



S.A. Nos.905 & 906 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.04.2025

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

S.A. Nos.905 & 906 of 2023

and

C.M.P.No. 29106 of 2023

M.Ravi

... Appellant in
both S.A.s

Vs.

1. Meenakshi

Jayakumar (deceased)

2. J.Sheela

3. J.Lenin Prabhu

4. J.Praveen

5. J.Edwin

.. Respondents in
both S.A.s

PRAYER in S.A.No. 905 of 2023 : Second Appeal filed under Section 100 of Code of Civil Procedure, to set aside the judgment and decree dated 27.09.2023 passed in A.S.No.8 of 2023 on the file of VII Addl. City Civil Court, Chennai confirming judgment and decree dated 11.08.2022 passed in O.S.No.2912 of 2012 on the file of XII Asst. City Civil Court, Chennai.



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PRAYER in S.A.No.906 of 2023 : Second Appeal filed under Section 100 of Code of Civil Procedure, to set aside the judgment and decree dated 27.09.2023 passed in A.S.No.7 of 2023 on the file of VII Addl. City Civil Court, Chennai thereby confirming judgment and decree dated 11.08.2022 passed in O.S.No.2912 of 2012 on the file of XII Asst. City Civil Court, Chennai.

For Appellant in
both S.A.s : Mr.T.Saikrishnan

For Respondents in
both S.A.s : Mr.Vargees Amal Raja
for R1

COMMON JUDGMENT

The appellant herein is the plaintiff, who had filed the suit in O.S.No.2912 of 2012 against the defendants 1 and 2 on the file of XII Asst. City Civil Court, Chennai for the relief of declaration to declare that he is absolute owner of the suit property as described in the plaint schedule in Old Survey No. 19/1A1, T.S.No.47/32, in Block No.4, Old Door No.73, New Door No.17, present Door No.15, Ponnuvelpuram 1st Street, Ayanavaram, Chennai-600 023 and also not to cause any interference with plaintiff's possession and enjoyment of schedule mentioned property by the



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defendants or their henchmen. Pending proceedings, the 2nd defendant died and his legal heirs were impleaded as parties in the suit. They have contested the suit by filing written statement along with counter claim filed under Order VIII Rule 1 r/w Order VIII Rule 6A of C.P.C., wherein they prayed to declare that defendants 1 and 2 alone are the owners of suit property and also prayed for a direction directing the plaintiff to vacate and hand over the possession of the suit property.

2. On considering the evidence on record, the trial judge finally dismissed the suit holding that the plaintiff has not proved his right and title over the suit property and allowed the counter claim stating that the defendants 1 and 2 proved their right and title and also established that their vendors having valid right and title over the suit property. Accordingly, the counter claim was allowed. Challenging the said findings, the plaintiff preferred appeals in A.S.Nos. 7 and 8 of 2023 before the VII Addl. City Civil Court, Chennai. The first appellate judge separately analysed the findings as well as documents and finally confirmed the findings of the court below by dismissing both the appeals. Challenging the concurrent findings rendered in the Suit, the plaintiff preferred the Second



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Appeal in S.A.No. 905 of 2023 and in respect of counter claim, he preferred the Second Appeal in S.A.No.906 of 2023. Subject in issue, parties are same and a common judgment and decree was pronounced by the first appellate court. Therefore, both the appeals heard jointly and the question of law in both Second Appeals are one and the same. Accordingly, the following question of law is framed :-

- (1) Whether the counter claim is barred by limitation, could the court entertain such counter claim without deciding the aspect of limitation?*
- (2) When the earlier R.C.O.P. filed by the defendant was dismissed on ground of denial of title by the plaintiff as early as on 25.06.1992 is not the counter claim filed in O.S.No. 2912 of 2012 on 06.08.2012 for declaration of title and recovery of possession barred by limitation?*
- (3) Whether the finding of the trial court that Ex.B6 is the patta is valid in the eye of law?*

3. For the sake of convenience, parties are denoted as per ranking in

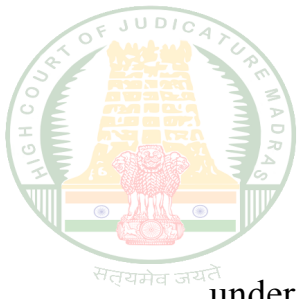


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the suit.
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4. Brief facts of the case is as follows :-

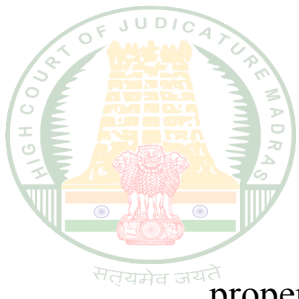
The total extent of 1184 sq.ft. comprised in Old Survey No.19/1A1, T.S.No.47/32 in Block No. 4, in Old Door No.73, New Door No. 17, Present Door No.15, Ponnuvelpuram 1st Street, Ayanavaram, Chennai-600 023 was originally classified as ryotwari land belongs to the Government and his grandfather late Krishnan was in possession and enjoyment of the said land from time immemorial and he died intestate in the year 1980 leaving behind his legal heirs viz., son Murugesan and Daughter Ellammal. After the demise of the said Krishnan, the said Ellammal and plaintiff's father Murugesan orally partitioned the property. Accordingly, front portion was allotted to Ellammal and rear side portion was allotted to Murugesan. The plaintiff herein is the son of the said Murugesan and he was allotted with 592 sq.ft., wherein he put up a hut and residing there. In the year 1990, the defendants 1 and 2 have filed a petition in R.C.O.P.No. 403 of 1990 against the plaintiff's father Murugesan alleging that he was a tenant under him and he committed default in payment of rent. But, the said RCOP was contested by plaintiff's father Murugesan stating that he was not a tenant



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under the defendants nor they are the owners of the suit property, thereby disputed the title. Hence, the Rent Controller dismissed the RCOP holding that the Rent Control Court has no jurisdiction to decide the title of the party and the Civil Court alone having jurisdiction and on that aspect, the RCOP was dismissed on 25.06.1992. The 1st defendant is the daughter of Ellammal and 2nd defendant is the son of 1st defendant. After the said oral partition, the plaintiff's father created illegal interference in the peaceful enjoyment of the suit property and they have filed the said RCOP petition and the same also dismissed observing that there is no landlord and tenant relationship. While so, in the year 2003, the said Murugesan died leaving behind his wife, two daughters and two sons. One of his son Ravi is the plaintiff herein. After the death of Murugesan, his legal heirs jointly possessed and enjoyed the suit property and out of love and affection, his mother executed a settlement deed in favour of plaintiff in the year 2004 and other co-sharers also released their shares in favour of plaintiff in the year 2007, as such the plaintiff became absolute owner of the suit property. Mutation was effected in the land register in the year of 2008 and he obtained electricity connection, water sewage connection and also paid



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property tax. As an absolute owner, he is in possession and enjoyment of the suit property. The defendants 1 and 2 have sold the share allotted to Ellammal to one Chandrababu and Vasanthi in the year 2006. As they are Government employees, they are residing in Government quarters and they have no right and title over the suit property belongs to plaintiff, but with the help of influenced person, they have caused interference and also gave objections to the revenue authority. On enquiry, the District Revenue Officer, Chennai, in the year 2012 mechanically, without proper appreciation, cancelled the patta stands in the name of plaintiff and directed both parties to approach the civil court. Hence, the plaintiff come forward with the present suit to declare the right and title over the suit property.

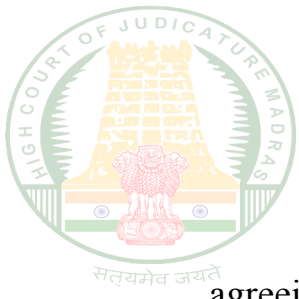
5. By way of written statement, the defendants admitted the relationship, but disputing the right and title of plaintiff as alleged in the plaint. The defendants also admit that the original extent of 1184 sq.ft. comprised in T.S.No. 47/32 Block No.4, Chinnachembarambakkam village was originally belongs to Government. The contention of defendants is that the land measuring an extent of 1184 sq.ft. originally was in possession and enjoyment by Dhanraj even prior to 1976 and after the land survey by the



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surveying authority, patta for the said land measuring an extent of 1184 sq.ft. was opted for Dhanraj based on his enjoyment on 05.08.1976. Eversince, Dhanraj was in absolute and peaceful possession of the said land and put up a superstructure by paying the rent regularly without any default. The husband of 1st defendant and father of 2nd defendant had executed a settlement deed during his life time in favour of defendants 1 and 2 on 21.01.1984. After that, patta was transferred in favour of defendants 1 and 2 in the year 1985. Eversince from the settlement as well as issuance of patta for the entire extent of 1184 sq.ft., the defendants 1 and 2 have been in possession and enjoyment of the suit property. They further submitted that Murugesan, brother-in-law of 1st defendant approached the 1st defendant to lease out the said house on a monthly rent, since he was a tenant eversince 1978. Believing his representation, he permitted him to reside in the said house on rental basis, but he committed default in payment of monthly rent. Hence, the defendants filed a petition in RCOP No. 403 of 1990 seeking for eviction and the same was dismissed observing that Murugesan disputed the ownership, instructed to approach the civil court. After that, Murugesan come forward for amicable settlement



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agreeing to hand over the possession of property, but he failed. In the year 2003, he died leaving behind his wife and his legal heirs, the defendants demanded them to hand over the possession. They have also sold the part of the property an extent of 592 sq.ft. and retained 592 sq.ft., which is the suit property herein. Instead of handing over possession, wife of Murugesan, one Sivagami, by way of settlement deed in the year 2004 created encumbrance over the property, for which, she is not entitled and other legal heirs of Murugesan also released their share as if they are having right over the 712.5 sq.ft. in favour of plaintiff. Based on that, the plaintiff by giving false information, obtained the patta in the year 2008. Therefore, the defendants gave objections before the revenue authorities and accordingly, in the year 2012, it was cancelled. Thereafter, the plaintiff come forward with this false claim by filing the suit. Neither the plaintiff nor their predecessors having no right over the suit property and the same belongs to defendants alone. Therefore, they come forward with counter claim directing the defendants to hand over possession of the suit property by paying separate court fee.

6. Before the trial court, both parties have adduced their evidence.



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On the side of plaintiff, the documents Ex.A1 to Ex.A36 were marked and on his side, witnesses P.W.1 to P.W.4 were examined. On the side of defendants, the documents Ex.B1 to Ex.B25 were marked and on their side, witnesses D.W.1 and D.W.2 were examined. On the side of court, documents Ex.C1 and Ex.C2 were marked and on its side, C.W.1 and C.W.2 were examined. Pending proceedings, 2nd defendant died and his legal heirs are added as defendants 2 to 5.

7. On considering the evidence on record, the trial judge had framed two issues viz.,

1. Whether the plaintiff is entitled for the relief of declaration as he prayed for?
2. whether the defendants entitled for delivery of possession of suit property by way of counter claim?

8. On perusal of evidence on record, the trial judge observed that the plaintiff not produced any document to show that his grandfather Krishnan had possessed and enjoyed the suit property an extent of 1184 sq.ft. nor produced any revenue records stand in the name of his father Murugesan

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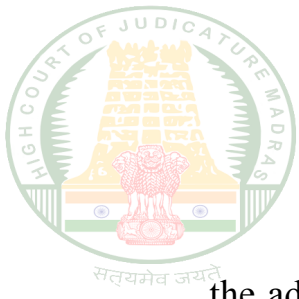


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and in the settlement deed executed by his mother also not been stated how the property belongs to the family, on the other hand, as per Ex.B6, patta was issued in the name of 1st defendant's husband Dhanraj in the year 1976, thereby from 1976, the 1st defendant's husband was in possession and enjoyment of the suit property. Therefore, the claim of oral partition pleaded by the plaintiff as such has not been proved, besides patta stands in the name of plaintiff cancelled by the revenue authority. Apart from that, RCOP also been dismissed due to the title disputed by the plaintiff, however, plaintiff not proved that he is owner of property. Based on Ex.B6 Patta, defendants 1 and 2 proved their right and title over the suit property. Accordingly, the suit was dismissed and the counter claim made by the defendants 1 and 2 was allowed.

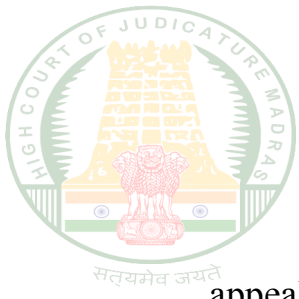
9. Challenging the said findings, the plaintiff preferred two appeals against the findings rendered in the suit as well as in the counter claim in A.S.Nos.7 and 8 of 2023 respectively before the VII Addl. City Civil Court, Chennai. The said appeals were also contested by defendants. The learned first appellate judge, after carefully analysing evidence both oral and documentary, gave a common judgment and on considering Ex.B21, as per



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the adangal register observed that entire extent of 1184 sq.ft. stands in the name of Manavala Iyer, Badri Narayana Iyer, Rangaramanuja Iyer and thereafter, as per the remarks found in the adangal register, entries now transferred in the name of Dhanraj and also found that the said adangal register mutated in the name of defendants 1 and 2. By relying Ex.A20, Patta proceedings order issued by Tahsildar, wherein there is an observation that though one Kottai Srinivasa Iyer's sons Manavala Iyer, Badrinarayana Iyer, Rangaramanujulu Iyer were owners of the land, but the said Dhanraj was the tenant of the portion and at the time of town survey measurement, he was in possession and enjoyment of the property, which was proved by the rent receipt submitted by him. By relying the said observation, the first appellate judge held that the origin of the property from Iyer family went to the hands of Dhanraj, thereafter urban land tax was assessed in his name, thereafter, patta was issued in favour of Dhanraj. After that, he has settled the same in favour of defendants 1 and 2, thereby the counter claim was rightly proved by the defendants and the right and title of plaintiff was not proved as he was a real owner of suit property. To that effect, the findings rendered by the first appellate judge is sustainable. Accordingly, both the



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appeals are dismissed confirming the findings of trial judge.

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10. Challenging the findings of courts below, the plaintiff preferred these second appeals by raising the following grounds :-

- (1) The judgment and decree of the courts below are contrary to facts and law.
- (2) The lower appellate court has grossly erred in dismissing the appeal without appreciating the facts and the law in the proper perspective.
- (3) Both the courts below failed to consider that the counter claim in O.S.No.2912 of 2012 is hopelessly barred by limitation.
- (4) The courts below failed to appreciate that the defendants and their predecessor in title had knowledge about the title claimed by the plaintiff and his predecessor in RCOP No.705 of 1986 which got dismissed for default and in RCOP No.403 of 1990 which was dismissed on the ground of denial of title by order dated 25.06.1992.
- (5) The courts below ought to have considered that the Ex.A2



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and Ex.A20 clearly prove the title and valid possession of the father of the appellant/plaintiff, both are the official revenue documents issued by the Tahsildar, Purasaiwakkam-Perambur Taluk.

(6) The Courts below ought to have considered that the oral partition has held on in the year 1980, the same was proved by the oral evidence of P.W.3 and also the documentary evidence in Ex.A2. Based on oral partition, the respondents/defendants sold their share of 592 sq.ft. out of 1184 sq.ft. to one Chandrababu and another.

(7) The courts below wrongly appreciated that the Ex.B6 is a patta, which stands in the name of one Mr.Dhanraj, who is the husband of the 1st respondent and father of 2nd respondent. Based on the Ex.B6 only the counter claim was decreed. Both courts failed to consider that the said document is not a patta, it was a notice issued by Head Surveyor and it cannot be adocument to prove the title and the name of the street described in the said document and the



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suit property are entirely different. The respondents/defendants is wrongly claiming the title from the appellant/plaintiff.

(8) The lower appellate court and trial court ought to have considered that the suit schedule property originally belonged to one Krishnan, who is the grandfather of the appellant/plaintiff, after the demise of said Krishnan, the father of appellant and mother of 1st defendant having rights over the property by way of intestate succession. In the Ex.A3 judgment and decree in RCOP No.403 of 1990 that the respondents/defendants admit that the father of appellant/plaintiff owned one property at Mylappa Street, 2nd lane, formerly known as Ponnuvelpuram, Ayanavaram, that the admitted property in RCOP No.403 of 1990 and the suit schedule property is the same present appeal are the same. The admission of the respondents/defendants are very clear to the title of appellant/plaintiff and also established that the respondents/defendants are wanting to illegally grab the



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share of the appellant in the property.

(9) The lower appellate court and trial court ought to have considered that the Ex.B6 and Ex.B14 which were the notice and patta respectively, both the documents are stated that the property of the respondents/defendants at Constable Road, Ponnuvelpuram, Ayanavaram. But, the property of the appellant/plaintiff is situated at Mylappa Street, 2nd lane, Ponnuvelpuram, Ayanavaram, Chennai as per Ex.A2.

(10) The appellate court miserably and without application of mind allowed the counter claim of the respondent/defendant and that in the para 23 of the judgment says that the defendants are the daughter and grandson and mortgaged the property and release the same and also sold half of the portion through Ex.B17/A18 to one Chandrababu and another and remaining half portion was leased out to the father of the appellant/plaintiff by the respondents/defendants without any material whatsoever.

11. Considering the facts and circumstances, the following common



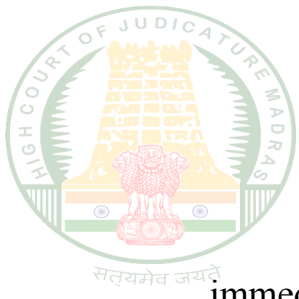
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question of law was framed :-

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- (a) *When the counter claim is barred by limitation, could the court entertain such counter claim without deciding the aspect of limitation?*
- (b) *When the earlier RCOP filed by the defendant was dismissed on the ground of denial of title by the plaintiff as early as on 25.06.1992 is not the counter claim filed in O.S.No.2912 of 2012 on 06.08.2012 for declaration of title and recovery of possession barred by limitation?*
- (c) *Whether the findings of the trial court that Ex.B6 is the patta is valid in the eye of law?*
- (d) *Has the proper procedure been followed by the trial court in the matter of considering the counter claim?*

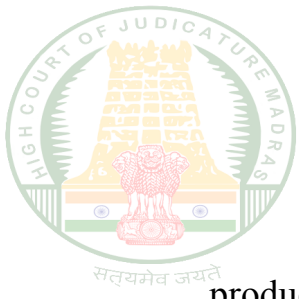
12. The learned counsel for appellant argues that both the courts below failed to consider the counter claim made by the defendants are barred by limitation, since RCOP filed by them was dismissed in the year 1992 itself on the ground of denial of title, so, they ought to have filed a suit for declaration to prove their right and title over the suit property



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immediately, but they have not approached the court to declare their right and title, on the other hand, they have preferred the counter claim nearly about 10 years later in the suit filed by the plaintiff, as such is barred by limitation for the reason that they ought to have filed the same within three years from the date of denial of title. But, the said legal proposition was not properly appreciated by the courts below and on that ground, these Second Appeals are to be allowed by setting aside the findings of the courts below. Further, he would submit that the trial judge wrongly interpreted Ex.B6 as the Patta, in fact, Ex.B6 is a notice issued by Tahsildar while fixing the boundaries and surveying by the revenue authorities to Dhanraj, husband of 1st defendant calling for objection on his side, but it was wrongly held that it is a patta, based on that, the trial judge wrongly held that husband of 1st defendant having valid right and title over the property. Accordingly, counter claim was allowed and the same was also confirmed by the first appellate judge as such is total misconception of documents by wrong interpretation, on that ground also, the findings of courts below is liable to be set aside. The learned counsel also pointed out that long possession and enjoyment of suit property by the plaintiff's father also been proved by

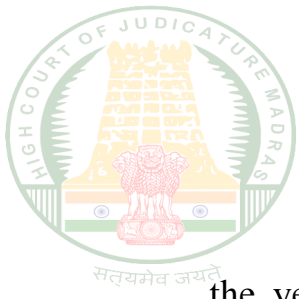


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producing document of the year 1986 Ex.A6 and also as per the Town Survey register marked as Ex.A19, inspite of best evidence available on his side, erroneously dismissed the suit filed by the plaintiff as such is perverse and liable to be set aside.

13. By way of reply, the learned counsel for respondents argue that before the trial court, plaintiff neither proved his right and title over the property nor produced any document to show the right and title of his predecessors and the same was rightly observed by the trial judge and by relying revenue records on the side of defendants 1 and 2, the trial court has rightly granted counter claim and dismissed the suit filed by the plaintiff, which needs no interference. So also, the findings of first appellate judge also well-reasoned by appreciating the documents adduced on the side of both parties. Therefore, he prayed to dismiss these Second Appeals as no merit. Further, he would submit that after the dismissal of earlier RCOP petition in the year 1992, father of plaintiff entered into compromise agreeing to vacate the premises, but he failed and thereafter he died. However, by creating false settlement deed, the plaintiff made encumbrance over the suit property and also obtained patta based on the false records in



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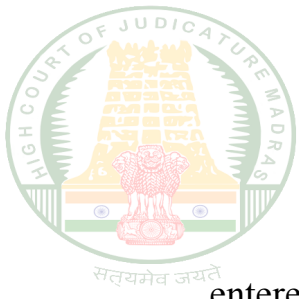
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the year 2008. On their objections, patta was cancelled by the revenue officials directing the plaintiff to approach the civil court. Therefore, he come forward with the present suit with false claim and immediately the defendants also filed the counter claim as such is within the time after dismissal of revenue authority's order and the same was rightly observed by the courts below. Therefore, the issue of limitation would not arise, thereby he prayed to dismiss these Second Appeals as there is no question of law involved.

14. Heard and considered rival submissions of both learned counsel for appellant and respondents and perused the materials available on record.

15. Considering both side submissions, it is an undisputed fact that one Krishnan had son and daughter viz., Murugesan and Ellammal and the plaintiff, being son of the said Murugesan and the defendants 1 and 2 are daughter and grandson of Ellammal and one Dhanraj, who is husband of 1st defendant are admitted facts. According to plaintiff, the total extent of 1184 sq.ft. originally classified as Inam land was in possession and enjoyment of his grandfather Krishnan. After his demise, his son and daughter orally

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entered into partition, thereby they divided equally. Accordingly, front portion admeasuring an extent of 592 sq.ft. was allotted to Ellammal and rear portion admeasuring an extent of 592 sq.ft. was allotted to plaintiff's father Murugesan, wherein his father put up a thatched hut and he resided in the portion. He died intestate leaving behind his legal heirs, thereafter, all the legal heirs executed the Settlement deed in favour of plaintiff. Therefore, plaintiff claimed right and title over the suit property. The objection of defendants 1 and 2 is that the suit property originally possessed and enjoyed by Dhanraj, husband of 1st defendant and considering his long possession and enjoyment, even prior to 1976, after the town land survey, patta for the said land measuring an extent of 1184 sq.ft. was obtained by the said Dhanraj. Eversince he was in absolute possession and enjoyment of the suit property. Therefore, the claim of defendants is that the entire extent of 1184 sq.ft. belongs to Dhanraj by way of long possession and enjoyment. He had approached the revenue authorities for issuance of patta and accordingly he derived title. Therefore, the fact reveals that both parties are claiming right and title over the suit property by long possession and enjoyment and there is no parent title deed



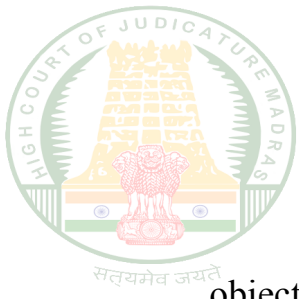
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in respect of suit property in the name of either of the parties' predecessors in title. The plaintiff, to prove right and title, relied document Ex.A2, the earliest document dated 08.02.1986, on perusal of the said document, it is a no objection certificate issued by the Tahsildar to the plaintiff's father on 08.02.1986. The contents of the document reveals that it is a no objection certificate issued by the Tahsildar, Purasaiwalkam-Perambur Taluk as follows:-

“the encroachment by K.Murugesan, son of Krishnan, on the Government land in S/T.S.No.47/32 Block No.4, of Chinnachembarambakkam, Purasaiwalkam Road, Taluk of Madras District is not objectionable and that therefore, there is no objection for supply of electricity to the premises.”

So, the said document reveals that father of plaintiff viz., Murugesan was in encroachment of the Government land in T.S.No.47/32, Block No.4, Old Door No.73, Ponnuvelpuram 1st street, which is the suit property herein. Therefore, as per the said certificate issued by the Tahsildar, father of plaintiff was in encroachment of the land in T.S.No.47/32, Door No.17 for which he sought for electricity connection and Tahsildar also given no

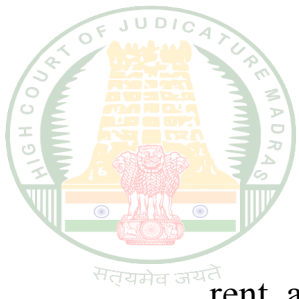


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objection certificate to that effect. Further, the plaintiff also relied Ex.A6, which is a property return form stands in the name of plaintiff's father Murugesan marked as Ex.A6 and particulars of the said form reveals that owner name was mentioned as Murugesan for Door No.17 for an extent of 600 sq.ft. with thatched hut and the same was submitted to revenue authorities of Corporation of Chennai during the life time of the said Murugesan. Thereafter, property tax stands in the name of the said Murugesan in the year 1998, he has paid tax from the year 1998-1999. To that effect, he produced the property tax receipt in his name. Therefore, during the life time of plaintiff's father, he was in possession and enjoyment of the suit property and the property tax was also assessed in his name and revenue authorities also issued no objection to get electricity connection holding that he was in encroachment of land in T.S.No.47/32, Block No.4.

16. Furthermore, the possession of the plaintiff's father was also been admitted by the defendants 1 and 2, who filed RCOP against him in RCOP.No. 403 of 1990, wherein they have stated that the plaintiff's father has entered into tenancy with Dhanraj from the year 1978 for a monthly



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rent and thereafter, he committed default from 1986-1990. Hence, they approached the court for eviction. Therefore, there is implied admission on the side of defendants that plaintiff's father Murugesan was in possession of the suit property not as a owner but as a tenant. Now the burden is shifted on the defendants to prove that plaintiff's father was entered into suit property as a tenant much earlier in the year 1978. Before the Rent Controller court, they have relied 1984 settlement deed and also relied the notice issued in the year 1968 and 1974, but those documents are not brought before the trial court. Moreover, there was no findings with regard to landlord and tenant relationship between the parties by the Rent Controller, on the other hand, Rent Controller dismissed the RCOP holding that title between parties are under dispute, which is beyond the jurisdiction of Rent Controller and both parties are disputing right and title. So, on the ground of denial of title, RCOP was dismissed in the year 1992. Therefore, in the RCOP proceedings, there is no finding with regard to right and title of the said Dhanraj. Hence, the defendants 1 and 2 independently bound to prove that when the father of plaintiff entered into tenancy with the said Dhanraj eversince from 1978 onwards.



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17. On perusal of records of the case in hand, it reveals that the defendants not produced any document nor proved that father of plaintiff Murugesan entered into the suit property as a tenant. Admittedly, the defendants also claiming right and title over the property based on the counter claim. So, the burden is equally bound on them to prove that husband of 1st defendant possessed valid right and title over the suit property. Before the trial court, the defendants produced the documents Ex.B1 to Ex.B25. On considering the evidence on record, the trial judge has held that the plaintiff not proved his case, on the other hand, the defendants produced the patta Ex.B6. Based on that, Dhanraj, husband of 1st defendant having valid title over the suit property, thereby he is entitled to execute the settlement deed in favour of defendants 1 and 2 in the year 1984, thereby defendants 1 and 2 perfected their title and right over the suit property. Accordingly, the counter claim was allowed. As rightly pointed out by the counsel for plaintiff, on perusal of Ex.B6, it is not a patta stands in the name of said Dhanraj, it is only a notice issued under Sec.9(2) declaring no objection in respect of fixing survey.

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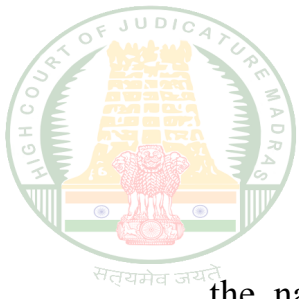


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18. As discussed above, in that notice the land bearing T.S.No.47/32 was mentioned and the entire contents of Ex.B6 clearly reveals that it is only the notice issued by Tahsildar and it is not patta, but the trial judge wrongly interpreted Ex.B6 notice as patta and conveyed title on the said Dhanraj, as such is totally erroneous and liable to be set aside. Furthermore, defendants 1 and 2 claimed right over the property based on the settlement deed executed by the said Dhanraj marked as Ex.B11. On perusal of Ex.B11, settlement deed, Dhanraj has gifted entire extent of 1184 sq.ft. in favour of his wife and son in the year 1984 stating that the entire extent was belong to him by way of long possession. Though he mentioned that the Government has issued patta in his name, but as discussed above, no such patta was produced on the side of defendants. After the settlement deed through Ex.B14, patta was issued in the name of defendants 1 and 2 for entire extent of 1184 sq.ft. stating that they are in possession and enjoyment of entire property. But, at the time of issuance of patta in the year 1985, the plaintiff's father was already in occupation of portion of property, which was also surveyed by revenue authority. Therefore, the said patta stands in

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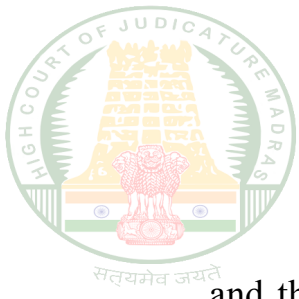


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the name of defendants 1 and 2 also not sufficient to hold that entire property was belongs to them, since because there is no parent title deed in the name of Dhanraj.

19. Both the plaintiff and 1st defendant's husband Dhanraj claiming right and title based on the long possession, but according to plaintiff, his grandfather Krishnan was under the possession and enjoyment on oral partition, suit property was allotted to his father admeasuring an extent of 592 sq.ft. and back portion of another 592 sq.ft. was allotted to Ellammal, mother of 1st defendant. In the year 2008, Patta granted in the name of plaintiff was cancelled based on the objections raised by the defendants 1 and 2. Thereafter, the revenue authorities directed them to approach the civil court. Accordingly, the plaintiff approached the court. As per the proceedings issued by Tahsildar in the year 2010, it reveals that the land in dispute, an extent of 110 sq.meter belongs to sons of Kottai Srinivasa Iyer viz., (1) Manavala Iyer, (2) Badrinarayana Iyer and (3) Rangaramanujulu Iyer as per the Town Survey Register, but in the Adangal column, Dhanraj name was mentioned as he occupied a portion of the property under tenant. At the time of town survey, he was in possession portion of the property



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and the same was proved by producing rent receipt. Therefore, as per the original town survey register extract, entire extent originally belong to one Kottai Srinivasa Iyer family and it was also found that Dhanraj was occupied portion of the property as a tenant. To that effect, he paid urban land tax and some of receipts also produced on the side of defendants marked as Ex.B12 and Ex.B13, which proves that they have paid land tax for Block No.4 in T.S.No.47/32, but the correct extent of property was not mentioned. So, Dhanraj also was in occupation of portion of property as per the proceedings issued by Tahsildar, but as per the Town survey register Ex.A19, adangal stands in the name of three sons of Kottai Srinivasa Iyer. Therefore, Dhanraj has also not been granted patta by the revenue authority and his long possession was considered by the revenue authority and received urban land tax. So also, the certificate issued in favour of plaintiff's father as per Ex.A2, he had encroached the Government land bearing the suit property existed and he put up a hut and obtained electricity connection and paying tax.

20. It is an admitted fact that already the said Dhanraj family sold 592 sq.ft. to one Chandrababu and Vasanthi, but they claimed that they



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have retained the suit property with themselves as if they are owners of entire extent of 1184 sq.ft. After the settlement deed executed by Dhanraj, the defendants 1 and 2 obtained patta for entire extent of 1184 sq.ft. but except that settlement deed, they have not produced any parent deed to show that they have perfected right and title over the entire extent of 1184 sq.ft. They are also not having better title than the plaintiff. Therefore, the trial court wrongly interpreted the notice issued by the Tahsildar marked as Ex.B6 as patta and conveyed title upon Dhanraj, husband of 1st defendant as such is erroneous one, perverse, liable to be set aside. Accordingly, the question of law No.3 is answered.

21. In respect of limitation aspect, admittedly, while dismissing RCOP petition filed by the defendants 1 and 2, the Rent Controller had observed that title is under dispute and the same can be decided only by the civil court. Therefore, in the year of 1991, RCOP filed by the defendants was very well aware that their right and title over the suit property was under dispute. But, after the year of 1992, within three years, they have not approached the civil forum to declare their right and title, however, they were aware of the denial of title made by plaintiff's father and they

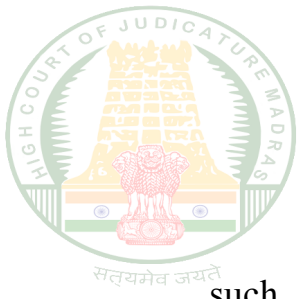


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contended that there was compromise, wherein the plaintiff's father agreed to vacate the premises, but to prove the said compromise, there is no evidence on the side of defendants, which would clearly proves that the defendants 1 and 2 not approached the civil court within three years even from the date of denial. Only after filing the present suit in the year 2012 by the plaintiff, they come forward with the counter claim, through which they claimed right and title as such is totally barred by limitation. Accordingly, question of law (1) and (2) is answered.

22. The patta stands in the name of plaintiff was cancelled based on the objections raised by the defendants 1 and 2. Therefore, the District Revenue Authority directed the plaintiff to approach the civil court to prove his right and title over the suit property. Accordingly, he come forward with the present suit in the year 2012 itself by producing the relevant document. So, the plaintiff, prima facie proved that his father was in long possession of suit property and after his demise, he possessed and enjoyed the suit property. To that effect, he produced the document before the trial court, which was not properly appreciated and erroneously appreciated the documents relied on by the defendants and granted the counter claim as



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such is also not sustainable under law. If the findings are perverse, improper appreciation, this Court is empowered to cause interference. Accordingly, the findings rendered by the first appellate court in A.S.Nos.7 and 8 of 2023 is set aside. The counter claim made by defendants 1 and 2, legal heirs of Murugesan is dismissed. Suit decreed as prayed for. Accordingly, both the Second Appeals are allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

07.04.2025

Index : Yes / No
Internet : Yes / No
Speaking/Non-speaking order
rpp

To

1. VII Addl. Judge, City Civil Court, Chennai.
2. XII Asst. Judge, City Civil Court, Chennai.
3. Section Officer, VR Section, Madras High Court.

T.V.THAMILSELVI, J.



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Pre-delivery common judgment in
S.A. Nos.905 & 906 of 2023

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