals are admitted on the following substantial question of law :-

“1) Whether the lower appellate court is correct in reversing the judgment and decree of the trial court holding that the suit

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filed by the plaintiff in O.S.No.296 of 2008 is barred under the principles of res judicata in view of the finding made in LAOP.No.158 of 1997 marked as Exs.B16?

2) Whether the plaintiffs have established their title to the property?

3) Whether the grant of inam patta to the appellants herein would not estop the respondents herein from claiming title over the property?

11. On perusal of records, it reveals that the 4th plaintiff claimed absolute right over the suit property in Survey No.198 based upon the Settlement Tahsildar Order dated 18.12.1968 marked as Ex.A8. According to plaintiffs, the suit property was originally belong to unenfranchised Dharmodhaya Inam granted and confirmed in the year 1863 in favour of Kovilapalayam Choultry. After the Inam Abolition Act, in the year of 1963, the suit property was vested with the Government and Settlement Tahsildar-IV passed an order dated 18.12.1968 granting ryotwari patta in respect of specified land changed in the name of 4th plaintiff as a hereditary manager of Choultry. In that order, one such land in Survey No.198 was



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allotted to the 4th plaintiff. On perusal of the order, Ex.A8, it reveals that on 18.12.1968 the Settlement Tahsildar IV, Gobichettipalayam conducted an enquiry in respect of various survey numbers including Survey No.198. After issuance of notice, some of the persons, who are in possession and enjoyment of the land were appeared and though some of persons were in possession and enjoyment of land, they have not appeared for enquiry. However, 12 individuals including 4th plaintiff Kathirvelu have appeared and official witness Karnam of the village, Revenue Inspector was examined as P.W.1 to 3 and documents were produced by the individuals as well as by the revenue authority, which are marked as Ex.C1 to Ex.C4. So, on considering all the oral and documentary evidence, the Settlement Tahsildar passed an order granting ryotwari patta in respect of the lands specified in the Schedule 'A' to the individuals with a condition to pay 20 times as fixed by the Tahsildar. Regarding 'A' schedule, the property is mentioned as follows :-

SCHEDULE 'A'

No. & name of village : 13, Velankurichi

T.D.No. : 538

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<i>Survey No.</i>	<i>Extent Ac.</i>	<i>Classification</i>	<i>Names of persons to whom ryotwari patta allowed</i>	<i>Section of the Act</i>
6/1	2-70	Dry	1. Krishna Gr, S/o. Ramana Gr, Velankurichi	8(2)(i)(b)
66/1 (Pro)	2-08	Dry	1. Sundarasami Gr, S/o. Venkatachala Gr, Kallipalayam, S/o. Alandurai	-do-
198/2 (Pro)	0-37	Dry	1. Urumanda Gr, S/o. Galiappa Gr, Velankurichi	-do-
198/2 (Pro)	5-60	Dry	1. K.Ramalingam, S/o. Kaliappa Gr, 2. Duraisamy, S/o. -do-	-do-
450	6-71	Dry	1. G.R.Damodaran, S/o. Rangasami Naidu, Coimbatore 2. Minor B. Padmanabhan, S/o. No.(1) by guardian father No.4, Coimbatore 3. G.V.Doraisamy Naidu, S/o. Venatasamy Naidu, Coimbatore	-do-

In respect of Survey number mentioned in 'B' schedule, the Settlement Tahsildar shows that the survey numbers were in occupation of persons not connected with the Choultry and some of individuals have not turned up for enquiry to give evidence as to how they came into possession of lands,



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though they were duly served on with notice. Therefore, no valid document or sale deed in respect of their right and enjoyment was produced, but some of them simply stated that they have enjoyed the land considerably for a long time by their fore-fathers. According to Sec.8(2)(i)(b) of the Inam Act, they should have come into possession of lands for more than two decades from 01.04.1960, then only, they are entitled to continue in possession of lands. On the other hand, P.W.9 hereditary manager of Choultry Kathirvelu, who possessed the property from their forefather and maintaining the choultry with a meagre income available from letting out a portion of the choultry for the use of cooperative society. Hence, under the provision of Sec.8(2)(ii) of the Act, the ryotwari patta in respect of these lands specified in 'B' schedule be allowed to the Choultry at Kovilpalayam, represented by Kathirvelu, the manager of Choultry “for the time being”. In respect of 'C' schedule of property, they contain the dwelling houses and house sites, the occupants were granted patta. Therefore, as per Ex.A8, the Settlement Tahsildar permitted the 4th plaintiff, who is manager of Choultry was allowed to enjoy 'B' schedule property for the time being. The 'B' schedule of property is as follows:-



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SCHEDULE 'B'

No. & name of village : 13, Velankurichi

T.D.No. : 538

<i>Survey No.</i>	<i>Extent Ac.</i>	<i>Classification</i>	<i>Names of persons to whom ryotwari patta allowed</i>	<i>Section of the Act</i>
5/1B	3-65	Dry	1. Kovilpalayam Choultry represented by manager P.Kadirvealu, S/o. Palaniappa Pillai, Kovilpalayam for the time being.	8(2)(ii)

Therefore, the 'B' schedule property in Survey No.198/3, an extent of 11 acres was permitted to enjoy for the time being by the Choultry Manager. But, no absolute right was given to the Choultry Manager nor ryotwari patta was granted in favour of Choultry Manager/4th plaintiff. So, Ex.A8 order was rightly appreciated by the first appellate judge, though the trial court failed to appreciate the same. Moreover, in 'A' schedule property, Ex.A8, Survey No.198/2 was allotted to individuals and Survey No.198/3 was allotted to Choultry at Kovilpalayam for the time being. But, now the 4th plaintiff claimed himself as absolute owner of the suit property for an

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extent of 1.12 acres, which was allotted sub-division No.198/2A1A is totally false. According to plaint averments, the suit property was originally assigned with Survey No.198/2. Thereafter, sub-division was effected. But, as stated above, Survey No.198/2 was also not allotted to this Choultry and it is allotted to individuals, besides, there was no absolute right and title was given in favour of Choultry. In fact, the forefathers of 4th plaintiff have only permitted to maintain the choultry with the help of income derived from the suit property. Therefore, the claim of 4th plaintiff based on Ex.A8 order is totally erroneous one, neither himself nor his ancestors having absolute right over the property. The first appellate judge has rightly appreciated the said facts, which needs no interference. Therefore, the purchase made by plaintiffs 1 to 3 from the 4th plaintiff was not valid under law. Furthermore, after the purchase, there was subdivision taken place and Patta was also assigned in favour of plaintiffs also not valid one. Therefore, the plaintiffs have no right and title over the suit property. Hence, they are not entitled for the relief of declaration as rightly observed by the first appellate judge, which needs no interference.



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12. The defendants 1 and 2 also claimed right over the property based on the purchase made from defendants 3 and 4. Admittedly, the defendants proved the title through the Settlement deed executed by Narayana gounder, grandfather of 3rd defendant in the year of 1959. The said Narayana Gounder purchased the property in the year of 1958 from one Palani Gounder. The said Palani Gounder purchased the suit property through court auction in E.P.R.No.1898/40 in O.S.No. 621/1937. The extract of the said proceedings filed before the court was mentioned in the sale deed in Ex.12 and Ex.13 of the year of 1958 and 1959. Admittedly, the vendors of defendants 1 and 2 have not appeared before the Settlement Tahsildar. In fact, the 4th defendant Rajamani has not appeared for the said enquiry before the Settlement Tahsildar. But, her name is mentioned in the said order in respect of Survey No.198/3 along with other persons, who were not appeared, but they were in possession and enjoyment of the property as mentioned by P.w.2 Karnam of the village. As per the evidence of P.W.2 Karnam of village, nearly about 12 persons were not appeared, but they were in possession and enjoyment of the property. One such person is Rajamani, wife of Maruthachalam according to Survey No.198/1. In fact,



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based upon the gift settlement deed, Rajamani claiming right over the property. Therefore, from the year of 1958, she was in possession and enjoyment of the property, but she has not appeared for the enquiry, which can be proved as per the observation made by Settlement Tahsildar. As per the evidence of Karnam of village, as per proceedings recognised by the Tahsildar, from the year of 1937 onwards, their vendors were in possession of the property also been proved. But, on the other hand, the hereditary manager of Choultry, 4th plaintiff, who claimed as absolute owner of the property has not produced any document to show his long possession and even as per Ex.A8 only for the time being he was permitted to maintain the property and he was not given any absolute right over the property. But, however, the 4th plaintiff claiming right based on the decree passed in O.S.No.1728/1996, which is an exparte decree, in which the defendants are not parties. Moreover, the proceedings in LAOP No.158 of 1992, only portion of the property in the survey number was acquired by the Government, wherein, the 4th plaintiff Choultry Manager claimed possession, but it was not accepted holding that the long possession has not been proved. Therefore, the first appellate court has rightly held that the



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findings evolved by the revenue officer in the acquisition proceeding has not been set aside as on date and it is operated as res judicata for the claim made by 4th plaintiff in the suit in O.S.No.296 of 2008. Accordingly, the question of law (a) is answered.

13. As discussed above, with regard to question of law (b) is concerned, whether the plaintiffs have established their title to the property? The 4th plaintiff has no right and title over the suit property. So also, the plaintiffs 1 to 3, who made purchase from the 4th plaintiff was also invalid under law. Therefore, they have not perfected the title over the property and the first appellate court rightly appreciated the said facts, which needs no interference.

14. In respect of question of law (c) is concerned, whether the grant of inam patta to the appellants herein would no estop the respondent herein from claiming title over the property? Though the patta was assigned in favour of plaintiffs 1 to 3 by way of subdivision in Survey No.198, would not bind the defendants, who proved their long possession and also having better title than the plaintiffs, thereby Patta stands in the name of plaintiffs



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would not estop the defendants from claiming right over the property.

Accordingly, the issue No.(c) is answered.

15. Accordingly, both the Second Appeals are dismissed and the findings of the first appellate judge in A.S.Nos 63 and 62 of 2012 on the file of I Addl. Sub-Court, Coimbatore respectively are confirmed. The suit filed by the plaintiffs in O.S.No. 296 of 2008 on the file of III Addl. District Munsif, Coimbatore is dismissed and the findings rendered in suit in O.S.No.315 of 2008 on the file of III Addl. District Munsif, Coimbatore is confirmed. No costs. Consequently, connected Miscellaneous Petitions are closed.

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Index : Yes / No
Internet : Yes / No
Speaking/Non-speaking order
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To

The I Addl. Sub-Judge, Coimbatore.

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