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S.A(MD)No.164 of 20



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **12.09.2024**

CORAM

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

S.A(MD)No.164 of 2005

1.Raghavan
2.Arumugam
3.Muthuraman
4.Subbaiah
5.Vijayan

... Appellants/defendants

Vs.

1.Subbiah (Died)
2.Peyammal
2.Ponnalagu
4.Jayalakshmi
5.Muniyandi
6.Saradha
7.Nehru
8.Cauvery
9.Pavalakodi

(Respondents 2 to 9 brought on record
as LR's of the deceased sole respondent) ... Respondents/Plaintiff

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree in A.S.No.20 of 2003, on the file of the Sub-Court, Sivagangai dated 24.11.2004 reversing the well considered decree and judgment in O.S.No.545/87, on the file of the Principal District Munsif Court, Sivagangai, dated 26.12.2002.



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For Appellants : Mr.T.S.Mohamed Mohideen

For R1, R4 to R6,
R8 & R9 : Mr.R.Devaraj

JUDGMENT

The appellants, who are defendants in the suit, filed the present appeal against the judgment and decree, dated 24.11.2004, made in A.S.No.20 of 2003, on the file of the Sub-Court, Sivagangai, reversing the Judgment and Decree in O.S.No.545 of 1987, dated 26.12.2002, on the file of the District Munsif Court, Sivagangai.

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

3. The plaintiff filed a suit in 545 of 1997 before the District Munsif Court, Sivagangai, for declaration and for injunction.

4. On analyzing documentary and oral evidence, the learned District Munsif, Sivagangai, has decreed the suit for three items of the suit property and dismissed the suit in respect of first item of the suit property. Aggrieved by the judgment and decree of the trial Court, the defendants 1 to 5 filed an appeal before the District Court,



Sivaganga which is taken on file in A.S.No.22/1992 and the plaintiff has filed cross-objections in that appeal. Considering the pleadings evidences, judgment and decree of the trial Court, the learned District Judge remanded the suit to the trial Court for appointment of Commissioner and also directed the trial Court to permit the parties to adduce further evidence if any adduced by the parties and to dispose of the suit according to law.

5. After remand, the plaintiff has taken up the matter before the High Court and this Court confirmed the judgment of the learned District Judge, Sivaganga and then the matter is remanded to the trial Court. The trial Court has further tried the suit and considering the pleadings and evidences of both parties and the directions of the District Court dismissed the suit without costs. Aggrieved over the same, the plaintiff has filed an appeal in A.S.No.20 of 2003, before the Sub-Court, Sivagangai. The learned Sub-Judge, Sivagangai, on carefully considering the materials on record, has allowed the appeal by setting aside the Judgment Decree of the trial Court. Aggrieved over the same, the defendants have filed the present appeal.

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

The case of the plaintiff is that the suit properties are the



ancestral properties of the plaintiff. The plaintiff and his ancestors have been in possession and enjoyment of the suit property from time immemorial. Based on their enjoyment, they also acquire prescriptive title by adverse possession. The plaintiff has cultivated Punja grains (வெகு) in the first and second item of the suit properties. The plaintiff has levelled the third item of the suit property for cultivation. The plaintiff had made an arrangement to cut the trees in the fourth item of the suit property and get it ready for cultivation. The plaintiff had cultivated food grains for an extent of 3 1/2 acres in the fourth item of the suit property. The defendants have no manner of title, right or interest or possession in the suit properties at any point of time. Without any semblance of right, the defendants have made an attempt to interfere with the peaceful possession and enjoyment of the plaintiff in the suit properties.

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

(i) The 6th defendant filed a written statement, which is adopted by the defendants 1 to 5. The suit is false and frivolous. The plaintiff has never been in possession and enjoyment of the suit property. It is false to state that the plaintiff have made arrangements to cultivate the suit properties. The plaintiff has no right and title in



the suit properties. The plaintiff has no revenue records in his name.

The plaintiff has also deposed before the Tahsildar that he has not enjoyed the suit properties. The first item of the suit property was originally belonged to one Chidambaram Chettiar and others of Keezhapoongudi which is purchased by the second defendant 15 years back. Patta is also issued in favour of the second defendant in Patta No.77 in respect of the first item of the suit property.

(ii) The second defendant has been in continuous possession and enjoyment of the first item of the suit property and also acquired prescriptive title by adverse possession also. The four boundaries of the first item of the suit property is not correct. The second item of the suit property belonged to the fourth defendant. The southern portion of the second item of the suit property is enjoyed by Ganesan and Tamilarasan, who are also the necessary parties in the suit. Hence, the suit is bad for non-joinder of necessary parties. The northern portion of the second item of the suit property belonged to the third defendant for an extent of 20 cents. These persons also has been in continuous possession and enjoyment of the second item of the suit property and acquired prescriptive title by adverse possession. As far as the third item of the suit property is concerned which is subdivided into S.No.106/2A and 106/2B. These properties are originally



belonged to one Annakodi, who had sold it to one Perumathal on 17.08.1965 through a registered sale deed.

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iii) The first defendant has orally purchased S.No.106/2A from the said Perumathal. S.No.106/2B originally belonged to Jeyaraj, who had sold it on 05.10.1983 through a registered sale deed to the first defendant. The third item of the suit property is also belonged to various persons including the first defendant, who had also acquired prescriptive title by adverse possession. As far as the fourth item of the suit property is concerned, survey number given by the plaintiff is not correct. The fourth item of the suit property comprised in S.Nos. 108 and 105/2, Survey No.105/2 consists of 2 acre 65 cents. As far as S.No.108 is concerned, the extent is 8 acres 92 cents in which, the first defendant, Ayyakannu, Sivaprakash, Ganesan, Manickam and Tamilarasan have 1 acre 49 cents each. Further Ammakannu has 1 acre 49 cents and the sixth defendant and Thaiyalnayaki are enjoyed 1 acre 49 cents. On the south of the above said portion, the third defendant and his brother Arumugam have 1 acre 49 cents. The fourth defendant, his brother Enan Ambalam and Thirumalaiyan have enjoyed 1 acre 49 cents. The above said persons have enjoyed the fourth item of the suit property and revenue records stands in their names. In this property also, the above said persons acquired



prescriptive title by adverse possession. The above said persons are not impleaded in the suit and the suit is bad for non-joinder of necessary parties. The plaintiff has not valued the property correctly and the Court fee paid is not correct. There is no cause of action for the suit and prayed for dismissal of the suit.

8. Before the trial Court, on the side of the plaintiff, the plaintiff was examined as P.W.1 and two other witnesses were examined as P.W. 2 & P.W.3 and Exs.P1 to P26 were marked. On the side of the defendants, the defendants 1,2,3 & 5 were examined as D.Ws.1 to 4 and other witnesses were examined as D.W.5 to D.W.7 and Ex.D46 were marked. Court documents Ex.C1 to Ex.C3 were marked.

9. 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 decreed the suit for three items of the suit property and dismissed the suit in respect of first item of the suit property.

10. Aggrieved by the Judgment and decree passed by the trial Court, the plaintiff had filed an Appeal Suit in A.S.No.20 of 2003.



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11. The first appellate Court had formulated the following substantial questions of law:-

"1. Whether the decree and judgment of the trial Court has to be set aside?

2. To what other relief?"

12. 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.

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

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

"1) Whether the findings of the lower appellate Court that pattas granted by the settlement authorities are sufficient to establish the title is legally sustainable as against the well established proposition of law enunciated in 1995 I MLJ 1176 and 1999 III CTC 650?



2) Whether the findings of the lower appellate Court that the principles of possession follows title will apply to the facts of the case particularly the suit properties are not vacant sites is sustainable under law?

3) Whether the findings of the lower appellate Court that appointment of a fresh commission is unwarranted in this case (when the same was previously considered by the appellate Court remanded the case on that ground that a appointment of commissioner is necessary and the same has been upheld by the Honourable Court) is sustainable in law?

15. Mr.T.S.Mohamed Mohideen, learned counsel appearing for the appellants / defendants would submit that the lower appellate Court has not properly understood the purpose for which the appeal was first remanded back to the trial Court in A.S.No.22/1994 on the file of the District Court, Sivagangai dated 14.11.1994 and confirmed by this Court in C.M.A.No.1661/1995 dated 30.01.2022 in which appointment of a fresh commissioner was suggessted. The commissioner report Ex.C1 already on record is not clear and sufficient to arrive at the just conclusion and by passing the said findings and observation that the appointment of a fresh commissioner is not warranted. The lower appellate Court has erred in law in not



properly appreciating the prayer by the respondent/plaintiff raised in his grounds of appeal as 13th ground in which he only pleaded for remand of the suit with a request for appointment of a commissioner.

The lower appellate Court has erred in law by holding that patta granted by the settlement authorities are the document of title to establish the title of the respondent/plaintiff ignoring the well settled principle of law that patta is not a document of title 1995 I MLJ 1176 and 1999 III CTC 650. The lower appellate Court has erred in law by wrongly applying the principle that possession follows title particularly and admitted by all the suit properties are nanja and punja and not vacant sites and the principle possession follows title will apply only to a vacant site and not to cultivable lands. The lower appellate Court has erred in law by relying upon the patta and kist receipts filed by the plaintiff for his title and possession ignoring the fact that P.W.1 the plaintiff was the village Karnam for the suit village and taking advantage of that official position records have been created without actual title and possession over the suit properties. The lower appellate court has erred in law in not the oral and documentary evidence particularly the registered sale deeds and wrongly rejected the same only on the ground that original sale deeds were not produced instead of going into the evidentiary value of those document. At any event, the reasoning and the conclusion arrived at



by the lower appellate Court legally unsound and devoid of any merits and the decree and judgment of the lower appellate Court is liable to be set aside.

16. Mr.R.Devaraj, learned counsel appearing for the respondents 2,4 to 6 and 8 & 9 would submit that the trial Court and the first appellate Court after hearing both sides and upon re-appreciating the evidence available on record, had rightly decreed the suit and also the appeal suit and there is no interference is required in the judgment and decree of the trial Court and the first appellate Court.

17. I have heard the learned counsel for the appellants and the respondent and also perused the materials on record carefully. There is no representation for the respondents.

18. The respondent/plaintiff has produced Ex.A1 patta pass book in respect of the first item of the suit property. The said Ex.A1 was issued to the plaintiff during 1973-74, for which, the plaintiff has paid kists on 15.06.1958 through Ex.A4. The plaintiff has paid kists for the Fasli 1367, 1369, 1383 to 1391 in the same patta numbers through Ex.A5, Ex.A6 and Ex.A22. All these documents go to show that the plaintiff is in possession of the suit properties from 1958. In order to



establish his title, the plaintiff has produced Ex.A24 settlement patta, which was issued to the plaintiff prior to 20.03.1956. It is the case of the defendants that the second defendant orally purchased the first item of the suit property. As per law, oral sale is not valid subject to certain conditions. The defendants have not adduced documentary or oral evidence in respect of the value of the property which is less than Rs.100/-. On careful perusal of Ex.A24, the rough settlement patta issued to 13 persons, in which the plaintiff's name is mentioned in Sl.No.6 and the name of Chidambaram Chettiar is mentioned in Sl.No. 8. As per the above document, Chidambaram Chettiar had owned lands in S.No.58/8 with an extent of 52 cents only. This document has disproved the case of the defendants. In such circumstances, the plaintiff has valid title and possession in the first item of the suit property and he is entitled for the relief of declaration and injunction as prayed for. It is true that the defendants have wrongly obtained patta during updating survey and attempted to interfere with the peaceful possession and enjoyment of the plaintiff's properties.

19. The second item of the suit properties are concerned, the plaintiff has produced patta pass-book for an extent of 30 cents. On careful consideration of Ex.C1 and Ex.C2 the Commissioner has categorically stated that this property is a single portion and not



divided as so many portions. The defendants have produced kist receipts and the said receipts are also after the implementation of updating survey in 1988, but the plaintiff has produced patta for the year 1973. It is seen from the said documents that defendants documents are latest documents and the plaintiff documents are oldest. Therefore, this Court hold that the plaintiff has title and possession over the second item of the suit property.

20. It is further seen that the plaintiff has filed Ex.A3 patta pass-book for both the items of 3 and 4 of the suit properties. The plaintiff has produced kist receipts. The kist receipts are marked as Ex.A23. As far as Ex.B6 sale deed is concerned, the property was belonged to the defendants vendor as an ancestral property. The vendor has executed Ex.B6 sale deed only on 05.10.1983. But, the plaintiff has produced patta Ex.A3 pertaining to the year 1973. Hence, it is the duty of the first defendant to produce the ancient document of his vendor prior to 1973. But, the first defendant has failed to do so. Therefore, the plaintiff's document Ex.A3 is ancient and prevail over Ex.B6. As far as this case is concerned, the defendants have not adduced any reason for the absence of primary evidence and even not affording any explanation. Hence, Ex.B5 has no evidenciary value as per well-settled position of law. Further, the first defendant has relied



upon Ex.B7 patta pass-book in the name of Annakodi. Admittedly, Annakodi has executed Ex.B5 for an extent of 39 cents only. The recital of four boundaries goes to show that she had not retained any property after the sale of 39 cents through Ex.B5. It is seen from Ex.B7 that this patta has been issued to Annakodi for an extent of one acre fifty six cents as ancestral properties. This contents of Ex.B7 is falsified by Ex.B5 itself. Therefore, there is some doubt about the validity of Ex.B7. Neither Annakodi nor her vendees paid any kist during the period of 1973 to 1983 which goes to show that they have no other document for the said property. In view of the above, the first defendant has no right over the third item of the property. At the same time, the plaintiff has produced Ex.A3 and some receipts in respect of this property. Therefore, this Court is of the view that the plaintiff has proved title over the property and also has possession in the same.

21. As far as the 4th item of the suit property is concerned, this is a punja land. The plaintiff has produced kist receipts for patta No. 206 through Ex.A20 for the falies 1378 to 1382. On the other hand, the defendants have claimed that this property is belonged to the defendants 1,3,4 & 6. In order to establish the rights of the defendants they have produced Ex.B10 to Ex.B15 kist receipts. The



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defendants have not produced any documents to establish their title in this property. On careful perusal of oral evidences of parties and the Ex.C1 and Ex.C2 and the probabilities of the case, the defendants case is falsified. The plaintiff has also produced Ex.A3 patta which is not disproved by the defendants. It is well-settled position of law that 'possession follows title'. The title of the plaintiff is proved. Hence, this Court is of the view that the possession of this property is also in the hands of the plaintiff and I have no reason to interfere with the well considered Judgment of the first appellate Court. Accordingly, the substantial questions of law are answered accordingly.

22. In the result, the Second Appeal is dismissed by confirming the Judgment and Decree made in A.S.No.20 of 2003, on the file of the Sub-Court, Sivagangai. However, there shall be no order as to costs.

12.09.2024

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Internet : Yes/No
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To

- 1.The Sub-Court,
Sivagangai.
- 2.The Principal 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
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