



S.A(MD).No.1289 of 20

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **25.09.2024**

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THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

S.A(MD)No.1289 of 2006

- 1.V.Jayaraj
 - 2.K.Jayarani
 - 3.Jayachandramohan
 - 4.Jamuna Devi
 - 5.Tamilselvi
 - 6.V.Rajan
 - 7.K.Rajathi
- ... Appellants

Vs.

- 1.Sagayamatha Teacher Training Institute
for Women and Saint Michael Teacher
Training Institute for Men.
rep. by its Correspondent
Michael (Died)
- 2.State of Tamil Nadu,
rep. by the District Collector,
Sivagangai District,
Marudupandiar Nagar,
Sivagangai.
- 3.The Special Tahsildar,
(ADW) Office of the
District Collector,
Marudupandiar Nagar,
Sivagangai.
- 4.M.Fathima Mary
- 5.M.Stalin Arokkiyaraj
- 6.M.Victoriya Sagayarani

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7.M.RoselinJuliana Mary
8.M.Jesintha
(R4 to R8 are brought on record as
LRs of the deceased R1 vide order
dated 03.08.2012)

.... Respondents

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree in A.S.No.191 of 1999, dated 17.07.2001, on the file of the Principal District Court, Sivagangai reversing the judgment and decree in O.S.No.469 of 1994, dated 08.09.1999 on the file of the Additional District Munsif Court, Sivagangai.

For Appellants	: Mr.V.Santha Kumaresan
For R2 & R3	: Mr.R.Ragavendran Government Advocate
For R4,R6 & R7	: No appearance
For R5	: Mr.V.Paneerselvam

JUDGMENT

This Appeal has been filed against the judgment and decree in A.S.No.191 of 1999, dated 17.07.2001, passed by the learned Principal District Judge, Sivagangai, reversing the judgment and decree in O.S.No.469 of 1994, dated 08.09.1999, passed by the learned Additional District Munsif, Sivagangai. The first respondent filed a suit in O.S.No.469 of 1994 before the Additional District Munsif Court, Sivagangai for declaration and permanent injunction against the defendant/appellant.



2. For the sake of convenience, the appellants and the respondents shall be referred to as per their ranks in the plaint as the plaintiffs and defendants respectively.

3. On analyzing documentary and oral evidence, the learned Additional District Munsif, Sivagangai, has dismissed the Original Suit in O.S.No.469 of 1994, filed by the plaintiff. Aggrieved over the same, the plaintiff preferred an appeal in A.S.No.191 of 1999 before the Principal District Court, Sivagangai. The learned Principal District Judge, Sivagangai, after carefully considering the materials on record, has allowed the appeal by setting aside the judgment and decree of the trial Court made in O.S.No.469 of 1994. Challenging the said judgment and decree, the defendants have filed the present second appeal.

4. The case set-up by the plaintiff in the plaint is as under:-

The suit property in survey No.46/4 was classified as Punja originally belongs to Morekuzhi Arulandhu Mudaliar. The said property was sold to one Savarimuthu Udaiyar of Periyannagarikottai by the son of Arulandhu Mudaliar. The said property was purchased by the plaintiff on 28.04.1984 by way of registered sale deed and he was in possession of the same. Patta was issued to the suit property in



Patta No.887 and then it was sub-divided as survey No.46/4A, 46/4B and 46/4C and 46/4B was allotted to road and Survey No. 46/4A and 46/4C were in possession and enjoyment of the plaintiff. Out of the suit property an extent of 2 acre and 28 cents was gifted to the plaintiff's Teacher Education Institute and it was fenced with other properties of the institution. All the properties held together as one property without any demarcation or division. The plaintiff has prescriptive title over the suit property by way of possession and enjoyment over the statutory period. The defendants have no right over the said property. The defendant's husband has filed application before Tahsildar and the Revenue Divisional Officer and after enquiry the District Revenue Officer has issued transfer of patta on 6.6.1994. Based on the said order, the defendants have made an attempt to remove the fence and tried to encroach the suit property. Hence, the present suit.

5. The defence set-up by the defendants in the written statement is as under:-

(i) The suit property was never in possession and enjoyment of the plaintiff. The suit property was in possession and enjoyment of the defendant long before settlement and it is in possession of the defendants till date. Since patta was issued in favour of plaintiff



during Land Registration Development Scheme, the defendants have filed petition before the District Collector Sivagangai and after enquiry by the DRO, patta issued in favour of the plaintiff was cancelled. Thereafter, the plaintiff preferred an appeal against the same, that too, in the absence of defendants, before the District Revenue Officer, once again patta was issued in favour of the plaintiff. Then on appeal by the defendant, once again the patta in the name of the plaintiff was cancelled and the same was issued in favour of the defendant on 06.06.1994. No appeal was filed against the same. The defendant was in possession of the suit property by paying tax from Fasli year 1363 to 1408. The suit property was never in possession of the plaintiff and hence, no prescriptive title over the suit property.

6. Before the trial Court, on the side of the plaintiff, two witnesses were examined as P.W.1 & P.W.2 and Exs.P1 to P11 have been marked. On the side of the defendant, two witnesses were examined as D.W.1 and D.W.2 and marked 16 documents, as Ex.D1 to Ex.D16. Court documents Ex.C1 and Ex.C2 were marked.

7. On the basis of the rival pleadings made on either side, the trial Court, after framing necessary issues and after evaluating both oral and documentary evidence, had dismissed the suit filed by the plaintiff.



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8. Aggrieved by the Judgment and decree passed by the trial Court, the plaintiff had filed an Appeal Suit in A.S.No.191 of 1999.

9. The first appellate Court had formulated the following substantial question of law:-

"1. Whether the suit property is vested with the plaintiff?

2. Whether the suit property is in the enjoyment of the plaintiff and in the enjoyment of the first defendant?

3. Not proved by the case?

4. Whether the declaratory and permanent injunction relief sought by the plaintiff is available?

10. The first appellate Court, after hearing both sides and upon re-appreciating the evidence available on record, had allowed the appeal by setting aside the judgment and decree of the trial Court.

11. Challenging the said reversal judgment and decree passed by the first appellate Court, the present Second Appeal has been filed by the defendant.



12. At the time of admitting the present second appeal, this Court had formulated the following substantial questions of law for consideration:

"1. Whether the first appellate Court is justified in granting a declaration and other consequential relief, when the plaintiff failed to produce any documents to establish the passing of title from the purchaser of the property under Ex.A2, namely, Mischael, to the plaintiff institution?"

13. Mr.V.Santhakumaresan, learned counsel appearing for the appellants would submit that the lower appellate Court is not right in holding that the documents under Ex.A1 being 30 years old and accepting the same, without proving the due execution etc. Section 90 of the Indian Evidence Act may not apply to the facts of the case, since the document under Ex.A1 is not the original, but it is a copy and to prove the same, the plaintiff has not taken any steps. Based on such document, the lower appellate Court ought not to have proceeded with the case. Without giving any reasons for setting aside the valid finding of the trial Court, the lower appellate Court merely held that the said document, being 30 years old is a valid document. The plaintiff has failed to prove the execution of the documents under Ex.A1 and Ex.A2. In the absence of such proof, the lower appellate



Court is not right in accepting the same as valid documents and proceeding with the case. The lower appellate Court having found that the Revenue Records do not prove title and the Civil Court is competent to decide the title of the parties to the property, erred in not properly deciding the case. The lower appellate Court failed to see that the defendants 2 & 3 were impleaded at the instance of the plaintiff and no relief has been sought for against them. No averment has been made with regard to the said defendants. The lower appellate Court having found that the defendants 2 & 3 are entitled to Section 80 notice, erred in holding that such notice is not required in this case. The first defendant received compensation for the lands in question from the third defendant will indicate that the first defendant is the real owner. Necessary notification was issued in the Gazette etc. After allowing all the procedure for acquiring the lands in question, the plaintiff is trying to unsettle the settled issue. Hence, on the ground of estoppel, the claim of the plaintiff cannot be decided. The orders passed under Ex.A9 will not in any way give a cause of action for the plaintiff to maintain the suit. The trial Court has given valid and convincing reasons while dismissing the suit. The trial Court has also held that the first defendant is in possession and all the records filed on her side will prove her title and possession. Under Ex.B3 will indicate that the first defendant is in possession pursuant to



the temporary patta issued under Ex.B1 and the permanent patta issued under Ex.B2.

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14. The learned counsel appearing for the respondents would submit that the defendant has never in possession and enjoyment of the suit properties and therefore, the title of the suit property was rightly recognised by the 1st appellate court, and therefore, the trial court's judgment and decree were set aside and the suit was decreed in favour of the plaintiff. He would further submit that the documents produced by the defendants will not help the defendants to prove their title. It is his further submission that the 1st appellate court had rightly interfered and set aside the judgment of the trial court on the correct perception of evidence to upset the Judgment of the trial Court in order to render justice. He would therefore submit that the 1st appellate court had come to a correct conclusion of reversing the judgment and decree passed by the trial court and thereby, corrected the position and therefore, there is no need for interference in the well considered judgment of the 1st appellate court and therefore, the Second Appeal may be dismissed and the judgment and decree passed by the First Appellate Court may be confirmed.



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15. I have heard the learned counsel for the appellants and the respondents and also perused the materials on record carefully.

16. Let us first deal with the points discussed by the trial Court. The trial Court while considering the issue, has discussed Exs.B1 to B16. Ex.B1 is the Rough Patta and Ex.B2 is the Patta Pass Book, which are in the name of the defendant. Exs.B4 to B10 are the tax receipts between Fasli 1394 and 1406 with respect to Patta No.353 and Survey No..46/4, which are all in the name of the defendant. Exs.B11 to B16, chitta and adangal, are in the name of the defendant. Further, P.W.2, Village Administrative Officer, in his testimony concedes that as per Ex.B11, Settlement Register, the suit property in Survey No.46/4 is registered in the name of Janakiammal. Considering all those documents and testimony of VAO, the trial Court came to the wrong conclusion that the suit schedule properties belongs to the defendant. But, the trial Court, omitted to consider the other important factors, which are absolutely necessary for deciding the issue.

17. On perusal of the records it is seen that initially, the suit properties belonged to one Arulandu Mudaliar. Thereafter, his son Sundaram Mudaliyar had inherited the property. Thereafter, the said



Sundaram Mudaliyar had executed a sale deed in favour of Savarimuthu Udaiyar. The plaintiff purchased the property from the said Savarimuthu Udaiyar, which is evident from the testimony of P.W. 1 to P.W.4. But the trial Court, disbelieved oral testimonies of P.W.1 to P.W.4 and the same cannot be brushed aside. Standard of proof is different in civil and criminal cases. In civil cases, it is preponderance of probabilities, while in criminal cases, it is proof beyond reasonable doubt. There is neither any statutory nor any legal principle that findings recorded by the court either in civil or criminal proceedings shall be binding between the same parties while dealing with the same subject matter and both the cases have to be decided on the basis of the evidence adduced therein.

19. No doubt, no basic documents have been adduced by the defendant to prove his title. The trial Court, on the basis of Ex.B1 / Rough Patta, dated 16.01.1956, came to the conclusion that the properties belongs to the defendant, in which patta number shown as 209. It is clear from the records that thereafter, no regular patta has been obtained by the defendant, which the trial Court omitted to consider. Further, the trial court failed to consider that the decision of Revenue Officers in a patta proceedings will not in any way affect the jurisdiction of civil Court. Further, the trial Court failed to take note



of the fact that the tax receipts produced by the defendant relates to Patta No.353 and does not belong to the suit properties. The 1st appellate Court, while deciding the issue, framed necessary points for consideration and had rightly interfered with the findings of the trial Court and set aside the judgment and decree passed by the trial court. In the opinion of this court, based on the available materials and records, the 1st appellate court had come to a correct conclusion in reversing the judgment and decree passed by the trial court and thereby, corrected the position and therefore, there is no need for interference in the well considered judgment of the 1st appellate court. Accordingly, the Substantial Question of Law is answered in favour of the plaintiff.

20. The appellate Court has rightly come to the conclusion that Ex.B2 shows patta No.209 as per rough patta but not proved the patta 353 for which the tax receipts produced are relating to 209. From 1947 the plaintiff was able to trace his title and the same has been rightly upheld. Patta No.887 belongs to plaintiff which was later cancelled. From the Court documents Ex.C1 and Ex.C2, where the Advocate Commissioner has given a report that the Survey No.46/4 was sub-divided as 46/4A, 46/4B and 46/4C and land in lying 46/4C was transferred and registered as Sarkar Poramboke for the Aadi



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Diravidor Colony on 06.07.1994. Regarding survey Nos.46/4A, 4B and 4C patta has been issued in favour of the plaintiff, wherein the plaintiff has running the educational institution and the same has been accepted by the defendant that almost 20 acres of land is belonging to the plaintiff and that has been proved by the plaintiff. During the UDR some kind of mutation and rough patta has been handed over to them. It is also seen that during the UDR only there has been some kind of mutation and rough patta has been handed over to them. Prior to 1985 there is no such document has been produced by the defendant to show that he has been paying the kist for the same property to prove that he was in enjoyment of the same.

21. In the result, the Second Appeal is dismissed, by confirming the Judgment and Decree passed by the learned Principal District Judge, Sivagangai, in A.S.No.191 of 1999, dated 17.07.2001, reversing the Judgment and Decree passed in O.S.No.469 of 1994 by the learned Additional District Munsif Judge, Sivagangai. However, there shall be no order as to costs.

25.09.2024

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To
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- 1.The Principal District Court,
Sivagangai.
- 2.The Additional District Munsif Court,
Sivagangai.
- 3.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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V.BHAVANI SUBBAROYAN, J.

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Judgment made in
S.A(MD)No.1289 of 2006

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