



S.A.(MD).No.244 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.03.2024

CORAM:

THE HONOURABLE **MRS.JUSTICE S.SRIMATHY**

S.A.(MD).No.244 of 2022

and

C.M.P.(MD)No.3215 of 2022

Pichai

... Appellant

Vs.

1.Perumal

2.District Collector,
District Collector Office Campus,
Collector Office, Maruthupandiarnagar,
Sivagangai Town, Sivagangai District.

3.District Revenue Officer,
District Revenue Office,
Maruthupandiarnagar,
Sivagangai Town, Sivagangai District.

... Respondents

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree in A.S.No.52 of 2015 on the file of the Subordinate Judge, Sivagangai, dated 16.07.2021, modifying the judgment and decree in O.S.No.180 of 2012 on the file of the District Munsif Court, Sivagangai, dated 15.06.2015.

For Appellant	: Mr.M.Ramu
For R1	: No appearance
For R2 & R3	: Mr.G.Suriyananth Additional Government Pleader



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JUDGMENT

The present second appeal is filed against the judgment and decree passed in A.S.No.52 of 2015 on the file of the Subordinate Judge, Sivagangai, dated 16.07.2021, modifying the judgment and decree passed in O.S.No.180 of 2012 on the file of the District Munsif Court, Sivagangai, dated 15.06.2015.

2. The first defendant Pitchai is the appellant herein and the plaintiff Perumal is the 1st respondent herein and the 2nd and 3rd defendants District Collector and District Revenue Officer are the 2nd and 3rd respondents herein. For the sake of convenience, the parties shall be referred as Plaintiff Perumal and 1st Defendant Pitchai and 2nd and 3rd Official Defendants as per the ranking in the suit.

3. The plaintiff Perumal had filed the suit in O.S.No.180 of 2012 to declare the order passed by the 3rd official defendant in Pa.Mu.B1/5309, dated 21.09.2012, as null and void and consequently, to restrain the 1st defendant Pitchai from interfering in the plaintiff Perumal's peaceful possession and enjoyment of



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the suit property.

4. The plaintiff Perumal has already filed a suit in O.S.No.198 of 1981 on the file of District Munsif Court for declaration and bare injunction in Old Survey No.64 and New Survey No.226/13 to an extent of 17 cents and the same was dismissed on the ground that the plaintiff Perumal had failed to prove his ownership, whereas the defendant Pitchai had proved his ownership. Aggrieved over the same, the plaintiff Perumal preferred appeal suit in A.S.No.116 of 1984 and the same was allowed by remanding the matter back to the Trial Court for framing additional issue whether the 1st Defendant Pitchai has absolute title and possession of the suit property and to consider the case. On such remand, the Trial Court has passed a judgment declaring that the said suit property belongs to the 1st Defendant Pitchai. Aggrieved over the same, a first appeal was preferred again in A.S.No.59 of 1988 and the same was dismissed on 30.06.1994 on the ground of non-joinder of necessary parties. Aggrieved over the same, the second appeal in S.A.No.1427 of 1994 was filed by plaintiff Perumal and the same was dismissed on the ground of non-joinder of Government as a party in the second appeal.



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5. Again, second round of litigation was started wherein the said plaintiff Perumal filed another suit adding the Government as one of the defendants in O.S.No.81 of 1995 praying for declaration and injunction and the same was dismissed stating that the scheduled property is classified as Natham. The said 1st Defendant Pichai had filed an appeal in A.S.No.20 of 1997 and the said plaintiff Perumal had preferred Cross Appeal. And both were heard together and it was held in favour of 1st Defendant Pitchai and was dismissed against plaintiff Perumal. Against which neither the plaintiff Perumal nor the Government / official defendants preferred any appeal, therefore, the same has attained finality. Based on the said judgment passed in A.S.No.20 of 1997, the said 1st Defendant Pichai had preferred a petition before the Revenue Divisional Officer to issue patta in his name and the same was granted. Aggrieved over the same, the said plaintiff Perumal had preferred an appeal before District Revenue Officer (DRO) and the said appeal was dismissed on 21.09.2012.

6. The said plaintiff Perumal started another litigation by filing another suit / the present suit in O.S.No.180 of 2012 to declare the order passed by the 3rd official defendant in Pa.Mu.B1/5309, dated 21.09.2012, as null and void and



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consequently, to restrain the 1st defendant Pitchai from interfering in the plaintiff Perumal's peaceful possession and enjoyment of the suit property and the same was dismissed by rendering a finding that plaintiff Perumal failed to prove his title and possession. Aggrieved over the same, the said plaintiff Perumal preferred an appeal in A.S.No.52 of 2015 and the Appellate Court dismissed the appeal, however directed the Government to restore the Schedule property as Puramboke land and declined the relief to the 1st Defendant Pichai as well. Aggrieved over the same, the present second appeal is preferred.

7. The present second appeal was admitted on the following substantial questions of law:

“(a) Whether the Natham Pormboke land always vested with the Government?”

“(b) Whether the suit for permanent injunction can be decreed without deciding the title of the plaintiff, when the title of the plaintiff specifically denied by the defendants?”

“(c) Whether the Appellate Court is correct in cancelling the patta issued in favour of the appellant without deciding the title of the plaintiff?”



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8. The contention of the 1st Defendant Pichai is that the revenue records have classified the land as Natham, patta was also issued by the official respondents recognizing the occupation of the 1st Defendant Pitchai. In such circumstances, the Natham patta cannot be cancelled. After hearing the said submission, this Court is of the considered opinion it is a settled proposition that once a person is in occupation of Natham land, he is entitled to Natham Patta. Then the land cannot be considered as Government Puramboke. Further if it is Natham then the Government cannot claim any right over the property. If the land is classified as Puramboke land, then the land vests with the government and no person is eligible to patta. In the present case according to the 1st Defendant Pitchai the land is classified as Natham and according to the government the land is classified as Puramboke. But the official respondents District Collector and the District Revenue Officer has not filed any records to show that the land is classified as Puramboke. Without any records the Appellate Court had come to the conclusion that the land is Puramboke. Admittedly the patta to the 1st Defendant Pitchai was granted based on the earlier judgment rendered in A.S.No.20 of 1997. In the judgments there is no discussion whether the land is “Natham” or “Puramboke”. Interestingly the Appellate Court has used the phrase “Natham



Puramboke”. It can be either Natham or Puramboke. Therefore, the Appellate Court had erred in treating the land as “Natham Puramboke, when such classification is not available. Further on such pretext had directed the official respondents to cancel the patta granted to the 1st Defendant Pitchai and hence the same is erroneous. Hence the first substantial question of law is answered in favour of the appellant Pitchai.

9. The next contention of the 1st Defendant Pitchai is that originally the property belongs to one Vallikannu Ammal wife of Verabathra Pillai. Thereafter the said Vallikannu Ammal had sold the property vide registered sale deed dated 06.08.1941 to one Manikam Pillai. Thereafter the said Manikam Pillai had sold the said property to the 1st Defendant Pitchai vide registered sale deed dated 21.04.1981. Further the northern side of the suit property was settled in favour of the daughter of the said Manikam Pillai namely Subbulakshmi on 10.07.1980. Thereafter the 1st Defendant Pitchai had purchased the said land from the said Subbulakshmi through registered sale deed dated 21.04.1981. The said Mainkam Pillai was having Natham Patta in his name and after the above sale the present 1st Defendant Pitchai is also entitled to the said Natham Patta. The further contention



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of the 1st Defendant Pitchai is that the plaintiff Perumal with an intention to purchase the suit property had approached the said Manikam Pillai but the said Manikam Pillai had declined to sell the property to the said Manikam Pillai but sold the property to the 1st Defendant Pitchai. Hence with vengeance the said Perumal is disturbing the peaceful enjoyment of the property and on this factual matrix the 1st Defendant Pitchai had filed the earlier suit and finally succeeded in A.S.No.20 of 1997. Based on the said judgment and decree, the patta was issued to 1st Defendant Pitchai. To substantiate this the 1st Defendant Pitchai had filed the Judgments and Decrees granted in O.S.No.198 of 1981 and A.S.No.116 of 1984, then in O.S.No.59 of 1988 and A.S.No.20 of 1997. The title of the 1st Defendant Pitchai was denied by the plaintiff Perumal. But the Plaintiff Perumal has not filed any piece of evidence to substantiate his rights over the suit property. Infact the present suit in O.S.No.180 of 2012 is filed to set aside the order passed by the 3rd official defendant and except this order which is marked as Ex.A1, no other evidence is filed and this is the only document filed in the suit by the plaintiff Perumal. When the plaintiff Perumal had not filed any other documentary evidence to prove his right over the property, it cannot be said that the title of the 1st Defendant Pitchai is denied by the plaintiff Perumal. Moreover, if any person is



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denying the title of the other person there should be some prima facie evidence to deny the title. Without an iota of evidence, a simple bare denial cannot be entertained. And such simple bare denial over title will not constitute an issue between the parties and “Issues” need not be framed for such simple bare denial.

10. Further, it is seen that the title issue between the plaintiff Perumal and 1st Defendant Pitchai was already discussed in the judgment passed in O.S.No.198 of 1981. On perusal of the said judgment, it is seen that the plaintiff Perumal is claiming right over the property under the legal principle of “adverse possession” and the same was denied in the said judgment. When the plaintiff Perumal is claiming adverse possession, then it amounts to accepting the title of the 1st Defendant Pitchai. On the other hand, the 1st Defendant Pitchai is claiming title over the property through the sale deeds and other deeds referred supra.

11. Further, it is seen that the revenue official has granted patta through order dated 12.09.2008, marked as Ex.B1, wherein in the said order it has been observed that S.No.226/13 is entered in the revenue register as “Sarkar



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manai” (house plot) and S.No.226/14 is entered as “pathway”. Therefore, the revenue official had granted patta to the 1st Defendant Pitchai as far as S.No. 226/13 but denied patta for S.No.226/14 which is classified and marked as “pathway”. In the said order it is further observed that on the northern and eastern side of the S.No.226/13 and 226/14, there are lands which are classified as “Nanja” lands. The land on the northern side in S.No.66/5 belongs to one V.Pambaian, S.No.66/6 belongs to 1st Defendant Pitchai and the land on eastern side in S.No.66/7A belongs to plaintiff Perumal. Further the pathway in S.No. 226/14 is used as pathway from Kuyavunadapu Kudiyirupu to the nanja lands stated above. Furthermore, in the said order it is observed that the plaintiff Perumal had not filed any piece of evidence to show that the land in S.No.226/13 belongs to him. But on the other hand, the 1st Defendant Pitchai had filed the copy of the judgments marked as ExB2 to 5, in turn the judgments had stated that the 1st Defendant Pitchai had sale deeds. Curiously the Village Administrative Officer had deposed before the revenue official that the land in S.No.226/13 is vacant place and classified as Sarkar manai means house plot. The revenue official based on the above factors had issued patta to the 1st Defendant Pitchai. After perusing the above factors stated in the documents marked as Ex.B1 to 5, this Court is of



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the considered opinion that the land in 226/13 is only manai means house plot and the same is classified as Natham. Even though the phrase “Sarkar manni” is used at some places and “Natham Puramboke” is used in some places and “Natham” in some places, this Court is of the considered opinion that suit property ought to be taken as “Natham” since the original owner was granted “Natham” patta. Further on description of land, it is seen the land in S.No.226/13 is in between nanja lands and 226/14 is used as pathway. In such circumstances, the above land in 226/13 can never be puramboke land at all and it ought to be either nanja land or natham land. Hence the classification of land in S.No.226/13 is only “Natham” and not “Puramboke”.

12. When the plaintiff Perumal is claiming right over the property under the legal principle of “adverse possession” and the same was denied in the earlier judgements and when the plaintiff Perumal had not produced an iota of evidence to prove his title over the suit property, therefore this Court is of the considered opinion that the plaintiff Perumal is not having any title over the suit property. Hence, this Court is of the considered opinion that the 1st Defendant Pitchai had proved better title over the suit property through sale deeds, natham patta in the



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name of the original owner and the report of Village Administrative Officer is in favour of the 1st Defendant Pitchai, hence the order dated 12.09.2008 of the Revenue Divisional Officer and the order dated 21.09.2012 of 3rd official defendants are absolutely sustainable. Hence the second substantial question of law “Whether the suit for permanent injunction can be decreed without deciding the title of the plaintiff, when the title of the plaintiff specifically denied by the defendants?” is answered in favour of the 1st Defendant Pitchai, since the plaintiff Perumal had not proved the title over the suit property and consequently the plaintiff Perumal is not entitled to the injunction.

13. Even though this Court had answered the second substantial question of law in favour of the 1st Defendant, this Court is of the considered opinion that the said substantial question of law is unnecessary. In the present case when the 1st Defendant had denied the title of the Plaintiff Perumal, then the plaintiff Perumal ought to have filed the suit for declaration and injunction. However, the plaintiff Perumal had filed the suit to declare the impugned order passed by the 2nd and 3rd defendants declining patta to the plaintiff Perumal and consequently injunction against 1st defendant. When declaration of title was not prayed then the suit is bad



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in law. Interestingly the declaration of title between parties is already decided in O.S.No.198 of 1981 and A.S.No.116 of 1984, then in O.S.No.59 of 1988 and A.S.No.20 of 1997. Further there is no appeal filed after the judgment and decree passed in A.S.No.20 of 1997 and it has attained finality. Hence the second substantial question of law is answered against the plaintiff Perumal.

14. The next substantial question of law is “Whether the Appellate Court is correct in cancelling the patta issued in favour of the appellant without deciding the title of the plaintiff?”. It is seen already the title of the plaintiff Perumal is decided in A.S.No.20 of 1997 wherein it is held that the plaintiff Perumal is not having title over the suit property and the claim of adverse possession is declined by the courts. And against the same appeal is not preferred, hence the same had attained finality. This Court has also held that the plaintiff Perumal has not produced an iota of evidence to prove his title and on the other hand the 1st Defendant had proved his title through sale deeds. Therefore, this Court is of the considered opinion that the plaintiff Perumal has no title over the property. On the other hand the appellate court had erred in cancelling patta granted in favour of the 1st defendant Pitchai and the 3rd substantial question of law is held in favour of



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the 1st defendant Pitchai.

15. Finally this Court is of the considered opinion that the 1st defendant / appellant is claiming title over the property through the said sale deeds, hence, the plaintiff Perumal cannot have any grievance at all, since he was not even having any iota of evidence. Therefore, the First Appellate Court has erred in passing the impugned judgment, hence the same is set aside. The patta granted to the 1st Defendant / appellant Pitchai by the District Revenue Officer is absolutely sustainable in law.

16. It is submitted that the patta was cancelled by the official respondents based on the impugned judgment of the First Appellate Court. Therefore, the official respondents are directed to issue patta in the name of the appellant Pitchai. The said exercise shall be completed within a period of six weeks from the date of receipt of a copy of this judgment. That portion of the judgment and decree passed in A.S.No.52 of 2015 on the file of the Subordinate Judge, Sivagangai, dated 16.07.2021 against the 1st defendant / appellant Pitchai alone is set aside by



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this Court. With the above said observations, the second appeal is allowed in above terms. No costs. Consequently, connected miscellaneous petition is closed.

07.03.2024

Index : Yes / No

NCC : Yes / No

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TO:

1. The Subordinate Judge,
Sivagangai.
2. The District Munsif Court,
Sivagangai.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.
4. District Collector,
District Collector Office Campus,
Collector Office, Maruthupandiarnagar,
Sivagangai Town, Sivagangai District.
5. District Revenue Officer,
District Revenue Office,
Maruthupandiarnagar,
Sivagangai Town, Sivagangai District.



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S.SRIMATHY, J.

Tmg

Judgment made in
S.A.(MD)No.244 of 2022

Dated:
07.03.2024