



S.A.No.48 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2025

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CORAM

THE HONOURABLE MS JUSTICE R.N.MANJULA

S.A.No.48 of 2012

Ramakrishnan
S/o.Sengeni Naidu.

...

Appellant

Vs

Pandurangan,
S/o Govindasamy Chettiar.

....

Respondent

PRAYER: Second Appeal is filed under Section 100 of C.P.C., against the judgement and decree passed in A.S.No.68/2009 on the file of the I additional Subordinate Judge, Villupuram dated 11.04.2011 which confirm the judgement and decree passed in O.S.No.90/2007 on the file of the District Munsif, Thirukovilur dated 04.06.2009.

For Appellant : Mr.C.Munusamy

For Respondent : Mrs.R.Poornima



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JUDGEMENT

The suit has been filed for the relief of declaration of title and permanent injunction. The trial Court has dismissed the suit and the appeal preferred by the plaintiff was also dismissed by confirming the judgement of the trial Court. Now the plaintiff has preferred the present Second Appeal challenging the judgement of the first appellate Court.

2. The shorts facts pleaded in the plaint are as follows:

The suit property is the ancestral property of the plaintiff's family. The senior paternal uncle of plaintiff namely Perumal Naidu and his brothers have entered into family partition on 30.05.1985 through a registered partition deed. In the said partition deed they left the suit property and some other property to the plaintiff's mother towards maintenance. The plaintiff was taking care of the properties which were left to his mother's maintenance. UDR patta has also been granted in the name of the plaintiff in patta No.459 and he has been in possession and enjoyment of the same by



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paying kist. The plaintiff's mother executed a settlement deed in favour of the plaintiff in respect of the suit property on 12.12.2007 and the same was accepted by the plaintiff and acted upon. The plaintiff and his predecessor in title have been in continuous peaceful possession and in enjoyment of the suit property for more than the statutory period and acquired title by prescription. As the defendant had tried to interfere with the enjoyment over the suit property by giving applications to the revenue authorities, the plaintiff was compelled to file the suit seeking the relief of declaration and permanent injunction.

3. The defendant's written statement in brief:

It is false to state that the suit property and some other properties were left out to the plaintiff's mother towards her maintenance during the alleged partition held on 30.05.1985 and that the plaintiff had been looking after his mother and the property. It is false to state that Patta No.459 has been granted in the name of the plaintiff and he has been in possession and in enjoyment of the suit property.



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3.1 The suit properties are not the ancestral properties of the plaintiff's family. The suit property measuring an extent of 2 acre 11 cents was purchased in a court auction by one Ramachandran and he took possession of the same and thereafter he sold the said property to one Govindasamy who is the father of the defendant through a registered sale deed dated 11.09.1985. On and from the date of purchase, Govindasamy has been in possession and enjoyment of the property. Govindasamy died four years back leaving his only son, the defendant herein. The alleged patta issued in the name of the plaintiff was given without making any due enquiries by the Revenue Officials. After knowing the wrong issuance of patta in the name of the plaintiff, the defendant applied for transfer of patta in his name and his petition was dismissed.

3.2. Again the defendant made an appeal before the District Collector and thereafter a full fledged enquiry was made and patta was transferred in the name of the defendant by an order dated 22.11.2006. There is no appeal



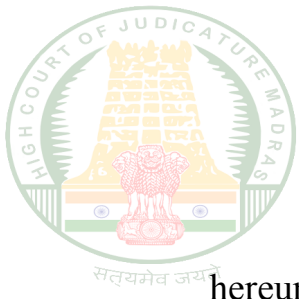
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pending against the said order as alleged by the plaintiff. The alleged settlement deed dated 12.02.2007 is not valid as the executant of the settlement deed did not have any right or title. The plaintiff has never been in possession and enjoyment of the suit property and hence the appeal should be dismissed.

4. During the course of the trial, on the side of the plaintiff four witnesses were examined as P.W.1 to P.W.4 and Exs.A1 to A24 were marked. On the side of the defendant two witnesses were examined as D.W.1 and D.W.2 and Exs. B1 to B19 were marked. The document produced by the witness were marked as Exs.X1 to X3.

5. At the conclusion of the trial and on considering the evidence on record, the trial Court dismissed the suit and the first appeal filed by the first respondent got dismissed by confirming the judgement of the trial Court. Now, the plaintiff has filed the present second Appeal by claiming that there are some substantial questions of law involved in the same, as



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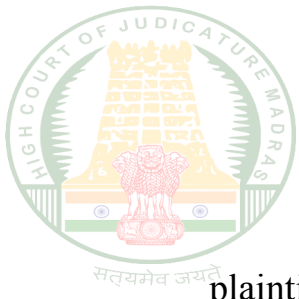
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"1.Whether both the Courts below misread the Commissioner's Report and wrongly held that the property claimed to be in possession of the plaintiff, by virtue of Patta No.459 is different from the property purchased by the defendant as per Ex.B2 and whether the property described in Patta No.459 is not related to suit property?

2.Whether both the Courts have erred in rejecting various Tax Receipts and Revenue Records to prove the possession and enjoyment of the plaintiff, by misreading the evidence of PW.1?"

6. Heard, Mr. C.Munusamy, learned counsel for the petitioner and Mrs.R.Poornima, learned counsel for the respondent and perused the materials available on records.

7. The learned counsel for the appellant submitted that the Courts below did not give weightage to the settlement deed executed by the



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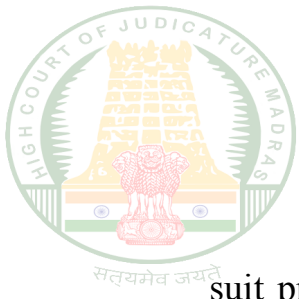
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plaintiff's mother in favour of the plaintiff and the patta that has been transferred it in the name of plaintiff. It is further submitted that the Courts below did not take into account of the plaintiff's possession over the suit property which is proved through documents before the Court.

8. On notice, Mrs. R.Poornima, learned counsel for the respondent has made her representation and submitted that the mother of the plaintiff did not have any right or title to settle the suit property in favour of the plaintiff and the patta granted in the name of the plaintiff was also cancelled subsequently. Hence, it is submitted by the learned counsel for the respondent that the Courts below had rightly dealt the matter in issue and appreciated the evidence on record in a right perspective and dismissed the suit.

DISCUSSION

9. The plaintiff claims his title from the family partition between his senior paternal uncle and his brother. It is stated that in the said partition the



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suit property has been allotted to the maintenance of the plaintiff's mother orally. When there is a written partition deed executed between the plaintiff's paternal uncle and his brothers on 30.06.1985, it is difficult to believe that an oral arrangement was made in respect of allotting a property to the maintenance of the plaintiffs mother. Obviously the fact was not stated in the partition deed dated 30.06.1985.

10. Any interest in the immovable property can be transferred only by virtue of a registered deed. On perusal of the property particulars in the plaint filed by the plaintiff, the survey number of the property is shown as S.No.106/4D comprising 0.11.0 acres. The plaintiff's claims that patta No 459 has been issued in his name, which is relevant to the suit Property in S.NO.106/4D. Despite the plaintiff claimed that the property has been allotted to the plaintiff's mother for her maintenance, no document has been produced by the plaintiff to show that his mother was ever in possession and enjoyment of the said suit property. Much stress was given only to the patta No.459 given in the name of the plaintiff. But the fact remains that the



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defendant has filed a revenue appeal before the appropriate authority and the same was dismissed. However the defendant has filed further appeal before the District Collector and after a full fledged enquiry the patta which is said to be have been given in the name of the plaintiff was cancelled and it was transferred to the name of the defendant on 22.11.2006.

11. The plaintiff did not prove the oral arrangement in respect of the suit property as claimed by him. The plaintiff's witness PW.3 has stated that he did not know about the oral partition. However the other witness PW.4 has stated that the parties to the partition deed thought of executing the settlement deed in favour of the plaintiff's mother in respect of the suit property, but that did not fructify due to the shortage of funds. PW.4 is said plaintiff's brother. He has stated in his evidence that the patta for the suit property now stands in the name of the defendant. Only after knowing that the plaintiff's mother had executed a settlement deed Ex.A15 dated 12.02.2007 in favour of his brother, who is the plaintiff herein and since the defendant is trying to interfere with the peaceful possession of the plaintiff,



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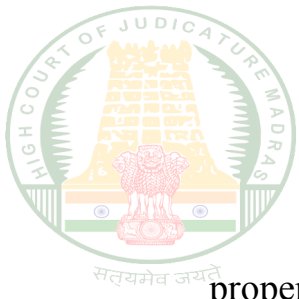
the suit is filed.

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12. A right in respect of the immovable property has been claimed by the plaintiff without producing any title deeds to show that the executant of the settlement deed had title over the same. On the other hand, the defendant has established that a suit has been filed in O.S.No.761/2018 for recovery of money from the plaintiff's paternal aunt's husband Mannangatti in which the suit property was brought for auction. Even the plaintiff himself has agreed that at some point of time, the chitta had stood in the name of his father's sister Sukkua @ Alamelu.

13. The suit property has been attached for the loan amount availed by the family members of Alemelu and thereafter, the defendant had taken the suit property in the court auction and to this effect, a court auction sale certificate has been issued in favour of the defendant as Ex.B19 and it is dated 29.08.1983. The auction certificate has been mentioned as Ex.B2 and the said property has been taken on auction by the defendant's father Govindan Chettiyyar and the patta No.704 has also been issued in respect of

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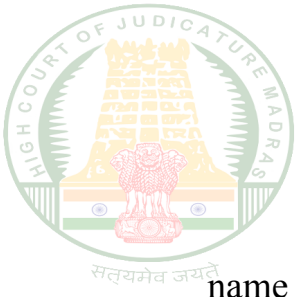
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property No.106/4D. The auction purchaser has put in possession of the suit property and he has been in enjoyment of the same right from his auction purchase.

14. In fact the defendants have produced Ex.B2 and Ex.B18 to show that the patta was standing in the name of the auction purchaser. Despite Patta No.704 has been given to the whole of the S.No.106/4, for the reasons known to the revenue authorities patta No. 459 has also been issued in the name of the plaintiff by sub dividing the S.No.106 into S.No.106/4D. However, on the appeal filed by the defendant the same has been subsequently cancelled and it has been ordered to be restored under S.No.106/4 itself. The plaintiff's claim in respect of the suit property seems to be unfounded and without any basis.

15. The claim made by the plaintiff on the basis of some oral allotment of the suit property by his paternal uncle during a family partition is also not proved. Since the patta has been given all of a sudden in the

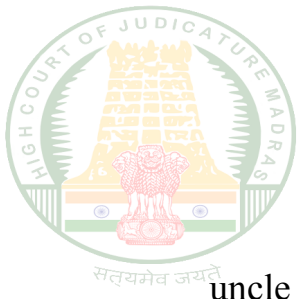


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name of the plaintiff for a portion of S.No.106/4 under a sub divided S.No.106/4D without any basis, the same was found to be wrong and subsequently rectified. Hence there is no question of wrong allocation of property under two different survey numbers or there is a confusion in the identity of the suit property and the property claimed by the parties. The suit property is a part of the property purchased by the defendant's predecessor in title through a court auction purchase. **Hence, the substantial question of law No.1 is answered against the plaintiff.**

16. As the Courts below had rightly understood the origin of title, identity of the property and the documents produced by both parties and appreciated the merits of the matter in the right perspective, it is wrong on the part of the second appellant/ plaintiff to state that the Courts have erred in rejecting the tax receipts and revenue records produced by him. The plaintiff has produced certain documents without any basis of his title and he did not also produce any continuous revenue records to show that himself and his mother had been in enjoyment of the suit property. Ever since the family partition that had been taken between the plaintiff's paternal



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uncle on 30.05.1985 or the other hand the defendant traced his title through a court auction purchase made by his predecessor in title and had produced relevant documents in support of his claim. The defendant had purchased the property from the rightful owner and he has also produced document to show his possession and enjoyment of the same. It is right for the courts below to reject the unconvincing documents produced by the plaintiff. **So the substantial question of law No.2 is answered accordingly.**

In the result, the Second Appeal is **dismissed**. The judgement and decree passed in A.S.No.68/2009 on the file of the I additional Subordinate Judge, Villupuram dated 11.04.2011 is confirmed. No costs.

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Speaking: Non-Speaking Order
Internet: Yes/No
Neutral: Yes/No



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R.N.MANJULA, J

jrs

To

1.The I Additional Subordinate Judge, Villupuram.

2. The District Munsif, Thirukovilur.

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