



S.A.No.517 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.05.2025

CORAM:

THE HONOURABLE Mrs.JUSTICE R.KALAIMATHI

S.A.No.517 of 2011

and

M.P.No.1 of 2011

Selvaraj ... Appellant / 3rd defendant

vs.

1.Arokkiasamy ... 1st Respondent / Plaintiff

2.The District Collector,
Vizhupuram.

3.The Revenue Tahsildar,
Kallakurichi ... Respondents 2 & 3 / Defendants 2 & 3

PRAYER: This Second Appeal is filed under Section 100 of C.P.C., against the Judgment and Decree of the Sub-Court, Kallakurichi, dated 30.11.2010 made in A.S.No.26 of 2009 reversing the judgment and decree of II Additional District Munsif Court, Kallakurichi dated 25.08.2009 made in O.S.No.439 of 2005.

For Appellant : Mr.A.Arun Babu
For Respondents : Ms.B.N.Sivagama Sundari[R1]



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Mr.P.Gurunathan[R2 & R3]

Additional Government Pleader

JUDGMENT

This second appeal has been preferred by the 3rd defendant against the judgment and decree dated 30.11.2010 passed in A.S.No.26 of 2009 by the Sub-Court, Kallakurichi.

2. Parties are indicated herein as per their litigative status and ranking before the trial Court.

3. According to the plaintiff, the suit property, 0.99 cents of waste land situated at Karadisithoor Village, Kallakurichi Taluk in dry S.No.58/1, patta No.446, absolutely belongs to the plaintiff. The suit property is waste land belongs to the Government. His father Appavu @ Agasthiyar got the assignment of said land in his favour as per TKT No. 505/79 dated 30.10.1970 and he had been in possession and enjoyment of the suit property. He died intestate in the year 2002 leaving behind the plaintiff, his



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mother Agathammal, sisters Selvamary, Arokkiyammal, Lourdumary,

Rabekkal and Amalorppavan. The plaintiff being the youngest member in

the family and only son, the other persons as mentioned supra have orally

relinquished their shares in favour of the plaintiff. Since 34 years, the

plaintiff and his father have been in possession of the suit property

continuously, thereby prescribed title by adverse possession.

4. Further more, the 3rd defendant Tr.Selvaraj, son of Asirvadham, who does not have any right or enjoyment in the suit property, claims to have obtained patta from the first and second defendants herein as per the Updating Registry Scheme and in order to prevent the plaintiff from enjoying the said property, he denies the title of the plaintiff to the suit property. He is also trying to sub-divide the suit property with the help of the second defendant herein. Hence, the suit is filed for the relief of declaration of title and for permanent injunction, not to interfere with the peaceful possession and enjoyment of the suit property.



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5. It has been averred that the suit property namely, S.No.58/1, 0.90

cents was assigned in favour of the father of the plaintiff and he was in possession and enjoyment of the suit property. As per the oral partition that took place in their family and as per the Updating Registry Scheme, 1982, based on his enjoyment over the suit property, patta was granted in favour of the plaintiff's father; Plaintiff's father Appavu @ Agasthiyar and defendants' father Asirvadham are brothers. After the death of plaintiff's father, 3rd defendant started to give trouble to the plaintiff's enjoyment of the suit property. The patta has been transferred in the name of the 3rd defendant as he is the elder person. The plaintiff has given incorrect details in the plaint and the patta was granted in favour of the third defendant under the Updating Registry Scheme, 1982.

6. Contending contra, the third defendant Selvaraj, S/o Asirvadham would contend that originally the suit property was a levelled and improved by the plaintiff's father as well as the defendants' father and it was in the joint possession and enjoyment of both persons. After the demise of



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plaintiff's father and his father, the suit property is in possession and

enjoyment of the 3rd defendant, who is the elder person and the patta has

been transferred in the name of the 3rd defendant. There was no fault on

the part of the first and second defendants in granting patta in his favour.

The total extent of the suit property is 0.90 cents. The 3rd defendant fairly

accedes to the fact that the plaintiff is entitled for half a share in the suit

property.

7. Based on the rival pleadings, the trial Court framed the following

issues:-

“(i) Whether the suit property absolutely belongs to the plaintiff?

(ii) The contention of the third defendant that the plaintiff as well as the third defendant are entitled for half share each in the suit property is correct or not?

(iii) Whether the suit property is in the possession and enjoyment of the plaintiff or not?



(iv) Whether the plaintiff is entitled for any other relief?

(v) To what other relief is entitled to the plaintiff?"

8. At trial, to substantiate the plaint details, one witness was examined and five documents had been marked. Assignment proceedings in TKT.No.505 of 79 issued by the Government in the name of the plaintiff's father dated 30.10.1970 is Ex.A1. Exs.A2 & A3 are the tax receipts and A4 is the chitta extract for the fasli year 1392 in the name of plaintiff's father. Adangal extract for the suit property dated 04.10.2005 in the name of the plaintiff's father for the fasli year 1379 to 1392 is Ex.A5. On the defendants' side, two witnesses had been examined and two documents had been marked. Ex.B1 is the General Power of Attorney Deed executed by the 3rd defendant in favour of his wife dated 21.08.2006 and patta for the suit in the name of 3rd defendant, dated 28.02.2006 is Ex.B2.



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9. The Trial Court, upon considering the oral and documentary evidence and after hearing the arguments advanced by the counsels on both sides held that the plaintiff has failed to prove that the suit property in its entirety belongs to him and chose to dismiss the suit.

10. Aggrieved over the same, the plaintiff preferred an appeal before the Sub-Court, Kallakurichi in A.S.No.26 of 2009. The First Appellate Court, upon consideration of the case records and after hearing both sides, observed that when the suit property is the exclusive property of the plaintiff's father, then the legal heirs of Appavu @ Agasthiar alone can claim right in the suit property and the plaintiff's mother and sisters have got no right as co-sharers in the suit property and allowed the appeal by setting aside the judgment and decree of the trial Court passed in O.S.No.439 of 2005, dated 25.06.2009.

11. Aggrieved over the same, the 3rd defendant has preferred this Second Appeal against the judgment and decree of the First Appellate



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Court as mentioned supra.

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12. To put it in a nutshell, the plaintiff's case is that the plaintiff's father was granted assignment of the suit property under TKT No.505/1979 dated 30.10.1970. From the said date onwards, plaintiff's father had been in possession and enjoyment of the assignment property by paying kist to the Government. After the death of his father in the year 2002 and as the other legal heirs have relinquished their shares in the suit property in his favour, he was in exclusive possession and enjoyment of the suit property. Meanwhile, the third defendant denied his title to the suit property by stating that he has obtained patta under “நில உடைமை மேம்பாட்டுத் திட்டம்”.

13. Rather, the 3rd defendant would vehemently contend that the suit property was in joint possession and enjoyment of the plaintiff's father and the 3rd defendant's father and after their lifetime, the suit property is in the



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enjoyment of the 3rd defendant as the elder member of the family and

hence, patta was changed in his name. However, the plaintiff and the 3rd

defendant are entitled to equal share in the suit property.

14. The following substantial questions of law arises for consideration:

"Whether the lower Appellate Court committed error of law in granting decree for declaration when there is no evidence on record to support the case of plaintiff that his sisters and mother relinquished their share in the suit property subsequent to their father's death?"

15. From the testimony of PW1 and DW1, it transpires that one Rabekkal had two sons, namely Asirvadham, Appavu @ Agastin and one daughter. Plaintiff's father is Appavu @ Agastin. The third defendant Selvaraj's father name is Asirvadam. The candid case of the plaintiff/P.W.1 is that the suit property in S.No.58/1, 0.90 cents was assigned in the name of his father by the Government under DKT No.505/1979, dated



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30.10.1970. Ex.A1 is the assignment patta granted in the name of

plaintiff's father Appavu @ Agastin, S/o.Rabel Gounder in DKT

No.505/1979 and the extent is 0.90 cents. There is no dispute as to the

nature of properties. Suit property is a Government property. As per Ex.A1

assignment patta, 19 stipulations have been given in the said patta. The

title to the suit property vest with the Government and in future, if the land

is required for the Government, it can be taken back by the Government in

accordance with law (Condition No.18: அடமானம் செய்யப்பட்ட இடம்

விலக்கப்பட்ட (prohibited) கிராமத்தில் இருந்து பிற்பாடு அரசாங்கத்திற்கு

தேவைப்பட்டால் எவ்வித கஷ்டமும் இன்றி எடுத்துக்கொள்ளப்படும்).

16. The case of the 2nd defendant (Tahsildar) is that the suit property and another family property of plaintiff's father and 3rd defendant's father were enjoying as a joint family property by the father of the plaintiff and father of the 3rd defendant as they are brothers and the suit property fell to the share of plaintiff's father. Thereafter, plaintiff's father Appavu @



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Agastin was granted assignment patta - Ex.A1. DW1-Ganapathy,

Draftsman of Taluk Office would state that based on the oral partition under Nila Udaimai Membattu Scheme as the 3rd defendant Selvaraj's father Asirvadam being the eldest male member, patta was transferred in his name. It is his further evidence that to this effect, statements have been recorded from the above said persons. Neither the plaintiff nor the 3rd defendant has put-forth as contended by the second defendant herein. When neither parties to the suit (plaintiff and the third defendant) have pleaded about the oral partition, this Court is of the view that the second defendant has put up a novel case in order to support the third defendant Selvaraj without any basis.

17. As per Exs.A1 (Patta), A4 (Chitta) and A5 (Adangal), all the revenue records stand in the name of plaintiff's father Appavu @ Agastin.

18. Admittedly, plaintiff and the third defendant are christians and there is no concept of joint family property in christians. Therefore, it



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should not lie in the mouth of the second defendant that the suit property was enjoyed as joint family property by the sons of Rabel namely father of the plaintiff and the father of the third defendant herein.

19. From a careful perusal of the Revenue Standing Order – 15, it is pellucid that only landless and poor persons who are likely to engage themselves in direct cultivation are eligible for assignment of land, free of land value subject to the condition of assignment imposed in the D-Form patta. The Standing Order No.15 reads that “No land belonging to Government shall be assigned or sold under this Standing Order to any person other than a British Subject or a subject of an Indian State, except by the Collector or the Board and with the previous permission of Government. Every assignment or sale made under this Standing Order shall be subject to the condition, that, if the land is alienated without the sanction of the Government in favour of any person other than a British subject or a subject of an Indian State, the grant shall thereupon become null and void.”

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20. The above said details would indicate the fact that the land belonging to the Government is assignable. If the Government land is assigned to a person as the grant (as the case of Ex.A1- D-Form patta), it is presumed to be a self acquisition of the pattadar. These details have been discussed in Hindu code by Sir Harisingh Gour's (6th edition, 1992, Volume I, at page 283). It reads that *"Property acquired from a grant from Government is unquestionable self-acquired, unless it was merely restoration of a confiscated grant intended to be for the benefit of the family or is a grant made in consideration of the services rendered by the family or at its expense. But party cannot sue Government for the modification of its grant. For specific instances see under mentioned cases. The question whether a Government grant was personal to the grantee or to him and his family is one of construction and intention to be inferred from the terms of the grant and its surrounding circumstances. It may be that the grant is personal. Even then it is open to the grantee to treat it as a joint family asset and it becomes so if the grantee constitutes*



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himself as trustee for his family or by a family arrangement or by a family custom."

21. This grant by the Government is dealt by Mayne's in Hindu Law and Usage (1996 Edition at page-648) *"Estate conferred by Government in the exercise of their Sovereign power become self-acquired property of the donees, whether such gifts are absolutely new grants, or only the restoration to one member of the family of property previously held by another but confiscated, unless some contrary intention appears from the grant, or the conduct of the donee and the other members of his family shows that they treated it as joint family property."*

22. As per Ex.A1/D-Form patta, father of the plaintiff is beneficiary and assignment was granted in the name of Appavu @ Agastin as an individual. Exs.A4 and A5 namely Chitta and Adangal in respect of the suit property stand in the name of Appavu @ Agastin, S/o.Rabel Gounder in patta No.668. Ex.A5 is the Adangal extract for the Fasalier 1379 to 1392

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stands in the name of Appavu @ Agastin, DW2. On the third defendant's

side, third defendant's wife Sagayamary has been examined as DW2. It is

her evidence that, when she got married (on 14.09.1982), her father-in-law

Asirvadham was not alive. Ex.B2 is the patta granted in the name of the

third defendant in respect of 58/1A and 1B dated 28.02.2006. It is clear

that D-Form patta was granted in favour of plaintiff's father in the year

1970 and in the year 2006, patta was granted in the name of the third

defendant. DW1-draftsman of the District Collector, Villupuram District /

second defendant would accede to the fact that no application was

received in respect of change of patta, no notice was issued to the legal

heirs of Appavu @ Agastin and no enquiry was conducted before granting

Ex.B2 patta. Therefore, Ex.B2 patta has been granted floating all the rules

pertaining to change of patta. In the eye of law, Ex.B2 patta can never be

considered as valid document. It is granted in sheer violation of Revenue

code. Therefore, the third defendant cannot seek for protection of his right

based upon the revenue document (Ex.B2) which is not in order.



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23. From the evaluation of both sides testimony coupled with the

exhibits, it is pellucid that the suit property namely in S.No.58/1, 0.90 cents and not 99 cents as claimed by the plaintiff was granted in the D-Form patta in the name of Appavu @ Agastin, father of the plaintiff herein. Undoubtedly, it is to be presumed that it is the self-acquired property of Appavu @ Agastin. As one of the legal heirs of the deceased Appavu @ Agastin, the plaintiff claim over the suit property is admissible. It is the evidence of DW1 Ganapathy- draftsman that the application given by the plaintiff to cancel Ex.B2 patta is pending disposal. As Ex.B2 patta is granted in defiance to the revenue code, rules and regulations, G.Os., grant of Ex.B2 stands set aside.

24. This Court is of the considered view that the judgment of the First Appellate Court does not suffer from any infirmity or perversity and this Court also does not find any good reason to upset the findings of the learned First Appellate Court.



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25. Based on the aforestated observations and discussions, this

Second Appeal filed by the third defendant stands dismissed. Sequel to this, Ex.B2 patta granted in favour of the third defendant stands cancelled and the judgment and decree granted in favour of the plaintiff in A.S.No.26 of 2009 passed by the Sub-Court, Kallakurichi stands confirmed. There is no order as to costs. Consequently, connected miscellaneous petition, if any stands closed.

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Index : Yes/No

Speaking / Non-speaking order

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2. The II Additional District Munsif Court,
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3. The Section Officer,
V.R.Section,
High Court of Madras,
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