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S.A. No. 1205 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2025

CORAM

THE HONOURABLE Ms. JUSTICE R.N.MANJULA

S.A. No. 1205 of 2011
and M.P. No. 1 of 2012

1.Padavattai Ammal
2.Kaveri Goundan (died)
[A2 died, A1 and R1 (already on
record) are legal heirs of the deceased
A2 vide Court Order dated
20.04.2023 made in S.A. No. 1205 of
2011.]

...Appellants

Vs.

1.Mari
2.The Tahsildar
3.The State of Tamil Nadu
Rep. By District Collector
Dharmapuri.

... Respondents

PRAYER: Second Appeal is filed under section 100 of the Code of Civil Procedure, 1908, to set aside the judgment and decree dated 31.07.2008 made in A.S. No. 71 of 2005 on the file of the Sub-ordinate Judge, Dharmapuri, reversing the judgment and decree dated 11.04.2005 made in O.S. No. 169 of 2000 on the file of the District Munsif at Palacode.

For Appellants : Mr.Sudharsan
For Mr.S.Subramanian

For Respondents : Mr.R.Selvakumar (R1)
Dr.S.Suriya, AGP (R2 & R3)



JUDGMENT

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The defendants 1 and 2 are the appellants against whom the plaintiff has filed a suit for declaration of title of the plaintiff / to declare the impugned patta issued to the first defendant as null and void and consequential permanent injunction. The trial Court has dismissed the suit. The plaintiff has preferred the first appeal. The first appellate Court has allowed the first appeal and the suit was decreed. Aggrieved over that, the defendants 1 and 2 have preferred this second appeal.

2. The short facts pleaded in the plaint is under:-

The plaintiff is the second defendant's daughter through his first wife. The first defendant is the second wife of the second defendant. The plaintiff is an illiterate person. The suit properties and other properties are the ancestral properties of the second defendant. Before 16 years from the date of the suit, the plaintiff got married and after her marriage, the second defendant allotted the suit properties to the plaintiff and from then onwards, the plaintiff is in enjoyment of the suit properties and cultivating the same to the knowledge of the defendants. The patta for the suit properties has also been effected in the name of the plaintiff on 20.02.2000. In the patta, there is a mention of 0.05.0



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hectare. The defendants do not have any right in the suit properties. The second defendant has got other properties for his enjoyment. By taking advantage of the patta, which do not have the right over the extent of the properties in enjoyment of the plaintiff, the defendants 1 and 2 claim false title over the suit properties. On 30.07.2000, they tried to encroach into the suit properties and disturb the peaceful possession of the plaintiff over the same and that was prevented by the plaintiff. The defendants 1 and 2 have declared that they would come and take the possession of the suit properties. The actions of the defendants 1 and 2 are illegal and hence the plaintiff has filed the suit to declare her title over the suit properties, to declare that the patta is defective and it is null and void and for consequential injunction restraining the defendants 1 and 2 from interfering with the plaintiff's peaceful possession of the suit properties.

3. The first and second defendants have filed their written statement and it is given in brief as under:-

The whole of the suit properties was not given to the plaintiff. A portion of the suit properties alone was given to the plaintiff by the second defendant. It was not cultivated by the plaintiff at any point of time. Only the defendants 1 and 2 are cultivating the same by paying Kist. In fact, the



plaintiff has agreed to sell a portion of the properties given to her to the first defendant and has entered into a sale agreement with her father. There is no cause of action for the suit and hence, the suit should be dismissed.

4. The written statement of the third and fourth defendants in brief as under:-

It is false to state that the suit properties belonged to the plaintiff. The suit properties belonged to the second defendant. It is wrong to claim that the patta is null and void, as it has been jointly given in the names of the plaintiff and the first defendant. Hence, the plaintiff cannot seek any relief against the patta.

5. On the basis of the above pleadings, the following issues are framed in the trial Court:-

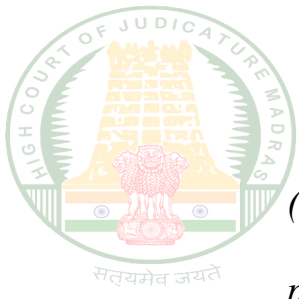
“(1) Whether the plaint is sustainable?”

“(2) Whether the plaintiff is entitled to the reliefs claimed?”

Taking into consideration of the plaint and the written-statement, the issues are re-framed in the trial Court as follows:-

“(1) Whether the plaintiff is the owner of the suit property?”

“(2) Whether the plaintiff is in possession of the suit property?”



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(3) *Whether the plaintiff is entitled to the relief claimed in the
plaint?*

(4) *What are the other reliefs?”*

6. During the course of trial, on the side of the plaintiffs, two witnesses were examined as PW1 and PW2 and Exs. A1 to A4 were marked, on the side of the first defendant, she was examined as DW1 and three witnesses were examined as DW2 to DW4 and seven documents were marked as Exs.B1 to B7.

7. At the conclusion of the trial and after considering the materials available on record, the learned Trial Judge has dismissed the suit. The first appeal filed by the plaintiff challenging the judgment of the Trial Court has also been allowed by the First Appellate Court and the suit was decreed. Aggrieved by than, the plaintiff has filed this second appeal.

8. Based on the above submissions of both side counsels and on perusal of records, the Second Appeal had been admitted on the following substantial questions of law:-

“(1) Whether the lower Appellate Court is right in deciding



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the question of title over the suit property only on the basis of recitals in Ex.A3 in the absence of any other evidence on record both oral and documentary to prove the same?

(2) Whether the lower appellate Court is right in finding that Ex.B1 which is a partition Muchalikka, is not acceptable in law for want of registration?

(3) Whether the lower appellate Court is right in finding that the patta dated 22.06.2000 has been granted in violation of law?"

Additional Substantial Questions of Law:-

a) Whether the impugned judgment of the First Appellate Court is vitiated in law due to noncompliance of the mandate contained in Order 41 Rule 31 of Civil Procedure Code?

b) Whether the learned First Appellate Court is right in coming to the conclusion that alleged stray admission with regard to the title of the plaintiff in the written statement of the Defendant would confer title upon the plaintiff when there is not even an iota of oral and documentary evidence to prove the same independently as per the procedure



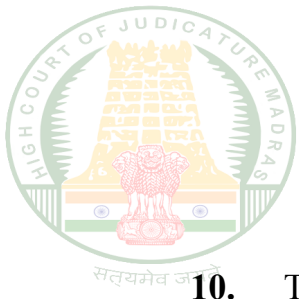
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established by law? Is such finding not perverse and opposed to the well settled principle of law that no estoppel can be claimed against statute?

9. The learned counsel for the appellants submitted that the First Appellate Court did not frame any point for determination. The First Appellate Court has framed a generalized point for consideration without making any specific point for determination. The plaintiff has not established her rights through any valid document that the suit properties were allotted to her in her plaint. The patta has been obtained just two months before filing of the suit and there is no document to show that she is in possession of the properties. The plaintiff tried to establish her title over the suit properties just by showing one of the boundary details found in Ex-A3-settlement-deed, executed by the second defendant in favour of the first defendant. The plaintiff has not raised any pleadings about the said document in the plaint. The plaintiff has executed a sale-deed in favour of the first defendant in the year 1987 and from then onwards, it was the first defendant who was in enjoyment of the suit properties. Despite the Trial Court has rightly appreciated the absence of the evidence in favour of the plaintiff to establish title in respect of the suit properties, the First Appellate Court was mis-guided. The plaintiff did not discharge her burden of proof and hence, the First Appellate Court ought to have dismissed the appeal.

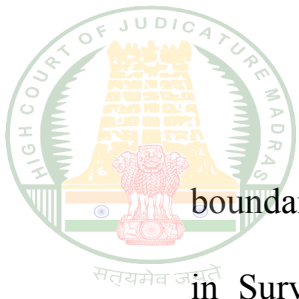


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10. The learned counsel for the respondents submitted that the First Appellate Court did not allow the appeal on the basis of the admission given by the defendants 1 and 2 in the written statement. As the boundary details given in the first defendant's settlement, which is marked as Ex.A3, itself would show that the plaintiff has been given with certain properties, the First Appellate Court has allowed the appeal on that basis. Unless the plaintiff has any title, there is no necessity to get any document to the property back from the plaintiff by the first defendant.

11. The relationship between the parties is not in dispute. The specific claim of the plaintiff is that she has been given with certain portion of the suit properties by her father and from then onwards, she is in enjoyment of the same. Even though the first defendant had admitted that certain properties have been given to the plaintiff at the time of her marriage to improve her status, later, the same was re-transferred in the name of the first defendant and to that effect, a Muchalikka has been obtained in the presence of some Panchayatars.

12. The First Appellate Court has mainly relied on the boundary details shown in the Ex.A3-Settlement-deed executed by the second defendant in favour of the first defendant. In the property details found in that settlement-deed, one of the



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boundary has been shown as the property belonged to one Munusamy and Mari in Survey No. 488/1 comprising an extent of 14 acres and 51 cents. The properties subjected to the settlement shown as situated on the East and West of the above properties mentioned in Survey No. 488/1. By claiming that the person mentioned by name Mari would refer to the plaintiff, the First Appellate Court proceeded to consider it as a piece of evidence in favour of the plaintiff. It might be true that the properties said to have been allotted to the share of Mari, i.e., the plaintiff, could have been on the West and East of the properties subjected to the settlement by virtue of Ex.A3-Settlement-deed. But that alone cannot confer title in favour of the plaintiff, unless the plaintiff could establish that by virtue of her long uninterrupted possession and she had perfected the title by adverse possession or that her father had executed a registered document conveying title in her favour.

13. Surprisingly, the second defendant, who is the owner of the properties claimed by the plaintiff and the first defendant, has not been examined as witness. The plaintiff has not filed the suit for specific performance against her father to execute a sale-deed or settlement-deed or gift-deed or partition-deed in pursuant to the alleged allotment made by her father in respect of the suit properties. Except one Kist receipt of the year 2002, and Patta, which has a specific extent, which does not tally with the extent of the suit properties, the



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plaintiff did not file any other document to show that she has been in continuous enjoyment of the suit properties and she has perfected title atleast by virtue of such continuous and uninterrupted possession. The plaintiff has not pleaded those facts in her plaint as well. It is settled law that no title can be transferred in favour of a person unless a registered document has been executed by way of any conveyance in his favour. The settlement-deed, which was marked as Ex.A3, is anterior in the point of time than the panchayat Muchalikka which was marked as Ex.B1 on the side of the defendants. Ex.B1 panchayat Muchalikka is dated 31.07.2001 and by virtue of the said Muchalikka, it is claimed by the defendants that the properties, which have been given to the enjoyment of the plaintiff, have been got back by the father himself in the presence of the panchayatdars and to that effect, the plaintiff has executed the Ex.B1-panchayat Muchalikka. On the side of the defendants, some of the witnesses have stated about the factum of panchayat and that Ex.B1-panchayat Muchalikka was executed and it was signed by the plaintiff.

14. Though, the first defendant claims that the plaintiff has re-transferred the title in respect of the suit properties by virtue of the sale deed dated 03.12.1987 (Ex.B2), it cannot also be taken as evidence. As it is an unregistered document, even the first defendant cannot claim title in respect of the suit properties based on Ex.B2. So, the only conclusion that can be arrived in respect of the suit



properties is that the title still remains with the father of the plaintiff, who is the second defendant herein. The second defendant, who is the rightful person to speak about the existing state of affairs in respect of the suit properties, did not come to the box.

15. Whatever may be the case, the plaintiff neither have any title-deed to claim title in respect of the suit properties nor proved her continuous and uninterrupted possession.

16. The First Appellate Court had proceeded to record the findings that the Patta dated 24.06.2000 given in favour of the first defendant is wrong and it is invalid. Though the Court could record the findings as to any of the non-disputable particulars seen in the patta contrary to the title deeds, the Court cannot usurp the jurisdiction of the revenue authorities who have to decide about the validity of patta for the suit properties given in favour of the plaintiff. Even according to the plaintiff, it was just an oral allotment and the same cannot be accepted as a proof of title to grant a relief of declaration of title in respect of the suit properties in favour of the plaintiff.

17. As the First Appellate Court did not take into consideration of the above facts and proceeded to set aside the decree of the Trial Court dismissing the suit,



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I feel that the judgment of the First Appellate Court is not correct. Further, the First Appellate Court has framed a generalized point for consideration without taking up specific points for determination. Even though the First Appellate Court might have discussed the contentious issue, which was raised by the parties, it has declared title in respect of the suit properties to the plaintiff without placing any reliance on any registered title deed. **Hence, the substantial questions of law are also answered in favour of the appellant.**

18. This second appeal is allowed and the judgment of the Sub-ordinate Judge, Dharmapuri made in A.S. No. 71 of 2005 dated 31.07.2008 is set aside. Consequently, connected miscellaneous petition is closed. No costs.

30.01.2025

Index : Yes/No
Speaking order : Yes/No
NCC : Yes/No
Maya

To

1. The Sub-ordinate Judge, Dharmapuri
2. The District Munsif at Palacode.
3. The Section Officer,
V.R. Section, High Court, Madras.



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R.N.MANJULA, J.

Maya

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