



S.A.No.271 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.11.2024

CORAM:

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

S.A.No.271 of 2023
and
CMP.No.7934 of 2023

Chandrasekar

.. Appellant

Vs.

Latchmi

.. Respondent

PRAYER : Second Appeal is filed under Section 100 of the Code of Civil Procedure, prayed to set aside the Judgment and Decree dated 28.11.2022 in A.S.No.14 of 2022 on the file of the I Additional Sub Judge, Cuddalore, confirming the judgment and decree dated 26.04.2022 in O.S.No.717 of 2004 on the file of Principal District Munsiff, Cuddalore.

For Appellant : Mr.Devaraj
for Mr.K.Shanmugam

For Respondent : Mr.R.Sunilkumar

J U D G M E N T



S.A.No.271 of 2023

WEB COPY

The appellant has filed this Second Appeal against the Judgement and Decree dated 28.11.2022 in A.S.No.14 of 2022 on the file of the I Additional Sub Judge, Cuddalore, confirming the judgement and decree dated 26.04.2022 in O.S.No.717 of 2004 on the file of Principal District Munsiff, Cuddalore.

2. Heard, Mr.Devaraj learned counsel for Mr.K.Shanmugam learned counsel for the appellant, Mr.R.Sunilkumar, learned counsel for the respondent and perused the materials available on record. For ease of reference, the parties herein are referred to as they were designated in the suit.

3. The appellant's hearing concerns the defendant challenging the concurrent findings of the courts below. The respondent, who is the plaintiff, filed a suit O.S. No. 717 of 2004 before the learned Principal District Munsif, Cuddalore, seeking relief of declaration of title and recovery of possession of 0.339 square meters in Survey No. 127/5 at Pathirikuppam Village, Cuddalore Taluk.

4. The plaintiff asserted that the suit property was originally owned and enjoyed by Kannappa Padayatchi as his absolute property for decades. After



S.A.No.271 of 2023

his death, his son Kuppusamy, along with his wife (the plaintiff), was in possession and enjoyment of the property. They built thatched huts on the property and paid taxes. The revenue officials, recognizing their long and continuous possession, issued patta No. 695 in the plaintiff's name. Additionally, the plaintiff obtained a service connection and a ration card for the said hut.

5. After the death of her husband Kuppusamy in 1997, the plaintiff, along with her children, became the legal heirs of the property. However, due to financial constraints, she could not maintain the hut, which eventually became damaged. Despite residing at her mother's house during this time, she continued paying taxes for the property. During her absence, the defendant, residing on a nearby property, allegedly trespassed into the suit property, unlawfully occupying it and claiming it as his ancestral property. This led the plaintiff to file the present suit.

6. The defendant contested the suit, stating that the suit property was his



S.A.No.271 of 2023

ancestral property. He argued that the rough patta issued to the plaintiff was invalid. After proper inquiry, a patta was issued in his name. He further claimed that he had never made any false claims and had been residing East of the suit property, using it as a cattle shed, garden, and manure-dumping area. The defendant also asserted that he had uninterrupted possession and enjoyment of the property, thereby acquiring title through adverse possession. He contended that Kannappa Padayatchi was merely a farm servant of his family and that the plaintiff was not a legal heir of Kannappa Padayatchi. Accordingly, the defendant prayed for the dismissal of the suit.

7. In his written statement, the defendant further argued that his forefathers had been in possession and enjoyment of the property, and therefore, recovery of possession did not arise. He also alleged that the court fee had not been correctly paid by the plaintiff and claimed that the suit was filed with the intention of extorting money.

8. During the trial, both parties presented oral and documentary evidence. The trial court framed four primary issues regarding the plaintiff's



S.A.No.271 of 2023

title and the defendant's rival claim, along with two additional issues.

WEB COPY

9. To establish her title, the plaintiff produced the natham patta (Ex.A2), showing that patta No. 695 had been issued in her name for the suit survey number. To corroborate her husband's name, she presented several documents, including a 1982 marriage invitation, chitta, family card, EB receipt, electoral roll card, encumbrance certificate, and a letter from UCO Bank addressed to her (marked as Ex.A4 to Ex.A11). Additionally, she provided a survey notice for patta No. 695 (Ex.A3). The plaintiff testified as PW-1, while other witnesses testified as PW-2 and PW-3.

10. The defendant, on the other hand, relied on patta marked as Ex.B1, which indicated that revenue patta No. 691 was assigned in his favour. Despite this, the trial court relied on Ex.A1 (the patta issued in the plaintiff's name) and found that the plaintiff had established her right and title over the suit property.

11. As per Ex.A2, Thorayapatta rendered by the Tahsildar for Natham



S.A.No.271 of 2023

Nilavari Thittam for new Survey No.127/5, old Survey No.53, measuring 0.0339 square meters in Patta No. 695, dated 28.04.1996, was issued in favour of the plaintiff, Lakshmi, wife of Kuppusamy, pertaining to the suit property. Ex.A4 is a chitta from the register of Natham Nilavari Thittam, issued in favour of the plaintiff on 24.10.2014. Ex.A5 is an adangal.

12. The plaintiff also produced additional documents such as EB receipts, family cards, and electoral roll records. These were taken into consideration by the learned trial Judge, who concluded that the plaintiff had proven her right and title over the suit property. In response, the defendant produced a revenue patta marked as Ex.B1, dated 06.05.2002, under Patta No. 691, claiming that it had been issued in favour of the suit property in 2002 based on the defendant's long possession and enjoyment, thereby establishing him as the absolute owner of the suit property. However, the learned trial judge rejected the defendant's patta, stating that Ex.A2, being a Natham Patta issued in favour of the plaintiff, could not be de-vested by any revenue authorities or government. This conclusion relied on the legal proposition laid down in the **2012(2) CTC 315, State of Tamil Nadu vs. Madasamy**, stated as follows:



S.A.No.271 of 2023

“ There is no dispute that wherever the lands classified as natham or natham poromboke or gramanatham are only meant a grama natham. The gramanatham lands where classified and allotted for village people to use them as house sites or for any other purposes for storing hay and manure or as a smithy or as a brick kiln or as a place for weaving etc. ”

13. Thus, the patta marked as Ex.B1 in the defendant's name was deemed invalid. Accordingly, the trial court declared the plaintiff's right and title to the suit property. Challenging this finding, the defendant filed A.S. No. 14 of 2022. The learned first appellate Judge independently analyzed the evidence and documents submitted by both parties. Ultimately, the learned appellate Judge concluded that the plaintiff's documents established possession and enjoyment of the property until 2004. The defendant had unauthorizedly entered the suit property thereafter and erected a cattle shed.

14. Furthermore, Ex.B1, the patta relied upon by the defendant, was based on an application dated 23.04.2002. However, the suit patta (Patta No. 695) was incorporated into the tax receipt stamped in the defendant's name. Since the defendant failed to produce the original tax receipt and relied solely on a xerox copy, the learned Appellate Judge dismissed this evidence. The



S.A.No.271 of 2023

appellate court affirmed the trial court's finding that the defendant had encroached upon the suit property and dismissed the appeal.

15. The defendant/appellant challenged the concurrent findings of the courts below on the following grounds.

i. The Courts below has failed to properly appreciate the case of the plaintiff, where in initially the plaintiff has come forward with the prayer of Permanent Injunction restraining the defendant from interfering with the possession and enjoyment of the suit schedule property, subsequently after the submission of the commissioner's report, has amended the prayer for the recovery of possession, followed by the 3rd amendment in the year 2013 for the declaration of title which clearly shows that the suit is itself speculative, which has not been considered by the courts below.

ii. The Appellant states that the courts below have failed to appreciate the fact that with the help of the documents which were given to the plaintiff while she was residing as a permissive occupant along with her husband and children in the suit schedule property has misused the same to claim title over the suit schedule property. The courts below even without considering the fact



S.A.No.271 of 2023

that the plaintiff has been ousted from possession even 15 years prior to the institution of the suit has granted the relief, and the reasoning for the same is that the plaintiff is illiterate is perverse and erroneous.

Iii. The appellant states that the finding of the courts below that the documentary evidence of the plaintiff is weighing more than EX.C1 to C4 is erroneous, in fact the EX.A4 and A5 were issued in the year 2014, pending the suit and the plaintiff has clearly admitted in the evidence that she is not in possession and fortified by Ex.C1 to C4 and as such rendering a finding that the plaintiff was in possession is erroneous.

iv. The Trial courts finding that EX.B1 regular patta is related to the suit property is not clearly established is erroneous, in fact the land is a patta land and no natham patta can be issued and the revenue documents filed by the plaintiff are all bogus documents which the court has failed to appreciate.

v. The courts below have without appreciating the fact whether the suit land in question is a Natham land or a patta land has discussed with the precedence of the Natham patta and had conferred title to the plaintiff, which



S.A.No.271 of 2023

is erroneous. Further in case of Natham land, the title is based only on possession and in the present case, the possession of the plaintiff is only a permissive occupant and also not in occupation. In such case declaration of the title in favour of the plaintiff is erroneous and unsustainable.

16. The learned counsel for the appellant prayed for the appeal to be admitted on specific questions of law.

a. Whether the courts below correctly appreciated the evidence on the plaintiff in the light of the pleadings as per section 11 of the Indian Evidence Act, where in the Facts not otherwise relevant becomes relevant?

b. Whether the Courts below properly appreciated the validity of the revenue documents issued in favor of the plaintiff and the defendant?

c. Whether the courts below are right in declaring that the plaintiff had established the possessory right based on the material evidence and is entitled to the declaration of title.

17. The learned counsel for the respondent also appeared, contesting the findings. The plaintiff's claim is that the suit property was originally possessed and enjoyed by Kannappa Padayatchi for several decades. After his



S.A.No.271 of 2023

death, his son Kuppusamy enjoyed the property, and upon Kuppusamy's demise, his wife, the plaintiff, continued in possession and enjoyment of the property. The plaintiff and her family resided on the property in a thatched shed. The suit property, classified as grama natham, was granted to the plaintiff under the Natham general survey, with the patta marked as Ex.A2.

18. The defendant relied on Ex.B1, a patta issued in 2002 under Patta No. 691. However, the plaintiff provided evidence such as a family card, electoral roll entries, and communication letters addressed to the suit property, proving her residence and possession. Witness testimonies from PW-1 and PW-2 confirmed that the suit property is located at 21/1 Marriamman Koil Street, Pathirikuppam, where the plaintiff resided with her husband. The defendant owned a property opposite the eastern portion of the suit property, where he had a tiled house but claimed to use the suit property as a cattle shed.

19. But evidence as well as the documents disclosed that suit property is a gramanatham, Based on long possession and title, the plaintiff was given Patta, exhibit A-2. It is settled proportion that Grama Naktam vested with his



S.A.No.271 of 2023

classified as Grama Naktam and allotted for village people to use them as outsiders. Accordingly, the suit property is in Grama Naktam allotted to plaintiff considering the plaintiff's and her family members possession and enjoyment.

20. The evidence and documents indicated that the suit property is classified as grama natham, which is vested with the village people for residential purposes and not with the government. The plaintiff's long possession and enjoyment of the property justified the issuance of Patta No. 695 (Exhibit A2) in her favour. The Courts rightly held that the revenue authorities had no authority to grant another patta in favour of the defendant. Exhibit B1, the patta relied upon by the defendant, was declared invalid.

21. Both the trial court and the First appellate court properly appreciated the evidence and granted relief to the respondent / plaintiff by declaring her right and title to the suit property. As no substantial question of law is involved.

22. Accordingly, this second appeal is dismissed as devoid of merits.



S.A.No.271 of 2023

Consequently, the connected miscellaneous petition is closed. There shall be
no order as to costs.

25.11.2024

Index : Yes/No
Speaking Order: Yes/No
Nutral citation: Yes/No

rri

To

- 1.The I Additional Sub Judge, Cuddalore.
2. The Principal District Munsiff, Cuddalore.
- 3.The Section Officer, VR Section,
High Court of Madras.

T.V.THAMILSELVI, J.

rri



WEB COPY



S.A.No.271 of 2023

S.A.No.271 of 2023
and
CMP.No.7934 of 2023

25.11.2024