



S.A.(MD)No.297 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 01.08.2025

CORAM

THE HON'BLE MR.JUSTICE G.ARUL MURUGAN

S.A.(MD)No.297 of 2019

Katturaja @ Thangam

...

Appellant/Appellant/Plaintiff

VS

1.Malairaj
2.Ponnalagu
3.Ramasamy
4.Maharajan
5.Vijayarani

...

Respondents/Respondents/
Defendants

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, against the judgment and decree, dated 06.04.2017, made in A.S.No.73 of 2012, on the file of the Sub Court, Sivagangai, confirming the judgment and decree, dated 25.01.2012 made in O.S.No.103 of 2004, on the file of the District Munsif Court, Manamadurai.



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For Appellant : Mr.S.Srinivasa Raghavan

For Respondents : Mr.R.Senthilkumar

JUDGMENT

The unsuccessful plaintiff is before this Court on appeal.

2. The Second Appeal is filed challenging the judgment and decree, dated 06.04.2017 in A.S.No.73 of 2012, on the file of the Subordinate Court, Sivagangai, confirming the judgment and decree, dated 25.01.2012 in O.S.No.103 of 2004, on the file of the District Munsif Court, Manamadurai.

3. For the sake of convenience, the parties are referred to as per the litigative status before the trial Court.

4. It is the case of the plaintiff that the suit property originally belonged to his grandfather Muthirulappa Pillai, who had purchased the same through two separate sale deeds dated 14.03.1907 and 14.11.1907. He was in possession and enjoyment of the suit property. Pursuant to his life



time, his only son Chinnathambiya Pillai inherited the suit property and in view of the oral partition entered into in the year 1972, he became the absolute owner. The suit property was situated in S.No.323, which alone has now been sub-divided as S.No.323/3. It is the further case of the plaintiff that when re-survey was done, this property was sub-divided as 323/3, for which wrongly patta has been issued in favour of the defendants. On coming to know that the defendants are trying to usurp the property based on the patta, he has issued a legal notice on 03.02.2004, for which a reply was sent on 17.02.2004. Hence, the plaintiff has come up with the suit for declaration and permanent injunction.

5. The defendants resisted the suit disputing the claim of the plaintiff. It is the specific contention of the defendants that no such property with S.No.323 is in existence at all. Even prior to or after to the settlement, never had this suit property been in the name of the plaintiff or his ancestors. The suit property is the ancestral property of the first defendant's father - Raman Ambalam, who was in possession and enjoyment of the suit property for nearly 40 years and he died. After the death of Raman Ambalam, his sons Alagappan and the first defendant inherited the property



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and patta was issued for S.No.323/3 in Patta No.915 and they had been in enjoyment of the suit property. Alagappan had died 12 years ago and pursuant to his death, the defendants 2 to 5 had been in possession of the suit property along with the first defendant. As such, the defendants claimed title to the suit property and sought for dismissal of the suit.

6. During trial, the plaintiff examined P.W.1 to P.W.3 and marked Exhibits A.1 to A.12. On the side of the defendants, D.W.1 to D.W.3 were examined and marked Exs.B.1 to B.17.

7. The trial Court, after analysing the evidences, came to the conclusion that when the plaintiff claimed right through the documents in Exs.A.1, A.2 and A.8, the very identity and existence of the property with S.No.323 had not been established. The trial Court found that the defendants were in possession of the property in S.No.323/3 and by Exs.B.1 and B.2, which are settlement register and 9(2) notice, the defendants had established that they are the owners and are in possession of the suit property. The trial Court decreed the suit. On appeal, the lower appellate Court concurred with the finding of the trial Court and dismissed the appeal.



It is also to be noted that in the appeal, an application was taken out and an Advocate Commissioner was appointed and his report has been received and marked as Ex.C.1. The lower appellate Court also found that the property was not able to be correlated with the documents filed by the plaintiff. Assailing on the concurrent findings of facts, the plaintiff had preferred the above Second Appeal.

8. This Court, by order dated 10.07.2019, admitted the Second Appeal on the following Substantial Questions of Law:

“1. Whether the Courts below are right in accepting the plea of adverse possession, merely on the basis of patta, ignoring the well settled possession that when the other ingredients of adverse possession was neither pleaded nor proved in the manner known to law?

2. Whether the plaintiff is entitled to title under Ex.A.1 and Ex.A.2 even though the documents are only release deed, especially when the document is 30 years old and the plaintiff has let in evidence to prove that the documents are in respect of the property, which is subject matter of the suit?”



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9. Mr.S.Srinivasa Raghavan, learned Counsel appearing for the appellant argued that the plaintiff had filed the documents in Exs.A.1 and A.2, whereby though it is claimed to be a sale deed, but however it is a release deed, wherein the property with S.No.323 had been released in favour of the plaintiff's grandfather Muthirulappa Pillai. The learned Counsel further submitted that originally the purchase was made in the year 1899, which is reflected in Exs.A.1 and A.2, the sale deed had also been marked as Ex.A.8, whereby the title to the suit property has been traced. It is his further contention that the plaintiff had examined P.W.1 to P.W.3 and marked Exs.A.3 and A.4 to establish the possession of the plaintiff and the Courts below, erroneously on coming to the conclusion that S.No.323 is not in existence, had dismissed the suit, which is perverse and sought for interference of this Court.

10. Contending contra, the learned Counsel for the respondents argued that when the plaintiff had come up with the suit for declaration, then the onus is on the plaintiff to prove that he has valid title to the suit property and when he makes an exclusive claim for the property in S.No.



323, it is for him to prove that such a property with S.No.323 was ever at all in existence. In the absence of the same, the defendants had, by filing documents, established their right and title to the suit property, which was rightly taken note of by the Courts below and dismissed the suit, which needs no interference and sought for dismissal of the appeal.

11. Heard the rival submissions and perused the materials available on record.

12. The plaintiff had approached the Court seeking for declaration and permanent injunction in respect of the suit property. It is the claim of the plaintiff that one Muthuirulappa Pillai had purchased the suit property measuring 3.36 acres with S.No.323 through two separate sale deeds dated 14.03.1907 and 14.11.1907 in Exs.A.1 and A.2 respectively. Since the documents in Exs.A.1 and A.2 are actually release deeds, to prove that the purchase was made through the document made in the year 1899, which is reflected in Exs.A.1 and A.2, the plaintiff had filed the document Ex.A.8, which is a sale deed. By filing these three documents Exs.A.1, A.2 and A.8, it is the contention of the plaintiff that the suit property was originally



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purchased by Muthuirulappa Pillai and pursuant to his death, the plaintiff's father inherited the property and through oral partition in the year 1972, the suit property got vested with the plaintiff's father – Chinnathambiya Pillai. After the death of Chinnathambiya Pillai, the plaintiff, as legal heir, had inherited the suit property.

13. On the other hand, it is the contention of the defendants that there is no such property with S.No.323 in existence. The defendants' claim is that the suit property is in S.No.323/3, which originally belonged to the father of the first defendant – Raman Ambalam. Raman Ambalam had been in possession of the suit property for nearly 40 years and the patta stood in the name of Raman Amabalam for the property in S.No.323/3. The defendants had filed the documents in Exs.B.1 and B.2. Ex.B.1 is the settlement register for the land in S.No.323/3 and Ex.B.2 is the 9(2) notice issued to the son of Raman Ambalam – Malairaj. Based on these proceedings, patta No.915 came to be issued to the defendants in Ex.B.3. The defendants had also filed other documents in Exs.B.5 to B.17, which all go to show that the suit property in S.No.323/3 was originally possessed and enjoyed by the first defendant's father – Raman Ambalam and in the



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settlement survey proceedings, the patta came to be issued in Ex.B.3 in patta No.915. From these documents, it has been established that the property having S.No.323/3 had been in absolute possession in the hands of the first defendant's father and thereafter the first defendant along with his two brothers.

14. After the death of one of his brothers – Alagappan, the defendants 2 to 5 had inherited the share of Alagappan. The defendants had proved that the suit property pertains to S.No.323/3 and the patta, even prior to and also after the settlement, stood in the name of the first defendant's father and the defendants. Even though the plaintiff had taken out an application for appointment of Advocate Commissioner, during the pendency of the appeal and the report was received in Ex.C.1, the plaintiff was not able to prove and correlate that the suit property pertains to S.No.323. The plaintiff is also not able to establish that there was any property with S.No.323, which was purchased by them through the documents relied on by them that has been sub-divided as S.No.323/3.



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15. When the plaintiff failed to establish the fact that there was any property at all with S.No.323 that was purchased by his ancestors and discharge his burden to succeed in the suit for declaration, the Courts below had rightly analysed the evidences and dismissed the suit.

16. This Court does not find any illegality or perversity in the concurrent findings arrived at by the Courts below. In view of the above, the Substantial Questions of Law are answered as against the appellant and in favour of the respondents.

17. Accordingly, the Second Appeal stands dismissed. However, there is no order as to costs.

01.08.2025

Internet :Yes/No

Index :Yes/No

NCC :Yes/No

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To

1. The Subordinate Court, Sivagangai.

2. The District Munsif Court, Manamadurai.

3. The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

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G.ARUL MURUGAN, J.

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Judgment made in
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