



S.A.(MD)No.609 of 2005

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.07.2024

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.(MD)No.609 of 2005

- 1.Palchamy Naicker (Died)
- 2.P.Velammal
- 3.P.Rajammal
- 4.G.Nagajothimani
- 5.R.Mariammal
- 6.P.Nagavalli
- 7.V.Rajalakshmi
- 8.R.Jeyalakshmi
- 9.S.Prema
- 10.P.Balamurugan
- 11.P.Satheeshkumar
- 12.P.Kandasamy

... Appellants

(Sole appellant died. Memo recorded vide order dated 04.10.2010. Memo USR.No. 3682/2010)

(Appellants 2 to 12 are brought on record as LRs of the deceased sole appellant vide Court order dated 31.01.2022 made in M.P.(MD)Nos.1 to 3/2011)

Vs

1.Government of Tamil Nadu,
Rep. by District Collector,
Virudhunagar District.

2.Tahsildar,
Thiruchuli Taluk,
Thiruchuli.

... Respondents



S.A.(MD)No.609 of 2005

PRAYER: Second Appeal filed under Section 100 of C.P.C., against the judgment and decree dated 14.10.2004 made in A.S.No.25 of 2002 on the file of Subordinate Court, Aruppukkottai, confirming the judgment and decree dated 21.12.2001 made in O.S.No.73 of 1993 on the file of District Munsif Court, Aruppukkottai.

For Appellants : Mr.S.Parthasarathy

For Respondents : Mr.SRA.Ramachandran,
Additional Govt. Pleader.

JUDGMENT

The plaintiff in the suit is the appellant. Suit was for declaration of title and for consequential injunction restraining the defendants from interfering with plaintiff's possession over the suit property. The suit was partly decreed by the trial Court only in respect of 94 cents in New S.No. 51/6. The suit was dismissed in respect of remaining extent in old paimash No.198. The findings of the trail Court were affirmed by the first appellate Court. Aggrieved by the same, the plaintiff has come by way of this Second Appeal.



S.A.(MD)No.609 of 2005

2. According to the plaintiff, the suit property originally belonged to one Kandavel Naikkar and the Zamin patta issued by Ramanathapuram Samasthanam in patta No.7 stood in the name of Kandavel Naikkar. In the family arrangement that had taken place in his family, the suit property was allotted to the share of Nagalinga Naikkar, brother of Kandavel Naikkar. One Kochadai Moopanar filed a suit in S.C.No.159 of 1947 for recovery of amount due from Nagalinga Naikkar and obtained a decree. In the execution proceedings, suit property was brought to Court auction sale and the suit property was purchased by Kochadai Moopanar. Subsequently, he sold the suit property to the plaintiff under registered document dated 17.09.1952. From that date onwards, the plaintiff has been in possession and enjoyment of the suit property. The defendants without having any manner of right attempted to interfere with the plaintiff's possession. Therefore, a notice was sent on 31.01.1979, questioning the illegal act of the defendants. Thereafter, the defendants refrained from interfering with the plaintiff's possession. Again the defendants started interference with the possession of the plaintiff claiming that they proposed to auction the palm trees stand in the suit property. In these circumstances, the plaintiff was constrained to file a suit for declaration and injunction.



S.A.(MD)No.609 of 2005

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3. The defendants filed a written statement and denied the title as well as the possession of the plaintiff over the suit property. It was the case of the defendants that the suit property was classified as “river poramboku” in the survey settlement proceedings as early as 1956 and the palm trees stand in the river proamboku were never enjoyed by the plaintiff. It was also claimed by the defendants that they used to auction the usufructs of the palm trees regularly. It was also claimed that the plaintiff worked as Village Munsif earlier and his claim that classification of the suit property in the records were not known to him could not be accepted. On these pleadings, the defendants sought for dismissal of the suit.

4. Before the trial Court, the plaintiff was examined as P.W.1 and yet another witness was examined as P.W.2. On behalf of the plaintiff, 13 documents were marked as Ex.A1 to Ex.A13. On behalf of the defendants, one Dhanasekaran was examined as D.W.1 and three documents were marked as Ex.B1 to Ex.B3. The Advocate Commissioner’s plan and report were marked as Ex.C1 and Ex.C2



S.A.(MD)No.609 of 2005

5. The trial Court, on appreciation of oral and documentary evidence available on record, found that the plaintiff failed to prove his title as well as possession over the suit property and consequently, dismissed the suit. Aggrieved by the same, the plaintiff preferred an appeal in A.S.No.25 of 2002 on the file of Subordinate Court, Aruppukkottai. The first appellate Court affirmed the findings of the trial Court. Aggrieved by the concurrent findings, the plaintiff has approached this Court by way of this Second Appeal.

6. The learned counsel for the appellants submitted that the documents filed by the plaintiff established his pre-existing right over the suit property and merely because, the suit property has been wrongly classified as river poramboku, in the settlement proceedings initiated under the “Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948”, [hereinafter referred to as “the said Act”] the title of the plaintiff will not get extinguished. The learned counsel further submitted that the Courts below by taking into consideration the land allotted to brother of Nagalinga Naikkar viz., Kandavel Naikkar came to an erroneous conclusion as if patta was given for larger extent to the plaintiff than what he was actually entitled to.



S.A.(MD)No.609 of 2005

WEB COPY

7. A perusal of the oral and documentary evidence available on record would suggest that Ramanathapuram Samasthana patta was issued in the name of Kandavel Naikkar in relating to the land in old Paimash No.198 with an extent of 2 acres 70 cents. The plaintiff produced old tax receipts to prove his enjoyment prior to coming into force of the said Act. As per the case of the plaintiff, his predecessor in interest viz., Nagalainga Naikkar, brother of original owner Kandavel Naikkar was allotted with half share of Eastern side. [1acre 35 cents]. Ex.A7 was a notice issued to the sons of Nagalinga Naikkar and the plaintiff on 08.04.1957. In settlement proceedings initiated under the said Act, under Ex.A7, the plaintiff was given settlement patta only for 94 cents in New S.No.51/6 in patta No.103. The same can be gathered from Ex.B1 “A” Register. Though the plaintiff claims right over 1 acre 35 cents by virtue of pre-existing right, under Ex.A7 notice issued in settlement proceedings, plaintiff was given patta only for 94 cents and the remaining extent was classified as river poramboku. The issue of patta of lesser extent viz., 94 cents was clearly admitted by P.W.1 in his cross examination and the relevant portion was extracted by the trial Court in its judgment. The same reads as follows:



S.A.(MD)No.609 of 2005

“வா.சா.ஆ.7ல் 94 சென்ட் என்றுதான் போடப்பட்டுள்ளது. 1957ல் செட்டில்மெண்ட் பட்டா கொடுத்தார்கள். நான் 94 சென்டுக்கு மட்டும் பட்டா கொடுத்ததற்கு அப்பீல் எதுவும் போடவில்லை. நான் போட்டுள்ள ரசீதுகள் இந்த 94 சென்டுக்கு மட்டும் சம்பந்தப்பட்டுள்ளது”

8. Therefore, it is clear that in the year 1957 itself patta was given to the plaintiff only for 94 cents. He clearly admitted that he has not questioned the issuance of patta for lesser extent by filing any appeal. He also admitted that the receipts produced by him are relating to the said 94 cents only. Taking into consideration the said fact, the trial Court came to the conclusion that the plaintiff was entitled to declaration only in respect of 94 cents as per Ex.A7 in S.No.51/6 and he is not entitled to declaration in respect of S.No.39, which was classified as river poramboku even in the year 1957. Hence, the suit was partly decreed and suit was dismissed in respect of remaining extent. The plaintiff has not produced any revenue document like tax receipt to show his possession over entire 1 acre 35 cents subsequent to 1957. EX.A7 clearly established that the plaintiff's title and possession was recognized only in respect of 94 cents in S.No.51/6 and the remaining extent in Old Paimash No.198 was classified as river poramboku in New S.No.39. The plaintiff has not questioned the same for nearly 35 years and the present suit has been filed only in the year 1993 claiming title over entire 1 acre



S.A.(MD)No.609 of 2005

35 cents in Old Paimash No.198. The plaintiff also mentioned the new survey number as 51/6. EX.B1 established that the extent of New S.No. 51/6 is only 94 cents. If Ex.A7 notice is taken as overt act on the part of the defendants in denying the title of the plaintiff in respect of remaining extent of the property in old Paimash No.198, except 94 cents in respect which patta was granted in his favour, nearly 35 years have gone and hence, the suit for declaration is hopelessly barred by limitation.

9. In view of the same, this Court holds the prayer for declaration in respect of entire extent in old Paimash No.198 is not maintainable as plaintiff questioned the same after 35 years. The suit claim is hopelessly barred by limitation. Therefore, I do not see any substantial question of law arising for consideration in the Second Appeal to interfere with the final conclusion of the Courts below. Accordingly, this Second Appeal stands dismissed. There shall be no order as to costs.

29.07.2024

NCC : Yes / No
Index : Yes / No

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S.A.(MD)No.609 of 2005

To

- 1.The Subordinate Judge, Aruppukkottai.
- 2.The District Munsif, Aruppukkottai.
- 3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.A.(MD)No.609 of 2005

S.SOUNTHAR, J.

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S.A.(MD)No.609 of 2005

29.07.2024