



S.A.(MD)No.803 of 2006

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 13.08.2024

PRONOUNCED ON : 23.08.2024

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

S.A.(MD)No.803 of 2006

S.Thirumeni alias Bakiavathi ... Appellant
Vs.

- 1.Maruthanayagam
- 2.Shanmuga Thevar
- 3.Bakkiathai
- 4.Duraisingh
- 5.Christopher

(Memo dated 26.04.2023 filed on 27.04.2023 in U.S.R.No.14719 is recorded, as the respondents 2 to 5 set ex-parte before the I Appellate Court vide Court order dated 28.04.2023 in S.A.(MD)No.803 of 2006)

- 6.Vasigara Thilagar
- 7.Thangaraj (died)
- 8.Subbulakshmi (died)
- 9.Subbammal
- 10.Mutharasu (died)
- 11.Sivasubramaniam (died)
- 12.Venkatachalam
- 13.Duraimurugan
- 14.Kannan
- 15.Vanamamalai



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(Guardianship discharged vide order dated 25.09.2014 made M.P.No.4 of 2014)

- 16.Marudanayagam
- 17.Petchiammal
- 18.M.Aruna
- 19.M.Annalaxmi
- 20.M.Arunkumar

(Respondents 17 to 20 are brought on records as LR's of the deceased 10th respondent vide order dated 22.09.2014 in M.P.Nos.1 to 3 of 2014)

- 21.Rajeswari
- 22.Jayakanchana Murugeswari
- 23.Amudha Vasugidevi
- 24.Jayalakshmi
- 25.Bhuvaneswari
- 26.Venkatasubramanian (died)
- 27.Karthikeyan
- 28.Ezhilarasi

(Respondents 21 to 28 are brought on records as LR's of the deceased 7th respondent vide order dated 25.09.2014 made M.P.Nos.1 and 2 of 2010)

- 29.Pandeeshwari
- 30.Asmitha Jeyajothi
- 31.Minor Amitha Jeyajothi

(Minor respondent no.31 represented through her mother and guardian Mrs.Pandeeshwari, 29th respondent)

(Respondents 29 to 31 are brought on record as LR's of the deceased R26)

- 32.Thangapandi
- 33.Rajathi



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34.Raja Sivasubramanian
35.Arumugakkani
36.Arunachalam (died)
(Respondents 32 to 36 are brought on record as LR's of the deceased R8)
37.A.Thambiratti
38.Indhu (minor)
(R38 represented through her natural guardian, mother R37)
(R37 and R38 are brought on record as LR's of the deceased R36)

(Memo dated 25.04.2023 in U.S.R.No.14469 is recorded as respondents 26, 8 and 36 died and their LR's are brought on record, vide order of this Court dated 24.04.2023 in S.A.(MD)No.803 of 2006)

... Respondents

Prayer: Second Appeal filed under Section 100 C.P.C. against the judgment and decree dated 27.11.2000 in A.S.No.110 of 1997, on the file of I Additional subordinate Judge, Tirunelveli, confirming the judgment and decree dated 21.12.1996 in O.S.No.1285 of 1985, on the file of Principal District Munsif, Tirunelveli.

For Appellant : Mr.H.Lakshmi Shankar

For Respondents : Mr.J.Barathan for R6
Mr.K.Sathiya Singh for R9, R13 and R14
Mrs.S.Annal Ranjani
for R12, R15, R17 to R20, R32 to R35
R37, R38
Mr.P.Thiagarajan for R16
Mr.S.Haja Mohideen Gisthi for R27
R7, R8, R10, R11, R26 & R36 - Died
No appearance for R21 to R25
R28 to R31
R1 died vide EB
R2 to R5 exparte



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JUDGMENT

The appellant has preferred this appeal against the judgment and decree dated 27.11.2000 in A.S.No.110 of 1997 on the file of the I Additional subordinate Judge, Tirunelveli, confirming the judgment and decree dated 21.12.1996 in O.S.No.1285 of 1985 on the file of Principal District Munsif, Tirunelveli

2. For the sake of convenience, the parties are referred to as per their ranking in the Original Suit.

3. The plaint averments are as follows.

3.1. The suit schedule properties and other items of properties situated at Uttamapandiankulam Village are classified as inam properties. The entire properties in Uttamapandiankulam village are classified as inam properties and the same were taken by the State Government as per the Act 26/63. While so, the Settlement Tahsildar, Kovilpatti had conducted an enquiry and declared the suit schedule properties and some other items of properties as Tharisu lands. Therefore, the plaintiffs and



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others made an appeal before the Revenue Authorities in Appeal Nos.384 and 394 of 1968. The Inam Abolition Tribunal after hearing the appeals, remanded the same to the Settlement Tahsildar, Kovilpatti, for re-enquiry. The Settlement Tahsildar after conducting an enquiry, decided that the suit schedule properties are 'Tharisu Lands' and passed an order dated 31.07.1991. Hence, the plaintiffs and others again made an appeal in Appeal No.182/1971 before the Minor and Inam Abolition Tribunal and pleaded to grant patta. Accordingly, the Minor Inam Abolition Tribunal set aside the orders of the Settlement Tahsildar and directed to issue a patta in the names of the plaintiffs and others. In the said proceedings, the first defendant, namely, B.S.Isac Durai had participated as a party. Against the order of the Tribunal, no one has filed an appeal or revision and as such, the order of the Minor Inam Abolition Tribunal dated 17.04.1974 has become final. The said order is binding on the first defendant. The defendants 2 and 3, namely, Maruthanayagam and Shanmuga Thevar purchased the subject properties from the joint owners and as such, the plaintiffs and defendants 2 and 3 have become the owners of the suit schedule properties and they are enjoying the same



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jointly without any interference. Therefore, the plaintiffs are absolute owners of the properties. Further, as per the patta granted by the competent authority in patta No.7, the plaintiffs were remitting the revenue taxes for the said lands to the revenue authorities. Meanwhile, the said Shanmuga Thevar, father of Ramachandra Devar and others had interfered with the possession of the plaintiffs and defendants 2 and 3. Hence, the plaintiffs and the defendants 2 and 3 had filed a suit in O.S.No.630 of 1985, along with an Interlocutory Application in I.A.No. 729 of 1985, wherein, the civil Court granted an interim injunction. On the instigation of Ramachandra Devar, the first defendant assumed that he is having ownership over the suit schedule properties and attempted to alienate the same. However, the first defendant could not claim any civil right over the said properties. Hence, the first defendant took some persons to the suit schedule properties on 17.12.1985 for selling the same. Hence the suit in O.S.No.1285 of 1985 has been filed on the file of Principal District Munsif, Tirunelveli. Pending suit, the first defendant expired and hence, the defendants 4 to 7 were added as necessary parties and as legal representatives of the first defendant. While the suit is



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pending, the first defendant had alienated the property to and in favour of the defendants 8 and 9. Hence, they were impleaded as necessary parties in the said suit.

4. The case of the first defendant as per the written statement filed by him, which is also adopted by the defendants 4 to 6 is as follows.

4.1. The suit schedule properties and some other properties were originally belonging to one Sivanu Thevar. The said Sivanu Thevar had executed a Will to and in favour of his sons, viz., Kandaswamy Thevar, Velayudha Thevar, Sudalami Muthu Thevar and Shamugha Thevar. The genealogy of the family was also filed. The plaintiffs and other family members are not having any rights over the suit schedule properties. The family members of Sivanu Thevar had lived as a joint family and enjoyed the said properties. One Subbiah Thevar and Sivanu Thevar sold the suit schedule properties to and in favour of the first defendant and plaintiffs. Therefore, the Settlement Tahsildar, Kovilpatti issued a joint patta dated 15.02.1968. Subbiah Thevar and Sivanu Thevar were the original owners of the properties. Subbiah Thevar was the father of Kandaswamy. The



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first defendant had purchased the property for a sum of Rs.6,000/- under a registered sale deed dated 24.08.1967. The defendants 8 and 9 purchased the said property as per the Original Suit No.650 of 1986. As such, the proceedings of the Settlement Tahsildar dated 31.07.1971 is not valid under law, besides the said order of the Settlement Tahsildar is not binding these defendants and their ancestors. Further, the first defendant and his ancestors did not receive any communication or notice from the Inam Abolition Tribunal. The validity of the sale deeds has to be decided only by a Civil Court and this observation was made by the Inam Abolition Tribunal, dated 15.02.1968. The plaintiffs can claim right and title only from Sivanu Thevar and his legal heirs and they did not have any independent right or title over the property. The Settlement Tribunal cannot decide regarding the enjoyment and possession of the properties. The civil forum is having jurisdiction to decide the said issue. The first defendant was granted patta by the Tahsildar, Palayamkottai Taluk on 21.10.1985. Further, the first defendant was not a party to the civil suits in O.S.No.630 of 1985 and O.S.No.650 of 1986. Further, the plaintiffs have not stated anything about the interference of the first defendant.



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Therefore, there is no cause of action for seeking interim injunction restraining the joint family members. Since the plaintiffs were enjoying the property along with joint family members and they purchased only the undivided joint family properties, they can only file a suit for partition and the present suit is not maintainable.

5. The case of the second defendant as per the written statement filed by him, which is also adopted by the third defendant is as follows.

5.1. The defendants 2 and 3 purchased the properties from the joint owners of the suit schedule properties and are enjoying the same. They are remitting the revenue taxes to the revenue authorities. They admitted the plaintiffs' case as true, as such, the plaintiffs filed the suit on behalf of the defendants 2 and 3 and the plaintiffs themselves. As such, they have no objection for decreeing the suit.

6. The case of the eighth and ninth defendants as per their written statement is as follows.



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6.1. The entire property situated at Uttamapandiankulam Village was originally classified as Inam lands and the same were taken over by the Government in the year 1963. The Settlement Tahsildar, Kovilpatti had conducted enquiry proceedings, in which 63 members participated and the Settlement Tahsildar after enquiry passed an order dated 15.02.1968 pertaining to the lands comprised in Survey No.46 and granted patta to the plaintiffs, the first defendant and five others. The first defendant executed a sale deed to and in favour of the defendants 8 and 9. Against the said patta granted by the Settlement Tahsildar, an appeal has been filed and the Appellate Authority remitted the matter to the Settlement Tahsildar for re-enquiry. Thereafter, the Settlement Tahsildar after conducting a fresh enquiry cancelled the patta proceedings which was granted in favour of seven members including the plaintiffs and first defendant. Aggrieved by the said orders, an appeal has been filed, wherein the defendants 8 and 9 were arrayed as parties. At the time of the enquiry before the Appellate Authority, the learned counsel appearing on both sides agreed to grant patta to the said seven members. Accordingly, the appeal was disposed of. Thereafter, patta was granted to some



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persons including the first defendant, who was the erstwhile vendor of the defendants 8 and 9. As such, the averments of the plaint are not true. The plaintiffs and defendants 2 and 3 were never in enjoyment of the properties as individual owners separately. The plaintiffs and defendants 2 and 3 never paid the taxes to the revenue authorities. The plaintiffs and the defendants 2 and 3 are not having any right or enjoyment over the suit schedule properties. One Ramachandra Thevar and others never interfered with the suit schedule properties and disturbed the plaintiffs and defendants 2 and 3. The first defendant was granted patta in RAIAT No.182/71 for the suit schedule properties comprised in survey Nos. 36,44,45,47,48,49 and also Uttamapandiankulam Village Adangal Nos. 197 and 200. All these properties originally belonged to Sivanu Thevar, who had executed a Will to and in favour of his four sons. Accordingly, all the four sons had succeeded 1/4 of the property. Out of these properties, some of the legal heirs of the four sons who developed some portion of the lands, are in enjoyment of the same. The suit schedule properties to an extent of 20.25 hectares was under the elder son of Sivanu Thevar. The first defendant purchased the suit schedule properties



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from the legal heirs of the eldest son of the Sivanu Thevar. The plaintiffs had purchased 1/6 share out of 1/4 share which belonged to the second son of Sivanu Thevar. The second son of Sivanu Thevar got 6 daughters, out of them one Gomathiammal had executed 1/6 share, out of 1/4 share to and in favour of the plaintiffs. The defendants 2 and 3 never purchased anywhere from any of the landowners. The plaintiffs purchased the properties situated on the western side of the suit schedule properties and as such, the defendants 8 and 9 purchased the property from the first defendant, wherein, the plaintiffs did not have any right or enjoyment over the said properties. Therefore, the suit is not maintainable.

6.2. Further, after the proceedings of the Inam Abolition Tribunal, the Revenue Tahsildar issued a patta. The ninth defendant also remitted revenue taxes to the revenue authorities. The defendants 8 and 9 purchased different suit schedule properties and obtained the properties under two different sale deeds dated 10.01.1986. From the date of purchase, the defendants 8 and 9 are enjoying the said properties to an extent of 24 acres 25 cents, which is situated on the western side. The



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properties pertaining to Survey Nos.46/1 and 46/2 have been subdivided and patta had been issued in the name of the defendants 8 and 9, who are also paying revenue taxes to the revenue authorities. The defendants 8 and 9 were not aware of the original suit in O.S.No.650 of 1986 filed by the plaintiffs. After obtaining a sale deed by the defendants 8 and 9, the plaintiffs and defendants 2 and 3 filed a original suit in O.S.No.650 of 1986, against the defendants 8 and 9 and challenged the sale deed and enjoyment of the properties. Even in that suit, the defendants 8 and 9 marked sale deeds, tax receipts and other relevant records. After contesting, the above suit was dismissed and the learned Judge had confirmed that the defendants 8 and 9 are owners of the properties and they are in enjoyment of the same. In the said suit, the plaintiffs had also filed an interlocutory application for an interim injunction and the same was dismissed by the trial Court. Thereafter, the suit went upto the High Court for the same relief, but it was negatived. After the dismissal of the suit in O.S.No.650 of 1986, the plaintiffs filed an appeal suit in A.S.No. 16 of 1989, before the Sub Court, Tirunelveli and the same was also dismissed. Against the dismissal of the said appeal suit, the plaintiffs had



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filed a second appeal before this Court, which is pending enquiry. Under these circumstances, the plaintiffs and the defendants 2 and 3 attempted to obtain an interim injunction, but the interim application was dismissed. As such, the above suit is not maintainable since the same issue had been decided in the earliest suit in O.S.No.650 of 1986. Therefore, the suit is also barred by *res judicata* and the relief sought for by the plaintiffs has become infructuous and the suit is not maintainable as framed by the plaintiffs. The right of the parties is only to file a suit for partition and separate possession, since they purchased undivided property from the joint family members. Therefore, the suit for declaration and injunction is not maintainable and the same is liable to be dismissed.

7. Pending suit, the third defendant filed a suit in O.S.No.237 of 1992 for permanent injunction alleging that the defendants 2, 8 and 9 trespassed into the suit schedule properties, for which criminal proceedings were initiated and rejected. The settlement proceedings / patta proceedings have not reached finality in the Revenue Department.



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Regarding joint owners and joint family members, enjoyments and rights have to be decided by the civil Court and as such, the present suit is not maintainable. Hence the defendants prayed for dismissal of the suit.

8. After considering the averments of the plaint and the written statements, the trial Court framed four main issues and one additional issue, which are as follows.

- "(i) Whether the suit schedule mentioned properties belonging to the plaintiffs, second and third defendants?*
- (ii) Whether the plaintiffs are entitled to obtain mandatory injunction?*
- (iii) Whether this Court having original jurisdiction to try the suit?*
- (iv) What other reliefs the plaintiffs are entitled to get?*
- (v) Whether the said suit has become infructuous on the basis of judgment and decree passed in O.S.No.650 of 1986?"*

9. On the side of the plaintiffs, P.W.1 was examined and Exs.P1 to P6 were marked. On the side of the defendants D.W.1 was examined and Exs.D1 to D5 were marked.



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10. After trial, the suit was dismissed. As against the Judgment and Decree, the plaintiffs 1 and 2 have filed an appeal in A.S.No.110 of 1997, which was dealt by the First Additional Sub Court, Tirunelveli. After hearing the arguments, the appeal suit was also dismissed and the Judgment and Decree passed by the Trial Court was confirmed. Challenging the same, now the first plaintiff has filed the present Second Appeal. This Court also on earlier occasion, after hearing appeal dismissed the appeal by Judgment dated 10.03.2015. Challenging the same, the first plaintiff has filed a civil appeal before the Honourable Supreme Court and the Honourable Supreme Court set aside the Judgment dated 10.03.2015 passed by this Court and remitted the matter back to this Court to decide the matter afresh in accordance with law.

11. While admitting the appeal on 13.06.2006, this Court has formulated the following substantial questions of law.

"(i) Whether the Courts below were correct in denying the relief of declaration and injunction in favour of the appellants / plaintiff, while there were sufficient documentary



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evidence were available to prove the possession and title of the plaintiffs?

(ii) Whether the First Appellate Court was correct in dismissing the appeal in favour of impleading the heirs of the deceased plaintiffs when admittedly each of the plaintiff have separate cause of action against the defendants?"

12. Heard the learned counsel who appeared on both sides and perused the materials available on record.

13.1. The learned counsel appearing for the appellant / first plaintiff would submit that all the documents pertaining to the title of the plaintiffs were filed in the other suit in O.S.No.650 of 1986 and the Judgment of the said suit is marked as Ex.B1 in the present suit and there is no dispute regarding the validity of the sale deed. Therefore, Ex.B1 is relied on by the plaintiffs for pressing their title. The contesting defendants are not having any title to the properties on the basis of genealogy alone. Having not produced any other documents to show that they are having title to the properties, they are pressing the title. The suit property was purchased by the plaintiffs from one Gomathiammal and



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Sivasami Thevar and his brothers who are all 'Kudivaramthars' in the Inam Village. Ex.A3 is the Judgment in O.S.No.83 of 1964, which clearly shows that Gomathiammal and Sivasami Thevar who are the vendors of the plaintiffs were in possession of the properties as 'Kudivaramthars' and patta was granted in their favour on the basis of their possession. The genealogy filed by the contesting defendants is not true. There are no documents filed by the contesting defendants to show that the properties belong to the family and the members of the family have right and share in the same. Having not proved that the persons mentioned in the genealogy alone are the joint family members and the legal heirs of Sivanu Thevar, the contesting defendants failed to prove that the properties belong to the entire family and out of the properties only Gomathiammal was having 1/4th shares in the properties. Even as per Ex.A3, except Gomathiammal, nobody has right in the properties. In Ex.A3, it is clearly mentioned that Gomathiammal was in possession of 24.50 acres and Sivasamy Thevar was in possession of another 24.50 acres, in total 49 acres, which is the subject matter of the suit.



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13.2. The learned counsel for the appellant would further submit that Ex.A1 is the order passed by the Minor Inam Abolition Tribunal, based on which, ryotwari patta was granted in favour of the plaintiffs after considering all the documents filed by the plaintiffs. Though the first defendant was a party to the above proceedings, he did not prefer any appeal or revision as against the order passed by the Tribunal. The defendants 8 and 9 are the subsequent purchasers from the first defendant. Therefore, Ex.A1 binds the defendants 1, 8 and 9. Though the first defendant and the subsequent purchasers defendants 8 and 9 got an adverse order under Ex.A1, they did not move any Civil Court to prove their title or possession over the suit properties and therefore, they cannot claim any right over the suit properties.

13.3. It is further submitted by the appellant counsel that the contesting defendants failed to prove that Sivanu Thevar had pre-existing right and title over the properties and based on the pre-existing title, the legal heirs of the Sivanu Thevar sold the properties to the plaintiffs and other supporting defendants. Based on possession, the vendors of the



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plaintiffs were having Kudivaramthar right and on the basis of the same, they sold their shares to the subsequent purchasers namely the plaintiffs and other supporting defendants. The first defendant did not have any right or title over the properties. The entire lands in the village are inam lands. Due to Act 26/63, the Government took over the lands and recognized the persons who were in possession. Accordingly, Kudivaramthars patta was granted by the authority concerned in favour of the vendors of the plaintiffs and only on the strength of the same, the plaintiffs purchased the properties and they did not purchase the properties in the capacity of ancestral properties. Therefore, the plaintiffs are entitled to decree. Unfortunately, both the Courts below failed to consider the factual as well as legal position and dismissed the suit. Therefore, the plaintiffs are before this Court by way of a Second Appeal.

14.1. The learned counsel appearing for the 27th respondent would submit that the plaintiffs did not prove their case before the trial Court as well as the appellate Court. The first defendant executed a sale deed to and in favour of the defendants 8 and 9 in the suit under a registered sale



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deed dated 24.08.1967. Therefore, the subsequent proceedings passed by the Settlement Tahsildar dated 31.07.1971 is not sustainable under law. The entire properties in the Uttamapandiankulam Village were classified as adheenam inam lands and the same were taken by the Government in the year 1963. Thereafter, the Settlement Thasildar, Kovilpatti had conducted enquiry and granted patta in favour of the defendants 8 and 9 including five other persons. The said patta proceedings was challenged before the Inam Abolition Tribunal. The Tribunal had remitted the matter to the settlement Tahsildar. The Settlement Tahsildar, subsequently, cancelled the patta. Aggrieved by the said cancellation of the patta, an appeal was filed before the Appellate Authority, who granted patta in favour of 7 persons including the defendants 8 and 9 after conducting a comprehensive enquiry and on hearing the learned counsel on both sides before the Appellate Authority.

14.2. The learned counsel would further submit that the defendants 2 and 3 have not purchased the said property from the joint owners, besides they have not produced any sale deed in order to to prove the



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said alienation. The plaintiffs and the defendants 2 and 3 have not produced any title deeds for claiming title over the properties. The competent authority issued a patta in favour of the first defendant in the suit schedule properties. The first defendant purchased 1/4 share from the eldest son of Sivanu Thevar. Likewise, the plaintiffs purchased 1/6 share out of 1/4th share from the second son of Sivanu Thevar. The second son of Sivanu Thevar got 6 daughters, out of them one Govindammal had alienated 1/6th share, out of 1/4th share to the plaintiffs. The defendants 2 and 3 did not purchase any properties out of the suit schedule properties. As such, the plaintiffs cannot claim any right over the suit schedule property, which absolutely belongs to the defendants 8 and 9. The suit filed by the plaintiffs for declaration and injunction is not maintainable since the plaintiffs did not possess any valid title deeds or marketable title deeds over the suit schedule properties, besides, the plaintiffs are not in physical possession and enjoyment of the same. Therefore, the order of interim injunction is not enforceable.



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14.3. The learned counsel would also submit that in pursuance of the grant of patta by the Inam Abolition Tribunal to and in favour of the defendants 8 and 9 and others, the ninth defendant had also obtained a patta from the Regular Tahsildar, who is attached to the Revenue Department. The ninth defendant also remitted the revenue taxes to the revenue authorities. So, the defendants 8 and 9 purchased the suit schedule properties under two separate sale deeds dated 10.01.1986. From the date of purchase, the defendants 8 and 9 occupied to an extent of 24 acres 25 cents on the western side of the property without any interference. Thereafter, the property comprised in Survey No.46 was sub divided as S.Nos.46/1 and 46/2 and patta was granted to the defendants 8 and 9 respectively by the Revenue Tahsildar. Further, they are regularly paying the kist and taxes to the revenue authorities.

14.4. It is further submitted that the plaintiffs and the defendants 2 and 3 have jointly filed a suit in O.S.No.650 of 1986 against the defendants 8 and 9 and challenging the sale deeds which was executed by the first defendant dated 10.01.1986. The said suit was tried on merits



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and it was decided that the defendants 8 and 9 are absolute owners of the properties. Against, the said decree and judgment, the plaintiffs filed an appeal before the Sub Court, Tirunelveli and the same was dismissed, Subsequently, second appeal filed by the plaintiffs was also dismissed. Therefore, the present suit and the subsequent appeals are not maintainable since they are between the same parties on the same properties, same cause of action, same issue and same prayer. The suit was decided on merits by the trial Court as well as the appellate Court. Therefore, the present suit is barred by *res judicata*. The plaintiffs have purchased undivided share from the vendor and as such they have to file a suit for partition and separate possession. Instead, they filed a suit for declaration without even impleading the necessary parties i.e., erstwhile vendors. The third defendant filed a suit in O.S.No.237 of 1993 for permanent injunction regarding suit schedule properties and the same was dismissed. The second defendant initiated criminal proceedings and the same was also rejected, as such the plaintiffs and defendants 2 and 3 did not prove their allegations. In support of his contentions, the learned counsel placed reliance on the Judgment in the case of *Rajasthan SRTC*



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vs. Bajrang Lal reported in (2014) 4 SCC 693.

15. The case of the defendants 2 and 3 is that they purchased the property from the second son of Sivanu Thevar. The settlement Tahsildar issued a patta in favour of the plaintiffs and defendants 2 and 3. The defendants 2 and 3 are blood brothers and they purchased the properties from the joint owners. From the date of purchase they have been in possession and enjoyment of the said properties without any interference, besides they have paid revenue taxes to the revenue authorities and therefore, the defendants 2 and 3 have no objection to allow the appeal and grant decree in favour of the plaintiffs.

16. The specific case of the plaintiffs and defendants 2 and 3 is that the plaintiffs purchased 1/6 share out of 1/4th share from the second son of Sivanu Thevar. The second son of Sivanu Thevar got 6 daughters out of them one Gomathiammal had alienated 1/6th share, out of 1/4th share to the plaintiffs. The defendants 2 and 3 purchased the said properties from some of the joint owners and therefore, the defendants 2 and 3



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became owner of the suit schedule properties and they are enjoying the same jointly without any interference. The plaintiffs and the defendants 2 and 3 are the absolute owners of the properties and Inam Abolition Tribunal after enquiry granted patta in the names of the plaintiffs. The plaintiffs and defendants 2 and 3 have also paid the revenue taxes to the revenue authorities. Since Shanmuga Thevar, father of Ramachandra Devar and others interfered with the possession of the plaintiffs and defendants 2 and 3, the plaintiffs and the defendants 2 and 3 filed a suit in O.S.No.630 of 1985. On the instigation of Ramachandra Devar, the first defendant claimed ownership over the suit schedule properties and attempted to alienate the same. However, the first defendant did not produce any title deed and he did not have any right or title over the suit schedule properties. Since, the first defendant set up some henchmen and tried to interfere with the possession of the plaintiffs and also tried to alienate the suit schedule properties, the plaintiffs filed a suit in O.S.No. 1285 of 1985 on the file of Principal District Munsif, Tirunelveli. Since the first defendant died, the defendants 4 to 7 were impleaded as legal representatives of the first defendant. Pending suit, the first defendant



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alienated his property to the defendants 8 and 9. Therefore, they have also been impleaded.

17. The case of the first defendant is that the suit schedule properties and some other properties originally belonged to one Sivanu Thevar. Sivanu Thevar executed a Will in favour of his four sons, viz., Kandaswamy Thevar, Velayudha Thevar, Sudalami Muthu Thevar and Shamugha Thevar. The plaintiffs and other family members are not having any rights over the suit schedule properties. The family members of Sivanu Thevar were living as joint family and enjoyed the properties as joint family properties. One Subbiah Thevar and Sivanu Thevar who are the brothers sold the suit schedule properties in favour of the first defendant and plaintiffs. Therefore, the Settlement Tahsildar, Kovilpatti issued a joint patta dated 15.02.1968. Subbiah Thevar and Sivanu Thevar were the original owners of the properties. The first defendant purchased the property for a sum of Rs.6,000/- under a registered sale deed dated 24.08.1967. The defendants 8 and 9 purchased the said property from the first defendant and also got patta in their favour and



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they are paying kist. The first defendant or his ancestors did not receive any communication or notice from the Inam Abolition Tribunal. The sale deeds in favour of the first defendant are valid and therefore, the plaintiffs have no independent right and title since they also purchased the undivided properties from the joint family members. At the best, the plaintiffs could file a suit for partition and separate possession and not for declaration and enjoyment.

18. The defendants 8 and 9 are supporting the case of the defendants 1, 4 to 7. The defendants 2 and 3 are supporting the case of the plaintiffs.

19. Admittedly, the plaintiffs have filed as a suit for declaration and permanent injunction. The plaintiffs have also filed a suit in O.S.No. 650 of 1986 and the Judgment and decree passed in that suit is marked as Ex.B1. Admittedly, the plaintiffs purchased the properties from one of the legal heirs of Sivanu Thevar and they applied for patta before the revenue authorities. When the Act 26/63 came into force, the



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Government took the Inam lands from the village and issued patta based on the possession in the capacity of Kudivaramthars. Even the defendants 8 and 9 have admitted in their written statement that the entire properties situated at Uttamapandiankulam Village was originally classified as Inam lands and the same were taken over by the Government in the year 1963. The Settlement Tahsildhar, Kovilpatti conducted an enquiry in which 63 persons participated. After enquiry, the Settlement Tahsildhar passed an order dated 15.02.1968 pertaining to the lands comprised in S.No.46 and granted patta to the plaintiffs, first defendant and five others. The first defendant sold his property to the defendants 8 and 9. Against the grant of patta by the Settlement Tahsildhar, an appeal was filed before the appellate authority. The appellate authority after hearing the same, remitted the matter back to the Settlement Tahsildhar for fresh enquiry. The Settlement Tahsildhar after conducting fresh enquiry cancelled the patta granted in favour of seven persons including the plaintiffs and the first defendant. Aggrieved by the said order, an appeal was filed and the defendants 8 and 9 were also arrayed as parties in that appeal. Subsequently, as agreed by the parties,



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patta was granted to them and based on that, the appeal was disposed.

Therefore, once based on the sale deed, patta was granted to the plaintiffs and the same was not challenged and even the right of the vendors of the plaintiffs was also not questioned, then, the contesting defendants admitted the right of the vendors of the plaintiffs and accepted the right and title of the plaintiffs and also the patta issued in their favour. Since, the some of the defendants interfered with their possession and planned to alienate them, the plaintiffs filed the suit for declaration and injunction.

20. Admittedly, patta was granted after conducting enquiry by the Settlement Tahsildhar and it went up to the Inam Abolition Tribunal and appellate Tribunal. Since the defendants 1, 8 and 9 had not challenged the patta proceedings, the patta granted in favour of the plaintiffs attained finality. The plaintiffs purchased the suit schedule properties with a specific extent and patta was also granted for specific extent. Therefore, since the contesting defendants themselves admitted the right and title of the plaintiffs and in the absence of any contra evidence, the plaintiffs are



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entitled to the relief sought for.

21. Substantial Questions of Law No.1 & 2: Admittedly, the plaintiffs purchased properties from the legal heirs of Sivanu Thevar. The Settlement Tahsildhar, Kovilpatti also issued patta and that was subsequently confirmed by the appellate Tribunal. The sale deed of the plaintiffs was not questioned and the patta issued in favour of the plaintiffs was also not in dispute. Further, the contesting defendants have stated that Sivanu Thevar executed Will in favour of his four sons. However, the Wills were not proved in the manner known to law. There is no dispute in the facts that the plaintiffs purchased the properties from one of the sons of Sivanu Thevar and based on that, they also got patta and paid taxes before the Revenue Authorities. Therefore, the plaintiffs have established their title, possession, entitlement to the decree as sought for. Since the plaintiffs have established their case, the onus has been shifted to the defendants and the defendants have not discharged the onus. The right and title of the vendors of the plaintiffs are not in dispute and sale deed and patta in favour of the plaintiffs are also not in dispute.



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The fact that the lands in the village were originally classified as Inam lands is also not in dispute. Subsequently, the entire lands were taken by the Government under Act 26/63 and thereafter, based on the possession, the plaintiffs obtained the patta and the patta issued by the revenue authorities would become final, unless, it is challenged or set aside before the competent authority or the Civil Court. However, if at all, right and title is disputed, that has to be decided only by the Civil Court. In this case, the contesting defendants have not denied the title of the plaintiffs and the possession of the plaintiffs. Both the Courts below failed to appreciate the oral and documentary evidence available on record. Therefore, the Judgment and Decree of the trial Court as well as the appellate Court are liable to be set aside. Accordingly, the substantial questions of law are answered in favour of the appellant / first plaintiff.

22. In the result, the Second Appeal is allowed. The judgment and decree dated 27.11.2000 in A.S.No.110 of 1997, on the file of I Additional subordinate Judge, Tirunelveli and the judgment and decree dated 21.12.1996 in O.S.No.1285 of 1985, on the file of Principal



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District Munsif, Tirunelveli are set aside. The suit in O.S.No.1285 of 1985 is decreed as prayed for. No costs.

23.08.2024

NCC:Yes/No

Index:Yes/No

Speaking/Non-speaking order

mbi



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To

- 1.The I Additional subordinate Judge, Tirunelveli.
- 2.The Principal District Munsif, Tirunelveli.
- 3.The Section Officer,
Vernacular Records Section,
Madurai Bench of Madras High Court,
Madurai.



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P.VELMURUGAN, J.

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Pre-Delivery Judgment in
S.A.(MD)No.803 of 2006

23.08.2024