



S.A.(MD).No.244 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.02.2024

CORAM

THE HON'BLE MRS.JUSTICE S.SRIMATHY

S.A.(MD).No.244 of 2021

and

C.M.P.(MD)No.4914 of 2021

- 1.Seenivasan (died)
- 2.Rajamaniammal
- 3.Seenichamy
- 4.Tamilselvi
- 5.Jayalakshmi
- 6.Ganeshkumar
- 7.Chinnathambi

... Appellants

--Vs--

- 1.Ramakrishnasamy@Ramakrishnan
- 2.Ramaraj
- 3.Vijayaraman
- 4.Vijayalakshmi
- 5.Valarmathi

...Respondents

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the Decree and Judgment passed in A.S.No.55 of 2012 dated 18.12.2019 on the file of the Sub Court, Kovilpatti, confirming the Decree and Judgment in O.S.No.222 of 2010 dated 03.04.2012 on the file of the District Munsif Court, Kovilpatti.

For Appellants : Mr.H.Lakshmi Shankar
For R1 : Mr.Pon Senthil Kumaran
For R2 to R5 : No appearance



JUDGMENT

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The present second appeal is filed by the 4th defendant in the suit against the judgement and decree dated 18.12.2019 passed in A.S.No.55 of 2012, which was passed confirming the judgement and decree passed in O.S.No.222 of 2010 dated 03.04.2012.

2. The plaintiff in the suit is the 1st respondent herein, the 4th defendant in the suit is the appellant herein and the defendants 1 to 3 in the suit are the respondents 1 to 3 herein. Pending second appeal the sole appellant / 4th defendant died and his legal heirs are impleaded as appellants 2 to 7. The 5th respondent in the present second appeal is one of the legal heirs of the deceased sole appellant / 4th defendant, but added as 5th respondent in the second appeal. For the sake of convenience, the parties are referred as plaintiffs and defendants as per the ranking in the suit.

3. The plaintiff had filed the suit to declare the suit schedule property belongs to the plaintiff and to grant injunction restraining the defendants from interfering with the peaceful possession and enjoyment of property and to declare the sale deed dated 24.10.2001 executed by defendants 1 to 3 in favour of 4th defendant as null and void. After considering the plaint, written statement,



documentary evidence and depositions the Trial Court had allowed the suit.

Aggrieved over the same the 4th defendant in the suit had preferred First Appeal and the same was dismissed. Aggrieved over the same the present second appeal is preferred by the 4th defendant.

4. The brief facts as stated by the plaintiff are that the suit scheduled property and other property originally belonged to his father namely Kondappa Gounder. The said Kondappa Gounder had two wives. Through first wife Meenakshi Ammal he had two sons, namely Ramakrishnasamy @ Ramakrishnan, the plaintiff herein and Ramaraj, the 1st defendant herein and three daughters namely Thaiyammal, Ramalakshmi and Kondammal. Through second wife Shanmugathai Ammal he had three sons and one daughter. He died intestate in the year 1976 and the legal heirs had divided the properties through oral partition, wherein half of the properties were allotted to the first wife children and the other half was allotted to the 2nd wife children. In the year 1985 the said Meenakshi Ammal, her daughters, plaintiff and the 1st defendant had again divided all the properties through oral partition, which they had received through the earlier partition. In the said partition the S.No.194/1 was allotted to the plaintiff along with other properties. In the said S.No.194/1, the western side portion was allotted to the plaintiff to an extent of 0.39.0 hectare and patta dated 26.09.1986 in Patta No.499



S.A.(MD).No.244 of 2021

was issued marked as Ex.A-1. Subsequently the said land was subject to land acquisition proceedings in the year 2009 by National Highways Authority, wherein 0.07.1 hectare was acquired and S.No.194/1A1 was assigned. The balance land was sub divided as S.No.194/1A2 and patta was issued to the plaintiff and thereafter the plaintiff was in possession and enjoyment of the properties by paying tax. While that being so, the plaintiff obtained Encumbrance Certificate in the year 2010 and was shocked to note that the suit schedule property was sold vide sale deed dated 24.10.2001 to the 4th defendant by the 1st defendant (who is the brother of the plaintiff) for himself and as guardian for his minor sons marked as Ex.A-11/Ex.B-2. Hence the plaintiff had issued suit notice dated 24.07.2010 and the same was received by the 1st defendant on 27.07.2010 and sent a reply on 26.08.2010 stating false case. The 4th defendant received the notice on 27.07.2010 but had not replied. Thereafter the plaintiff had received notice from Tahsildar regarding issuance of patta to the 4th respondent and the Tahsildar had issued notice based on the order passed in W.P.(MD)No. 8610 of 2010. The plaintiff had attended the hearing but the defendants had not appeared. Then the plaintiff had taken efforts to get the said sale deed cancelled through negotiation, but did not succeed, hence the plaintiff was constrained to file the suit.



5. The 4th defendant had filed written statement, wherein it is stated that the defendant had admitted that the property originally belongs to Kondappa Gounder. But the other contents of the plaint were denied and the same ought to be proved by the plaintiff. The 4th defendant denies the suit property was allotted to the plaintiff in the year 1989 through oral partition and submitted that the suit property is allotted to the 1st defendant and had relied on Ex.B-1 patta issue in the name of the 1st defendant. Based on the said patta the 1st defendant had sold the suit property through the sale deed dated 24.10.2001 to the 4th defendant marked as Ex.B2. The 4th defendant further relies on the Ex.B5 sale deed dated 24.10.2001 executed by the legal heirs of the 2nd wife in favour of the 4th defendant. Further submitted that the plaintiff and the 1st defendant had colluded and filed the present suit and hence prayed to dismiss the suit.

6. The defendants 1 to 3 had not filed any written statement and had remained exparte in the suit. The Trial Court after scrutinizing the pleadings, exhibits and depositions had allowed the suit. Aggrieved over the same the 4th defendant had preferred the first appeal and the same was dismissed. Aggrieved over the same the present appeal is filed. The second appeal is admitted on the following Substantial Questions of Law:



“(a).Are the courts below justified in declaring plaintiff’s title based on UDR scheme patta whose basis remains unproved while ignoring and rejecting Ex.B-1 issued as per the Tamil Nadu Patta Passbook Act in favour of the 1st defendant and which is entitled to a statutory presumption of correctness and prima facie title in favour of the 1st defendant?”

(b) Whether the courts below are justified in granting decree of title and a declaration of invalidity of a sale deed dated 24.10.2001 in a suit filed after 9 years and in the light of the admission of PW1 that he was aware of another sale deed (Ex-B5) registered on the same day for the adjacent property, which falsify the cause of action pleaded?

(c). Are the courts below justified in drawing adverse inference for non - examination of the 1st defendant when the burden is on the plaintiff to rebut the statutory presumption in favour of Ex.B1 as per section 4 and section 6 of the Tamil Nadu Patta Passbook Act 1983 and also in the light of the apparent collusion between plaintiff and the 1st defendant?”

7. The plaintiff and the defendants admitted that originally the suit schedule property along with several other properties belongs to one Kondappa Gounder, who is the father of the plaintiff and 1st defendant. Also admit the said Kondappa Gounder died intestate in the year 1976 and the legal heirs born through two wives divide the properties through oral partition. But the contention of the plaintiff that thereafter there was oral partition in the year 1985 among the legal heirs of the 1st wife and the suit property was allotted to the plaintiff under



UDR patta under Ex.A-1 is denied by the 4th defendant. And submitted that the suit property was allotted the 1st defendant which would be evident from the Patta issued to the 1st defendant under Tamil Nadu Patta Passbook Act marked as Ex.B-1 and based on the said Patta Passbook under the Act, the 1st defendant had sold the suit property to the 4th defendant. It is seen that Ex.A-1 was issued in the name of the plaintiff but on perusing the same there is over writing in the patta. Initially S.No.119/1A was stated, but the same was struck down, then over written as 194/1A. Hence the validity of Ex.A-1 is questionable. Based on this alleged patta the other revenue documents namely kists were issued in Ex.A3, A4 to A7 and the same is also not reliable, since it is issued based on Ex.A-1. Based on the said UDR patta the payment made to plaintiff under acquisition proceedings also cannot be relied on. In short any subsequent documents issued by relying on Ex.A1 cannot be relied on. The PW2, who is the Revenue Sub Inspector from Taluk Office had deposed that the patta under UDR was issued not based on the application from the plaintiff, but by the government suo motu. This is confirmed by the DW2 who is Revenue Tahsildar. Whereas he has admitted that the patta issued under Patta Passbook Act would be issued based on the application from the individual. Moreover, it is admitted by PW1 and DW2, the said patta under the Patta Passbook Act would be issued after issuing notice to all interested parties. In such circumstances, the patta issued to the 1st



defendant under the Patta Passbook Act ought to be construed as issued after issuing notice to the plaintiff. Infact the plaintiff while deposing had admitted the fact that he is aware of Patta Passbook issued to the 1st defendant under the Patta Passbook Act. It is seen that the said patta was issued to the 1st defendant on 21.12.1996, when the plaintiff is aware of the said fact, then the plaintiff ought to have taken action to cancel the same. The plaintiff had admitted he had not taken any action to cancel the patta. On the other hand, it is seen that the patta issued to the plaintiff under UDR was issued without issuing any notice to the interested parties. Moreover, the same was issued without any application from the plaintiff, but was issued suo motu by the government as stated by the DW2 in his deposition. Therefore, this Court is of the considered opinion that when the patta is issued under Patta Passbook Act, which is a Statutory Act has more value than the patta issued under UDR Scheme. Hence the 1st substantial question of law is answered in favour of the 4th defendant / appellant.

8. Further it is to be seen that the 4th defendant had relied on the Patta Passbook and had purchased the property for valuation sale consideration and hence the 4th defendant is a bonafide purchaser and is entitled to the protection.



9. The Learned Counsel appearing for the 4th defendant brought to the knowledge of this Court that the plaintiff and the 1st defendant are residing in the same house while the suit notice was issued. On perusing the address stated in the notice and reply notice it is seen that both the plaintiff and the 1st defendant are residing in same village and in same “Mela Theru”. In the plaint also the address of both the plaintiff and the defendant are mentioned as “Mela Theru”. On perusing the alleged sale deed marked as Ex.A4 executed by the 1st defendant in favour of the plaintiff, the address of both the plaintiff and the 1st defendant is mentioned as “Door No.59A”. The 1 to 3 defendants remaining exparte and staying under same roof along with the plaintiff would indicate that the plaintiff and the defendants 1 to 3 are colluded with each other and hence adverse inference ought to be drawn against the plaintiff and the 1st defendant. But the Courts below had shifted the burden on the 4th defendant and had held that the 4th defendant had not produced the 1st defendant to prove the sale deed. This Court is of the considered opinion when the plaintiff and the 1st defendant are brothers, when they reside under the same house, then the burden is more on the plaintiff to prove that the property belongs to the plaintiff. But the plaintiff had not proved by relying on convincing evidence. If the case of the plaintiff is accepted for arguments sake, when the 1st defendant is remaining exparte, then adverse inference can be drawn that the 1st defendant had cheated the 4th defendant. Further in the present case the plaintiff is



aware of the Patta Passbook issued to the 1st defendant, as admitted in his deposition and the same was not cancelled, the plaintiff had not taken any steps to cancel, then it is conclusively proved that the plaintiff and the 1st defendant had cheated the 4th defendant. Based on their close relationship and based on the fact they are residing under the same roof, this Court is of the considered opinion that the plaintiff and the 1st defendant are colluded and cheated the 4th defendant.

10. The 2nd substantial question of law when the plaintiff is aware of the sale deed marked as Ex.B5, whether the suit filed beyond 9 years, can the sale deed executed in favour of the 4th defendant set aside. It is seen that the property in S.No.194/1 admeasuring 1.89 cents originally belongs to the Kondappa Gounder. After his demise the said property was divided and one portion admeasuring 96 cents was allotted to the legal heirs of 1st wife and the other portion admeasuring 96 was allotted to the legal heirs of the 2nd wife. The 4th defendant had purchased in the name of his wife the said other portion of the land in the same S.No.194/1 belonging to the legal heirs born through 2nd wife namely Marimuthu son of Kondappa Gounder through sale deed dated 24.10.2001 marked as Ex.A5. It is on the same day on 24.10.2001 the 4th defendant had purchased that portion of the land in the same S.No.194/1 allotted to the legal heirs born through the 1st wife namely Ramaraj son of Kondappa Gounder, the 1st defendant herein. The plaintiff



S.A.(MD).No.244 of 2021

had admitted that he is aware of the purchase by the 4th defendant from the said Marimuthu son of Kondappa Gounder. Hence it is highly improbable that the plaintiff is not aware of the said sale deed executed in the year 2001 by the 1st defendant. Therefore, this Court is of the considered opinion that when the plaintiff is aware of the sale executed in the year 2001, then the suit filed in the year 2010 cannot be entertained, since there is not cause of action. Infact the same is beyond the period of limitation. Even as per the plaintiff he came to know of the sale deed dated 24.12.2001 when he had obtained encumbrance certificate in the year 2010, but the plaintiff had not stated what triggered him to obtain encumbrance certificate and verify the same. This would further confirm that the plaintiff and the 1st defendant are colluded with each other. Infact the plaintiff is aware of the patta 21.12.1996 issued to the 1st defendant under the Patta Passbook Act as admitted in his deposition. Hence, the suit is a vexatious suit. Therefore, the 2nd substantial question of law is held in favour of the 4th defendant / appellant.

11. The next substantial question of law is that whether the Courts are justified in drawing adverse inference for non - examination of the 1st defendant when the burden is on the plaintiff to rebut the statutory presumption in favour of Ex.B1 as per section 4 and section 6 of the Tamil Nadu Patta Passbook Act 1983 and also in the light of the apparent collusion between plaintiff and the 1st



defendant? In order to consider this issue it is necessary to analyse the section 4 and 6 of the Patta Passbook Act. The relevant portion is extracted hereunder:

“4. Presumption of correctness of entries in the patta pass book.

- The entries in the patta pass book and the certified copy of entries in the patta pass book shall be presumed to be true and correct until the contrary is proved or a new entry is lawfully substituted therefor.

5. ...

6. Entries in the patta pass book to be prima facie evidence of title.

- The entries in the patta book issued by the Tahsildar under section 3 shall be prima facie evidence of title of the person in whose name the patta pass book has been issued to the parcels of land entered in the patta pass book, free of any prior encumbrance, unless otherwise specified therein.”

Under section 4 when there is presumption that the entries are true and correct, then the burden is on the person who denies such entry. In the present case the plaintiff had admitted that the S.No.194/1A is entered in the patta passbook issued to the 1st defendant on 21.12.1996 and also admitted that he is aware of the such entry in the patta passbook. Then the burden is on the plaintiff to prove that the entry is incorrect. As held supra when the plaintiff and 1st defendant are brothers residing under same roof and the 1st defendant remaining exparte and the statutory



presumption under section 4 is available to the 4th defendant, then adverse inference ought to be drawn against the plaintiff and the 1st defendant. Further the same is only collusion. But the Courts below had failed of analyse the case in the angle of collusion. Further the Courts below had not taken the plea of adverse inference. Hence the courts below had erred.

12. Under section 6 it is stated that the entry in the patta passbook under the Act would be prima facie evidence of title, free from any prior encumbrance. When the provision states that the entry is free from any prior encumbrance then the earlier entry of patta under UDR ought to be taken as nullified or cancelled. The provision is qualifying the word “encumbrance” by sufficing the word “prior”, which means any patta issued prior to entry made in Patta Passbook are cancelled and there is no encumbrance. In the present case the UDR patta was issued to the plaintiff on 26.09.1986 and the Patta Passbook was issued on 21.12.1996, hence under section 6 the earlier patta issued on 26.09.1986 is cancelled and the land is free from “prior encumbrance”. In such circumstances, the Ex.A-1 issued on 26.09.1986 cannot be relied on and any documents issued following the said Patta dated 26.09.1986 cannot be relied on. When the statutory provisions are in favour of the 4th defendant, then the plaintiff ought to have proved by producing the 1st defendant as witnesses to prove his case. If not adverse



S.A.(MD).No.244 of 2021

inference ought to be drawn against the plaintiff. Moreover the plaintiff ought to prove his case and cannot stand on the 4th defendant's lapse. But the Courts had placed the burden of proof on the 4th defendant erroneously. Based on the above observations, the 3rd substantial question of law is held in favour of the 4th defendant / appellant.

13. For the reasons stated supra, the second appeal is allowed. The Judgment and Decree passed in A.S.No.55 of 2012 dated 18.12.2019 on the file of the Sub Court, Kovilpatti confirming the Judgment and Decree passed in O.S.No. 222 of 2010 dated 03.04.2012 on the file of the District Munsif Court, Kovilpatti, is set aside. No costs. Consequently, connected Miscellaneous Petition is closed.

16.02.2024

Index : Yes / No
NCC : Yes / No

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To



S.A.(MD).No.244 of 2021

1.Sub Court, Kovilpatti.

2.District Munsif Court, Kovilpatti.

3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.A.(MD).No.244 of 2021

S.SRIMATHY, J.

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S.A.(MD).No.244 of 2021

16.02.2024