



S.A.No.959 of 2002

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.06.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

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1. The Ayachuthdhars of
Keelkattikulam.
Represented by
K.Duraisamy

2. V.N.Mani

3. S.Palanivel

4. S.Aliar

5. G.Chinnayya

...Appellants

-Vs-

1. R.Ponnappan (Died)

2. R.Valliammai (Died)

3. State of Tamil Nadu,
represented by

District Collector, Pudukottai.

4. State of Tamil Nadu,
represented by

Tahsildar, Pudukottai.



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5. K.Pandian

6. Jaya

7. Athimoolam

8. Rethinakumar

9. Muthumeena

10. Marimuthu

11. Karuppaiah

12. Ramasamy

13. Meenachi

14. Sivakumar

15. Deepan

... Respondents

(8th respondent declared as 'major', vide Court Order dated 07.06.2018 made in C.M.P.(MD).No.1372 of 2018 and 9th respondent declared as 'major', vide Court Order dated 07.06.2018 made in C.M.P.(MD).No.1373 of 2018))

(Respondent Nos.6 to 9 are brought on record as legal representatives of the deceased Respondent No.1 vide Order dated 14.06.2012 made in M.P.(MD).Nos.1 and 2 of 2012 in S.A.(MD).No.959 of 2002).

(Respondent Nos.10 to 15 are brought on record as legal representatives of the deceased Respondent No.2 vide Order dated 07.06.2018 made in C.M.P.(MD).No. 1371 of 2018)

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, against the judgment and decree of the Subordinate Court, Pudukottai passed in A.S.No.52 of 2000, dated 21.12.2001, confirming the decree and



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judgment of the Additional District Munsif, Pudukottai, passed in O.S.No.575 of 1996, dated 30.06.2000.

For Appellant : Mr.VK.Vijayaraghavan

For R-3 & R-4 : Mr.SRA.Ramachandran,
Additional Government Pleader

For R-5 : No Appearance

For R-6,
R-7 to R-15 : Mr.K.Vadivelan

JUDGMENT

The defendants 3 to 5, 7 and 8 in the suit are the appellants. The respondent Nos.1 and 2 filed a suit for declaration of title and injunction and the suit was decreed by the trial Court and the findings of the trial Court were affirmed by the First Appellate Court. Aggrieved by the concurrent findings, the appellants are before this Court.

2. According to respondent Nos.1 and 2 / plaintiffs, the suit property has been in possession and enjoyment of the respondent Nos.1 and 2 / plaintiffs and their forefathers under Patta No.533. Originally, the suit property was possessed



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and enjoyed by the first Plaintiff's maternal grandfather and second plaintiff's father viz., Ramasamy. He had two daughters, viz., the first plaintiff's mother viz., Meenachi and the second plaintiff viz., Valliammai. Thus, after the death of the above said Ramasamy and Meenatchi, the respondent Nos.1 and 2 / plaintiffs have been enjoying the suit property as its owner. It was further pleaded by respondent Nos.1 and 2 / plaintiffs that during resettlement, the suit property was wrongly classified as a water body (Keelkattikulam) and the said fact came to the knowledge of respondent Nos.1 and 2 / plaintiffs only recently. Immediately, respondent Nos.1 and 2 / plaintiffs submitted an application before the competent authority for restoration of original classification in the name of respondent Nos.1 and 2 / plaintiffs and the said application was rejected. In these circumstances, respondent Nos.1 and 2 / plaintiffs were constrained to file a suit for declaration of title and injunction.

3. The second defendant / Tahsildar filed a written statement and resisted the suit on the ground that the suit property was classified as a water body in the revenue records and neither respondent Nos.1 and 2 / plaintiffs nor their forefathers had any right over the same. It was also claimed by the defendants 1



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and 2 in the suit that the respondent Nos.1 and 2 / plaintiffs admitting the title of the Government paid B Memo charges and hence, they were estopped from claiming the title over the suit property.

4. The appellants / contesting defendants filed a written statement denying the title of the respondent Nos.1 and 2 / plaintiffs over the suit property. The appellants / contesting defendants also contended that the suit property was classified as a water body and the respondent Nos.1 and 2/ plaintiffs paid B memo charges to the Government and hence, they were not entitled to assert the title over the suit property.

5. Before the trial Court, the first plaintiff was examined as P.W.1 and two other witnesses were examined as P.W.2 and P.W.3. On behalf of the plaintiffs, six documents were marked as Ex.A1 to Ex.A6. The third defendant was examined as D.W.1 and the Village Administrative Officer of the concerned Village was examined as D.W.2. Eight documents were marked on behalf of defendants as Ex.B.1 to Ex.B.8. The Advocate Commissioner's report and plan were marked as Ex.C1 and Ex.C.2. The trial Court on consideration of the



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evidence available on records came to the conclusion that the plaintiffs had proved their title and possession over the suit property and decreed the suit. Aggrieved by the same, the appellants / contesting defendants filed an appeal in A.S.No.52 of 2000 on the file of the Sub Court, Pudukottai and the First Appellate Court concurred with the findings of the trial Court. Aggrieved by the same, the appellants are before this Court.

6. At the time of admission, this Court formulated the following substantial questions of law by order dated 24.06.2002:

1. When the respondents 1 and 2 did not prove title to the suit property, was it correct for the Courts below to grant declaration of title of suit property to them as prayed for?

2. Whether the Courts below were correct in granting a decree for declaration merely on the basis of Adangal extract Ex.A.2, when the appellants had filed Exs.B.1 and B.3 to show that the property was poramboke and receiving the irrigation of 'Kelkattikulam' and whether the erroneous construction placed by the Courts



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below on the respondent's exhibits will not give rise to substantial questions of law?

7. Elaborating the substantial question of law framing at the time of admission, the learned counsel appearing for the appellants / contesting defendants submitted that respondent Nos.1 and 2 / plaintiffs failed to establish their title over the suit property by producing any acceptable document. He further submitted that Ex.A.4 and Ex.A.6-kist receipts marked through P.W.3 are not connected to the suit property. The learned counsel further submitted that even as per the document of plaintiffs-Ex.A.5, they paid B memo charges to the Government admitting the title of the Government over the suit property and hence, the suit for declaration of title and injunction filed by the respondent Nos.1 and 2 / plaintiffs is misconceived one and sought for interference with the findings rendered by the Courts below.

8. The learned counsel appearing for the respondent Nos.1 and 2 / Plaintiffs by taking this Court to the evidence of P.W.3 submitted that the erstwhile Village Headman was examined as P.W.3 and he clearly deposed that the property belonged to the said Ramasamy and he paid kist receipts to the



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Government under Ex.A.4 and Ex.A.6. The learned counsel submitted that the payment of kists by the said Ramasamy to the Government in the years 1961 and 1962 under Ex.A.4 and Ex.A.6 would probabalize the title of the respondent Nos.1 and 2 / plaintiffs and subsequent wrong entry made in the resettlement as if the suit property was the water body would not obliterate the title of the respondent Nos.1 and 2 / plaintiffs over the suit property.

9. The respondent Nos.1 and 2 / plaintiffs claimed title over the suit property on the ground that it belonged to the maternal grandfather of the first plaintiff, viz., Ramasamy. In order to prove the title of Ramasamy, the respondent Nos.1 and 2 / plaintiffs have not produced any title document or revenue records in the name of Ramasamy. The learned counsel for the appellants / contesting defendants placed much reliance on kist receipts-Ex.A.4 and Ex.A.6 issued in the name of Ramasamy. A perusal of the same would indicate Ex.A.4 and Ex.A.6-kist receipts were issued in respect of Patta No.533. The respondent Nos.1 and 2 / plaintiffs failed to produce Patta No.533 and establish that Patta No.533 pertains to the suit survey number and the same stands in the name of Ramasamy. There is nothing in Ex.A.4 and Ex.A.6-kist receipts to suggest the same were



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issued in respect of the land in the suit survey number and in the absence of any evidence available on record to connect Ex.A.4 and Ex.A.6-kist receipts with the suit survey number, we cannot come to the conclusion that Ramasamy paid his kist to the Government in respect of the suit property in the years 1961 and 1962. Therefore, the reliance placed by the Courts below on Ex.A.4 and Ex.A.6 cannot be accepted.

10. The learned counsel appearing for the appellants / contesting defendants further submitted that the Village Headman of the suit Village, viz., P.W.3 clearly deposed that Ramasamy paid kists for the suit property under Ex.A.4 and Ex.A.6. A perusal of the evidence of P.W.3 would suggest that when he was cross-examined with regard to the aspect whether the patta number mentioned in Ex.A.4 and Ex.A.6 viz., 533 stood in the name of Ramasamy, he replied by saying that he could not re-collect in whose name the patta No.533 was issued. Therefore, based on the evidence of P.W.3 and Ex.A.4 and Ex.A.6, we cannot come to the conclusion that the kist receipts filed by the respondent Nos.1 and 2 / plaintiffs were relating to the suit property.



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11. The appellants / contesting defendants marked Ex.B7-chitta for lands included in Patta No.533. A perusal of the same would suggest that Patta No.533 in the suit Village stands in the name of one Patchamuthu Udaiyar, but, not in the name of Ramasamy. In these circumstances, the reliance placed by the Courts below on Ex.A.4, A.6 and the evidence of P.W.3 for coming to the conclusion that the suit property belonged to Ramasamy and later, it was wrongly classified as water body is not acceptable to this Court. When respondent Nos.1 and 2 / plaintiffs failed to produce any document or revenue patta to establish that the suit property originally belonged to Ramasamy, merely based on two kist receipts issued in the years 1961 and 1962, the Courts below ought not to have declared the title of the respondent Nos.1 and 2 / plaintiffs. Further, as mentioned earlier, those two kist receipts produced by the respondent Nos.1 and 2 / plaintiffs were also not connected with the suit property. In these circumstances, the findings rendered by the Courts below as if the respondent Nos.1 and 2 / plaintiffs established their title over the suit property is based on no evidence and hence, liable to be interfered with while exercising the jurisdiction under Section 100 of C.P.C.



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12. Accordingly, the substantial questions of law framed at the time of admission are answered in favour of the appellants / contesting defendants and the Second Appeal stands allowed by setting aside the judgment decreed by the Courts below.

13. In conclusion:

- (a). the Second Appeal stands allowed.
- (b). the judgment and decree passed by the Courts below are set aside.
- (c). There will be no order as to costs.

04.06.2024

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

TSG

To

1.The Sub Court, Pudukottai.

2.The Additional District Munsif Court, Pudukottai.

3.The Record Keeper,

V.R.Section,

Madurai Bench of Madras High Court, Madurai.

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S.SOUNTHAR, J.

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