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S.A.No.841 of 2021

**IN THE HIGH COURT OF JUDICATURE AT MADRAS
ORDER RESERVED ON : 09.07.2024**

ORDER PRONOUNCED ON : 02.09.2024

CORAM:

THE HON'BLE MRS.JUSTICE.N.MALA

**S.A.No.841 of 2021
and CMP.No.16182 of 2021**

Senthil @ Senthil Kumar

... Appellant

Vs.

Anbalagan

... Respondent

PRAYER:-- This Second Appeal is filed under Section 100 of the Civil Procedure Code, to allow this Second Appeal and set aside the Judgment and Decree passed in A.S.No.9 of 2019 dated 17.02.2021 on the file of the Principal Sub Court, Mayiladuturai by confirming the Judgment and Decree passed in O.S.No.76 of 2013 dated 25.10.2018 on the file of the District Munsif Court, Sirkali.

For Appellant : Mr.B.Jawahar

For Respondent : Mr.A.Muthukumar

Ms.P.Srividhya

* * * * *



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J U D G M E N T

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This Second Appeal is filed to to allow this Second Appeal and set aside the Judgment and Decree passed in A.S.No.9 of 2019 dated 17.02.2021 on the file of the Principal Sub Court, Mayiladuturai by confirming the Judgment and Decree passed in O.S.No.76 of 2013 dated 25.10.2018 on the file of the District Munsif Court, Sirkali.

- 2.The unsuccessful defendant is the appellant in the second appeal.
- 3.The appeal is filed against the concurrent Judgments of the Courts below.
- 4.The parties will be referred to as per their rank in the trial Court.
- 5.The plaintiff filed the suit for recovery of the possession of plaint “B” schedule property and mandatory injunction directing the defendant to remove the constructions put up by the defendants thereon and other reliefs.
- 6.The gist of the facts of the case are as follows:

The suit property is situated at Arur Village, Nemmeli Panchayat, Sirkali Taluk.



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The suit “B” schedule property forms a part of the “A” schedule property. It is the plaintiff's case that the plaintiff and his ancestors were in possession of the suit properties for the past 100 years and based on the long possession of the plaintiff and his ancestors, the plaintiff was granted patta by the Government under the Natham land settlement scheme on 31.03.1998. The plaintiff was residing in the house located in the suit properties and paying property tax and electricity bills etc. While so, the defendant encroached the suit property and therefore the plaintiff filed a petition before the Sirkali Tahsildar's office to conduct a survey and found that there was an encroachment by the defendant. As the defendant continued to create issues to the plaintiff, the plaintiff filed a complaint before the Sirkali Police Station on 22.12.2012. On 15.03.2013, the defendant encroached upon an additional 123 sq.mts. of the suit schedule “A” property measuring an extent of 6.6 metres in east-west direction and 18.8 metres in north-south direction and erected a hay shed. The said encroached portion is the suit “B” Schedule property. The plaintiff therefore filed the suit for eviction of the defendant from the suit “B” Schedule property, for recovery of possession of the same and for mandatory injunction directing the defendant to remove the constructions put up by the defendant and other reliefs.

7.The defendant filed a written statement stating that the burden was on the plaintiff to prove that the suit property belonged to him. According to the defendant,



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the plaintiff taking advantage of the wrong patta issued by the Government under the Natham Land Settlement Scheme on 31.03.1998 filed the suit. According to the defendant, the defendant's father Ayyasami purchased 15 cents of land from one Samikannu on 27.07.1966 in Old Survey No.73/10, Arur Village, Nemmeli Panchayat, Sirkali Taluk and ever since his purchase he was in possession of the same. After the death of the defendant's father on 05.02.2002, the defendant continued to be in possession and enjoyment of the aforesaid 15 cents of land. According to the defendant the suit "B" Schedule property was a part of the defendant's property in S.No.73/10 measuring 15 cents. According to the defendant, the patta was wrongly granted in favour of the plaintiff by including the defendant's land measuring 123 sq. mtrs. The defendant came to know only on 06.06.2015 that his land measuring 123 sq. mts. was included in new S.No.73/24 under the Natham Land Settlement Scheme. The defendant therefore sent a notice dated 23.09.2015 to the Mayiladuthurai Tahsildar and three other persons requesting them to cancel the individual patta issued in the name of the plaintiff for 301 sq. mtrs. in the said new S.No.73/24 and to issue a joint patta including the defendant's name. According to the defendant, the land belonged to him and therefore, the plaintiff had no right, title and possession of the same.

8.The original suit was filed showing the "B" schedule property as South of the



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“A” Schedule Property. After the appointment of the Advocate Commissioner, who surveyed the suit property along with the Surveyor, the plaint was amended and the “B” Schedule Property was shown as western part of “A” Schedule property. Therefore, the defendant filed additional written statement questioning the amendment. According to the defendant, the amendment resulted in changing the entire character of the suit and also that after amendment the suit fell beyond the jurisdiction of the Court and hence deserved to be dismissed.

9.Before the trial Court, the plaintiff examined himself as PW1 and marked Ex.A1 to Ex.A6. The defendant examined himself and two other witnesses and marked Ex.B1 to Ex.B4. Four documents were marked as Court documents in Ex.C1 to Ex.C4.

10.The trial Court on an assessment of the entire evidence on record decreed the suit on its finding that the plaintiff's title to the suit property was established by the patta issued under the Natham Land Settlement Scheme. The trial Court also found that the defendant had not produced any document of title to establish his right to the suit property. Even the document Ex.Ex.B3 produced by the defendant to support his title was disbelieved by the trial Court. The trial Court on the basis of the Advocate Commissioner's report filed under Ex.C3 found that the defendant had illegally



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encroached upon the suit property. The trial Court also found that from Ex.C1 it was clear that the defendant had put up a hay shed in the “B” Schedule property and therefore decreed the suit as prayed for. Aggrieved by the Judgment and decree of the trial Court, the defendant filed an appeal before the lower appellate Court. The lower appellate Court on an assessment of the entire evidence on record and for identical reasons concurred with the finding of the trial Court and dismissed the appeal. Aggrieved by the Judgment and Decree of the Courts below, the defendant has filed the above second appeal.

11.This Court on 02.11.2021 ordered notice to the respondent. On notice the respondent appeared through his counsel.

12.The learned counsel for the defendant submitted that the Courts below erred in decreeing the suit in favour of the plaintiff on the basis of the natham patta and the Advocate Commissioner's Report. The learned counsel for the defendant submitted that the Courts below failed to note that the plaintiff had failed to prove his title to the suit property and therefore ought to have dismissed the suit. The learned counsel further submitted that in the absence of the prayer for declaration of title, the suit ought to have dismissed by the Courts below.



13.The learned counsel for the plaintiff on the other hand submitted that absolutely no substantial questions of law arose for consideration in the second appeal and therefore this Court sitting under Section 100 CPC should not interfere with the concurrent findings of facts of the Courts below.

14.I have heard both the learned counsels and I have perused the materials placed on record.

15.The plaintiff's case is that the suit property was in enjoyment and possession of his ancestors over 100 years and therefore, the plaintiff was granted patta by the Government under Natham Land Settlement Scheme in 1998, that the defendant without any manner of right, title and interest in the suit “B” Schedule property encroached upon the suit “B” Schedule Property by putting up construction.

16.The defendant's case is that his father purchased 15 cents of land from one Samikannu and ever since the purchase the defendant's father was in possession and enjoyment of the property and after his demise the defendant continued in peaceful enjoyment and possession of the same. According to the defendant the suit “B” Schedule property was a part of the 15 cents purchased by his father. The plaintiff taking advantage of the wrong patta granted to him under the Natham Land Settlement



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Scheme filed the vexatious suit.

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17.The plaintiff filed the natham patta granted in his favour by the Government on 31.03.1998 as Ex.A1. The plaintiff claims that the natham patta was issued in his favour on the basis of the long and uninterrupted possession of his ancestors and himself.

18.First of all, it is to be noted that the natham patta cannot be equated to revenue patta as it has more evidentiary value than the revenue patta. The natham patta is granted for natham lands to regularize the occupation of lands by the villagers as the natham lands are meant for habitation of the villagers. The natham patta unlike the revenue patta need not be accompanied by documents of title. Therefore, the Courts below rightly relied on Ex.A1, to hold that the plaintiff had established his right to the suit property. The defendant in order to controvert the plaintiff's right to the suit property produced Ex.B3, Sale deed dated 27.07.1966 executed by one Samikannu in favour of his father. The Courts below concurrently held that Ex.B3 could not be relied on as it was neither registered nor stamped. The Courts below also found that the defendant's vendors title was not traced in Ex.B3 and for that reason also the Courts below found that Ex.B3 was unreliable, I find logic in the reasoning of the Courts below for rejecting Ex.B3. As far as the encroachment is concerned, the Court



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Document Ex.C1 and Ex.C2, clearly establish that the defendant encroached suit “B”

Schedule property by putting up a hay shed. As the defendant has failed to prove better title, I am of the view that the plaintiff's possession deserves protection.

19.I find absolutely no hard pressed reasons to interfere with concurrent findings of the Courts below. From the above discussions, I find that absolutely no substantial questions of law arise for consideration in the second appeal. The Hon'ble Supreme Court in the case of ***Kirpa Ram (D) Tr.Lrs. . vs Surender Deo Gaur*** reported in 2021 (3) SCC 57, following the Judgment in the case of ***Ashok Rangnath Magar vs Shrikant Govindrao Sangvikar*** reported in ***2015(16) SCC 763*** held that the second appeal can be dismissed without even formulating the substantial question of law, if, it is satisfied that no substantial question of law is involved in the appeal. On a comprehensive appreciation of the entire materials, I find that there is absolutely no perversity in the findings of facts of the Courts below and therefore, the second appeal is dismissed at the admission stage itself. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

02.09.2024

NCC : Yes /No

Index : Yes / No

Speaking Order / Non-speaking order

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- To
- 1.The Principal Sub Court,
Mayiladuturai.
 - 2.The District Munsif Court,
Sirkali.
 - 3.The Section Officer,
Vernacular Records,
High Court,
Madras.

N.MALA, J.
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PRE-DELIVERY JUDGMENT IN

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02.09.2024