



S.A.No.739 of 2017

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.02.2025

CORAM

THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

S.A.No.739 of 2017 and
C.M.P.No.8788 of 2022

Kathirvel

... Appellant

Vs.

1. Raman

2. Sooran

... Respondents

Prayer: Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment, dated 31.08.2016 passed in A.S.No.56/2014, on the file of the I Additional Sub Court, Villupuram upholding the decree and judgment dated 18.02.2014 passed in O.S.No.316/2009, on the file of the Principal Principal District Munsif, Ulundurpet.

For Appellant : Mr.R.Dhamodaran

For Respondents : Mr.M.Muruganantham (for R1)

JUDGMENT

The unsuccessful plaintiff before both the Courts below has filed the present second appeal.



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2. The plaintiff filed the suit in O.S.No.316/2009 before the Principal District Munsif Court, Ulundurpet, seeking for a relief of declaration of his title to the suit property and for a consequential relief of permanent injunction restraining the defendants from interfering with his peaceful possession and enjoyment of the suit property.

3. For the sake of convenience, the parties are referred to as per their ranking in the Trial Court and at appropriate places, their rank in the present second appeal would also be indicated.

4. The case of the plaintiff in a nutshell is as follows :

The suit property originally belonged to the Government of Tamilnadu. The Government assigned the suit property in favour of the plaintiff during the year 1977. The patta bearing number 77 was also issued in favour of the plaintiff. The plaintiff has been in possession and enjoyment of the suit property ever since the date of assignment and in any event he has perfected his title by way of adverse possession and prescription. The defendants who do not have any right over the suit property, are attempting to trespass into the suit property. Hence the suit.



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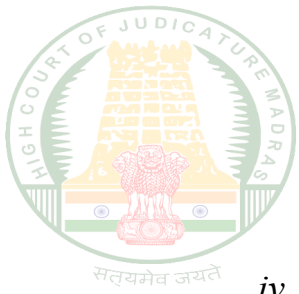
5. The suit was resisted by the defendants on the following

grounds:

- i. The suit property was never assigned to the plaintiff.
- ii. The suit property is the adjacent property of the defendants' and the defendants are in possession and enjoyment of the same.
- iii. When the defendants wanted to get patta in respect of the suit property, the plaintiff has filed the present suit.
- iv. The suit is also barred by non-joinder of necessary parties namely the Government. Thus, the suit filed by the plaintiff is liable to be dismissed.

6. On the basis of the above pleadings, the Trial Court framed the following issues:

- i. *Whether the suit property was assigned to the plaintiff by the Government of Tamil Nadu?*
- ii. *Whether the plaintiff has absolute right over the suit property?*
- iii. *Whether the plaintiff is entitled for the relief of declaration and permanent injunction as prayed for?*



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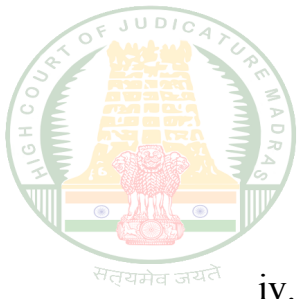
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iv. To what relief the plaintiff is entitled?

7. In the Trial Court, the plaintiff examined himself and one another witness and marked Ex.A1 to Ex.A7. The defendants 2 and 3 examined themselves and one another witness and marked Ex.B1 to Ex.B9. Ex.X1 to Ex.X3 were also marked.

8. After full contest, the learned Trial Court Judge, vide his decree and judgment dated 18.02.2014, dismissed the suit filed by the plaintiff on the following grounds:

- i. The plaintiff has not produced the assignment patta issued in his favour.
- ii. Though the plaintiff during the course of cross examination, had deposed that he lost the assignment patta due to a fire accident in his house, he did not take steps to procure the Government record.
- iii. The plaintiff had contended that he has been in possession and enjoyment of the suit property right from the date of assignment of patta in his favour.



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iv. However, he has filed the kist receipts only for the years 1987, 1989, 1990 to 1993.

v. A perusal of patta (Ex.A1) shows that Patta number 77 is in respect of other properties and there is no clinching evidence to show that Patta number 77 was also assigned in respect of the suit property during the year 1987 and 1988.

9. Aggrieved over the decree and judgment passed by the Trial Court Judge, the plaintiff filed an appeal in A.S.No.56/2014 before the I Additional Sub Judge, Villupuram. The learned I Additional Sub Judge, Villupuram on considering the oral and documentary evidence adduced on both sides, upheld the findings recorded by the Trial Court, vide her decree and judgment dated 31.08.2016, as against which the present second appeal is filed.

10. Notice of motion was ordered on 08.01.2018 and the second appeal has not been admitted so far.



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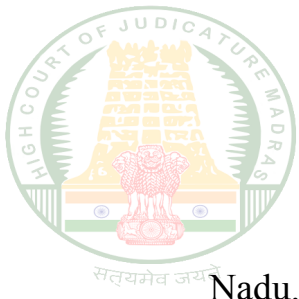
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11. Heard Mr.R.Dhamodaran, learned counsel for the appellant and Mr.M.Muruganantham, learned counsel appearing for the first Respondent.

12. Mr.R.Dhamodaran, learned Counsel for the appellant would contend that since the appellant / plaintiff had lost his assignment patta issued by the Government, he could not produce the same. It is also his contention that both the Courts below had not properly analysed the other documentary evidence adduced by the plaintiff and he prayed for allowing the present second appeal.

13. Per contra, Mr.M.Muruganantham, learned counsel appearing for the first Respondent contended that both the Courts below by their well reasoned judgments had dismissed the suit filed by the plaintiff and therefore, there is no reason for this Court to interfere with the same.

14. The specific contention of the plaintiff is that the suit property has been assigned in his favour by the Government of Tamil



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Nadu. In order to substantiate the same, the plaintiff has examined himself as P.W.1. He had also relied on the computer patta bearing number 77 (Ex.A1). A perusal of the Computer patta (Ex.A1) shows that the Patta number 77 is in respect of various properties. According to the plaintiff, it includes the suit property also. The plaintiff in the plaint has not stated that he lost the original patta issued by the Government of Tamil Nadu. On the contrary, during the course of cross examination, he had deposed that he lost the assignment patta in a fire accident. However, the plaintiff has not chosen to get the copy of the patta from the Government or examine the Government officials to prove that the suit property was assigned in his favour.

15. It is also relevant to point out that the date of issuance of patta was not indicated in the plaint. Though the plaintiff has produced the kist receipts (Ex.A2 to Ex.A7) for the years 1987, 1989, 1991, 1992, 1993 and 2009, he has not filed the kist receipts for the period from 1977 to 1986, 1988, 1990 and 1994 and till the filing of the suit. According to the plaintiff, the suit property is an agricultural land and he has been in



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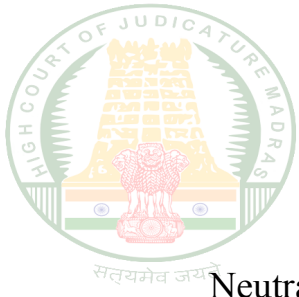
possession of the same by cultivating crops. However, he did not adduce the Adangal extract to show his possession over the suit property. The plaintiff who has filed the suit for declaration of title should prove his case to the hilt. Since both the Courts below had properly analysed the evidence on record, I do not find any reason to interfere with the same. In fact, there is no substantial question of law involved in the present second appeal.

16. In the result,

- i. The Second Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is dismissed.
- ii. The decree and judgment dated 31.08.2016 passed in A.S.No. 56/2014, on the file of the I Additional Sub Judge, Villupuram is confirmed.
- iii. The suit in O.S.No.316/2009, on the file of the Principal District Munsif, Ulundurpet, is dismissed with costs.

20.02.2025

Index: Yes/No
Speaking/Non-Speaking order



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Neutral Citation : Yes / No

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To

1. The I Additional Sub Court, Villupuram.
2. The Principal Principal District Munsif, Ulundurpet.
3. The Section Officer, VR Section,
Madras High Court, Chennai.



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R. HEMALATHA, J.

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