

**(1971) 12 MAD CK 0012**

**In the Madras High Court**

**Case No :** Second Appeal No's. 1469 and 1470 of 1969

Velayudham Pillai

APPELLANT

Vs

Sandhosa Nadar and Others

RESPONDENT

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**Date of Decision :** 16-12-1971

**Acts Referred:**

Madras Estates Land Act, 1908 — Section 11, 3(16)

**Citation :** AIR 1973 Mad 299 : (1973) 86 LW 524 : (1973) 1 MLJ 44

**Hon'ble Judges :** Ramanujam, J

**Bench :** Single Bench

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## **Judgement**

1. Theses two appeals arise out of a common judgment rendered by the courts below in two suits filed by the same plaintiff, the appellant herein,

against the defendants in each of the suits, seeking a declaration of title and injunction in respect of the properties covered by those suits. The

property involved in O. S. 22 of 1966 out of which S. A. 1469 of 1969 arises is 94 cents in S. No. 335/1 and the property involved in O. S. No.

180 of 1966 out of which S. A. 1470 of 1969 arises is 5.47 acres, the western half of S. No. 333 measuring 10.94 acres. The plaintiff's case is

that the suit properties and the adjoining properties belonged to him ancestrally, that in any event, he has prescribed title to those properties by

adverse possession, and that the defendants have no manner of right or interest in the same but they have chosen to interfere with his possession

and enjoyment of the same.

2. The defendants in both the suits contended that the suit properties do not belong to the plaintiff, that they are the owners of the respective suit

properties, that the plaintiff has never been in possession of the same, and that the plaintiff is not entitled to any of the relief's claimed in the suits.

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3. The trial Court held that the plaintiff has neither title nor possession. It therefore dismissed both the suits. Aggrieved against the decision of the

trial Court, the plaintiff preferred appeals to the lower appellate Court, and it also agreed with the view taken by the trial Court. Hence the present

second appeals by the plaintiff in the two suits.

4. The learned counsel for the appellant in both the second appeals contended that the courts below have not given due weight to the document,

Exs. A-1 to A-8 and A-20 produced by the plaintiff to establish his title, and that the plaintiff's title should have been upheld on the basis of those

documents. The learned counsel also contends that the finding of the courts below on the question of possession is also vitiated for many reasons

and that, in any event, even if the plaintiff has not established his title to the suit properties, he should have been granted the relief of injunction. On

the face of the said contentions, the points that arise for consideration in both the appeals are:(1) whether the plaintiff has established his title to the

properties covered by both the suits and (2) whether the plaintiff has been in possession of the properties on the date of the suits so as to entitle

him to seek an order of injunction against the defendants.

5. Out of the documents filed by the plaintiff to establish his title, Exs. A-1 to A-4 are lease deeds of the years 1900, 1906, 1910 and 1913

respectively executed in favor of the plaintiff's predecessors-in-title by Pallikoodathan alias Periakaruppa Nadar and his heirs Raman Nadar and

others. The plaintiff seeks to rely on these documents in support of his plea that the said land have been leased out to defendants' forefathers by

the plaintiff's predecessor-in-title. But it is seen that the boundary recitals in the above documents do not indicate with any certainty that the suit

properties are covered thereunder. The boundary recitals in these documents cover a large tract of land including 60 acres of nanja land and a

large extent of punja lands as well as tank and tank bed lands. This is also clear from the Commissioner's plan Ex. C-5 prepared after local

inspection of the locality which locates various boundaries mentioned in Exs. A-1

to A-4 on ground. The courts below have concurrently held that the lease deeds Exs. A-1 to A-4 which refer to palmyrah Tohpe of a limited extent of 5.47 acres cannot be correlated to the specific extent claimed by the plaintiff in the suit. The learned counsel for the appellant concedes that with reference to the boundaries shown in Exs. A-1 to A-4 it is not possible to say that the suit property claimed in S. No. 333 is the identical one which is covered by the above documents. I therefore agree with the view of the courts below that Exs. A-1 to A-4 cannot be of any held to the plaintiff to establish his case that he is the owner of the specified extends claimed by him in both the suits.

6. Ex. A-5 dated 5-8-1922 is a gift deed executed by one Sundararaja Pillai, who is the heir of Chidambara, the original owner, in favor of the plaintiff's grandfather in respect of one half of the extent owned by him Ex. A-6 dated 12-11-1922 is deed of hypothecation by the plaintiff's grandfather in favor of one Sundararaja Iyengar and Ex. A-7 is a deed of partition dated 5-8-1931 executed between Sundararaja Pillai, the plaintiff's grandfather and others, and as per the said deed of partition the plaintiff's father is said to have been allotted a half share in the block of land said to be covered by the recitals in Ex. A-1. Ex. A-8 is another deed of partition between the plaintiff and his brothers and according to the plaintiff the suit properties with others came to be allotted to his share. But even here the boundary recitals contained in these documents cover an extensive area and it is not possible to correlate the suit properties with reference to the documents. Therefore having regard to the boundary recitals in these documents, it cannot be held that the plaintiff has established his title specifically to the suit items. In this connection it has to be pointed out that P. W. 1, the plaintiff's father, has admitted that the four boundaries given under these documents take in large extents of land belonging to others including tank bed lands and poromboke etc. Therefore, Exs. A-5 to A-8 are also of no help to the plaintiff to establish his title to the suit properties.

7. The learned counsel for the appellant then relies on Ex. A-20, a patta granted by the Settlement authorities under Madras Act 26 of 1948 and the payment of taxes by the plaintiff in respect of the lands covered by the said patta under Exs. A-22 to A-29. But as per the evidence of P. W.

1, the karnam of Arasativandal village in which the suit properties are situate, the land was granted on cowl by the Raja of Ramnad to one

Ramaswami Thevar and till the estate was taken over by the Government in 1939 it remained cowl village, that during the time of the cowledar

there are paimash numbers given to the lands of Arasativandal, that one Paramakudi Chettiar got an othi of half of Arasativandal village and that

no patta was granted by the cowledar in respect of the lands to any of the occupancy riots until the Government issued patta to him and the plaintiff

for the suit lands. He also admits that he or his predecessors-in-title never paid any tax for the suit properties to the cowledar. Therefore, till the

issue of patta by the Government under Ex. A-20, the plaintiff or his predecessors-in-title have not shown to have had any title to or possession of

the suit properties. Ex. A-20, the patta granted by the Settlement authorities and the payment of taxes after the issue of patta, to the Government

are relied on by the learned counsel for the appellant as strong pieces of evidence to establish the plaintiff's title and possession. But it is urged by

the learned counsel for the respondents that both the plaintiff and P. W. 1 being Karnams of two villages had procured pattas taking advantage of

their position as karnams, that the pattas have been obtained without notice to the defendants who are in occupation of the properties, and that,

therefore, no reliance could be placed on the grant of patta.

8. The learned counsel for the appellant contends that the lands claimed in these suits were sandy, uncultivable lands, that, therefore, they should

not be treated as ryoti lands and the patta Ex. A-20 granted by the Settlement authorities should be treated as a fresh grant from the Government,

and that the plaintiff's title based on the patta cannot be challenged by the defendants. The learned counsel urges that Ex. A-20 has been granted

u/s 19-A of the Madras Act 26 of 1948 and that jurisdiction of the civil Courts to canvass the correctness or otherwise of the grant of patta is

excluded under the provisions of the Act. It is true that if the lands are shown to be neither ryoti nor private, they will vest in the Government under

Section 3(d) of Madras Act 26 of 1948 and the grant of patta u/s 19-A will finally conclude the question of title, as it is a fresh grant from the

Government in favor of the grantee of the patta. But if it is shown to be a ryoti land, the grant of patta by the Settlement authorities to one of the

competing claimants will not exclude the jurisdiction of the civil Court to find out as to who is the lawful ryot in respect of the land in dispute. The

learned counsel says that the lands in dispute are sandy and uncultivable where only palmyrah trees grow spontaneously and that therefore, the

lands could not be brought in within the definition of "ryoti land" as per Section 3(16) of the Estates Land Act of 1908. But it is seen that this case

of the appellant as to the nature of the land and the conclusive character of the patta, Ex. A-20 has not been set out in the plaint nor was any issue

raised in relation thereto and no argument seems to have been advanced before the courts below nor a decision rendered by them. Even

otherwise, a perusal of Ex. A-20 clearly shows that the patta has been granted only u/s 11 as per clause 5 of the form, and the particulars given as

against survey Nos. 333 and 335/1 show that the extents of 10.94 acres and 94 cents to be punja land. From this fact it is clear that at the time of

the grant of the patta Ex. A-20, under the provisions of Madras Act 26 of 1948 the land was being used as punja land. The plaintiff wants this

court to draw an inference that the land is non-ryoti because only palmyrah trees were there. As pointed out by the Supreme Court in Sri

Athmanathaswami Devasthanam Vs. K. Gopalaswami Aiyangar, , a case similar to the one on hand, where the appellant claimed that part of the

suit land consisted of beds of tank and therefore did not come within the definition of "ryoti land". The appellant not having alleged in the plaint or at

any stage of the proceedings in the trial Court or in the lower appellate Court that the land is non-ryoti land, it is not fair to allow this fresh point

relating to a question of fact as to the nature of the land to be raised at the stage of second appeal. Even otherwise, Ex. A-20, the patta, on which

much reliance is placed by the plaintiff himself is against him on this point, as that shows that the survey numbers in question bearing extents 10.94

acres and 0.94 acres were punja lands at the time of the taking over of the estate by the Government. The mere fact that the lands were sandy and

not cultivated will not make them non-ryoti lands. In the above case their Lordships of the Supreme Court have pointed out that--

The lands in suit, according to the plaint, were uncultivable waste lands covered with shrubs, jungle and the like. They had not been cultivated for

a long time. Waste lands covered with shrubs, jungle and the like cannot be held to be uncultivable merely on that account or on account of their

being not cultivated for a long time. Land which can be brought under cultivation is cultivable land unless some provision of law provides for

holding it otherwise in certain circumstances.

I am not inclined to accept the contention of the appellant's learned counsel that the lands were non-ryoti and the grant of patta under Ex. A-20 is

conclusive of the question of title especially when the patta was obtained behind the back of the defendants who are said to be the occupancy

ryots. I have to, therefore, hold that the grant of patta under Ex. A-20 and the subsequent payment of tax by the plaintiff on the basis of the said

patta cannot be said to establish the plaintiff's title when there are rival claimants putting forward title to the same.

9. So far as the defendant in O. S. 22 of 1966 is concerned, he has put forward his title to the suit property under Exs. B-1 and B-2 which are

pattas granted by the cowledar. Ex. B-1 is of the year 1883 and Ex. B-2 is of the year 1899. Subsequently he and his predecessors-in-title have

acquired the property from the other co-owners. This is evident from Exs. B-20 and B-23. The claim of title put forward by this defendant was

accepted by the courts below and in the face of P. W. 1's definite statement that he and the plaintiff did not get patta from the cowledar nor had

they paid any tax in relation to the suit properties, the defendant's title based on the patta of the years 1888 and 1899 and the subsequent

acquisitions should be upheld. This defendant has also shown by acceptable evidence that he has been in possession of the suit property. Therefore

the dismissal of O. S. 22 of 1966 by the courts below has to be upheld and the second appeal 1469 of 1969 arising out of that suit also has to be

dismissed.

10. As regards the properties covered by O. S. 180 of 1966, the defendants attempted to prove their title by filing their documents of title, Ex. B-

20, a settlement deed dated 17-12-1910, executed by the original owner Muthukaruppa Pillai in favour of one Karuppiyah Pillai, Ex. B-21, dated

7-9-1916 a hypothecation deed, Ex. B-22 dated 3-7-1935, an othi deed and Ex. B-23 dated 20-4-1943 a sale in favor of the second defendant

in O. S. 180 of 1966. But now that the plaintiff has not established his title to the suit properties, it is unnecessary to go into the defendant's title.

The learned counsel for the appellant, however, contends that the plaintiff has

perfected title by adverse possession to the properties covered by

O. S. 180 of 1966 and that, therefore, he is entitled to an order of injunction on the basis of his possessory title. But in this case the patta Ex. A-20

has been given to him only in the year 1965 and, therefore, the grant of patta and the payment of tax will not help him to prove that he has been in

possession for more than 12 years prior to the suit. Besides, mere issue of patta and the payment of kist alone will not show that the plaintiff was in

possession of the property unless there is other evidence forthcoming to show his actual possession in respect of the property. In this case both the

courts below have held that the plaintiff has not shown to have been in possession of the suit property at any time, and that being a finding of fact I

have to accept the same. In that view the contention of the appellant's learned counsel that even if he has failed to establish his title to the suit

property, he is entitled to an order of injunction on the basis of his possessory title based on the decision in *Bundi Singh Vs. Shivanandan Prasad*

*Sahu and Another*, does not arise.

11. In the result both the second appeals fail and they are dismissed with costs. No leave.

12. Appeal dismissed.