



S.A.No.870 of 2022
& C.M.P. No.17750 of 2022

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.11.2024

CORAM

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

S.A.No.870 of 2022

and

C.M.P. No.17750 of 2022

Kaliyuga Kannadasan

...Appellant

Vs.

1. Dhanalakshmi

2. Jayaprakash

... Respondents

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 30.11.2021 passed in A.S. No.2 of 2019, on the file of the Sub Court, Madurantakam, upholding the decree and judgment dated 11.12.2017 passed in O.S.No.321 of 2012, on the file of the District Munsif, Madurantakam.

For Appellant : Mr.A.J.Mohamed Kassim

For Respondents : Mr.M.S.Subramanian



WEB COPY



S.A.No.870 of 2022
& C.M.P. No.17750 of 2022

JUDGMENT

The unsuccessful plaintiff before both the Courts below has filed the present second appeal.

2. The plaintiff filed the suit in O.S.No.321/2012 before the District Munsif, Madurantakam, for declaration of his title over the suit property morefully described in the plaint schedule as a wet land in survey numbers 39/5B and 39/5E of Mogalvadi Village, Madurantakam Taluk, Kancheepuram District. The plaintiff has also sought for a permanent injunction restraining the defendants from interfering with his peaceful possession and enjoyment of the suit property.

3. For the sake of convenience, the parties are referred to as per their ranking in the trial court and at appropriate places, their rank in the present second appeal would also be indicated.



WEB COPY



S.A.No.870 of 2022
& C.M.P. No.17750 of 2022

4.The case of the plaintiff in a nutshell is as follows :

The suit property is the ancestral property of Bakthavachala Reddiar. The said Bakthavachala Reddiar sold the suit property in favour of the plaintiff through a registered sale deed dated 25.09.2008 (Ex.A1) and ever since the date of purchase, the plaintiff is in possession and enjoyment of the suit property. The patta (Ex.A3) has also been issued in favour of the plaintiff by the revenue authorities. The plaintiff has been paying kists to the Government. The defendants who are strangers to the suit property are attempting to trespass into the suit property and one such attempt was made on 07.12.2012 and hence, the suit.

5. The suit was resisted by the defendants on the following grounds:

- i. The suit property in S.No.39/5 of Mogalvadi Village admeasuring 1 acre, was purchased by Senga Reddiar, father-in-law of the first defendant and grandfather of the second defendant, through a registered sale deed dated 29.05.1961 (Ex.B1) from one



S.A.No.870 of 2022
& C.M.P. No.17750 of 2022

WEB COPY

Veerasamy Reddiar and others for valuable consideration and ever since the date of purchase Senga Reddiar was enjoying the said property. After his death, his son Veerasamy Reddiar (husband of the first defendant) was enjoying the suit property. Thereafter, the defendants are in enjoyment of 2.09 acres in S.No.39/5.

- ii. The revenue authorities had mistakenly granted patta under UDR scheme in the name of Bakathavachala Reddiar and taking advantage of the same, the present plaintiff is claiming title to the suit property. Therefore, the suit is liable to be dismissed.

6. On the basis of the above pleadings, the trial Court framed the following issues :

- i. *"Whether the plaintiff is having the right and title over the suit properties?"*
- ii. *Whether the plaintiff is entitled for the relief of declaration?*
- iii. *Whether the plaintiff is in possession and enjoyment of the suit properties?*
- iv. *Whether the plaintiff is entitled for the relief of permanent*



S.A.No.870 of 2022
& C.M.P. No.17750 of 2022

WEB COPY *injunction?*

v. *To what other relief the plaintiff is entitled?"*

7. In the trial Court, the plaintiff examined himself and one another witness and marked Ex.A1 to Ex.A5. The first defendant examined himself and one another witness and marked Ex.B1 and Ex.B6. The Tahsildar, Madurantakam was examined as C.W.1 and Ex.C1 and Ex.C2 were marked through him.

8. After full contest, the learned District Munsif, Madurantakam, dismissed the suit filed by the plaintiff, vide his decree and judgment dated 11.12.2017, on the following grounds:-

- i. The plaintiff has not proved his title over the suit property by adducing acceptable evidence.
- ii. The patta is not a document of title.
- iii. The kist receipt dated 05.01.2008 is subsequent to the purchase made by the plaintiff and therefore, no credence can be attached to the said document.



S.A.No.870 of 2022
& C.M.P. No.17750 of 2022

WEB COPY

iv. The plaintiff has also admitted that the defendants are in possession of the suit property by raising coconut trees.

9. Aggrieved over the decree and judgment passed by the trial court, the plaintiff filed an appeal in A.S. No.2 of 2019, before the Sub Court, Madurantakam. The learned Sub Judge, Madurantakam, after analysing the oral and documentary evidence adduced on both sides, upheld the findings recorded by the trial court vide her decree and judgment dated 30.11.2021, as against which the present second appeal is filed.

10. Heard Mr.A.J.Mohamed Kassim, learned counsel for the appellant and Mr.M.S.Subramanian, learned counsel for the respondents.

11. The plaintiff has filed the suit for declaration of his title to the suit property and for a permanent injunction restraining the defendants from interfering with his peaceful possession and enjoyment over the same. In order to substantiate his title over the suit property, the



S.A.No.870 of 2022
& C.M.P. No.17750 of 2022

WEB COPY

plaintiff relied on a certified copy of the sale deed executed by Bakthavachala Reddiar in his favour on 25.09.2008 (Ex.A1) and the patta issued by the Revenue Authorities dated 04.12.2012 (Ex.A3) and also kist receipts (Ex.A4 and Ex.A5). According to the plaintiff, the suit property was ancestral property of Bakthavachala Reddiar. However, in Ex.A1 it is stated that the property belonged to Bakthavachala Reddiar. The plaintiff did not substantiate that the suit property was originally owned by Bakthavachala Reddiar by adducing the parent documents. The Tahsildar of Madurantakam Taluk, who was examined as C.W.1 had deposed that survey number 39/5 was subdivided as 5A, 5B, 5C, 5D and 5E even in the year 2008. It is pertinent to point out that the plaintiff has not described the four boundaries of the suit properties.

12. Mr.A.J.Mohamed Kassim, learned counsel for the appellant relied on the patta (Ex.A3) and contended that the plaintiff has established his title and possession over the suit property.



S.A.No.870 of 2022
& C.M.P. No.17750 of 2022

WEB COPY

13. It is pertinent to point out that the patta is not a document of title and in the absence of any evidence to show that the plaintiff is entitled to the suit property, this Court cannot grant a decree of declaration of title to the suit property in favour of the plaintiff. Moreover, the plaintiff has not also filed the original sale deed allegedly executed by Bakthavachala Reddiar. Apart from that, the plaintiff also admitted during the course of cross examination that the defendants are in possession of the suit property and that coconut trees were raised by them. Thus the plaintiff has not proved either the title or possession over the suit property. Both the Courts below, by a well reasoned order, had dismissed the suit filed by the plaintiff. There is no substantial question of law involved in the present second appeal and hence the second appeal stands dismissed.

14. In the result,

- i. the Second Appeal is dismissed. No costs. Consequently connected Civil Miscellaneous Petition is also closed.



S.A.No.870 of 2022
& C.M.P. No.17750 of 2022

WEB COPY

ii. The decree and judgment dated 30.11.2021 passed in A.S. No.2 of 2019, on the file of the Sub Court, Madurantakam, and the decree and judgment dated 11.12.2017 passed in O.S.No.321 of 2012, on the file of the District Munsif, Madurantakam, are upheld.

12.11.2024

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
mtl

To

1. The Sub Court, Madurantakam.
2. The District Munsif, Madurantakam.
3. The Section Officer, VR Section, High Court, Madras.



WEB COPY



S.A.No.870 of 2022
& C.M.P. No.17750 of 2022

R. HEMALATHA, J.

mtl

S.A.No.870 of 2022
and C.M.P. No.17750 of 2022

12.11.2024