



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:**30.07.2024**

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.NO.1306 of 2003
and
C.M.P.No.11299 of 2003

1.S.K.Subramanian

2.S.K.Muthukrishnan

3.S.K.Arumugam

4.S.K.Kanthiah

5.S.K.Sankar

6.S.K.Ganesan

7.S.K.Baskar

8.Ramalakshmi

9.Muthammal :Appellants/Appellants/Defendants

.VS.

1.Nelliappa Asari(died)

2.Murugasan

3.Ulaganathan

4.Subramanian @ Ravi

5.Saroja

6.Subbu Lakshmi @ Pushpam

7.S.Sendu



8.B.Balasundari

:Respondents/Respondents/
Plaintiffs

WEB COPY

(Respondents 2 to 4 who are already on record are recorded as legal representatives of the deceased first respondent and respondents 5 to 8 are also brought on record as legal representatives of the deceased first respondent as per order of this Court made in M.P(MD)No.1 of 2012 in S.A.No.1306 of 2003, dated 31.8.2023)

PRAYER: Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree made in A.S.No.22 of 2002, dated 11.4.2003, on the file of Additional Sub-Court, Tenkasi confirming the judgment and decree made in O.S.No.87 of 1998, dated 2.1.2002, on the file of Principal District Munsif Court, Tenkasi.

For Appellants	:Mr.S.Meenakshisundaram Senior Counsel for Mr.R.Manimaran
Respondent-1	: Died
For Respondents 2 to 4	: Ms.V.T.Harshini for Mr.D.Nallathambi
For Respondents 5 to 8	: No appearance

JUDGMENT

The Second Appeal is directed against the judgment and decree made in A.S.No.22 of 2002, dated 11.4.2003, on the file of Additional Sub-Court, Tenkasi confirming the judgment and decree made in O.S.No.87 of 1998, dated 2.1.2002, on the file of Principal



District Munsif Court, Tenkasi.

WEB COPY

2.The defendants are the appellants. The suit is for declaration of title, permanent injunction and mandatory injunction. The suit was decreed by the trial Court and on appeal, the findings of the trial Court was affirmed by the First Appellate Court. Aggrieved by the concurrent findings of the Courts below, the defendants have come forward with this Second Appeal.

3.According to the respondents/plaintiffs, the suit first schedule property was divided among the first plaintiff, his brothers Karuppiah Asari, and Subbiah Asari under Ex.A1 Partition Deed. The first plaintiff was allotted with 1 acre and 86 cents on the northern side. Karuppiah Asari was allotted with 1 acre and 86 cents on the middle portion and Subbiah Asari was allotted with 1 acre and 86 cents on the southern most portion. The common well situate in the middle portion was kept as a common well for all the three parties. The Plaintiffs 2 to 4 are the sons of the first plaintiff. The defendants are the heirs of Karuppiah Asari, who was allotted with middle portion. The property allotted to the first plaintiff which situate on the northern side of suit first schedule property is shown as second schedule property. The property allotted to the defendants predecessor in interest Karuppiah Asari in the middle



portion was shown as third schedule property. The property allotted to Subbiah Asari on the southern portion was shown as fourth schedule property. The dispute considering the land situated on the southern extremity of the second schedule property abutting third schedule property has been shown as fifth schedule property. The suit second schedule property was gifted to the plaintiffs 2 to 4 by the first plaintiff by Gift Deed, dated 14.5.1984. In the year 1977, there was dispute between the parties regarding irrigation of water from the common well. The defendants attempted to interfere with the plaintiffs possession over the property situate on the western and eastern side of the common well. In this regard, a Police complaint was given by the plaintiffs 2 to 4 against the defendants 1 to 7. Only during the enquiry in the Police Station, the Plaintiffs acquired knowledge about the issuance of patta in favour of defendants in respect of their property shown as third schedule property which forms part of second schedule property allotted to the plaintiffs under second schedule. Immediately, the plaintiffs moved the Revenue Officials for correction of the revenue records and an order was also passed for inclusion of the plaintiffs name in the patta. The defendants 1 to 7 issued a legal notice to the plaintiffs claiming right over the suit fifth schedule property. Later, the defendants obliterated the ridge portion dividing the suit second schedule property allotted to the



plaintiffs and the suit third schedule property allotted to the defendants in the earlier partition. Therefore, the plaintiffs were constrained to file the suit for the above said reliefs.

4. The suit was resisted by the defendants by denying the right as well as possession of the plaintiffs over the suit fifth schedule property. It was asserted by the defendants that the suit fifth schedule property has been in their possession and enjoyment for more than the statutory period with patta in their name. It was also claimed that the sub-division of suit survey number had been made and issuance of new patta in the name of the defendants had taken place in the year 1985 itself and therefore, the defendants have been in possession and enjoyment of the suit fifth schedule property along with suit third schedule property for more than statutory period. Therefore they claimed to have perfected title over the suit property. The proceedings before the revenue officials mentioned in the plaint were denied by the defendants in their written statement. It was also claimed that inclusion of the plaintiffs name in the revenue documents shall not confer any title on them. Thus denying the right and title of the Plaintiffs over the suit fifth schedule property, the defendants sought for dismissal of the suit.



5. Before the trial Court, the third plaintiff was examined as p.W.1 and nine documents were marked on their side as Ex.A1 to Ex.A9. The fourth defendant was examined as D.W.1 and six documents were marked on the side of the defendants as Ex.B1 to Ex.B6. The Advocate Commissioners report and plan were marked as Ex.C1 and Ex.C2. The Surveyor's plan has been marked as Ex.C3. The second Advocate Commissioner's report is marked as Ex.C4.

6. The trial Court, on appreciation of oral and documentary evidence available on record, came to the conclusion that the plaintiffs proved their right and possession over the suit fifth schedule property and granted a decree as prayed for. Aggrieved by the same, the defendants preferred an appeal in A.S.No.22 of 2002, on the file of Additional Sub-Court, Tenkasi. The First Appellate Court affirmed the findings of the trial Court. Aggrieved by the concurrent findings of the Courts below, the defendants are before this Court by way of this Second Appeal.

7. The learned Senior Counsel appearing for the appellants/defendants submitted that the sub-division of suit survey number had taken place in the year 1984 itself and the patta for new sub-division numbers were issued in favour of the



defendants in the year 1984 and from that day onwards, the defendants have been enjoying the suit fifth schedule property along with suit third schedule property and therefore, they perfected title by adverse possession. The learned counsel submitted that both the Courts below failed to consider the plea of adverse possession raised by the defendants and hence, the same needs to be interfered with. The learned counsel further submitted that the Advocate Commissioner's report and plan are not useful to come to the conclusion that the suit fifth schedule property forms part and parcel of the land allotted to the first plaintiff under Ex.A1-Partition Deed.

8.It is not in dispute that the total extent available under suit survey number is 5 acres and 66 cents. The said extent was divided among the first plaintiff, defendants predecessor Karuppiah Asari and their brother Subbiah Asari who is not a party to the suit under ExA1 Partition Deed. A perusal of Ex.A1 would suggest that under third schedule to the partition deed, the first plaintiff was allotted with 1 acre and 86 cents on the northern side of the suit survey number. The defendants predecessor-in-interest Karuppiah Asari was allotted with 1 acre and 86 cents in the middle portion of the suit survey number as second schedule to the partition deed. The other brother Subbiah Asari was allotted with 1 acre and



86 cents on the southern portion of the suit survey number under first schedule to the partition deed. Therefore, all the borthers were allotted with 1 acre and 86 cents each in the suit survey number. A perusal of Surveyor's Plan and Advocate Commissioner's report which were marked as Ex.C3 and Ex.C4 would suggest that in sub-division, the S.NO.251/2A1, S.No.251/2A2 and S.No.251/2B1 which are in the name of the first plaintiff is only with an extent of 1 acre and 55 cents. The sub-division in S.No.251/2A4 and S.No.251/2B2 stand in the name of Karuppiah Asari was allotted with 1 acre and 95 cents. The sub-division in S.No.251/2A5 and S.No.251/2A3 stand in the name of Subbiah Asari allotted with 2 acre and 05 cents. Under Ex.A1, the first plaintiff was allotted with 1 acre and 86 cents. However, as per the new sub-division plan, the first plaintiff is shown to be entitled to only 1 acre and 55 cents. The defendants predecessor-in-interest Karuppiah Asari was allotted with 1 acre and 86 cents in the middle portion of suit survey number under Ex.A1. However, as per the new sub-division plan, the defendants are entitled to 1 acre and 95 cents. The other brother of the parties namely, Subbiah Asari was allotted with 1 acre and 86 cents on the southern side. However as per the new sub-division number, two acres and 5 cents is shown to be allotted to the said Subbiah Asari. It is settled law that patta or revenue documents cannot be treated as a document of title. When the first



plaintiff was allotted with 1 acre and 86 cents under Ex.A1 by sub-division, his allotment cannot be reduced to an extent of 1 acre and 55 cents. Likewise, the defendants, who are entitled only to 1 acre and 86 cents in suit survey number are not entitled to claim more than the extent based on new sub-division plan. The Courts below by taking into consideration the extent of the properties allotted to the respective parties under Ex.A1 and also the Surveyor's plan and Commissioner's report, came to the conclusion that the suit fifth schedule property shall form part and parcel of suit second schedule property allotted to the share of the first plaintiff. The said finding is based on proper appreciation of evidence available on record and there is no perversity in the findings recorded by the Courts below.

9. The learned Senior Counsel for the appellants vehemently contended that adverse possession raised by the defendants was not at all considered by the Courts below. In support of his plea of adverse possession, the defendants have not examined any other witness to prove their hostile possession over the suit fifth schedule property. The only witness examined by the defendants is the fourth defendant. Except his interested testimony, there is no other evidence available on record to sustain the plea of hostile possession. The defendants have not examined the neighbours to



establish their hostile possession over the suit fifth schedule property for more than the statutory period. For the reasons well known to the defendants, they failed to examine the neighbours to establish their hostile possession. As far as patta produced by the defendants are concerned, as mentioned earlier, the pattas cannot be treated as a document of title and there is no evidence available on record to show that the patta issued in favour of defendants were issued after proper notice to the plaintiffs and after due enquiry. Therefore, the same will not advance the case of the defendants with regard to the plea of adverse possession. Therefore, the appellants/defendants failed to establish the plea of adverse possession by leading any cogent evidence. In such circumstances, I do not find anything to interfere with the findings of fact recorded by the Courts below. As a necessary consequence, the Second Appeal fails and the same stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

30.07.2024

Index:Yes/No

Internet:Yes/No

NCC:Yes/No

vsn



To

- 1.The Additional Sub-udge,
Tenkasi.
- 2.The Principal District Munsif,
Tenkasi..
- 3.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



12

S.SOUNTHAR, J.

vsn

JUDGMENT MADE IN

S.A.NO.1306 OF 2003
and
C.M.P.No.11299 of 2003

30.07.2024