

Kesavan and Others Vs. Muthu

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Court : Chennai

Decided On : Nov-02-2012

Judge : The Honourable Mrs. Justice S. Vimala

Appeal No. : S.A.No.2060 of 2001

Appellant : Kesavan and Others

Respondent : Muthu

Advocate for Pet/Ap. : For the Appellants: V. Raghavachari, Advocate. For the Respondent: V. Bhiman, Advocate.

Judgement :

(Prayer:-SecondAppeal filed under Section 100 of Civil Procedure Code against the judgment and decree of the Court of the Principal District Judge, Villupuram in A.S.No.72 of 2000 dated 6.7.2001 in reversing the well considered judgment and decree of the Court of the II Additional District Munsif, Ulundurpet in O.S.No.1317 of 1995 dated 20.7.1999.)

The plaintiff Muthu Gounder filed the suit seeking the relief of permanent injunction and in the event of defendants succeed in trespassing upon the suit property, for the relief of declaration and recovery of possession. The suit was dismissed. Appeal was filed by the plaintiff in A.S.No.72 of 2000. The appeal was allowed. The judgment and decree of dismissal was set aside. The suit was decreed granting the relief of permanent injunction in favour of the plaintiff. As against

which, the defendants 2 to 6 have filed the second appeal.

2. The second appeal has been admitted on the following substantial questions of law:

"1) Whether the lower appellate court is right in ignoring Exs.B-1, B-3 and B-13, the documents, which establishes the title of the defendants ?

2) Whether the lower appellate court is right in decreeing the suit after observing that the document under Ex.B-1 is an ancient document standing in the name of the appellants' predecessor in title, viz., Chinnathambi and whether it is right in coming to a conclusion that the defendant had failed to establish Patta No.17 correlates with the suit property, even in the absence of dispute ?

3) Whether the lower appellate court is right in decreeing the suit solely on the basis of the revenue records, when the plaintiff had failed to prove his case of the suit property being his ancestral one ?"

3. Brief facts:

The suit property is an extent of 0.39.0 ares in R.S.No.142/4 situated at Seekampatti Village, Thiruvannainallur Sub Division, Villupuram District. The suit property originally belonged to plaintiff's grandfather, Sanyasi Gounder. After his death, the plaintiff's father, Kalluvaraya Gounder inherited the property as his only legal heir and later on the plaintiff is enjoying the property. The patta No.321 was assigned in the name of the plaintiff. (UDR)

3.1. During the pendency of the suit, the first defendant died on 3.9.1997. The defendants 4 to 7 have been added as legal representatives of deceased, first defendant. The plaintiffs are in long, continuous and uninterrupted possession of enjoying the suit property.

3.2. The defendants tried to trespass into the suit property during 1995. The defendants got the patta transferred on 28.7.1995 in their name by giving false information. Plaintiff filed appeal to the Revenue Divisional Officer. The defendants are continuously trying to trespass into the suit property. Hence, the suit.

4. The suit was resisted by the defendants on the following contentions:

- (i) The suit property originally belonged to defendants' father Chinnathambi.
- (ii) The defendants are legal heir of Chinnathambi and they got the property divided by way of registered partition deed dated 3.3.1987. Northern 32 cents were allotted to first defendant, southern 32 cents were allotted to second defendant and middle 32 cents were allotted to third defendant.
- (iii) Originally patta was in the name of the first defendant in old Patta No.17. The plaintiff got the patta in his name under UDR scheme. Therefore, the defendants legally got the patta transferred in their name. Therefore, the defendants rights cannot be disputed.

5. The trial court framed the following five issues:

- (i) Whether the plaintiff is in possession and enjoyment of the suit property ?
- (ii) Whether the partition deed dated 3.3.1987 is true and valid ?
- (iii) Whether the suit properties were in possession and enjoyment of the defendants ?
- (iv) Whether the plaintiff is entitled to declaration and permanent injunction ?
- (vi) To what other reliefs the plaintiff is entitled to ?

On those issues, the trial court found that the partition dated 3.3.1987 is true and valid and that the plaintiff did not prove his possession. On this finding, the suit was dismissed.

6. The first appellate court reversed the finding of dismissal on the following findings:

- (i) The plaintiff had established that he has been in continuous possession and enjoyment of the suit property from 1984.

(ii) The defendants did not prove their title. Their claim for prescriptive title for possession is not proved since there are only two transactions in 1982 and 1987 (Ex.B-13 and Ex.B-2 respectively).

On these findings, the suit was decreed.

7. It is relevant to consider these two documents, i.e., Ex.B-13 and Ex.B-2. Ex.B-13 is the encumbrance certificate covering the period from 1.1.1970 to 26.9.1996. This certificate shows the existence of two encumbrances. One is the encumbrance relating to mortgage of suit property on 16.12.1972 in favour of Thirukoilur Co-operative Land Development Bank and the other is the encumbrance relating to Ex.B-2 partition deed.

Sl.No	Ex.No.A1 to A16	date	Plaintiff Doc.	Ex.No.B1 to B13	Defendants Doc.
1	Ex.A1	26.2.1980	UDR Patta in the name of Muthu Gounder(plaintiff)	Ex.B1, dt.Nil	Chitta for various fasli
2	Ex.A2	3.3.1991	Kist receipt in the name of plaintiff	Ex.B2, dt.3.3.87	Partition deed
3	Ex.A3	29.2.1992	-do-	Ex.B3, dt.Nil	Patta book stands in the name of Veerabhatra Gounder
4	Ex.A4	26.2.1990	-do-	Ex.B4, dt.29.3.84	Kist receipt of Mottaiyan
5	Ex.A5	10.1.1995	-do-	Ex.B5, dt.20.3.85	Kist receipt
6	Ex.A6	16.2.1993	-do-	Ex.B6, dt.17.3.80	-do-
7	Ex.A7	21.02.1989	-do-	Ex.B7, dt.26.1.79	-do-
8	Ex.A8	7.3.1988	-d0-	Ex.B8, dt.18.1.78	-do-
9	Ex.A9	28.2.1987	-do-	Ex.B9, dt.14.3.97	-do-

10	Ex.A10	19.02.1994	-do-	Ex.B10, dt.5.1.96	-do-
11	Ex.A11	03.01.1997	-do-	Ex.B11,dt.28.7.95	Patta transferred from the plaintiff to the defendant
12	Ex.A12	03.01.1997	-do-	Ex.B12,dt.23.8.96	Same as Ex.A16
13	Ex.A13	05.02.1998	-do-	Ex,B13,dt.3.10.96	Encumbrance certificate from 1970 to 1996
14	Ex.A14	25.08.1995	Notice issued from I.I.668 Killiyur Primary Agricultural Co.Op.Bank Ltd. to the plaintiff K.Muthu Gounder (No details of land)		
15	Ex.A15	24.11.1995	Adankal Account from 1394 to 1403 in the name of Muthu Gounder and for 1404 in the name of Veerabhatra Gounder		

16	Ex.A16	23.08.1996	Order for Cancellation of patta issued by the Tahsildar, Ulundurpet in the name of defendants 1 to 3 cancelled by R.D.O., Thirukoilur		
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8. The plaintiff as well as the defendants claim title and possession based on similar set of documents. Both of them contend that the property originally belonged to their ancestors and later on they obtained possession and they enjoyed the property by paying kist. The comparison of documents produced on both sides go to show that the documents at the earliest point of time stand only in the name of defendants' ancestors. Ex.B-1, covers fasli 1330, 1334, 1335 and 1340. Ex.B3 patta stands in the name of Veerabhatra Gounder. The property is shown to be an ancestral property. Property has been divided between the sons of Chinnathambi Gounder on 3.3.1987. The partition deed has been registered. It is the specific case of the defendants that originally patta stood in the name of their ancestors and the plaintiff obtained patta by fraudulent methods when U.D.R. scheme was introduced. This patta has been subsequently cancelled and in the cancellation order, it has been indicated that patta transfer has been made, i.e., from the name of defendants to the name of the plaintiff without following the prescribed procedure. Therefore, it is clear that patta has been in the name of the defendants originally. Then it is for the plaintiff to explain as to how the defendants were enjoying the property and under what circumstances the patta came to be transferred in the name of the plaintiff.

8.1. Contending that patta is not a document of title and that it is only the Civil Court which is competent to decide the issue of title, learned counsel for the appellant relied upon the decision rendered in W.A.No.1275 of 2006, dated 28.7.2011(**Vishwas Footwear Company Ltd., Chennai Vs. The District Collector, Kancheepuram and Others**), the Hon'ble Division Bench of this Court

at paragraph No.21 has held as follows:

"In the light of the judgments in Kuppuswami Nainar's case and Chockkappan's case, the person who has applied to the Revenue Divisional Officer for cancellation of patta should be directed to approach the Civil Court to establish the title and for seeking the grant of patta after cancelling the patta granted in favour of the appellant company."

9. It is the contention of the learned counsel for the appellant that patta is not a document of title and therefore plaintiff having been relying upon patta alone to show title has to be non-suited. Whether patta is the document sufficient enough to establish ownership is the issue canvassed. Then the question is what is a patta what is the value to be attached to patta ?

9.1. There are many types of patta and those types are issued depending upon the nature of property conveyed. A patta land means it is the private property which stands in the name of a particular individual in the revenue records of the government, in contra distinction to government-owned lands, which are categorised as government poromboke, reserve forests poromboke, road poromboke and water course poromboke etc.

9.2. Whether patta itself would be the document of title or patta would be a supporting document for title, depends upon the nature of the transaction by which a party acquires title to the property and the nature of transfer made to the party concerned. The right to property may be acquired by a party through transactions covered by Transfer of Property Act. A person may also require right to property by way of inheritance or bequest, governed by the law relating to succession for example, Hindu Succession Act, Indian Succession Act, etc. The third type may be by the order of the government or court auction or by orders of Tribunal.

9.3. When the property is assigned by the government, patta will be the only document conferring the title to the property. But when the property is transferred by parties inter vivos, then the registered document evidencing the transfer of title will be the main document of title and the patta issued, based upon the transfer of title will become the supporting document to the title of the party. Normally,

possession of patta signifies lawful possession of the property by person in possession of patta.

9.4. Origin of patta would provide some insight into the purpose for which patta came to be issued. Revenue is the sine-qua-non for administration. When the State was ruled by Kings, the King used to run the administration by imposing Rajbhaga in terms of 1/6, 1/8th or any other fraction of produce from the lands, owned by the people. For that purpose, the lands were measured and classified and land records for every piece and parcel of land was prepared and Kabuliyat and patta became the instrument of settlement. Patta was issued in the name of the owner or in the name of joint owners as the case may be. At a later point of time, after permanent settlement of land accounts, patta issued are either extract from 'permanent land register' or extract from 'town survey land register' with a topo plan. Thus patta is a document issued and used by the government for the purpose of collection of revenue. Incidentally, person in possession of patta is presumed to be in lawful possession of the property. Patta may confer or may not confer title depending upon the nature of the property and nature of the transaction. Therefore, the theory that patta is not a document of title is not meant for universal application and it would apply contextually.

9.5. So far as this case is concerned, both parties are rely upon patta. The defendants additionally rely upon the partition deed. Having regard to the contention that the properties were acquired from their ancestors, the court cannot expect any registered document to prove the title. Therefore, patta is the prima facie proof for title in this case.

10. Whenever there is discrepancy in the oral evidence, the court normally relies upon documentary evidence. The documents issued by the Government departments are expected to be correct and true. But in this case, the revenue department has issued patta both in the name of the plaintiff family as well as the defendants family and that has enabled both the families to fight the litigation endlessly. The existing format used by the Revenue Department do not assist the court to arrive at a proper conclusion. However, in this case if comparative strength of the documents produced on both sides are analysed, it is clear that the

documents produced on the side of the defendants are ancient and consistent with the defence taken in the written statement. The partition deed, which is a registered one had come into existence long prior to the filing of the suit. Therefore, the documents available only support the case of the defendants. The plaintiff has not established either title or possession over the suit property. The documents proving possession at the earliest point of time stands in the name of ancestors of the defendants. A person in possession is presumed to be continued in possession unless dispossession is shown. The presumption under Section 114 of Indian Evidence Act would apply to take presumption as to continuity of possession once original possession is proved. Therefore, when the defendants have proved possession at the earliest point of time and if the plaintiff also claims possession, it is for him to explain as to how he got possession from the defendants. There is no proof for the same. Therefore, the claim of possession by the plaintiff is not proved. Hence, the dismissal of the suit is justified.

11. In the result, second appeal is dismissed. The judgment and decree of the Court of the Principal District Judge, Villupuram in A.S.No.72 of 2000 dated 6.7.2001 in reversing the judgment and decree of the Court of the II Additional District Munsif, Ulundurpet in O.S.No.1317 of 1995 dated 20.7.1999 is set aside. The dismissal of the suit in O.S.No.1317 of 1995 is confirmed. No costs.

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