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S.A(MD)No.240 of 20



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.09.2024

CORAM

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

S.A(MD)No.240 of 2006

P.Mariappan ... Appellant/1st Respondent/Plaintiff

Vs.

1.R.Murugan ... 1st Respondent/1st Appellant/1st Defendant

2.Chitra ... 2nd Respondent/2nd Appellant/3rd Defendant

3.Loganathan

... 3rd Respondent/2nd Respondent/2nd Defendant

(3rd Respondent is given up in notice)

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree, dated 29.10.2004 passed in A.S.No.111 of 2004, on the file of the Principal District Court, Tirunelveli, reversing the judgment and decree dated 12.11.2003 passed in O.S.No.241 of 2000, on the file of the Sub Court, Sankarankovil.

For Appellant : Mr.D.Nallathambi

For R – 1 : No appearance

For R – 2 : Mr.F.X.Eugene

For R – 3 : Given up



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JUDGMENT

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This Second Appeal has been directed against the Judgment and decree, dated 29.10.2004 passed in A.S.No.111 of 2004, on the file of the Principal District Court, Tirunelveli, wherein, the Judgment and decree, dated 12.11.2003 passed in O.S.No.241 of 2000, on the file of the Sub Court, Sankarankovil, are reversed.

2.Originally, the appellant herein as plaintiff has instituted a suit in O.S.No.241 of 2000 on the file of the trial Court for the relief of declaration of title to the suit schedule property and permanent injunction restraining the first defendant alone from interfering with the peaceful possession and enjoyment of the plaintiff in the suit schedule property. When the suit was pending, the defendants 2 and 3 were made as parties to the suit and the plaint was amended accordingly, for the relief of declaration, declaring that the plaintiff was entitled to the schedule property, permanent injunction and also recovery of possession, wherein, the respondents 1, 3 and 2 have been shown as the defendants.



3.For the sake of convenience, the parties are referred to as, as described before the trial Court.

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4.In the plaint, it is averred that the suit schedule property belonged to the plaintiff by virtue of the registered sale deed, dated 19.06.2000 executed by one Muniyandi in his favour. Originally, the suit schedule property was allotted to one Chinnathungan by the Government under Harijan Welfare Scheme in the year 1971. The said Chinnathungan was one of the allottees in respect of the schedule property. Subsequently, one Muniyandi applied to transfer the patta in his name with the consent of Chinnathungan. Accordingly, the Thasildar, Sivagiri issued an order transferring the title of the suit schedule property in favour of Muniyandi by issuing a patta, dated 27.10.1994. From the date of issuing the patta, the said Muniyandi was in possession and enjoyment of the suit schedule property. The tax for the schedule property has been changed in the name of the said Muniyandi and he was paying tax for the suit schedule property. The said Muniyandi, who was the vendor of the plaintiff, obtained an electricity connection for the schedule property in his name. After purchasing the suit schedule property, the plaintiff was in possession and enjoyment of the same. The mutation of name has been effected



in revenue records in the name of the plaintiff. With regard to the suit schedule property, the plaintiff was paying tax for the schedule building and the patta has also been changed in the name of the plaintiff. The plaintiff and his predecessor-in-title have been in possession and enjoyment of the suit schedule property for more than 30 years. The first defendant is the brother of the plaintiff's vendor. On 15.09.2000, the first defendant came to his sister's house, which was situated near suit schedule property. Since the first defendant has taken the defence of non-joinder of the necessary party, the plaintiff had impleaded the defendants 2 and 3.

5.While pending the suit, the plaintiff filed an interlocutory application in I.A.No.129 of 2000 for the relief of a temporary injunction. The said I.A was dismissed on 15.12.2000 as if the plaintiff was not in possession of the plaint schedule property. Thereafter, the plaintiff filed C.M.A.No.16 of 2001 on the file of the District Court, Tirunelveli and the said C.M.A was also dismissed on 24.10.2003. Hence, the plaintiff claimed for recovery of possession and a consequential relief instead of a permanent injunction. The cause of action for the suit arose on 19.06.2000 when the plaintiff purchased the suit schedule property and on 15.09.2000, when the defendants



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attempted to disturb the plaintiff's possession by raising a novel claim, the present suit has been instituted for the relief as sought for in the plaint.

6.In the written statement filed on the side of the defendants, it is averred that it was an admitted fact that the suit schedule property was originally belonged to one Chinnathungan as per the assignment of the Government under the Harijan Welfare scheme. According to the defendants, their father is one Ramasamy. The said Ramasamy had three sons, namely Muniyandi, Loganathan and Murugan and one daughter Chitra. Ramasamy and Loganathan were living in Estate, Muniyandi was working in the Government Transport Corporation and Murugan was residing in Vasudevanallur Village and only from the common income, the defendants purchased the property 15 years back through oral sale.

7.According to the defendants, since there was a dispute between Muniyandi and their father regarding some other properties, he had filed a suit in O.S.No.225 of 1994 as against his father, Loganathan and Murugan for the relief of partition and in the said suit,



he had admitted that he has been residing in the suit schedule property and given the address of the suit schedule property. The defendants stated that the patta would have been obtained by the said Muniyandi, only after the death of his father and only after the suit was filed, the defendants came to know about the mutation and the suit schedule property does not belong to the said Muniyandi alone as separate property and he was not residing there at any point of time and the suit schedule property belonged to the defendants as per the oral sale and in the pending suit, the plaintiff filed an application in I.A.No.129 of 2000, which was dismissed and the said Loganathan and Chitra do not have any other property other than the disputed property and they are residing in the suit schedule property. Hence, the suit has to be dismissed for non-joinder of necessary parties and also the plaintiff's prayer cannot be granted and the property belonged to all the legal heirs of Ramasamy.

8.The first defendant along with the third defendant filed an additional written statement wherein they have admitted the fact that pending the suit, the plaintiff filed an application in I.A.No.129 of 2000 on the file of the trial Court, which was dismissed. Thereafter, the plaintiff filed an appeal in C.M.A.No.16 of 2001, which was also



dismissed. From the orders passed in the application, it would be seen that the suit schedule property has been in the management of the defendants as well as Muniyandi. Hence, the plaintiff cannot claim recovery of possession from the defendants, as he has already stated that the suit schedule property was in possession of the plaintiff himself and he cannot now seek for recovery of possession and the suit has been filed with false averments and the same has to be dismissed.

9.Before the trial Court, on the side of the plaintiff, he himself was examined as P.W.1 and one Kuppandi was examined as P.W.2 and Exs.A1 to A9 were marked. On the side of the defendants, P.W.1 to P.W.3 were examined and Exs.B.1 to B.9 were marked.

10.On the basis of the rival pleadings raised on either side, the trial Court has framed necessary issues and after analysing both the oral and documentary evidence, has allowed the suit. Against the Judgment and decree passed by the trial Court, the defendants 1 and 3 as appellants have preferred an Appeal Suit in A.S.No.111 of 2004, on the file of the first appellate Court.



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11.The first appellate Court, after hearing both sides and upon reappraising the evidence available on record, has allowed the appeal and thereby set aside the Judgment and decree passed by the trial Court. Against the Judgment and decree passed by the first appellate Court, the present second appeal has been preferred at the instance of the plaintiff as appellant.

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

'1. Whether the first Appellate Court was right in applying the principle that patta is not a document of title, in the instant case, while that is the only document available in view of the allotment of the house built by the Government and assigned to the appellant?

2. Whether the first appellate Court was correct in not looking into that the defendants have not established the legal right to be in possession of the property?



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3. Whether the appellant is entitled to get a declaration of title and recovery of possession on the basis of the documentary evidence adduced through Exs.A.1 and A.2?'

13.The learned counsel appearing for the appellant/plaintiff contended that the first Appellate Court failed to take into consideration the fact that the suit house was constructed by the Government on Government land and subsequently assigned to various persons belonging to the Harijan community. The Government used to issue patta in respect of such houses to different individuals. As such, patta is the only document of title regarding the property allotted; the first Appellate Court is wrong in applying the general principles of law that patta is not a document of title to the facts of the present case; the first Appellate Court ought to have relied upon Ex.A.2 and held that Muniyandi, the vendor of the plaintiff was allotted a house by the Government; the first Appellate Court ought to have held that even if the defendants are held to be in possession of the suit property, their possession was not lawful and they do not claim possession under any lawful title; the first Appellate Court ought to have upheld Ex.A.1-sale



deed of the suit property executed by Muniyandi in favour of the plaintiff and the first Appellate Court is wrong in relying on the letters received by the third defendant as proof of possession of the suit property by the defendants and prayed for allowing the Second Appeal.

14.The learned counsel appearing for the second respondent would submit that the first Appellate Court, after considering the documents viz., Ex.B.1 to B.9, has rightly allowed the first Appeal and prayed for dismissal of the Second Appeal.

15.Heard the learned counsel appearing for the appellant and the learned counsel appearing for the second respondent and perused the materials available on record.

16.According to the plaintiff, the suit schedule property belonged to him by virtue of the registered sale deed, dated 19.06.2000 executed by one Muniyandi in his favour. Originally, the suit schedule property was allotted to one Chinnathungan by the Government under Harijan Welfare Scheme in the year 1971. The said



Chinnathungan was one of the allottees in respect of the schedule property. Subsequently, one Muniyandi applied to transfer the patta in his name with the consent of Chinnathungan. Accordingly, the Thasildar, Sivagiri issued an order transferring the title of the suit schedule property in favour of Muniyandi by issuing a patta, dated 27.10.1994. From the date of issuing the patta, the said Muniyandi was in possession and enjoyment of the suit schedule property. The tax for the schedule property has been changed in the name of the said Muniyandi and he was paying tax for the suit schedule property. The said Muniyandi, who was the vendor of the plaintiff, obtained an electricity connection for the schedule property in his name. After purchasing the suit schedule property, the plaintiff was in possession and enjoyment of the same. The mutation of the name has been effected in revenue records in the name of the plaintiff. With regard to the suit schedule property, the plaintiff was paying tax for the schedule building and the patta has also been changed in the name of the plaintiff. The plaintiff and his predecessor-in-title have been in possession and enjoyment of the suit schedule property for more than 30 years. The first defendant is the brother of the vendor of the plaintiff. On 15.09.2000, the first defendant came to his sister's house, which was situated near the suit schedule property. Since the first



defendant has taken the defence of non-joinder of the necessary party, the plaintiff had impleaded the defendants 2 and 3. While pending the suit, the plaintiff filed an interlocutory application in I.A.No.129 of 2000 for the relief of a temporary injunction. The said I.A was dismissed on 15.12.2000, as if the plaintiff was not in possession of the plaint schedule property. Thereafter, the plaintiff filed C.M.A.No.16 of 2001 on the file of the District Court, Tirunelveli and the said C.M.A was also dismissed on 24.10.2003. Hence, the plaintiff claimed for recovery of possession and a consequential relief instead of a permanent injunction.

17. According to the defendants, it was an admitted fact that the suit schedule property originally belonged to one Chinnathungan as per the assignment of the Government under the Harijan Welfare scheme and their father is one Ramasamy. The said Ramasamy had three sons, namely Muniyandi, Loganathan and Murugan and one daughter Chitra. Ramasamy and Loganathan were living in Estate, Muniyandi was working in the Government Transport Corporation and Murugan was residing in Vasudevanallur Village and only from the common income, the defendants purchased the property 15 years back through oral sale. Further according to the defendants,



since there was a dispute between Muniyandi and their father regarding some other properties, he had filed a suit in O.S.No.225 of 1994 as against his father, Loganathan and Murugan for the relief of partition and in the said suit, he had admitted that he has been residing in the suit schedule property and given the address of the suit schedule property. The defendants stated that the patta would have been obtained by the said Muniyandi, only after the death of his father and only after the suit was filed, the defendants came to know about the mutation and the suit schedule property does not belong to the said Muniyandi alone as a separate property and he was not residing there at any point of time and the suit schedule property belonged to the defendants as per the oral sale and in the pending suit, the plaintiff filed an application in I.A.No.129 of 2000, which was dismissed and the said Loganathan and Chitra does not have any other property other than the disputed property and they are residing in the suit schedule property and the property belonged to all the legal heirs of Ramasamy.

18.The first Appellate Court held that the plaintiff was not in a position to prove his possession and he only claimed for permanent injunction and declaration and after the dismissal of his interim application, he filed an amended plaint for recovery of

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possession and he has not stated anywhere, from which date he was in possession and enjoyment of the suit property. Further, the first Appellate Court has stated that in the suit filed by one Muniyandi in O.S.No.225 of 1994, the defendants brother had shown this address of the disputed property and accordingly, the defendants was in possession of the suit property has been proved. That being the case, from 1994 onwards, the defendants are in possession of the property. Even though oral sale was not proved, the defendants are in possession of the suit property was proved, the trial Court Judgment was reversed by the first Appellate Court. Further, the first Appellate Court has not dealt in detail with the proof of the defendants enjoyment of the suit schedule property. The first Appellate Court has stated that Ex.B.1-voters list for the year 1995, would show that the defendants and his family members are residing in the said disputed property and the number of house is 39A and even though when the defendants have stated that there was a hut near 39, the same may be given 39A and that has been demolished on its own as it was in a dilapidated condition, but the plaintiff has not been proved that 39A was in some other place or the third defendant was not in possession and enjoyment of the suit property has not been denied by the plaintiff and hence, the same should be considered and the plaintiff was not



entitled for recovery of possession. It is further stated that the defendants have produced the letter corresponding between the parties from the years 1997-1998 would show that the third defendant was residing in that place. Hence, the first Appellate Court was of the view that the same was proved that the defendants are in possession of the property and the title vest with them.

19.Regarding the first question of law, it is to be seen that originally the property was assigned in favour of one Chinnathungan and later on, as per the proceedings of the revenue officials, the patta was mutated in favour of Muniyandi. The said Muniyandi has sold the suit schedule property in favour of the plaintiff in the year 2000 and patta and other property tax and service connection have been transferred in the name of the plaintiff and it is to be seen that in those days Harijan Welfare Department issue only patta while assigning the land and there cannot be any such document of conveyance in favour of the parties concerned and the first question of law is held in favour of the plaintiff.



20.Regarding the second question of law, the legal right to be substantiated with a title document to show the right to reside in that particular place. The defendants stated that only the father of the defendants purchased by way of oral sale. When the oral sale has not been proved beyond any doubt by the defendants, this question also goes in favour of the plaintiff wherein the legal right to be in possession of the property has not been established other than that they have not stated anything about adverse possession but claimed only that the suit schedule property has been purchased by the father of the defendants orally and then, the same has been in possession and enjoyment of the parties from 1994 onwards as a family property and they are residing there was not established by any evidence. Though the possession has been accepted by this Court, they have no legal right to claim in that property. Hence, they have not proved the title to the suit schedule property.

21.Regarding the third question of law, this Court is of the view that the plaintiff has proved his title by producing appropriate documents viz., Ex.A.1-sale deed executed by Muniyandi in favour of the plaintiff and Ex.A2-patta. As the defendants have not chosen to challenge the said patta which was issued in favour of Muniyandi and also in the name of the plaintiff, mere possession alone could not be



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given any right to stay in that place and declaration of title and recovery of possession are to be ordered in favour of the plaintiff. The substantial questions of law are ordered accordingly in favour of the plaintiff and against the defendants.

22.Since the defendants have resided for so many years, this Court is of the view that time should be given for the defendants to relocate their families. Accordingly, six months time is given to the defendants to vacate the suit schedule property ie., on or before 30th March 2025.

23.In fine, this second appeal is allowed without costs and the Judgment and decree, dated 29.10.2004 passed in A.S.No.111 of 2004, on the file of the Principal District Court, Tirunelveli is set aside and the Judgment and decree, dated 12.11.2003 passed in O.S.No.241 of 2000, on the file of the Sub Court, Sankarankovil, is restored.

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Internet : Yes/No
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To

- 1.The Principal District Court,
Tirunelveli.
- 2.The Sub Court,
Sankarankovil.
- 3.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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V.BHAVANI SUBBAROYAN, J.

ps

Judgment made in

S.A(MD)No.240 of 2006

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