



S.A. No. 1165 of 2011

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.10.2024

CORAM

THE HONOURABLE MR. JUSTICE N.SENTHILKUMAR

S.A. No.1165 of 2011

and

M.P.No.1 of 2011

1. Ramayee
2. Irusammal
3. Rathinammal
4. Mariyammal
5. Raniammal
6. Lakshmi
7. Vatchala
8. Dhanalakshmi

... Appellants

Versus

1. Begum Jan
2. Iqbal Basha
3. Ghouse Basha

... Respondents

Second Appeal filed under Section 100 of the Civil Procedure Code, 1908, to set aside the Judgment and Decree of the Sub Judge, Gingee dated 28.01.2009 in A.S.No.149 of 2005, confirming the Judgment and Decree dated 22.07.2005 made in O.S.No.41 of 1999 on the file of the Additional District Munsif Court, Gingee.



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For Appellants : Mr. D. Ashok Kumar
For Respondents : Mr. A. G. Prabu Kumar

JUDGMENT

The appellants are the defendants in the suit in O.S. No. 41 of 1999 on the file of the Additional District Munsif Court, Gingee. The original suit was decreed, as against which, the defendants, as appellants, preferred an appeal suit in A.S. No. 149 of 2005 and the same was dismissed by the Sub Court, Gingee. As against the concurrent findings of the Courts below, the appellants have filed the present Second Appeal.

2. For the sake of convenience, the parties are addressed as plaintiffs and defendants, as referred in the suit.

3. The suit in O.S. No.41 of 1999 was filed by the plaintiffs for permanent injunction restraining the defendants, their men or agents from in anyway interfering with the plaintiffs' peaceful possession and enjoyment of the suit property. According to the plaintiffs, they are in possession of the suit schedule property from 10.09.1959 on the strength of the sale deed executed by one Mahaboob Ali Sahib in respect of the land in S.No.14/6, which is the suit property, classified as "Chery Naththam" and



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the other properties in favour of Abdul Samad Sahib who is the husband of the first plaintiff and father of the plaintiffs 2 and 3. The plaintiffs were in possession and enjoyment of the properties in S.No.14/5 and S.No.14/6. The properties in S.No. 14/5 situated on the eastern and northern side of the suit property are in a clubbed manner. The plaintiffs are in peaceful and undisturbed possession of the said properties. The said Abdul Samad Sahib died in the year 1992. Thereafter, the plaintiffs continued to be in possession of the said properties.

4. The plaintiffs contended that even though the suit property is classified as Chery Naththam, the plaintiffs are in possession of the suit property for more than 12 years. Therefore, the plaintiffs had perfected their right and title by adverse possession. As the Special Tahsildar for Harijans and other revenue authorities tried to interfere with the plaintiffs' possession of the suit property and made arrangements to grant patta in respect of the suit property to the people of Harijan community, the plaintiffs had filed a suit in O.S.No.543 of 1992 for permanent injunction. The suit was decreed in favour of the plaintiffs and therefore, according to the plaintiffs, they are the absolute owners of the suit schedule properties.



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5. The plaintiffs contended that, the defendants attempted to interfere with the plaintiffs' peaceful possession of the suit property by stating that the suit property belonged to the Government. Therefore, the present suit in O.S. No.41 of 1999 was filed.

6. The defendants have filed their written statement contending that the plaintiffs are not in enjoyment of the suit property as the property is a village Chery Naththam constituted by the government for the purpose of allotting residential lands to the Harijans. Further, the defendants contended that the people of Harijans community made applications before the revenue authorities to grant patta. Based on the representations, condition pattas were granted on 31.03.1993. The details of the Patta allotted to the defendants are listed hereunder:

<i>Plot No.</i>	<i>Measure</i>	<i>Handed Over to</i>
1	0.01.0 Ares	4 th Defendant
2	0.01.0 Ares	5 th Defendant
3	0.01.0 Ares	8 th Defendant
4	0.01.0 Ares	5 th Defendant
5	0.01.0 Ares	2 nd Defendant
6	0.01.0 Ares	1 st Defendant
7	0.01.0 Ares	3 rd Defendant



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<i>Plot No.</i>	<i>Measure</i>	<i>Handed Over to</i>
8	0.01.0 Ares	7 th Defendant

7. It is the specific contention of the defendants that, after the grant of Patta, they had been in possession of the properties. The decree in O.S. No. 543 of 1992 is not binding on them, as they were not made as parties to that suit. Only the government officials were made as defendants in O.S.No.543 of 1992 and the suit was not filed against the defendants. The defendants contended that the Judgment and Decree in O.S.No.543 of 1992 is not a valid one and prayed for dismissal of the present suit.

8. The Trial Court after examining the plaint and the written statement, framed the following issues:

“1. Whether the suit properties had been handed over to the defendants on 31.03.1993 as per CHERY.S.No.18/1402 order?

2. Whether the defendants are in possession and enjoyment of the suit property as per the said order?

3. Whether the decree obtained in respect of O.S.No.543/1992 is valid or void and whether the decree is binding these defendants?



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- 4. Whether the plaintiffs are entitled to seek the relief of permanent injunction as prayed for?*
- 5. To what relief, the plaintiffs are entitled?"*

9. Before the Trial Court, three witnesses were examined and Ex. A1 to A23 were marked on the side of the plaintiffs. The 2nd defendant was examined as D.W.1 and the 7th defendant was examined as D.W.2 and two other witnesses were examined as D.W.3 and D.W.4. On the side of the defendants, Ex.B1 to B8 were marked.

10. The Trial Court has come to the conclusion that the plaintiffs have proved their possession through clinching evidence and the defendants have failed to prove that the possession of the suit property was handed over to them by the Government. The Trial Court held that the plaintiffs are entitled to the relief of permanent injunction and decreed the suit.

11. Challenging the same, an appeal in A.S.No.149 of 2005 was filed before the learned Sub Judge, Gingee by the defendants. The First Appellate Court while examining the correctness of the judgment and



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decree passed by the Trial Court, had formulated the following points for determination:

- “1. Whether the judgment and decree passed by the Trial Court is correct?*
- 2. Whether the appeal deserves to be allowed?”*

12. The First Appellate Court considered the patta marked by the defendants as Ex. B1 to B8 and held that, after the grant of patta, the defendants have not taken any steps to obtain possession of the suit property. The actual possession of the suit property was not given to the defendants by the revenue officials. The First Appellate Court concurred with the findings of the Trial Court and dismissed the appeal.

13. Challenging the same, the present Second Appeal has been filed by the defendants. On 17.11.2011, this Court admitted the Second Appeal on the following substantial questions of law:-

- “1) Whether the lower appellate Court is right in confirming the decree and judgment of the trial Court after having admitted the conclusion of the trial Court?*



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2) Whether the lower appellate Court is right in admitting and the fact that the plaintiff/respondent is in possession and enjoyment of the suit property even in the absence of the tracing of the title deed to the suit property?

3) Whether the lower appellate Court is right in dismissing the first appeal even after admitting the suit property as “CHERY NATHAM”?

4) Whether the lower appellate Court is right in confirming the trial Court decree as against the defendants/appellants even though the respondent has not filed any document in support of the suit property?”

14. It is brought to the notice of this Court by the learned counsel for the appellants that, during the pendency of the First Appeal, the second appellant namely, Irusammal died on 30.10.2007 and the third appellant, namely, Rathinammal died on 13.05.2016 after filing the Second Appeal. As the legal heirs of the deceased appellants No.2 & 3 were not impleaded



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as parties, he prayed to keep the appeal proceedings in abeyance to bring the legal heirs on record.

15. This Court by order dated 05.04.2017 observed as follows:

“Learned counsel for the respondents filed a Memo dated 27.03.2017 stating that even prior to filing of First Appeal before the Courts below, the second appellant died and without bringing LRs on record, the First Appeal was contested and First Appeal itself is not maintainable against the deceased person. It is also submitted through Memo that the third appellant died in 2016 after filing of Second Appeal, Counsel for appellant submits that he will verify the above facts and report before this Court. Post on 12.04.2017.”

Further, on perusal of order dated 24.04.2017, this Court recorded that when the 2nd appellant, died in the year 2007, without impleading the legal heirs of the deceased appellant, the First Appeal should not have been proceeded with and the judgment and decree could not have been rendered therein. Further, this Court also observed that the person who died in the year 2007, has already signed the Vakalat. Therefore, the judgment and



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decree dated 28.01.2009 made in A.S.No.149 of 2005 has become null and void. In view of the same, the Second Appeal itself cannot be entertained as against the 2nd appellant and 3rd appellant and the same was dismissed as against them on 24.04.2017 itself. The second appeal survives for consideration and it is maintainable as against the other appellants.

16. The learned counsel for the appellants would contend that the grant of Patta in favour of the appellants, as evidenced by Exs.B1 to B8 dated 31.03.1993 has not been taken note of by the First Appellate Court. Details of the Patta granted in favour of the appellants, including the measurement of the land and the plot allotted to the appellants have already been tabulated in paragraph No.6 of this judgment. Further, the learned counsel for the appellants would contend that, admittedly, the classification of the land itself is “Chery Naththam”. Once an assignment Patta is granted in favour of the appellants, then, title in favour of the respondents will have no bearing. Therefore, when the assignment Patta was granted in favour of the appellants, the Judgment and Decree passed by the Courts below are *per se* illegal.



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17. Per contra, learned counsel appearing for the respondents would contend that the suit schedule property was purchased by way of Sale Deed dated 10.09.1959, and the same is marked as Ex.A1. Ex.A2/Patta Nos.106 and 154 stands in the name of Abdul Samad Sahib, the husband of the first respondent and father of the second and third respondents. This would clearly show that the respondents were in possession and enjoyment of the suit schedule property. The Kist receipts standing in the name of Abdul Samad Sahib are marked as Ex.A3 to A10 and the Kist receipts standing in the name of the 2nd Respondent are marked as Ex. A11 to A19.

18. Learned counsel for the respondents submitted that the decree and judgment made in O.S.No.543 of 1992, marked as Ex.A20 and Ex.A21, would also reveal that the respondents are in possession of the suit property. With regard to the classification of the land as “Cherry Naththam”, despite such classification, it is in occupation and possession of the respondents. The Courts below, after proper analysis of the above documentary evidence, had rightly decreed the suit in favour of the



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respondents. Therefore, the learned counsel for the respondents prayed for dismissal of the second appeal.

19. Heard the learned counsel for the appellants and the learned counsel appearing for the respondents and perused the materials available on record.

20. It is undoubtedly clear from the evidence and pleadings advanced by the appellants that the respondents have no right over the suit property, which is classified as “Chery Naththam” and it only belongs to the government. The Government had issued the assignment Patta to the appellants, which would clearly show that it is the decision of the government to grant Patta in favour of the appellants.

21. The Trial Court while deciding the suit in favour of the respondents, had failed to take note of the fact that, in the absence of any document to show that the respondents are in lawful possession of the suit property, the respondents are not entitled to the relief of permanent injunction. Whereas, Ex.B1 to Ex.B8, the assignment Patta issued in favour of the appellants, would clearly show that, once the assignment



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Patta is granted in favour of the appellants, then the title over the suit property, automatically flows in favour of the appellants. From these facts, it is clear that the Trial Court and the First Appellate Court have miserably failed to consider that the respondents have no right over the suit property which was classified as “Chery Naththam”.

22. Even otherwise, the present suit as well as the earlier suit were filed by the respondents only for permanent injunction. The respondents, though contended that their possession has been disturbed on the basis of the assignment Patta granted to the appellants, have not filed a suit for declaration of title to clear the cloud of controversy, but have simply filed the suit for permanent injunction. This fact was not taken note of by the Courts below, and on this score, the Judgment and Decree of the Courts below warrants interference by this Court. In view of the above, all the substantial questions of law are decided in favour of the appellants.

23. Accordingly, the Second Appeal is allowed. The Judgment and Decree in A.S.No.149 of 2005 dated 28.01.2009 passed by the Sub Court, Gingee is hereby set aside. No costs. Consequently, the connected miscellaneous petition is also closed.



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Index :Yes/No

Speaking/Non-Speaking Order

Neutral Case Citation : Yes/No

To:

1. The Sub Court, Gingee.
 2. The Additional District Munsif, Gingee.
 3. The Section Officer, V.R.Section, High Court of Madras.
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N.SENTHILKUMAR, J.

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