
(1980) 06 MAD CK 0016
In the Madras High Court
Case No : Second Appeal No. 1317 of 1976

Mangathayi Ammal

APPELLANT

Vs

E.M. Sami

RESPONDENT

Date of Decision : 17-06-1980

Acts Referred:

Citation : (1980) 06 MAD CK 0016

Hon'ble Judges : Balasubrahmanyam, J

Bench : Single Bench

Advocate : R. Sundaravaradan, for the Appellant; K.N. Balasubramanian and T. Danyakumar, for the Respondent

Judgement

Balasubrahmanyam, J.—This Second appeal arises out of a simple suit for declaration and possession. The plaintiff, who is the appellant in this second appeal, sued the defendant herein for a declaration and injunction or, in the alternative, for possession. The subject matter of the suit was an item of agricultural land of the extent of 3.30 acres bearing survey No. 116/2 Zamin Orangavali village. The Plaintiff claimed her title to the property on the basis of a registered sale deed Ex. A1, dated 22nd August, 1970 executed by one Rangaswami Reddiar for Rs. 5,000. The defendant resisted the suit. His plea in defence was as follows: The suit property formed part of Orangavali Zamin Village, and after its abolition under Tamil Nadu Act 26 of 1948, Rangaswami Reddiar applied for ryotwari patta of the suit land on the score that it formed part of his private land, but the claim was negatived by the Settlement Authorities, and in appeal, by the Tribunal. The proceedings to which the defendant was a party thus failed. Nevertheless Rangaswami Reddiar sold the suit property to the Plaintiff. It was now the plaintiff's turn to start this second round of litigation for securing possession of the property from the defendant. The defendant pleaded that he was in possession of the suit property, having been let into possession under a cowl by one Kamalanatha Reddiar who was one of the land-holders of the Zamin estate. The Defendant relied on a cowl deed, dated 10th March, 1945.

He also pleaded that he had been in possession of the suit property for more than the statutory period and hence, the plaintiff's suit had to be dismissed as barred. The learned District Munsif found that the entire Zamin village of Orangavali did not include any ryoti land. He found that the village was owned by several shares as landholders. He further found that the plaintiff's vendor Rangaswami Reddiar was one of the sharers. The learned District Munsif accepted that Ex.A1 considered in itself, conveyed the title of Rangaswami Reddiar, the landholder, in favour of the Plaintiff. He however, rejected the title of the Plaintiff on the ground that there was no evidence to show that the suit land was the private land, or pannai land of Rangaswami Reddiar the Plaintiff's Vendor. On the contrary, according to the learned District Munsif's reading of the evidence on record, the suit land was either poramboke or tharisu. The learned District Munsif expressed the view that a landholder, in the position of the Plaintiff's Vendor, could be entitled to a ryotwari patta under S. 12 of the Tamil Nadu Act 26 of 1948 only where he is in a position to establish that the land in question was his private land and not in respect of lands which are either poramboke or tharisu. He accepted the cowl deed Ex.B1 relied on by the defendant as evidence of his having been let into possession of the suit land by Kamalanatha Reddiar, the then landholder. The learned District Munsif also relied on the evidence of Kamalanatha Reddiar, D.W.2 as establishing that the defendant was in possession of the suit land and had been paying rent to him ever since his occupation. In the result, he dismissed the suit. On appeal, the learned Subordinate Judge confirmed the findings of the learned District Munsif. The learned Subordinate Judge also took the view that since the suit land was zamin poramboke land and not private land, the plaintiff's vendor could not obtain any ryotwari patta under S. 12 of the Tamil Nadu Act 26 of 1948. There was no order under S 12 of Act No. 26 of 1948, granting ryotwari patta to the plaintiff's vendor. Hence the learned Judge held that the plaintiff could not derive any title to the suit land especially when it had been transferred to him after the take-over of the estate under Act 26 of 1948.

2. As for the defendant's claim that he was in possession of the suit property on the basis of the cowl deed, Ex.B1, dated 10th March, 1945, the Plaintiff's contention before the learned Subordinate Judge was that Ex B1 did not relate to the suit land and this was admitted by the defendant himself in another proceeding viz., O.S. No. 318 of 1946 and had also been found as such. Even otherwise, it came out in that suit that the cowl deed was held to be invalid. It was further contended by the plaintiff that Kamalanatha Reddiar himself could not purport to execute a cowl in favour of the defendant under Ex.B1 in the year 1945 considering that as early as in the year 1926, Kamalanatha's father, acting as guardian for him during his minority, had already parted with the title to these properties in favour of a third party under a registered sale deed, dated 21st May, 1926.

3. These considerations hearing on the documentary evidence in the case were not, however, considered by the learned Subordinate Judge as material to the

decision in this case. He observed that the principle that a trespasser is entitled to assert his possession against the owner would apply to the present case. In the result, he dismissed the Plaintiff's appeal and confirmed the decision of the learned District Munsif.

4. In this second appeal brought by the Plaintiff, her learned counsel Mr. Sundaravaradan submitted that the decision of the courts below is vitiated by an erroneous approach to the points at issue in the case. Learned counsel pointed out that the plaintiff came to court for a declaration of her title to an item of land and for injunction or in the alternative, for possession. In a suit such as this, the only question for the court to consider was whether the Plaintiff had established her title by evidence and whether she was entitled to the ancillary reliefs of injunction or possession. Learned counsel pointed out that on the question of title, the defendant had not denied the execution of the sale deed Ex.A1, dated 22nd August. 1970 or the passing of consideration thereunder. All that was mooted by the defendant was that by the time of Ex.A1, the Zamin village, of which the suit land formed part, had been notified under the Tamil Nadu Act 26 of 1948 and taken over by the State Government. Learned counsel, however, submitted that the take over of this estate did not make any difference to the question of passing of title in respect of the suit land from the landholder Rangaswami Reddiar in favour of the Plaintiff. Learned counsel submitted that it did not make any difference even though at the time of sale, Rangaswami Reddiar was not shown to have obtained a ryotwari patta under S. 12 of Act 25 of 1948. According to learned counsel, the notification of any estate did not affect the ownership of the lands in the estate, but only affected the tenure under which they were held. Learned counsel submitted that on the basis that the entire Zamin Village Orargavali was owned by the landholders in several shares and there were no ryoti lands whatever in the said Zamin, the sale by Rangaswami Reddiar in favour of the plaintiff, even without his having obtained a ryotwari patta, did convey his interest in suit land in favour of the plaintiff. It was urged that the plaintiff could work out her rights as purchaser from the landholder. It only remained for the plaintiff to perfect her title by appropriate proceedings. So far as the defendant was concerned, Mr. Sundaravaradan pointed out, he had no semblance of title or possession to the suit property and he could not stand in the way of the plaintiff obtaining a declaration of her title merely on the score that the plaintiff's vendor had not obtained a ryotwari patta under Act 26 of 1948. As for the claim of the defendant for possession of the suit land, it was urged by learned counsel that Ex.B1, the cowl deed, did not relate to the suit land, and in any case, it was already held in the previous proceedings between the parties that the cowl deed was invalid and hence ineffective to confer any interest in the defendant over the subject-matter of the cowl. The defendant's evidence as to possession, it was said only related to the subject matter of the cowl, and if the cowl did not relate to the suit land, then there could be no question of the defendant having established his possession to the suit land. In these circumstances, learned counsel for the plaintiff urged that the

judgments of the lower courts have to be set aside.

5. Mr. K.N. Balasubramaniam, learned counsel for the defendant, on the other hand, submitted that on the abolition of the Zamindary Estate of Orangavali village, the erstwhile landholder can have no title to any piece of land which formed part of the estate unless he succeeded in obtaining a ryotwari patta. Learned counsel further submitted that under the law any land in an "estate" shall be presumed not a private land until the contrary was proved. He added that in the present case, it was not established that the plaintiff's Vendor had held the suit land as a private land. Learned counsel pointed out that in a former suit, the plaintiff's Vendor Rangaswami had admitted that the suit land was grazing land. He accordingly submitted that Rangaswami could not purport to sell the suit land, in the absence of a ryotwari patta in his favour which alone would provide him with title to convey the suit property.

6. Having considered the submission on either tide, I am inclined to accept those put forward by Mr. Sundaravaradan, on behalf of the plaintiff. I agree with his thesis that Tamil Nadu Act 25 of 1948 does not purport to decide the question of ownership, but it only purports to transform the tenure under which lands in an estate were held. This position is now made clear by more than one Division Bench decision of this Court. I shall only refer to one of them, viz., S.K.M. Muhammed Musthafa Marakayar v. Udayanachiammal and others ILR 1968 Mad. 72379 L.W. 187. Veeraswami, J. speaking for the Bench in that case observed that under the scheme of the Tamil Nadu Act 36 of 1948, the only change brought about by a notification of an estate was not in regard to the ownership of land, but only in regard to the tenure of the land. That decision, no doubt, arose with particular reference to certain pannai lands or private lands held by a quandam landholder. The question was whether, after the abolition of the estate and the obtaining of ryotwari patta by a landholder, a mortgagee of the land could bring the properties to sale in execution of a mortgage decree against the landholder. It was in that context that the learned Judges held that the issue of a patta under the Act was in recognition of a title which inhered before the notified date and continued to inhere in the landholder thereafter to the private lands but only with this difference that after the notification the tenure of the land was no longer pannai or private, but, on grant of ryotwari patta, became ryotwari land subject to payment of assessment.

7. In the present case, if the suit land were to be regarded as zamin poramboke or waste land, then the reasoning in this decision cannot be applied. However, the basic principle that the Abolition Act does not purport to destroy title, but only makes a transformation in the tenure would still have application to the present case. In my judgment, the question is to title to land in a Zamindary or other estate covered by the Act is not to be regarded as being foreclosed merely because the estate happens to be notified by the Government under S. 3 of the Tamil Nadu Act 26 of 1948. It may be that any person affected by the notification and having an interest in any item of land forming part of the estate may or may

not be in a position to obtain a ryotwari patta under one or other of the provisions of the Act. But the question of obtaining the ryotwari patta is a matter strictly between himself and the State Government and any question relating to the anterior title to land can hardly be regarded as having become a dead issue merely because the estate has been notified.

8. In the present case, but for the State Government notifying the zamin village and taking over the estate, there could hardly be any doubt whatever about the plaintiff's Vendor's title to the suit property or his right to convey it in favour of the plaintiff as to give her a good title. The argument of Mr. Balasubramaniam that no title passed under Ex.A1, sale deed, from Rangaswami Reddiar to the plaintiff, is based on the absence of any order under S. 12 of the Act 26 of 1948 granting ryotwari patta in favour of Rangaswami Reddiar for the suit land. He relied on Exs.A33 and A34. Ex.A33 is an order of the Assistant Settlement Officer, Arni, denying ryotwari patta to Rangaswami Reddiar, among others, in respect of certain lands, on the ground that they are not private lands. This decision was confirmed in appeal by the Estates Abolition Tribunal. Against the decision of the Estates Abolition Tribunal, Rangaswami Reddiar and another brought writ petitions before this Court in Rangaswami Reddiar and another v. Estates Abolition Tribunal W.P. Nos.2415 of 1965 and 3359 of 1965. These writ petitions were disposed of by Venkatadri, J., by order dated 10th April, 1969, Ex A34. In that order, the learned Judge upheld the decision of the Estates Abolition Tribunal in respect of certain lands holding that they were not private lands of Rangaswami Reddiar. The decision of the Assistant Settlement Officer, as well as this Court, does not, however, affect the suit land because it is not one of the items which figured in the application filed by Rangaswami Reddiar before the Settlement Officer nor was it an item on which there was any adjudication.

9. Mr. Sundaravaradan, on the contrary, submitted that there was no need for the plaintiff's Vendor Rangaswami Reddiar to apply for a patta under S. 12 of Act 26 of 1948 since the revenue authorities had already recognised his title to the land and had issued to him a patta, viz, patta No.38 in respect of the suit land. Learned counsel referred to the certified Extract of the Survey Land Registry of the suit village marked as Ex.A20. In that land Registry, the plaintiff's vendor Rangaswami Reddiar as well as Krishnaswami Reddiar were shown as pattadars in respect of the suit land and other lands under patta No.38. Mr. Sundaravaradan pointed out that an application by a landholder under S. 12 of the Act is not the only means open under the statute for obtaining ryotwari patta. He said that under the scheme of the Act, it was the bounden duty of the State Government to effect survey and settlement of any estate notified by them and to issue ryotwari patta in respect of land with reference to which they considered that the landholder is entitled to a ryotwari patta. Learned counsel relied on two unreported decisions of this Court in support of this contention. One is a decision by Ramachandra Iyer, J., in Chandra Uma Peena Muhammed Kassim Marakayar v. E.A.M. Madurai Through its Chairman W.P. No. 1055 of 1958, dated 1st December, 1960 and the other is that of Veeraswami, J. in Sri

Kumaradevan Madam Vriddachalam by Adinakarthar Sria Sri Subramania Sivaprakasa Pandara Sannadigal, Vridachalam v. E.A.T. Vellore and another W.P. No. 900 of 1960, dt. 10th April 1962. In the case first mentioned, an application filed by a landholder for ryotwari patta was rejected as time barred. The question was whether notwithstanding the rejection of that application, the landholder was entitled to claim a ryotwari patta in respect of his private lands. Ramachandra Iyer, J., referred to the scheme of Act 26 of 1948 generally and especially Ss. 21 and 22, under which a duty was cast on the State Government to conduct the survey of an estate taken over by them and to effect a ryotwari settlement thereof. The learned Judge observed that in the discharge of these functions, it was inevitable that the State Government should go into the character of the land which had to be surveyed and settled. The learned Judge further observed that if the survey conducted under S. 21 of the Act discloses that a given item of land was one in respect of which the landholder was entitled to a ryotwari patta, then independent of any enquiry conducted by the Settlement Officer in the course of any proceedings before him contemplated under S. 15 of the Act, the Government owes a duty to the landholder to grant him a ryotwari patta. The same effect was the decision of Veeraswami, J., in a later unreported case. He held that the landholder's right to a ryotwari patta for the land was by no means lost merely because his application under S. 13 was rejected as time barred. According to the learned Judge, although, on the rejection of his application under S. 13 of the Act, the landholder lost his right to take further proceedings before the Appellate Authority, yet, under the general provisions of Ss. 21 and 22 he would have the benefit of a similar enquiry although by other appropriate authorities. The only difference is that in the event of his not being granted a ryotwari patta, he would not have the benefit of a right of appeal against such an order.

10. Reference to these two unreported decisions by Mr. Sundaravaradan is presumably intended to emphasise that the recognition by the Government and the revenue authorities of Rangaswami Reddiar as a pattadar and the grant to him of patta and the entry to that effect in the Survey Land Registry Ex.A20 must be regarded as quite in order and as fully effective in conferring ryotwari patta as landholder as would be the case in proceedings under S. 13 of the Act.

11. I must agree with these submissions of the learned counsel. The courts below have doubted the legal force of the grant of patta evidenced by the Survey Land Registry Ex.A20 on the score that neither the plaintiff nor Rangaswami Reddiar who had given evidence as P.W.3, had been in a position to state as to how he was recognised as a pattadar and had been granted patta No. 38 in respect of the suit land. It was observed that there was no mention made in the Survey Land Registry as to the particular proceedings in which the patta was granted. It seems to me that these speculations are not to the point. On the basis of the two unreported decisions, it must now be held that there is more than one way for a landholder to obtain ryotwari patta; one is by an application under S. 13; the other is even without such an application, the Government, in

fulfilment of its obligation under the Act, institutes a survey and Battlement of the estate to recognise the right of a land holder for a ryotwari patta and grant it wherever it is due. It is in this respect that the entry in Ex.A20 has to be accepted without further ado.

12. When once it is accepted that the Plaintiff's Vendor Rangaswami Reddiar had been granted a ryotwari patta in respect of the suit land, then we must perforce accept the position that the suit land was the private land of the landholders. In this case, there is an indication that ryotwari patta must have been issued on the basis that the suit land is the private land of the landholder, although Ex.A20 itself contains a description that the suit land before its abolition was classified as a zamin poramboke. It has been pointed out by Rajagopalan, J., in *Srimathi Saraswathi Bai, by Power of Attorney Agent T.S Srinivasan Rao v. The Chairman, Estates Abolition Tribunal, Madurai* and another 1956 I. M.L.J. 200=68 L.W. 857, thus:

The description of a given piece of land as poramboke may not conclude the question. Though it is a relevant factor the evidentiary value of such a description is to be decided on the facts of each case. It is the use to which the land was put and not its name that should matter.

It may be observed that in Ex.A20 itself there is an indication that the suit land bearing survey No. 116/2 is "Nanja". That paddy crop was raised in the field is found from the entries in the adangal extract Ex.A17 relating to the year 1379 fasli and Ex.A18 relating to the year 1380 fasli in Ex.A19 adangal extract relating to fasli 1381, it is found that blackgram was cultivated in the suit land. It is true that in the adangal extracts for some of the other fields, the land is stated to have remained uncultivated. But on the evidence on record, it cannot be stated that the land is waste land or tharisu or a poramboke. As I observed earlier, Ex.A20 clearly describes the suit land bearing Survey No. 116/2 as "Nanja" at least from the date of the taking over of the lands. This would mean that the earlier descriptor in the zamin accounts of the suit land as poramboke may be a mistake. The description certainly seems to be out of date. Applying the decision laid down by Rajagopalan, J., in *Srimathi Saraswathi Bai, by Power of Attorney Agent T.S. Srinivasa Rao v. The Chairman Estates Abolition Tribunal, Madurai* and another 1956 I. M.L.J. 200=68L.W. 857. I must hold on the recorded evidence in the case, that the recognition by the Government of the Plaintiff's vendor Rangaswami Reddiar as being entitled to ryotwari patta in respect of the suit land cannot be regarded as based on no materials or as a fanciful determination. In view of the aforesaid consideration, I cannot accept the submission made by Mr. Balasubramaniam on behalf of the defendant that at the time of the Ex. A1 sale deed, dated 22nd August, 1970 in relation to the suit land, the plaintiff's vendor had no title.

13. I must also accept the further submission of Mr. Sundaravaradan, learned counsel for the plaintiff, that the defendant is a trespasser and he had no locus standi to question the title of the plaintiff's vendor to the suit land and his right

to convey the suit land under Ex.A1 in favour of the Plaintiff. The claim of the plaintiff and his Vendor having been established on the basis of Exs.A1 and A20, the defendant could if at all succeed in non-suiting the plaintiff only by establishing that he himself had been in exclusive and uninterrupted possession of the suit property for more than 12 years immediately before the date of the suit. On this question, the trial court has no doubt rendered a finding that the defendant was in such possession of the suit property. But this part of the finding of the trial court is bereft of any analytical discussion of the evidence in the case. Therefore, it cannot be accepted as a proper finding at all. As I had earlier mentioned, the plaintiff brought to the notice of the learned Subordinate Judge the utter lack of evidence on the side of the defendant on the aspect of possession. The judgment of the learned Subordinate Judge shows that, he had only extended the formal judicial courtesy of mentioning the submissions made by the counsel for the plaintiff in the regard. The learned Subordinate Judge, however, had not followed up the process by catering his own findings on the materials placed before him by the plaintiff. Normally, in such a situation where the courts below had not properly dealt with the issue relating to possession, this court would remit the case for a fresh consideration by either of the courts below. In this case, however, I do not think that there is any need to follow such a time consuming course. Hence, on the materials brought on record in the case by the parties relating to the issue as to the possession, I propose to go into them myself even though the learned Subordinate Judge, not to speak of the learned District Munsif, had not gone into them and rendered their decision. These materials show beyond doubt that the defendant was not and could not have been in possession as a cowldar in the suit land under Kamalanatha Reddiar or any other landholder. It is not the defendant's case that he was in possession of the suit land for a period of 12 years although it did not form part of his cowl. On the contrary, according to his written statement, in paragraph 5 it is stated thus:

The defendant has been in conclusive possession of the suit property in his own right ever since 10th March, 1946 when he got a cowl from Kamalanatha Reddiar, the landholder. The defendant has been paying the Kist ever since then, and has been in occupation of the land.

14. As I already mentioned, the defendant relied on Ex.B1, dt. 10th March, 1945 as a cowl created by Kamalanatha Reddiar in his favour. Kamalanatha Reddiar gave evidence as D.W.2. He was admittedly a landholder entitled to a certain share in the zamin village Orangavalli. The description of the subject-matter of the cowl under Ex.B1, however, does not mention any paimash number. The suit property bearing paimash No. 153 part cannot be identified as one of the items forming part of the cowl under Ex.B1. Even otherwise, in Exs.A41 and 42, which are certified copies of the transcript of evidence given by the defendant in E.A. No. 20 of 1958 in O.S. No. 318 of 1945 on the file of the Principal District Munsif Court, Chingleput, there is an admission by him that the cowl lands which he obtained on 10th March, 1945, concerned paimash Nos. 54, 155, 156, 162, 168

and 169. It therefore follows that even according to the defendant himself, the suit land bearing paimash No. 153 did not form part of the cowl.

15. If the learned Subordinate Judge had gone into the merits of these materials, I am sure he would have come to the same conclusion as I have come to on a consideration of the documents Exs.B1, A41 and A42. In these circumstances, I am satisfied that the defendant cannot be held to have succeeded in non-suiting the plaintiff on the question of possession as well.

16. Mr. Sundaravaradan, learned counsel for the plaintiff, reiterated the submission put forward in the courts below to the effect that on the evidence relating to possession, his client's claim in the suit should be upheld on the basis of possessors title irrespective of other considerations. Learned counsel further submitted that even though the basis of the Plaintiff's suit was not founded on possessory title, the Plaintiff was not disentitled from obtaining relief on that basis. He cited a decision of Patanjali Sastri, J. in P.V. Karuppannan Ambalam v. Pandari Sundara Raja 1939-II-M.L.J. 645. I do not think it necessary for me to go into this aspect of the plaintiff's case. My disinclination to deal with this aspect of the plaintiff's case is not on the ground that the pleadings of the plaintiff had not afforded any scope for such an enquiry. The reason for my not going into this question is that there has not been any serious controversy on the part of the defendant that the plaintiff has title to the property on the basis of the conveyance in her favour by Rangaswamy Reddiar under Ex.A1, registered sale deed dated 22nd August, 1970. Indeed, the learned District Munsif's finding on this aspect is clearly in favour of the plaintiff, and it reads thus: Ex.A1 registered sale deed, dated 22nd August, 1970, was executed by Rangaswami Reddy, P.W.3 in favour of the appellant, P.W.1.

The recital in Ex.A1 shows that he got the right in the suit property by way of sale. No doubt, there has been a comment by the learned District Munsif as well as by the learned Subordinate Judge in appeal that the sale deed under which P.W.3, Rangaswami Reddiar himself purchased the property had not been marked in evidence by the Plaintiff. But neither the learned District Munsif nor the learned Subordinate Judge had doubted the derivative title of the Plaintiff on the basis of Ex.A1. As I earlier mentioned, the courts below non-suited the plaintiff on the issue as to title on quite different considerations based on their own understanding of the provisions of the Tamil Nadu Act 26 of 1948. In the circumstances I do not want to go into the question of possessory title mooted on the plaintiff's behalf in the courts below as well as before me.

For all the above reasons, I am satisfied that the judgment and decree of the courts below have got to be set aside and I accordingly do so. I allow this second appeal and decree the plaintiff's suit as prayed for with costs here and in both the courts below.