



S.A.No.1545 of 2003

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.07.2024

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No.1545 of 2003

Sri Muniaswamy Temple,
Rep. by Poosari and Trustee
P.Kasimayan,
S/o.Late Periyasamy
Sembatti Sindupatti (Post),
Usilampatti Taluk,
Madurai District.

... Appellant

*(Poosari and Trustee of the appellant temple
is substituted vide Court order dated 31.10.2023
made in C.M.P.(MD)No.13611 of 2023)*

Vs

Chinna Thevar

... Respondent

PRAYER: Second Appeal filed under Section 100 of C.P.C., against the judgment and decree dated 21.02.2002 passed in A.S.No.224/2000 on the file of II Additional District Court, Madurai confirming the judgment and decree dated 16.11.1999 passed in O.S.No.484/1997 on the file of III Addl. Sub Court, Madurai.

For Appellant : Mr.R.Subramanian

For Respondent : Mr.R.Paranjothi



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JUDGMENT

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The unsuccessful plaintiff in a suit is the appellant. The suit is for declaration of title and injunction. The suit was dismissed by the trial Court and the findings of the trial Court were affirmed by the first appellate Court. Aggrieved by the concurrent findings, the plaintiff has come by way of this Second Appeal.

2. According to the appellant/plaintiff, the suit property lies in S.No.65/4 equivalent to the Zameen Pymash No.626. It was claimed by the plaintiff that the old Pymash numbers of the suit property were 625, 626 and 627. It was claimed by the plaintiff that 55 cents of land in old Pymash No.626 originally belonged to grandfather of the plaintiff Muthumayathevar and he acted as Poosari cum Trustee of Muniyasamy Temple. It was also claimed that Muniyasamy Temple situated in old Pymash No.626 and the entire extent of 55 cents had been in possession and enjoyment of the plaintiff and his predecessor in interest in their capacity as Poosari. The defendant's father purchased 2 acres 85 cents in old Pymash Nos.625 and 627 under a sale deed dated 26.09.1940. The defendant had no claim or right over old Pymash No.626. However, they



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got patta for the entire new S.No.65/4 to an extent of 3 acres 40 cents including the old Pymash Nos.625, 626 and 627. The plaintiff submitted a petition before the Tahsildar, Usilampatti for correction of revenue records and after enquiry, he ordered inclusion of the Trustee of the Muniyasamy Temple also as a co-pattadhar for entire 3 acres 40 cents in new S.No.65/4. Though the defendant has no right over the suit property, he attempted to interfere with the plaintiff's possession and hence, the above said suit was laid.

3. The defendant filed a written statement denying the right as well as possession over the suit property. It was claimed by the defendant that entire 3 acres 40 cents in new S.No.65/4 has been in possession and enjoyment of the defendant and his predecessor in interest. They denied the existence of Muniyasamy Temple in the said survey number. It was also claimed by the defendant that Muniyasamy Temple situated on the Eastern side of the suit property in Kazhuva Devar's land. The order passed by the Tahsildhar, Usilampatti for inclusion of the plaintiff's name in the revenue records was set aside on an appeal filed by the defendant. It was also claimed by the defendant that the possession of the defendant over the entire 3 acres 40 cents in the suit survey number was confirmed



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in the settlement proceedings and patta was issued by the Assistant Settlement Officer in the name of the defendant. Thus, claiming continues possession over the entire extent of 3 acres 40 cents in new S.No.65/4, the defendant sought for dismissal of the suit.

4. Before the trial Court, the plaintiff was examined as P.W.1 and yet another witness was examined as P.W.2. 7 documents were marked on behalf of the plaintiff as Ex.A1 to Ex.A7. The defendant was examined as D.W.1 and 38 documents were marked as Ex.B1 to Ex.B38.

5. The trial Court, on appreciation of oral and documentary evidence available on record, came to the conclusion that the plaintiff miserably failed to prove his possession over the suit property and dismissed the suit. Aggrieved by the same, the plaintiff preferred an appeal in A.S.No.224 of 2000 on the file of II Additional District Court, Madurai. The first appellate Court affirmed the findings of the trial Court. Aggrieved by the same, the plaintiff has come by way of this Second Appeal.

6. At the time of admission, this Court formulated the following



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substantial question of law by an order dated 14.10.2003:

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“Whether in law, have not the Courts below erred in overlooking that admittedly when the entire extent belonged to the plaintiff's ancestors and the defendant having purchased only a part of the same, the onus is on him to prove his title?

7. The learned counsel for the appellant vehemently contended that under Ex.A2 equivalent to Ex.B1, the defendant's father Periyasamy Devar purchased only 2 acres 85 cents in old Pymash Nos.625 and 627. Therefore, the defendants are not entitled to lay any claim over 55 cents in old Pymash No.626. The learned counsel relied on Ex.A3, an order passed by the Tahsildar, Usilampatti dated 18.11.1996, directing the inclusion of plaintiff's name in the patta for the suit survey number.

8. On the other hand, the learned counsel appearing for the respondent submitted that in a suit for declaration of title and injunction, the plaintiff has to succeed based on his own documents and he cannot seek declaration by relying on the weakness of the defendant's evidence. The learned counsel further submitted that the order passed by the Tahsildar, Usilampatti in Ex.A3 for inclusion of plaintiff's name in the patta was set aside by the Revenue Divisional Officer, on an appeal filed



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by the defendant, as seen from Ex.B33. Therefore, the learned counsel for the respondent sought for dismissal of the Second Appeal.

9. It is the case of the plaintiff that 55 cents of land in old Pymash No.626 belonged to Muthumaya Devar, paternal grandfather of the plaintiff and it was his further case that the plaintiff's ancestors have been performing poojas in Sri Muniyasamy Temple, situated in the suit property and he acted as Poosari cum Trustee. In order to substantiate that 55 cents of land in old Pymash No.626 originally belonged to plaintiff's ancestors, no documents have been produced by the plaintiff. In order to prove possession of the plaintiff over the suit property, the plaintiff produced Ex.A3 Tahsildar's order dated 18.11.1996, Ex.A4 Chitta and Ex.A5 Adangal etc. It is seen from Ex.B33, the order passed by the Tahsildar, Usilamapatti dated 18.11.1996, for inclusion of plaintiff's name in the patta under Ex.A3, was set aside by Revenue Divisional under Ex.B33. In such circumstances, the revenue documents viz., Ex.A4-Chitta and Ex.A5-Adanagal, which came into existence immediately after passing of order under Ex.A3 will not advance the case of the plaintiff to prove his possession over the suit property. Therefore, the plaintiff failed to produce any acceptable title documents to prove his title over the suit property. He also failed to produce any revenue



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document to prove his alleged long possession over the suit property from the date of his ancestors.

10. On the other hand, the defendant produced various documents to prove his long possession over the suit property. Ex.P2 is an extract of the settlement register, wherein the name of the defendant's father Periyasamy Devar was entered as owner of the entire 3 acres 40 cents in the suit property in new S.No.65/4, including old Pymash No.626. Ex.B3, "A" Register extract produced by the defendant also confirms the same. Absolutely there is no explanation on the part of the plaintiff why he has not sought for patta under settlement proceedings after the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948, came into force. Whereas, the defendant got patta in settlement proceedings under Ex.B2 for the entire extent of 3 acres 40 cents. Ex.B4 is a patta in the name of defendant for the suit property. Ex.B5 to Ex.B18 are Adangal extract of the suit property for the Fasli years 1383 to 1403 in the name of the defendant. Ex.B4 to Ex.B18 are relating to the years 1972 to 1993. Therefore, the defendant succeeded in proving his long possession over the entire extent of the suit property by producing the revenue documents.



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11. In these circumstances, both the Courts below rightly came to the conclusion that the plaintiff failed to prove his title and possession over the suit property. Even assuming the defendant is able to produce title documents only for 2 acres 80 cents and prove his long possession over the suit property, his failure to prove his title and long possession over the entire extent of suit property will not automatically confer title on the plaintiff, in the absence of any positive evidence on his side. Therefore, the question of law framed at the time of admission is answered against the appellant and in favour of the respondent. Accordingly, the Second Appeal stands dismissed. There shall be no order as to costs.

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NCC : Yes / No

Index : Yes / No

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To

- 1.II Additional District Judge, Madurai.
- 2.III Addl. Sub Judge, Madurai.
- 3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SOUNTHAR, J.

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