



S.A.No. 317 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.11.2024

CORAM:

THE HONOURABLE Ms. JUSTICE R.N.MANJULA

S.A. No.317 of 2014
and M.P.No.1 of 2014

1. Thangammal
2. Masilamani
3. Sinthamani

... Appellants / Defendants

Vs.

1. Elangovan
2. Tahsildar,
Pallipattu Taluk,
Tiruvallur District.

...1st Respondent / plaintiff

... 2nd Respondent / 4th defendant

Second Appeal is filed under Section 100 of Civil Procedure Code, 1908, against the judgment and decree passed by the Subordinate Judge, Tiruttani dated 30.07.2013 made in A.S.No.32 of 2012 reversing the judgment and decree of District Munsif Court, Pallipattu dated 31.07.2012 made in O.S.No.5 of 2005.

For Appellant : Mr.S.Kamadevan
for Mr.M.S.Palaniswamy
For R1 : Mr.T.P.Prabakaran
R2 : Mr.R.Arumugam
Additional Govt. Pleader



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JUDGMENT

WEB COPY Heard Mr.S.Kamadevan, the learned counsel for the appellants, Mr.T.P.Prabakaran, the learned counsel for the first respondent and Mr.R.Arumugam, the learned Additional Government Pleader for the second respondent.

2. The defendants 1 to 3 are the appellants against whom the plaintiff has filed a suit for declaration and permanent injunction. The trial Court has dismissed the suit and the appeal preferred by the plaintiff was allowed by the first Appellate Court by reversing the judgment of the trial Court. Hence, the defendant 1 to 3 have preferred this Second Appeal.

3. **The short facts pleaded in the plaint filed by the plaintiff are as follows:**

The suit properties are classified as poromboke land belonged to the Government. The plaintiff's father encroached the suit property 35 years back and cultivated the same. At the time of UDR, patta was given in favour of the plaintiff for the suit properties. The plaintiff was in possession and enjoyment of the suit schedule property for 20 years. As the absolute owner, the plaintiff had cultivated groundnut, green chillies and he planted mango



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trees in the suit schedule properties.

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3.1 The defendants 1 and 3 are the sisters of the plaintiff's father and the second respondent is the husband of the first defendant. They are claiming right over the suit properties and attempted to trespass which was resisted by the plaintiff. The defendants are highly influential people and hence the plaintiff has filed a suit for declaration and consequential permanent injunction. During the pendency of the suit, the fourth respondent who is the Tahsildar, Pallipattu Taluk, Tiruvallur District, has also been impleaded as a party to this proceedings.

4. The averments made in the written statement filed by the defendants are as follows:

The suit property in S.No.63 consists of 11.79 acres and classified as “Anadeenam”. The father of the defendants 1 and 3 and the grandfather of the plaintiff by name Periya Kannayiram Reddy had acquired and reclaimed the suit properties and made it fit for cultivation. After the death of Periya Kannayiram Reddy, his legal heirs were in possession and enjoyment of the suit properties. The Government has decided to grant patta to the landless poor in the year 1978. Accordingly, the entire land in S.No.63 has been



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subdivided into five divisions and patta were given to the plaintiff's father Periyasamy, his mother Jayamma, his grandmother Rajamma and the defendants 1 and 3. The plaintiff's father Periyasamy had executed a Will on 05.10.2003 in favour of the defendants 1 and 3 with a condition that both of the defendants 1 and 3 have to share the properties equally after his death. After the death of Periyasamy, the defendants 1 and 3 have succeeded the suit property in S.No.63/3.

4.1 The plaintiff was managing and cultivating the suit properties. Whenever, he raises crops, he was in the habit of giving waram to the defendants 1 to 3. Taking advantage of their absence, the plaintiff had managed to get patta in his name. The land was classified as “Anadeenam” for the fasali 1380 to 1387. From Fasali 1389 to 1394, the suit property stands in the name of these defendants and her mother Rajamma. By misrepresentation, the plaintiff had got patta in his favour. The documents relied upon by the plaintiff were obtained subsequent to the change of patta. The defendants alone were in possession of the suit properties. The plaintiff has no right to seek declaration and injunction against the defendants who were the original owners of the suit properties. Hence, the suit should be dismissed.



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5. During the course of the trial, on the side of the plaintiff, P.W.1 and P.W.2 were examined and Exs.A1 to A8 were marked. On the side of the defendants, D.W.1 to D.W.6 were examined and Exs.B1 to B3 were marked and Exs.X1 and X2 were also marked as court side exhibits.

6. Based on the above pleadings and materials available on record, the trial Court has framed the following issues :

- “ 1. Whether the plaintiff has got absolute right and title to the suit property ?*
- 2. Whether the plaintiff is entitled for the decree as prayed ?*
- 3. To what other reliefs the parties are entitled for ?”*

7. At the conclusion of the trial and on considering the evidence on record, the trial Court had dismissed the suit and the first Appeal preferred by the plaintiff was allowed by reversing the judgment and decree of the Trial Court. Now the defendants have filed this Second Appeal by raising the following substantial question of law:

"Whether in law the First Appellate Court is right in allowing the First Appeal unmindful of the contradictory stand taken by the plaintiff by claiming title on the basis of the ownership and title through adverse possession?"



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8. Mr.S.Kamadevan, the learned counsel for the appellants / defendants, submitted that despite the first appellate court have accepted that the suit property was “Anadenam” and that it has not been assigned in favour of the private parties, it has wrongly proceeded to decree the suit; the first appellate Court shifted the burden on the side of the defendants and had arrived at a conclusion that the defendants 1 to 3 did not prove Ex.B3 – Unregistered Will dated 05.10.2003 and thereby decreed the suit; it is the plaintiff who had filed the suit ought to have proved his title and lawful possession of the suit properties; hence the approach of the first appellate court is wrong and the judgment and decree of the first appellate Court should be set aside and the judgment of the trial court should be restored.

9. Mr.T.P.Prabakaran, the learned counsel for the first respondent / plaintiff, submitted that the plaintiff's father was given with the patta during UDR survey and he has been in possession and enjoyment of the same for more than 20 years; in fact the property has been sub-divided as Survey No.63/2 and 63/3; as the plaintiff has proved his title and possession over the suit property, the burden would shift upon the defendants to prove the contrary; only during that course, the lower appellate Court has appreciated the genuineness of Ex.P3 – Will and hence the judgment of the first



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appellate Court does not suffer from any infirmity.

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10. The specific stand taken by the first respondent / plaintiff is that he is the pattadhar of the suit property and his possession is being disturbed by the defendants 1 to 3 / appellants who are his father's sisters and one of the sister's husband. Even though the plaintiff has all along stated that the suit property was classified as “Anadenam”, the fact that during UDR Survey the patta has been given in the name of plaintiff's father, cannot be disputed. The second respondent / fourth defendant who was a party to the proceedings also did not object that the first respondent / plaintiff cannot claim any title or legal possession over the suit property basing upon the UDR patta given to him. If at all the fourth respondent thought it fit that the UDR patta granted in favour of the first respondent is not correct, it should have been within his power to cancel the same by adopting new procedure.

11. As against the appellants / defendants 1 to 3, the plaintiff has got a better entitlement over the suit property by virtue of UDR patta granted in favour of his father. Having produced the UDR patta and other documents substantiating the possession over the suit property, the defendants are expected to prove the contrary. Only during that course, the lower appellate



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Court has adverted to appreciate the genuineness of Ex.P3-Will which was alleged to have been executed by the plaintiff's father in favour of the defendants 1 to 3.

12. Admittedly the suit property was not purchased by the plaintiff through any title deeds and the plaintiff had not produced any assignment in his favour. On the basis of the patta the plaintiff has pleaded that he had the rightful title over the suit property and he has been in possession of the suit property to the knowledge of all the defendants including the fourth defendant, for more than a statutory period and thereby prescribed the title. The best person who can deny the above contention of the plaintiff would be the fourth defendant, but the fourth defendant remains *ex parte* thereby accepting the pleadings of the plaintiff. Had the plaintiff's suit for declaration and permanent injunction has been maintained without the presence of fourth defendant who is the necessary party, the lower appellate court could have found fault for granting the declaratory relief in favour of the plaintiff. So far as the private defendants who are the appellants herein are concerned, they would at the best say that the plaintiff had been in enjoyment and possession of the suit property on their behalf as the joint owner who is entitled for joint possession.



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13. In view of the finding that Ex.B3-Will is not genuine, the presumption of possession on behalf of defendants 1 to 3 is also lost. Under such circumstances, the plaintiff cannot be blamed that he has taken a contradictory stand. All that the plaintiff pleaded was that the UDR patta is in the name of his father and he and his predecessors have been in possession of the suit continuously within the knowledge of the fourth defendant but without any objection and thereby prescribed his title. Even if the plaintiff is presumed that he did not have a good case by setting up title through any transaction in his favour, he can very well prove his possession in view of the patta and revenue records which are standing in his name. So far as the title is concerned, the plaintiff has got no other go except to plea adverse possession and that has also been proved in the presence of the fourth defendant who is the Government respondent.

14. As the plaintiff has proved both the title and continuing possession and that he has also been given with patta by the fourth defendant, the lower appellate court is right in appreciating the above materials in order to record that the plaintiff has perfected his title. Only if the plaintiff discharges his initial burden, the burden would be shifted upon the appellants / defendants to prove the contrary on the basis of the Ex.B3-Will .



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15. The first appellate court has rightly dealt the principle of shifting of burden of proof between the parties and had rightly arrived at a conclusion that plaintiff is entitled to the relief as prayed. In view of the above stated reasons, I find no illegality or infirmity in the judgment of the lower appellate Court and hence it does not require any interference.

16. In the result, the Second Appeal is dismissed and the judgment and decree dated 30.07.2013 made in A.S.No.32 of 2012 on the file of the learned Subordinate Judge, Tiruttani is confirmed and the suit in O.S.No.5 of 2005 on the file of District Munsif Court, Pallipattu, is dismissed. No costs. Connected miscellaneous petition is closed.

27.11.2024

Index:Yes/No

Speaking Order / Non-speaking order

Neutral Citation Case : Yes / No

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To:
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1. The Subordinate Judge,
Tiruttani.
2. The District Munsif,
Pallipattu.



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R.N.MANJULA, J.

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