

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 09.03.2022

DELIVERED ON : 13.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A(MD)No.744 of 2021 and
CMP(MD) No.6774 of 2021

Periammal

Appellant

Vs.

1.Kamalam
2.Ramesh
3.Venkatesh (died)
4.Kandasamy (died)

(R3 & R4 deceased and they exonerated)

Respondents

PRAYER: Civil Miscellaneous Appeal filed under Order XLIII Rule 1(r) of Civil Procedure Code, 1908, against the fair and decreetal order dated 24.03.2021, made in I.A.No.29 of 2020 in O.S.No.2 of 2020, on the file of Fast Track Mahila Court, Sivagangai.

For Appellant	:Mr.A.Arumugam
For R1 & R2	:Mr.S.Karthikeyan
For R3 & R4	:Died and they have been exonerated

J U D G M E N T

The plaintiff is the appellant herein. For the sake of convenience, the parties are referred to, as per their ranking before the trial Court.

2.The plaintiff filed the above Civil Miscellaneous Appeal against the order, dated 24.03.2021, made in I.A.No.29 of 2020 in O.S.No.2 of 2020, on the file of the Fast Track Mahila Court, Sivagangai.

3.The factual matrix of the case is as under:-

The appellant/plaintiff filed a suit for declaration of her title and for injunction. Pending the suit, she also filed an application for temporary injunction in I.A.No.29 of 2020 against the defendants 1 to 4. As per the pleadings in the suit, the suit property was originally belonged to one Chellaiah, under an assignment order Ex.P.1, issued on 12.01.1982. The said Chellaiah sold the suit schedule property on 10.11.1993, under Ex.P.2, an unregistered sale deed in favour of Moolaiyan, who is the father of the plaintiff. The said Moolaiyan obtained patta transfer in his name under Ex.P.3. Subsequently, the said Moolaiyan died and after his death, the plaintiff has become the absolute owner of the suit property and she has paid kist to the Government and

hence she prayed for interim injunction.

4.The first defendant/first respondent filed a counter statement in I.A.No.29 of 2020, stating that Ex.P.2 is not true, genuine, not valid and inadmissible in law. The plaintiff has not averred as to how the husband of the first defendant has got possession of the assignment order.

5.During the trial, the plaintiff side, Ex.P1 to Ex.P10 were marked and on the side of the respondents, Ex.R1 to Ex.R28 were marked. The learned trial Judge has dismissed the application and hence, this Civil Miscellaneous Appeal.

6.Mr.A.Arumugam, learned counsel appearing for the appellant/plaintiff would contend that the original assessment order is in possession of the plaintiff, by virtue of Ex.P.2, unregistered sale deed and hence she is entitled for declaration of title, on the plea of adverse possession and relied upon the decision reported in **2005 (1) CTC 494**. According to the learned counsel appearing for the appellant /plaintiff, declaration and title on adverse possession is an alternate plea and it is not a mutual inconsistent plea for the plaintiff. He relied upon the

judgment of this Court in S.A.1289 of 2002, dated 23.08.2016.

7.Per contra, the learned counsel appearing for the respondents would contend that Ex.P.1/Assessment order is in favour of one Chellaiah, who is the husband of the first respondent and the father of the other respondents. Though the plaintiff claimed that by an unregistered sale deed, the said Chellaiah has sold the property to one Moolaiyan (the father of the plaintiff) on 10.11.1993 and till December 2000, the said Moolaiyan has not obtained any patta in his favour. Only after the death of the said Moolaiyan, the patta was manipulated and obtained in the name of the plaintiff. Ex.P.5 is a manipulated patta and Ex.R3, dated 20.04.2017 is an online patta print out for patta No.1224, stands in the name of Chellaiah, (the husband of the first respondent and the father of the other respondents). In short, the contention of the learned counsel for the respondent is that as per Ex.R1, dated 12.01.1982 Assessment order was issued in favour of Chellaiah and as per Ex.R2, dated 21.09.1987, 'A' Register Extract for Survey Numbers: 765/4 and 766/1 in Patta no.1224, was issued only to Chellaiah, by the Special Tahsildar, Tiruppattur and even in the year 2017, under Ex.R3, online patta print out for Patta No. 1224, is also in favour of Chellaiah and therefore would contend that

Ex.P.5, online patta print out for Patta No.6344 stands in the name of Chellaiah is a manipulated record and also relied upon Ex.R.28, Reply with answers received from Zonal Deputy Tahsildar of South Singampunari, under RTI Act as to mutation of name in the revenue records in the name of the father of the plaintiff and no records have been available in the Tahsildar Office and further contended that as a plaintiff, she cannot raise a plea of adverse possession and the plea of adverse possession can only be a defence of a defendant's for declaration of title and it cannot be a plea of the plaintiff to sue as a suit for declaration of title on the plea of adverse possession.

8.I have heard both sides and perused the materials placed on record.

9(a). By relying on the Honourable Supreme Court, the case **in Ravinder Kaur Grewal and others Vs Manjit Kaur and others**, reported in **2019 (8) SCC 729**, wherein, Honourable Supreme Court has held as follows:-

“...Whether a person claiming the title by virtue of adverse possession can maintain a suit Under Article 65

of Limitation Act, 1963 (for short, “the Act”) for declaration of title and for a permanent injunction seeking the protection of his possession thereby restraining the Defendant from interfering in the possession or for restoration of possession in case of illegal dispossession by a Defendant whose title has been extinguished by virtue of the plaintiff remaining in the adverse possession or in case of dispossession by some other person?”

“Plea of acquisition of title by adverse possession can be taken by Plaintiff under Article 65 of the Limitation Act and there is no bar under the Limitation Act, 1963 to sue on aforesaid basis in the case of infringement of any rights of a Plaintiff.”

9(b). Following the above decision of the Hon'ble Apex Court in Civil Appeal Nos.1701-1702 of 2022, dated 28.02.2022, it is held that the suit is maintainable.

10. Accordingly, I find that as a plaintiff, she can raise a plea of adverse possession in a suit, seeking declaration of title and for permanent injunction and hence in view of the decisions of the

Honourable Apex Court, I have no hesitation to hold so. Hence, I have no hesitation to hold that the age-old axiomatic of law that the plaintiff cannot raise a plea of adverse possession and the plea of adverse possession can only be a defence of the defendant in a suit for declaration of title and for recovery of possession and it cannot be a plea of the plaintiff to sue as a suit for declaration of title on the plea of adverse possession is no longer holds the field and as a plaintiff, she can raise the plea of adverse possession by raising the plea of acquisition of title by adverse possession can be taken by the plaintiff subject to Article 65 of the Limitation Act and there is no bar to sue on the above said basis in the case of infringement of any right of the plaintiff and hence the plaintiff can also raise the plea of adverse possession subject to prove and let in any evidence of the above scope. Accordingly, the suit in O.S.No.2 of 2020 is held to be maintainable. The contra submissions made by the learned counsel for the defendant cannot be countenanced.

11(a). Insofar as the relief of interim injunction is concerned, the appellant /plaintiff has come forward with a specific plea that the husband of the first defendant has sold the property under Ex.P.2, unregistered sale deed. Admissibility of the said document is in question

and the same is matter for trial.

11(b). It is the further case of the plaintiff that pursuant to Ex.P.2, unregistered sale deed, dated 10.11.1993, the father of the plaintiff was in possession of the suit property and she relied upon Ex.P.5. Ex.P.5 is an online patta print out for patta No.6344, stands in the name of Chellaiah, dated 25.10.2019. Ex.P.3 is Patta transfer proceedings of Singampunari Zonal Deputy Tahsildar, in the name of Moolaiyan during December 2000. However, I find as per Ex.R3 and Ex.R8, patta stands in the name of Chellaiah. So also Ex.R8, online patta, dated 29.06.2020 stands in the name of the respondents 1 to 4. As per Ex.R28, information given by the Zonal Deputy Tahsildar of South Singampunari reveals that mutation of name in the revenue records in the name of the father of the plaintiff and no records have been available in the Tahsildar Office, which creates serious doubt as to the evidentiary value of Ex.P3 and Ex.P.5. Though the plaintiff relied upon Ex.P3, dated December 2000, Ex.P.10, dated, 03.12.2016 and Ex.P.5, dated 25.10.2019, but, Ex.R3 and Ex.R8 are online patta stand in the name of Chellaiah and in the name of legal representative of the respondents 1 to 4.

11(c). It remains to be stated that even assuming without admitting

the plea of the plaintiff that the unregistered sale deed entered between the said Moolaiyan and Chellaiah in the year 1993, till the date of death of Chellaiah, no document, evidencing the possession has been produced assumes greater significance. It appears only after the death of Chellaiah, there was a patta transfer. There was no positive explanation as to why transfer of patta proceedings in the name of Chellaiah was not effected for seven long years, till the date of death of the original assignee Moolaiyan.

11(d). Hence, I find that the plaintiff has not made out any *prima facie* case of her alleged possession and documents relied upon also appears to be under cloud and hence the finding of the learned trial Judge that the petitioner/plaintiff has not proved the *prima facie* case, balance of convenience, in the event of non granting of interim injunction appears to be just and fair and does not suffer from any irregularity or illegality warranting interference at this Appellate stage.

12.Hence, in this view of the matter, the order passed by the learned Judge, Fast Track Mahila Court, Sivagangai in I.A.No.29 of 2020 in O.S.No.2 of 2020, 24.03.2021 is hereby confirmed. It is made clear

that the observations made in this appeal regarding some of the documents filed by the plaintiff and the defendants are only limited for determination in this case. The Trial Court shall not be influenced by the observations made by this Court regarding those documents, while discussing and dealing with the main suit.

13. With these observations, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

13.04.2022

Index: Yes/No
Internet: Yes/No
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To

1. The Fast Track Mahila Court, Sivagangai.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

C.M.A(MD)No.744 of 2021

RMT.TEEKAA RAMAN.,J.

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Pre-Delivery
JUDGMENT MADE IN
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