



S.A.(MD)No.109 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 02.07.2025

CORAM

THE HON'BLE MR.JUSTICE G.ARUL MURUGAN

S.A.(MD)No.109 of 2025
and
C.M.P(MD)No.3388 of 2025

Ayyar

... Appellant

-vs-

1.Seeni
2.Raja
3.Chinniah

..Respondents

PRAYER: Second Appeal filed under Section 100 Code of Civil Procedure, against the Judgment and Decree dated 20.08.2024 made in A.S.No.14 of 2019 on the file of Sub Court, Usilampatti confirming the Judgment and decree dated 17.09.2012 made in O.S.No.85 of 2005 on the file of the District Munsif-cum-Judicial Magistrate No.1, Usilampatti.

For Appellant ... Mr.J.Barathan

For Respondents ... Mr.A.Rajaram



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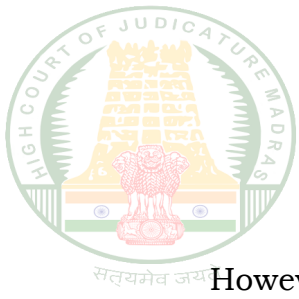
JUDGMENT

The unsuccessful plaintiff is before this court on appeal.

2. The second appeal is filed challenging the judgment and decree dated 20.08.2024 in A.S.No.14 of 2019 on the file of the Sub Court, Usilampatti, confirming the judgment and decree dated 17.09.2012 in O.S.No.85 of 2005 on the file of the District Munsif-cum-Judicial Magistrate No.1, Usilampatti.

3. The parties are referred to as per their litigative status before the trial Court.

4. It is the case of the plaintiff that the suit property originally belonged to the ancestor of his wife, Sarasu. She had inherited the suit property and had been in possession and enjoyment of it, based on which a patta came to be issued in favour of the said Sarasu. Thereafter, she had executed a settlement deed dated 04.05.2005 in Ex.A2 in favour of her husband, the plaintiff. The plaintiff had been in possession and enjoyment of the suit property. Since the defendants, who had property on the eastern side, started to interfere, the plaintiff had come up with the suit for a permanent injunction.



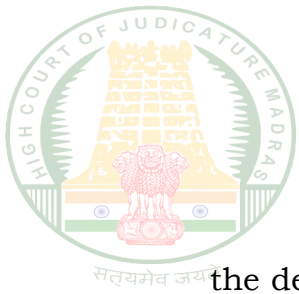
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However, after the Advocate Commissioner's report was filed, the plaintiff sought to amend the relief, and the suit relief has been amended, seeking recovery of possession.

5. The defendants resisted the suit, contending that the adjacent property to the suit property bearing S.No.292/32 belongs to the defendants and their brothers. It is their further case that there was a partition among the brothers and the property in S.No.292/32 was allotted to the share of the brothers, namely, Chinniah and Paulsamy. It is the further case of the defendants that Paulsamy had orally sold the same to Chinniah, and thereafter, he had constructed a house on the suit property and has been in possession and enjoyment of it for the past 40 years. The other brothers had also constructed a house, and based on their possession and enjoyment, a natham patta was issued in favour of the defendants in Exs.B1 and B2. As such, the plaintiff has no right over the suit property, and therefore, the defendants sought dismissal of the suit.

6. During the trial, the plaintiff examined himself as P.W.1 and examined one Pitchaiyammal and Peruamal as P.W.2 and P.W.3 and also examined one Karnan, who is the Village Administrative Officer of the suit village, as P.W.4 and marked Exs.A1 and A2. On the side of



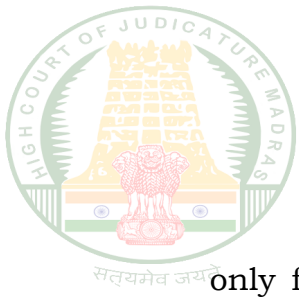
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the defendants, the second defendant examined himself as D.W.1 and examined one Periyandi as D.W.2 and marked Exs.B1 to B22. An Advocate Commissioner was also appointed, and the report along with the sketch of the Advocate Commissioner had been marked as Exs.C1 to C3. Further document Ex.X1 had also been marked through the witness P.W.4.

7. The trial court, after analyzing the evidence, came to the conclusion that the plaintiff had not established possession over the suit property. The trial court particularly found that when the plaintiff claimed his right as per the patta in Ex.A1, for the same suit property, patta in Ex.B2 stood in the name of the second defendant, which was issued earlier in point of time than Ex.A1. Further, the trial court, by placing reliance on the evidence of the Village Administrative Officer (P.W.4) to the effect that the patta in Ex.A1 relates to patta No.688, which does not relate to the suit property, had dismissed the suit.

8. On appeal, the lower appellate court, by placing reliance on the admission of P.W.1 to the effect that earlier the suit property was having natham S.No.202/1A, and there was a larger extent of the land available, and when the patta had been issued in favour of his wife,



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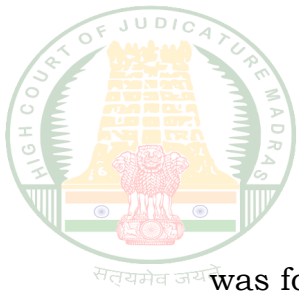
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only for 5 cents, the plaintiff had not established his right over the suit property, dismissed the appeal. The lower appellate court also found that the settlement deed in Ex.A2 dated 04.05.2005, has been executed in respect of the larger extent than what was available in patta Ex.A1. Further, the lower appellate court, on concluding that when there is a cloud in the revenue records on the title of the plaintiff, the suit filed by the plaintiff for recovery of possession without seeking declaration is unsustainable, dismissed the appeal, confirming the judgment and decree of the trial court. Assailing the concurrent finding of facts, the plaintiff is before this court.

9. At the time of admission, the following substantial question of law has been formulated by this court:

“Whether both the courts below committed error in dismissing the suit holding that the suit is not maintainable without the prayer of declaration when there is a specific prayer for recovery of possession?”

10. The learned counsel appearing for the appellant/plaintiff argued that when a patta has been issued in favour of the plaintiff's wife in Ex.A1 and based on which a settlement deed in Ex.A2 also came to be executed, the plaintiff has established his title, and particularly, through the Advocate Commissioner's report, when it



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was found that the defendants were in possession of the suit property, the plaintiff has the right to amend the relief seeking recovery of possession. The learned counsel further contended that the defendants have not filed any document to trace the title, and more particularly, mere raising a defence questioning the title of the plaintiff will not amount to raising a cloud on the title, and such a dispute raised must be true and genuine. The learned counsel further contended that in view of the documents filed in Exs.A1 and A2, the suit for recovery of possession is sustainable, and the courts below had taken an erroneous approach in coming to the conclusion that the plaintiff ought to have sought a declaration, which is perverse, and sought for interference from this court.

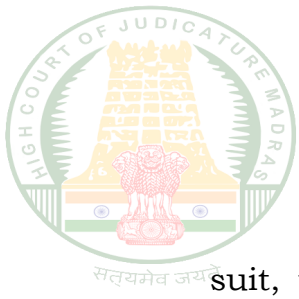
11. In support of his contention, the learned counsel for the appellant/plaintiff has referred to the decisions of the Hon'ble Supreme Court in the case of **Anathula Sudhakar vs. P.Buchi Reddy** reported in **(2008)4 SCC 594**, and **Jharkhand State Housing Board vs. Didar Singh and another**, reported in **(2019)17 SCC 692**, to the effect that unless a true and genuine dispute is raised, raising a cloud on the title, the suit simpliciter for injunction would not be maintainable.



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12. Per contra, the learned counsel for the respondents/defendants argued that admittedly it is a Gramanatham property and that a patta had been issued in favour of the second defendant for the suit property in Ex.B2, which predates the patta issued in favour of the plaintiff's wife in Ex.A1. When the defendants had constructed the house and were residing there, admittedly, which has been brought to the notice by the Advocate Commissioner's report, and as a result of which, the plaintiff sought to amend the relief of recovery of possession, and the plaintiff came to know that the defendants had filed a patta for the suit property, which necessarily raises a cloud on the title, then the plaintiff ought to have sought a declaration, and the suit filed for mere recovery of possession without seeking a declaration cannot be sustained. In this regard, the learned counsel for the respondents/defendants also placed reliance on the same decision in the case of **Anathula Sudhakar vs. P.Buchi Reddy** reported in **(2008)4 SCC 594** to the effect that when a cloud is raised on the title, then the suit filed without seeking a declaration, for mere injunction and recovery of possession is not maintainable. The learned counsel, relying on the documents filed in Exs.B3 to B22 contended that the defendants established that they are in possession of the suit property. Therefore, the courts below have rightly considered the documents in a proper perspective and dismissed the



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suit, which needs no interference, and sought for dismissal of the second appeal.

13. Heard the learned counsel for the appellant/plaintiff and the learned counsel for the respondents/defendants and perused the materials available on record.

14. Admittedly, the suit property is a Natham property bearing S.No.292/31. Even according to the admission of P.W.1, originally, the suit property was having old Natham in S.No.202/1A. According to P.W.1, though the old survey number had a vast extent of land, he is not aware as to what was the extent and out of that, how many persons were in possession and enjoyment, and out of which, for which portion, the patta was issued in favour of his wife for five cents. When admittedly the suit property is having new S.No.292/31 and the suit property is a natham site, the plaintiff relied on the document Ex.A1 patta issued in favour of the plaintiff's wife. The patta in Ex.A1 has been issued for the suit property on 01.11.2004 in favour of one Sarasu, who is the wife of the plaintiff. Placing reliance on this patta, the settlement deed came to be executed in favour of the plaintiff in respect of the suit property.



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15. A perusal of two documents in Exs.A1 and A2, makes it explicitly clear that when the lesser extent alone was granted in the patta in favour of the plaintiff's wife in Ex.A1, the settlement deed was executed in Ex.A2, to a larger extent. The plaintiff had not come forward and explained on what basis the settlement deed had been executed in Ex.A2 to a larger extent when it was not covered under the patta in Ex.A1.

16. Further, the defendants had filed a patta in Ex.B2, which is dated 06.10.2004. Admittedly, the patta relied on by the plaintiff in Ex.A1 is dated 01.11.2004. The patta issued in favour of the second defendant in Ex.B2 is prior in point of time, which was issued on 06.10.2004. From the perusal of the two pattas in Exs.A1 and B2, it reveals that natham pattas have been issued for the same suit property in S.No.239/31 one in favour of the second defendant and another in favour of the plaintiff's wife. Admittedly, when the patta issued in Ex.B2 is at an earlier point in time, it is a natham patta and unless it has been cancelled in the manner known to law, a subsequent patta for the same property could not be issued in the name of the plaintiff's wife in Ex.A1.

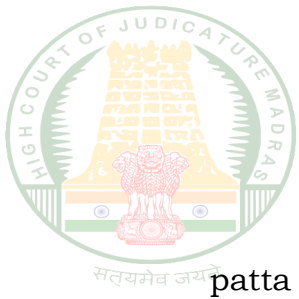


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17. The plaintiff has not filed any document in this regard to establish that any such proceedings have been undertaken wherein the patta issued in favour of the second defendant has been disturbed. In the absence of any such materials or claim made by the plaintiff, the patta issued in Ex.B2 in favour of the second defendant holds good, and the second defendant, in view of the previous patta, holds title to the suit property.

18. The plaintiff sought to prove his case by examining the Village Administrative Officer as P.W.4. The Village Administrative Officer's document in Ex.X1, which is an Adangal extract, has been marked through P.W.4. The Adangal extract is in respect of S.No. 291/31. As per the evidence let in by P.W.4, the patta Nos.139 and 340 are not connected to the suit property, and the suit property relates to patta No.688. However, the patta in Ex.A1 had been issued in favour of the plaintiff's wife, bearing Patta No.689. From the evidence of P.W.4, it came to light that the suit property relates to patta No.688 and the patta issued to the plaintiff relates to patta No. 689. Hence, the plaintiff had failed to establish that the patta in Ex.A1 gives any right to the plaintiff to make the claim in respect of the suit property. In view of these clarifications, it become more clear that the



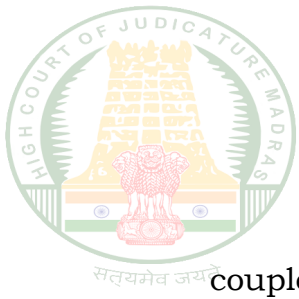
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patta in Ex.B2 in favour of the second defendant which is earlier in point of time has been correctly issued and not disturbed. When the defendants had filed documents particularly the patta in Ex.B2 for the natham property, pertaining to the suit property and established their rights over the suit property, then the plaintiff, who had initially sought a bare injunction, and thereafter amended the relief for recovery of possession, could not maintain the suit relief without seeking for declaration of the suit property. In this regard, it is useful to refer the decision of the Hon'ble Supreme Court in the case of **Anathula Sudhakar vs. P.Buchi Reddy** (cited supra).

19. In the instant case, when admittedly, the defendants by filing documents in Ex.B2 had raised a cloud on the title of the plaintiff over the suit property, as the plaintiff also makes a claim for the suit based on the patta alone in Ex.A1, the plaintiff ought to have sought a declaration and in view of the above-stated decisions (cited supra), the suit filed by the plaintiff for mere recovery of possession without seeking a declaration is not maintainable.

20. The courts below have also, by relying on the documents filed by the defendants, concluded that the defendants are in possession of the suit property, which is established by documents



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coupled with the report of the Advocate Commissioner. In fact, the plaintiff has also amended the relief seeking recovery of possession. In such circumstances, the concurrent findings arrived at by the courts below are based on the material facts. This court does not find any illegality or perversity in the finding arrived at. In view of the above deliberation, the substantial question of law is answered as against the appellant and in favour of the respondents.

21. In the result, the Second Appeal fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

02.07.2025

NCC : Yes/No
Index : Yes/No
Internet: Yes
skn

To:

- 1.The Sub Judge, Usilampatti.
- 2.The District Munsif-cum-Judicial Magistrate No.1, Usilampatti.
- 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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