IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 24 / 09 / 2024

JUDGMENT PRONOUNCED ON : 02 / 01 / 2025

CORAM:

THE HON'BLE MR.JUSTICE R.SAKTHIVEL

S.A.NO.305 OF 2020
AND CMP NO.6225 OF 2020

Selvaraj	...	Appellant / Appellant / Defendant

versus

1.Rajeswari 2.Uri	...	Respondents / Respondents / Plaintiffs

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, 1908, praying to set aside the Judgment and Decree dated March 8, 2019 passed in A.S.No.80 of 2018 on the file of the Court of II Additional District Judge, Chidambaram, confirming the Judgment and Decree dated June 25, 2014 passed in O.S.No.122 of 2006 on the file of the Court of District Munsif cum Judicial Magistrate, Kattumannarkoil, as well as to set aside the Order dated March 8, 2019 passed in I.A.No.25 of 2019 in A.S.No.80 of 2018, and dismiss the said Original Suit by allowing this Second Appeal.

For Appellant : Mr.A.Muthukumar

For Respondents : Mr.S.Kamala Kannan
for Ms.K.Jayasudha

JUDGMENT

This Second Appeal is directed against the Judgment and Decree dated March 8, 2019 passed in A.S.No.80 of 2018 by the 'II Additional District Court, Chidambaram' [henceforth 'First Appellate Court'] whereby the Judgment and Decree dated June 25, 2014 passed in O.S.No.122 of 2006 by the 'District Munsif cum Judicial Magistrate Court, Kattumannarkoil' [henceforth 'Trial Court'] was confirmed as well as against the Order dated March 8, 2019 passed in I.A.No.25 of 2019 in A.S.No.80 of 2018

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2. For the sake of convenience, hereinafter, the parties will be referred to as per their array in the Original Suit.

Plaintiffs' case

3. The Suit Property is an extent of 5 Cents comprised in Old S.No.23 / New S.No.181/4. It belonged to one Perumal and his brother -Amirthalingam, who enjoyed it jointly as joint family members. Said Amirthalingam passed away in 1984 leaving behind the plaintiffs and one

Stalin, as his legal-heirs. Said Stalin went elsewhere without intimation and his whereabouts were not known. In 1993, a family arrangement was made between the plaintiffs and the said Perumal, in which the western side 2 ½ Cents were allotted to Perumal and the eastern side 2 ½ Cents were allotted to the plaintiffs, and the same was reduced into writing and attested by the village people. From the date of allotment, the plaintiffs alone have been in peaceful possession and enjoyment over the eastern 2 ½ cents *i.e.,* the Suit Property and Patta No.523 in respect of the total 5 Cents was also issued jointly in the name of the said Perumal and the said Stalin. The plaintiffs have been assessed with house tax and paying the same in respect of the house in the Suit Property. In 2005, due to flood, the house property became dilapidated and as such the plaintiffs were residing in the house opposite to the Suit Property.

3.1. Said Perumal duly conveyed the western portion allotted to him to one Selvaraj, son of Murugesan, who constructed a R.C.C. building and residing therein. The defendant owns a property on the west of the western side portion allotted to said Perumal. The defendant, who failed in his attempt to purchase the western portion allotted to the Perumal, in order to trouble the said Selvaraj, requested the plaintiffs to convey the Suit Property in his favour. As the plaintiffs rejected the same, the defendant proclaimed the he purchased the Suit Property from one Vaithiyalingam @ Vaithiyanathan, who has no right or interest over the Suit Property and never possessed and enjoyed the Suit Property. Any document or conveyance by the said Vaithiyalingam in respect of Suit Property would be null and void. The plaintiffs also prescribed title over the Suit Property by way of adverse possession. The defendant made attempts to interfere with the peaceful possession and enjoyment of the plaintiffs over Suit Property and as such the plaintiffs filed this Suit against the defendant for permanent injunction.

Defendant's case

4. The defendant resisted the Suit by stating that the defendant owned a property in R.S.No.181/3 and to its east, Perumal had 2 ½ cents, and immediately to the east of Perumal's 2 ½ Cents, Vaithiyalingam, son of Govindhasamy, owned 2½ cents in Rs.No.181/4 *i.e.,* Suit Property. Thus, the Suit Property originally belonged to Vaithiyalingam, and he was in possession and enjoyment of it for a long time. He then conveyed the Suit Property to the defendant under a registered Sale Deed dated April 27, 2006 for a valid consideration and since then, defendant has been in possession and enjoyment over the Suit Property as absolute owner.

4.1. Further stated that the so called 1993 family arrangement is nothing but a cock and bull story, and the said document is a concocted and forged one, and there was no house in the Suit Property, and neither plaintiffs nor Perumal nor Amirthalingam was in possession at any time, much less on the date of filing of Suit and as such the Suit is not maintainable.

4.2. Further that that the plaintiffs manoeuvred to get Patta in the name of the Stalin behind the back of true owner and as such the said Patta will not bind defendant on any account. Accordingly, the defendant prayed for dismissal of the Suit.

Trial Court

5. At trial, the second plaintiff was examined as P.W.1, one Thangasamy was examined as P.W.2 and Ex-A.1 to Ex-A.12 were marked on the side of the plaintiffs. On the side of the defendants, defendant was examined as D.W.1, one Kaliamoorthy was examined as D.W.2 and Ex-B.1 and Ex-B.2 were marked.

6. After hearing both sides, the Trial Court on the basis of Exs-A.2, A.3 and A.10 – Revenue Records as well as Ex-A.11 – Suit Register, found that the plaintiffs have proved their possession and enjoyment over Suit Property and accordingly, decreed the Suit and granted permanent injunction in favour of the plaintiffs.

First Appellate Court

7. Feeling aggrieved, the defendants preferred an appeal before the First Appellate Court which placing reliance on Exs-A.2, A.3, A.10 and A.11, concurred with the findings of the Trial Court and accordingly, dismissed the appeal.

Second Appeal

8. Feeling aggrieved by the concurrent findings, the defendant has preferred this Second Appeal which was admitted on June 8, 2022 on the following substantial questions of law:

"(1)When the defendant's predecessor in interest was also a co-owner for the Suit Property, as admitted by PW2, whether the Court below erred in Law in granting the relief

for permanent injunction against the co-owner?

(2)Whether the suit for permanent injunction would lie against the co-owner?

(3)Whether the Lower Appellate Court erred in Law in holding that mere suit for permanent injunction is maintainable in Law, when the defendants disputing the plaintiff's title and set up title in themselves by producing Ex.B.1?

(4)Whether the Lower Appellate Court erred in Law in relying upon Ex.A.2, a thoraya Patta contrary to the decisions of this Court?

(5)Whether the Lower Appellate Court erred in Law in relying upon Ex.A.3 when there are corrections in the said exhibit particularly in the absence of any explanation for the same?"

Arguments

9. Mr.A.Muthukumar, learned Counsel for the appellant/ defendant would argue that the Patta is neither a document of title nor a document of possession and it is issued only to collect revenue from the *Pattadhars.* Ex-A.2 is a rough Patta or *thoraya* Patta and the revenue authorities did not conduct proper enquiry before issuing it. Moreover, Ex-A.2 - Patta has been issued behind the back of the defendant's vendor, without notice.

9.1. He would further argue that there is an overwriting in Ex-A.3 – Chitta creating serious doubts. It is an admitted fact that the Suit Property is a vacant land and the plaintiffs are residing on the southern side of the east-west road opposite to the Suit Property. Ex-A.4 to Ex-A.9 – House Tax Receipts are not related to the Suit Property and P.W.1 himself has admitted the said fact.

9.2. He would further argue that the defendant denied the plaintiffs' title by marking Ex-B.1 - Original Registered Sale Deed and hence, the Suit for bare injunction is not maintainable. Moreover, the defendant is a purchaser from the original owner. The Trial Court and the First Appellate Court failed to consider Ex-B.1–Original Registered Sale Deed, which stands in the name of the defendant. The defendant has better title than the plaintiffs. Therefore, the Trial Court as well as the First Appellate Court erred in concluding that the plaintiffs are in possession and enjoyment of the Suit Property by relying on Ex-A.2, Ex-A.3 and Ex-A.10 - Revenue Records. The findings of the Courts below are perverse and hence, prayed to set aside the Judgments and Decrees of both the Courts and dismiss the Suit.

9.3. The learned counsel for the appellant / defendant relied on the following decisions in support of his submission:

(i)Judgment of this Court in ***Panneer Vs. Anjalai,*** reported in ***(2018) 8 MLJ 246***

(ii)Judgment of this Court in ***S.Shanmugam and Others Vs. Chandrasekaran,*** reported in ***(2015) 8 MLJ 799***

(iii)Judgment of the Hon'ble Supreme Court in ***Boramma Vs. Krishna Gowda and Others,*** reported in ***2000 (3) MLJ 199***

10. Per contra, Mr.S.Kamala Kannan, learned Counsel for the respondents / plaintiffs would contend that Ex-A.2 – Patta was issued in the year 1996. Pursuant to Ex-A.2, Ex-A.3 - Chitta was obtained in the year 2003. Ex-A.10 is the Patta obtained consequent to Ex-A.2 - Patta. The plaintiffs were residing in the Suit Property till 2005. Thereafter, since the thatched house in the Suit Property washed away due to flood, the plaintiffs are residing opposite to the Suit Property. The defendant's vendor, namely Vaithiyalingam @ Vaithiyanathan has never been in possession or enjoyment of the Suit Property.

10.1. He would further argue that the Suit Property is a Natham land. For recognising the possession of the plaintiffs, Ex-A.2, Ex-A.3 and Ex-A.10, which are Pattas and chitta, were issued. Ex-B.1 – original Registered Sale Deed was obtained four months before the filing of the Suit only with a view to usurp the plaintiffs' possession and enjoyment of the Suit Property. The defendant did not file any document prior to execution of Ex-B.1 to show that the vendor was in possession and enjoyment of the Suit Property. Ex-B.1-original Registered Sale Deed is not sufficient to deny title and possession of the plaintiffs. Hence, there is no need to file a Suit for the declaratory relief which is a larger and expensive relief. Since the plaintiffs established their case *vide* Ex-A.1 to Ex-A.12, there is no need to amend the prayer seeking declaration. Both the Courts after considering the evidence, rightly decreed the Suit. There is no warrant to interfere with their Judgment and Decree. Accordingly, he prayed to dismiss the Second Appeal.

Discussion

11. This Court has considered the submissions made on either side and perused the materials available on record.

12. Ex-A.1 is said to be the Original Family Arrangement Deed. The said document was marked subject to objections. Ex-A.1 is an unregistered and unstamped document. Moreover, Ex-A.1 is not proved as per law. Hence, both the Courts are right in concluding that Ex-A.1 was not proved and there is no need to interfere with the said finding.

13. Ex-A.2 is the original Patta issued on July 13, 1996. It is true that Ex-A.2 is a '*Thoraya* Patta' issued under Form IV. Ex-A.3 is the True Copy of Patta and Chitta dated June 30, 2003 issued pursuant to Ex-A.2 - '*Thoraya* Patta'. Ex-A.10 is the Patta dated April 19, 2006 issued pursuant to Ex-A.2 '*Thoraya* Patta'. The said Pattas were issued under the Natham Land Survey and Land Tax Scheme, which was introduced in the year 1988. Ex-A.12 is the notice under Section 9 (2) of the Tamil Nadu Surveys and Boundaries Act, 1923 issued by the Land Survey Records Department, Cuddalore pursuant to Ex-A.1. A close perusal of Ex-A.2, Ex-A.3, Ex-A.10 and Ex-A.12 would show that the Suit Property is situated in the Natham land and that the plaintiffs are in possession and enjoyment of the Suit Property. To be noted, the Suit Property has never been agricultural land or Patta land. Thus, Exs-A.2, A.3, A.11 and A.12 were issued recognising the plaintiffs' possession and enjoyment of the

Suit Property.

14. The learned counsel for the appellant, relying on the Judgment of this Court in ***Panneer's case*** (cited *supra*), would contend that Ex-A.2 being a *manaivari thoraya* Patta (மனைவரி தோராயப் பட்டா) has no evidentiary value and that Ex-A.2 does not confer any title or possession to the plaintiffs over the Suit Property.

15. This Court is not inclined to accept the said contention for the following reasons - It is true that Ex-A.2 is a *manaivari thoraya* Patta or Rough Patta issued in the year 1996 and there is no evidence available on record to show whether any notice was published or not. But law presumes that official act is being done properly unless the contrary is established. In the Government Order in G.O.Ms.No.1971, Revenue (SS-II) Department, dated October 14, 1988 a set of detailed guidelines have been prescribed for issuing Patta for the occupants of Natham land. It is useful to refer to Paragraph Nos.5, 6, 7, 8 and 9 of the said Government Order, which reads as follows:

'5.Rough Patta Objection Hearing:-

A Rough Patta Objection Hearing will be conducted by the Special Tahsildar appointed for this purpose on the date *fixed in advance. The date / dates of the Rough Patta Objection Hearing will be not less than 15 days from the last date of service of the rough Patta in the Village / Municipal Town / Corporation City. The date and place of hearing will be noted in the rough Patta. Objections to the entries or omissions from a rough Patta will be heard at that time. Notices of the time and place fixed for hearing objections will be pasted in the Village Administrative Office or Village Chavadi or where there is no village chavadi, in some other conspicuous place in the village, if the lands are located in the village, in the Municipal Office if the lands are located in Municipal Town Limits, in the Corporation Office if the lands are situated within the Corporation City limits and will be published in the Village / Municipal Town / Corporation City by beat of tom-tom not less than 15 days prior to the date by hearing. The Village Administrative Office will attend at the time and place fixed for the disposal of objections. Objections to the entries or omissions in the Patta will be heard and disposed of on the day and at the place notified therein. The Special Tahsildar will pass speaking orders in the form of proceedings in all disputed ownership ceases. Copies of the orders passed will be served on the existing holder and the objector at the Rough Patta Objection Hearing.*

No Objection will be received by the Special Tahsildar after the date notified in the manner set forth above unless the delay in presenting the petition is explained to his satisfaction.

Petitions for alteration of demarcation which are barred by the provisions of the Tamil Nadu Survey and Boundaries Act VIII of 1923 will not be entertained.

No objections will be admitted as to the rates of Ground Rent levied on lands in accordance with this notification.

6.Publication of gist of Rough Patta Objection Hearing Order:-

The orders passed during Rough Patta Objection Hearing shall be published immediately after the conclusion of the proceedings in the Village Administrative Office of Chavadi or if there is no Chavadi in the Village in any conspicuous public place in the village / Municipal Town / Corporation City and the fact of the publication shall be announced in the Village / Municipal Town / Corporation City by beat of tom-tom. The Village Administrative Officer shall certify to the place and date of publication of the order and the said date shall be deemed to be the date of communication of the copy of the decision or order to the party concerned.

7.Appeals:-

An appeal shall lie to the Assistant Settlement Officer with jurisdiction over the concerned area against any order passed by the Special Tahsildar for Rough Patta objection hearing within 30 days from the date of communication of the order. This period is exclusive of the time occupied in obtaining certified copies of the order appealed against. Appeal petitions need not be stamped but certified copies and enclosures appended thereto shall be stamped in accordance with the rules.

8.Revision:-

A revision shall lie to the District Revenue Officer or the Collector (where there is no District Revenue Officer) of the concerned district against any order passed by the Assistant Settlement Officer within 30 days of receipt of the order of the Assistant Settlement Officer by the aggrieved party.

9.Rectification of errors etc.

Any clerical error noticed or brought to the notice by the parties interested can be corrected at any time during or after this Settlement Work.'

16. It is to be noted that the defendant did not adduce any evidence to show that the defendant's vendor had been in possession and enjoyment of the Suit Property prior to execution of Ex-B.1 – Sale Deed. In the absence of any evidence / document to prove the defendant vendor's possession, this Court is of the view that Ex-A.2, Ex-A.3, Ex-A.10 and Ex-A.12 prove that the plaintiffs are in possession and enjoyment of the Suit Property. Moreover, the defendant's vendor filed a Suit in O.S.No.160 of 1995 on the file of the District Munsif Court, Chidambaram. Later, it was transferred to District Munsif cum Judicial Magistrate Court and renumbered as O.S.No.47 of 2000 and the same was allowed to be dismissed for default for reasons best known to him. The defendant did not file the pleadings of the said Suit along with the present Suit. Non filing of the pleadings of the previous Suit and non-examination of any witnesses in this regard, creates doubts over the defence of the defendant.

17. It is settled proposition of law that the plaintiff has to prove his/her case and cannot pluck holes or take advantage of the weakness of the defendant's case. In this case, the plaintiffs *prima facie* established their possession by way of filing Ex-A.2, Ex-A.3, Ex-A.10 and Ex-A.12 and by examining the first plaintiff as P.W.1 and another witness as P.W.2. It is stated that the defendant's vendor passed away before commencement of the trial. However, neither the legal heir nor any person related to the deceased -vendor was examined to prove the defendant's case. In view of the overwhelming evidence available on record as well as the facts and circumstances of this case, this Court is of the view that ***Panneer's case*** is not applicable to instant case. In these circumstances, the arguments advanced by the learned Counsel appearing for the appellant/defendant that *manaivari thoraya* Patta does not confer any title or right to the plaintiffs, does not hold water.

18. The appellant / defendant filed an application under Order XLI Rule 27 of Code of Civil Procedure, 1908 before the First Appellate

Court praying to receive additional evidence. The defendant was given sufficient time to prove his case before Trial Court. The defendant failed to establish his defence. Defendant's side neither examined the Tahsildhar nor produced the certified copy of the documents sought to be received under the said Order XLI Rule 27 Application before the Trial Court. Hence, the First Appellate Court is right in dismissing the I.A.No.25 of 2019. This Court does not find any irregularity or infirmity with the Order passed therein by the First Appellate Court.

19. P.W.1 himself admitted that he and his mother are residing opposite to the Suit Property since 2005 and that the Suit Property is a vacant land since 2005. Assuming a moment that Ex-A.4 to Ex-A.9 – House Tax Receipts are not related to the Suit Property, and instead related to the property situate opposite to the Suit Property where the plaintiffs are now residing, even then, owing to the overwhelming evidence available on record, namely Ex-A.2, Ex-A.3, Ex-A.10 and Ex-A.12, it does not affect the plaintiffs' case. The Trial Court as well as the First Appellate Court concurrently held that the plaintiffs are in possession and enjoyment of the Suit Property. The findings of the Trial Court as well as the First Appellate Court are in consonance with law and therefore, there is no need to interfere with the same. The case of the defendant that his vendor and the plaintiffs are co-owners, has not been proved. P.W.2 has admitted that the plaintiffs and defendant's vendor are relatives. Mere admission that the plaintiffs and the defendant's vendor are relatives, is not sufficient to hold that the plaintiffs and the defendant's vendor are co-owner. The Substantial Question of Law No.(1) is answered accordingly in favour of the plaintiffs and against the defendant.

20. As discussed above, the defendant did not establish that the plaintiffs and defendant are co-owners in the Suit Property. Under such circumstances, permanent injunction against the defendant is maintainable. Substantial Question of Law No.(2) is answered accordingly in favour of the plaintiffs and against the defendant.

21. As already stated *supra*, Suit Property is a Natham property. Recognizing the plaintiffs' possession and enjoyment of the Suit Property, Ex-A.2, Ex-A.3,Ex-A.10 and Ex-A.12 were issued in favour of the plaintiffs. The defendant did not produce any document to show that the defendant's vendor has been in possession and enjoyment of the Suit Property prior to execution of Ex-B.1 – Sale Deed. In these circumstances, Ex-B.1 – Sale Deed alone is not sufficient to deny the title and possession of the plaintiffs. If the defendant desires so, he has to establish his alleged title by filing separate Suit for declaration and recovery of possession. Substantial Question of Law No.(3) is answered accordingly in favour of the plaintiffs and against the defendant.

22. As alluded to *supra*, Ex-A.2 – *thoraya* Patta was issued on July 13, 1996. Pursuant to Ex-A.2, Ex-A.3 – True Copy of Patta and Chitta was issued on June 30, 2003. Ex-A.10 – Patta was issued on April 19, 2006. The defendant's contention is that there is some overwriting in Ex-A.3 and hence, it does not appear to be genuine. If it is so, the burden is upon the defendant to prove that Ex-A.3 is not genuine. In the absence of proof, mere inadvertent overwriting does not impeach the character and evidentiary value of the document. The Substantial Question of Law Nos.(4) and (5) are answered accordingly in favour of the plaintiffs and against the defendant.

Conclusion

23. In the result, the Second Appeal is dismissed. The Judgment and Decree of the First Appellate Court as well as the Trial Court is confirmed. Considering the facts of the case, leave is granted to the appellant / defendant to file a separate Suit for declaration and recovery of possession, if he is so advised and if law permits. In view of the facts and circumstances of this case, the parties shall bear their own costs. Consequently, connected Civil Miscellaneous Petition is closed.

02 / 01 / 2025

Index : Yes
Internet : Yes
Neutral Citation : Yes
Speaking Order
TK

To

1.The II Additional District Judge
Chidambaram.

2.The District Munsif cum Judicial Magistrate
Kattumannarkoil.

R.SAKTHIVEL, J.

TK

PRE-DELIVERY JUDGMENT MADE IN S.A.NO.305 OF 2020

02 / 01 / 2025