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S.A.NO.119 OF 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 11 / 09 / 2024

JUDGMENT PRONOUNCED ON : 12 / 12 / 2024

CORAM:

THE HON'BLE MR.JUSTICE R.SAKTHIVEL

S.A.NO.119 OF 2020
AND CMP NO.2591 OF 2020

1.Joseph
2.Vanathaiyan ... Appellants / Respondents/
Defendants

Versus

1.Susairaj
2.Sasili
3.Dominic Saviyo
4.Amalanathan
5.Arokiya Mery
6.Povulin Mery ... Respondents/Appellants/
Plaintiffs

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, 1908 praying to set aside the Judgment and Decree dated April 15, 2019 passed in A.S.No.49 of 2018 on the file of the Court of Subordinate Judge, Chidambaram reversing the Judgment and Decree dated July 17, 2018 passed in O.S.No.113 of 2007 on the file of the Court of District cum Judicial Magistrate, Kattumannarkoil, and restore the



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Judgment and Decree of the Trial Court by allowing the Second Appeal.

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For Appellants : Mr.A.Muthukumar

For Respondents : Mr.A.Murugan

J U D G M E N T

This Second Appeal is directed against the Judgment and Decree dated April 15, 2019 passed in A.S.No.49 of 2018 by the 'Subordinate Court, Chidambaram' [henceforth 'First Appellate Court' for the sake of brevity], wherein and whereby the Judgment and Decree dated July 17, 2018 passed in O.S.No.113 of 2007 by the 'District Munsif cum Judicial Magistrate Court, Kattumannarkoil' [henceforth 'Trial Court' for the sake of brevity] was reversed.

2. For the sake of convenience, hereinafter, the parties will be referred to as per their array in the Original Suit.

PLAINTIFFS' CASE

3.The first plaintiff is the son of one Michael. Plaintiff Nos.2 to 4 are said Michael's pre-deceased son - Dawood's legal heirs : second plaintiff is his widow and Plaintiff Nos.2 to 4 are his sons. Plaintiff Nos.5 and 6 are the daughters of said Michael. Michael's another son - Samuvel



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passed away unmarried long ago. Michael's daughter - Elizebath also passed away.

3.1.Suit Property is an extent of 0.15.00 Hectares [37 Cents approximately] within specific four boundaries situate in Resurvey No.12/6A of Aranthangi Village. It is a Natham land. About fifty years before the date of plaint, first plaintiff's father - Michael occupied the Suit Property and spent a lot to convert it into a fit place for residential purposes. Since then, he has been in continuous possession and enjoyment of the Suit Property by constructing two thatched house and one shed therein. He was living there till his demise in the year 2000. Based on his long and continuous possession, Government issued Patta in his name. After his demise, the plaintiffs being his legal heirs, have been in possession and enjoyment of the Suit Property.

3.2.The specific case of the plaintiffs is that the entire extent of 0.15.00 Hectares in R.S.No.12/6A belongs to the plaintiffs and they have been in continuous possession and enjoyment of the Suit Property. On the southern side of the Suit Property, first defendant's property is situated. The first defendant's sister's husband is the second defendant. The defendants demanded to sell the eastern portion of the Suit Property so as



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to enable them to access the first defendant's property from the Road. But the plaintiffs denied to sell any portion of the Suit Property. Due to the plaintiffs' refusal, the defendants developed enmity with the plaintiffs and attempted to trespass into the Suit Property. Hence, the Suit for permanent injunction restraining them from interfering with the plaintiffs' peaceful possession and enjoyment of the Suit Property.

DEFENDANTS' CASE

4. The first defendant filed written statement and the same was adopted by the second defendant. The sum and substance of the written statement is that the plaintiffs are entitled to only the northern 25 Cents out of total 2 Acre 60 Cents in R.S.No.12/6, where the plaintiffs are residing. Earlier, on June 14, 1950, Anthonysamy, the elder brother of the first defendant's father, purchased an extent of 2 Acre 35 Cents out of the total 2 Acre 60 Cents in S.No.12/6 from one Sambasiva Naidu. After the demise of Anthonysamy, his brothers - Arockiasamy and Michael partitioned the said 2 Acre 35 Cents, whereby Arockiasamy was allotted an extent of 1 Acres 57 Cents and Michael was allotted 78 Cents and they were cultivating their respective lands. The first defendant is the son of aforesaid Arockiasamy. Two Cents in the said 2 Acre 35 Cents was allotted for



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pathway. Thus, the first defendant is the owner of western 1 Acre 57 Cents in the said 2 Acre 35 Cents. The second defendant is the brother-in-law of the first defendant and has no right in the Suit Property. Patta has been wrongly issued in favour of the plaintiffs and therefore, they sought to dismiss the Suit.

TRIAL COURT:

5. At trial, first plaintiff - Susairaj was examined as P.W.1, one Susairaj, Son of Solomon was examined as P.W.2, one Mariya Selvam was examined as P.W.3 and Ex-A.1 to Ex-A.12 were marked on the side of the plaintiffs. On the side of the defendants, first defendant was examined as D.W.1, one Stephen, cousin of first defendant, was examined as D.W.2 and Ex-B.1 to Ex-B.3 were marked. Ex-C.1 – Report of the Advocate-Commissioner and Ex-C.2 – Plan were marked as Court documents.

5.1. After analyzing the oral and documentary evidence, the Trial Court, concluded that the total extent of Suit Survey No.12/6 is 2 Acre 60 Cents. The defendants are entitled, as per Ex-B.1 – Sale Deed, to an extent of 2 Acre 35 Cents therein. Relying upon the evidence of P.W.2 as well as Ex-C.1 and Ex-C.2 – Advocate Commissioner's Report and Plan, which show the presence of barbed wire fence along the eastern side



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of Survey No.12/6 securing a pathway to the defendants' land from the main road, the Trial Court concluded that the plaintiffs' family is entitled to only 25 Cents in Survey No.12/6. Hence, Ex-A.1 - UDR Patta issued in favour of Michael, first plaintiff's father, in respect of larger extent is not valid. Moreover, the Special Tahsildhar (UDR Scheme) has no power to issue UDR Patta in respect of Government Poromboke Land viz., Suit Property. District Revenue Officer alone has power to do so. Further, pursuant to Ex-A.1 - UDR Patta, Patta under Natham Land Tax Scheme was issued in the name of said Michael / first plaintiff's father. The same is also not valid. Thus the revenue records issued in respect of more extent than what the plaintiffs are entitled to, do not confer any title or right in respect of the entire extent of Suit Property. Further, the plaintiffs failed to prove that they were in possession and enjoyment of the entire extent of Suit Property. Hence, the plaintiffs are not entitled to the relief of permanent injunction. Accordingly, dismissed the Suit.

FIRST APPELLATE COURT:

6. Aggrieved by the dismissal, the plaintiffs preferred an appeal before the First Appellate Court, which, after hearing both sides, concluded that the Suit Property is not Government Poromboke Land as



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held by the Trial Court. There is no concrete evidence available to show whether the fence was put up by the plaintiffs or the defendants. Merely because fence is erected on the Suit Property, it cannot be presumed that the plaintiffs are out of possession and enjoyment of any portion of the Suit Property, especially when there is no specific denial by the defendants with respect to adverse possession of plaintiffs in Survey No.12/6A. Ex-A.1 – UDR Patta was issued in the year 1983. Till the date of filing the Suit, the first defendant has not questioned about the larger extent mentioned in Ex-A.1 and hence the plaintiffs proved their possession and enjoyment of the Suit Property. Further, the Trial Court's finding that the Special Tahsildhar (UDR Scheme) is not entitled to issue Ex-A.1 – UDR Patta is liable to be set aside as it is baseless. Accordingly, the First Appellate Court allowed the appeal, set aside the Judgment and Decree of the Trial Court and decreed the Suit.

SECOND APPEAL

7. Feeling aggrieved, the defendants have preferred this Second Appeal which was admitted on February 11, 2020 on the following substantial questions of law:



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- “a) *When the defendants produced a Registered sale deed dated 14.06.1950, Ex.B1, in favour of their predecessor in interest, whether the Lower Appellate Court erred in law in holding that there is no cloud over the plaintiffs' title and the relief of declaration of the plaintiffs' title need not be asked for ?*
- b) *When PW2 and PW3 have categorically admitted in their evidence about the existence of barbed wire fence in the Suit Property but the plaintiffs denied the existence of the same whether the Lower Appellate Court erred in law in rejecting Ex.C1 and Ex.C2 on the ground it is not known as to who has put up the said barbed wire fence ?*
- c) *Whether the judgment and decree of the Lower Appellate Court is perverse ?”*

ARGUMENTS:

8. Mr.A.Muthukumar, learned Counsel for the appellants / defendants would argue that the first defendant has better title to the Suit Property vide Ex-B.1 – registered Sale Deed dated June 14, 1950. Referring to the recitals thereof, he would argue that Anthonysamy, who is the paternal uncle of first defendant, was entitled to an extent of 2 Acre 35 Cents in Survey No. 12/6, out of which, the first defendant is now entitled 2 Cents on the eastern portion of Suit Survey No.12/6A. The Advocate Commissioner's Report and Plan [Exs-C.1 and C.2] and the Surveyor's



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statement would clearly show that the property to the east of the fencing is in possession and enjoyment of the first defendant. Further, they would establish that the plaintiffs are not in possession and enjoyment of the entire extent of the Suit Property *i.e.*, 0.15.00 Hectares. Further, revenue records do not confer any title. The Trial Court rightly appreciated the facts of the case as well as the evidence available on record and dismissed the Suit. The First Appellate Court allowed the appeal and erroneously set aside the Trial Court's Judgment and Decree. Accordingly, he would pray that the Second Appeal be allowed, the Judgment and Decree of First Appellate Court be set aside and the Judgment and Decree of the Trial Court be confirmed.

8.1. He would rely on the following decisions in support of his contentions:

- (i) ***Anathula Suhdakar's Case*** - Judgment of Hon'ble Supreme Court in *Anathula Sudhakar -vs- P. Buchi Reddy*, reported in (2008) 4 SCC 594;
- (ii) ***Chellathurai's Case*** - Judgment of this Court in *Chellathurai -vs- Perumal Nadar* reported in 1998-3-L.W.119;



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(iii) ***Kammavar Sangam's Case*** - Judgment of this Court in *Kammavar Sangam -vs- Mani Janagarajan* reported in 1999-3-L.W.727.

9. Per contra, Mr.A.Murugan, learned Counsel for the respondents / plaintiffs would argue that the Suit Property has three houses where the plaintiffs are residing. Based on their possession and enjoyment, Ex-A.1 – Patta dated December 9, 1983 was issued in favour of their common ancestor - Michael, in respect of the Suit Property. Similarly, Ex-B.3 – Natham Patta was issued in favour of first defendant. This shows that in 1983, Ryotwari Survey No.12/6 was bifurcated into Natham Survey No.12/6A under Natham Land Tax Scheme and the remaining extent thereof remained as ryotwari. Accordingly Ryotwari Pattas were issued in respect of Survey Nos. 12/6B [1 Acre 44 Cents] and 12/6C [77 Cents]. Ex-A.2 - Adangal and Ex-A.3 – Chitta issued under Natham land Tax scheme in 2007 and Ex-A.4 to Ex-A.12 - House Tax Receipts prove the plaintiffs' possession and enjoyment of the Suit Property. He would further argue that Ex-B.1 – Sale Deed, through which the defendants allegedly derive title, is doubtful as its original was not produced. Moreover, there is nothing to show that the executant thereof owned 2 Acre 35 Cents in Survey No.



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12/6. Further as per D.W.1's evidence, Anthony samy, the alleged purchaser under Ex-B.1, died leaving behind 6 daughters and 1 son. In the presence of lineal descendants, the first defendant would not get any right over the Suit Property. The Trial Court erroneously appreciated the law as well as the facts of the case and dismissed the Suit. The First Appellate Court rightly reversed the Judgment and Decree of the Trial Court. There is no warrant to interfere with the same. Accordingly, he would pray to dismiss the Second Appeal and confirm the Judgment and Decree of First Appellate Court.

DISCUSSION:

10. This Court has heard on either side and perused the materials available on record in light of the Substantial Questions of Law.

11. According to the plaintiffs, Ex-A.1 – Patta was issued based on the first plaintiff's father – Michael's long possession and enjoyment in respect of the Suit Property. The plaintiffs constructed three houses and are residing in the Suit Property. Thereafter, considering the nature of plaintiffs' possession and enjoyment, the classification of the land was changed from Ryotwari to Natham under Natham Land Tax Scheme.



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While the precise date for conversion is not known, Ex-A.2 - Adangal and Ex-A.3 – Chitta were issued on July 11, 2007. Hence, it can be safely concluded that the conversion was done before 2007. The plaintiffs' side documents viz., revenue records in Ex-A.1 to Ex-A.12 prove their possession and enjoyment over the Suit Property. The specific case of the plaintiff is that in July 2007, the defendants attempted to trespass into the plaintiffs' property viz., Suit Property and hence, the Suit for bare injunction against them.

12. The case of the defendants is that vide Ex-B.1 – Sale Deed dated June 14, 1950, an extent of 2 Acre 35 Cents in Survey No.12/6 was purchased by Anthonysamy, who later passed away leaving behind his brothers – Arockiasamy and Michael. After the demise of Anthonysamy, Arockiasamy and Michael partitioned the said property, whereby Arockiasamy got 1 Acre 57 Cents and Michael got 78 Cents therein. The first defendant is none other than the son of Arockiasamy. Thus, he is entitled to 1 Acre 57 Cents therein post the demise of Arockiasamy.

13. On perusal of records, there is nothing to show when Anthonysamy passed away. D.W.1 / first defendant himself in his cross-examination has clearly deposed that Anthonysamy passed away intestate



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leaving behind his 6 daughters and one son as his legal heirs. In the presence of lineal descendants, Arockiasamy and Michael would not have inherited the Suit Property. In such a scenario, the alleged partition between them would also not be valid. First defendant failed to produce documents sufficient to trace his title successfully. Hence, it cannot be said that the first defendant derives title from Anthonysamy.

14. According to the defendants, the plaintiffs have right and possession only in the 'HIJK' portion described in the Advocate Commissioner's Plan viz., Ex-C.2. As per Ex-C.2, 'HK' length is 39.2 meters and length of 'HI' portion is 20 meters approximately. If it is so, the plaintiffs do not even have 20 Cents [20 meters (X) 39.2 meters = 784 square meters = 19.37 Cents]. Suit Property as described by the plaintiffs is in respect of the entire extent of Survey No.12/6A i.e., 37 Cents [0.15.00 Hectare]. In such a scenario, the deposition of P.W.2 to the effect that the plaintiffs fenced their properties limiting their extent to 20 Cents is unbelievable and misconceived. Such lip slips cannot be taken as such but have to be seen comprehensively along with the facts and circumstances of the case. This Court is of the view that the barbed wire fence must have been erected just before the Suit or during its pendency by the defendants.



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To be noted, the plaintiffs have filed objection to the Advocate Commissioner's Report on January 24, 2018 for the reason that, as per the Report, an area of 3.4 meter width and 50.6 meter length in Survey No.12/6 A marked in red in the Surveyor's report is being used by defendants as a pathway.

15. The Surveyor has mentioned in his report that he learnt from the first defendant that the said area marked in red is being used as a pathway by the defendants. He ought not to have observed so based on oral information furnished by interested parties. Hence, the observations in the surveyor report in respect of the area marked in red in the plan is hearsay and cannot be considered by this Court as evidence. Hence the Surveyor's report and plan to that extent cannot be relied upon.

16. The learned Counsel for the appellants / defendants would argue that the Advocate Commissioner is an independent Officer of the Court and his report cannot be simply brushed aside. The said argument deserves to be rejected for the reason that the Surveyor has acted based on oral information furnished by first defendant who is an interested person. The Surveyor's report obviously forms a part of the Advocate Commissioner's Report. Surveyor should be neutral and measure the Suit



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Property as per the directions of the Advocate Commissioner. He cannot act independently based on verbal information supplied by any party, especially interested party.

17. As rightly observed by the First Appellate Court, Ex-A.1 – Patta is issued in 1983. Thereafter, Natham Patta was issued in favour of plaintiffs. The defendants did not object to the long standing revenue record allegedly issued in respect of more extent than the plaintiffs' entitlement, before the authority concerned. There is no foundational plea about the original of Ex-B.1 and the subsequent partition between Arockiasamy and his brother - Michael. Anthonysamy's lineal descendants, *i.e.*, one son and 6 daughters are alive as per D.W.1 / first defendant's own admission. In their presence, how the first defendant and his brother - Michael acquired the entire extent of land covered under Ex-B.1 is unclear as there are no pleadings and proof in this regard.

18. The Trial Court's observation that the Suit Property is a Natham Government Poromboke and that the Tahsildar has no power to issue Patta under UDR scheme is baseless and erroneous, and demonstrates non-application of mind. Nobody's case is that the property is Natham Government Poromboke. Probably the Trial Court misconstrued



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the Patta issued under Natham Land Tax Scheme, and regarded the Suit Property as a Government Poromboke Land. Actually, the Suit Property was initially a Ryotwari Land, and later since the owners thereof raised residential constructions, Government converted the same into Natham and imposed land tax under the said scheme. Merely because Patta was issued under the Natham Land Tax Scheme, it cannot be said to be a Government land. The First Appellate Court has rightly set aside the findings of the Trial Court in this regard.

19. It's true that the plaintiffs have to prove their case and cannot take advantage of the loop holes in the defendants' case. In this case, the plaintiffs through Ex-A.1 to Ex-A.12 coupled with their oral evidence have proved their possession and enjoyment of the Suit Property. Plaintiffs' side documents show their settled possession of the entire extent of the Suit Property. The defendants have not established a *prima facie* case to create a cloud over the plaintiffs' title. Hence, the plaintiffs need not seek the relief of declaration. Further, the Advocate Commissioner appointed has produced Report and Plan [Exs.C.1 and C.2] showing that in Survey No.12/6A, 10 feet away from the eastern boundary thereof, there is a barbed wire fence described as 'IJK' in his Plan. The same has been



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erected by the defendants as stated *supra*. This shows that the defendants are trying to usurp the Suit Property, over which the plaintiffs have proved their possession and enjoyment by way of Ex-A.1 to Ex-A.12 – Revenue records. Revenue records may not prove title but they prove settled possession and enjoyment. The plaintiffs have proved that they are in settled possession of Suit Property. If really the defendants have any right over Suit Property, they have to establish the same and evict the plaintiffs by process of law. They cannot encroach upon the Suit Property or attempt to evict through other means. There is no quarrel with the case laws relied on by the defendants' side. The Substantial Questions of Law are answered accordingly.

CONCLUSION:

20. Resultantly, the Second Appeal stands dismissed. The Judgment and Decree of the First Appellate Court is hereby confirmed. Keeping in mind the facts and circumstances of the case, there shall be no order as to costs. Connected Civil Miscellaneous Petition shall be closed.

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Index : Yes

Neutral Citation : Yes

Speaking Order : Yes

TK

To

1.The Subordinate Judge
Chidambaram.

2.The District Cum Judicial Magistrate
Kattumannarkoil.



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R. SAKTHIVEL, J.

TK

PRE-DELIVERY JUDGMENT MADE IN
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