

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.03.2015

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

Second Appeal No.1302 of 2014

and

M.P.No.1 of 2014

1. S.Krishnan

2. K.Sekar

...Appellants/Defendants 1 & 2
- Vs -

1. M.Thangamani

...1st Respondent/Plaintiff

2. The Revenue Divisional Officer,
Anna Salai,
Tiruvannamalai Town & District-606 601

3. The District Collector,
Tiruvannamalai District - 606 604.

...2nd & 3rd Respondents/ 3rd & 4th
Defendants

Prayer:- Second Appeal filed under Section 100 of C.P.C., against the Judgment and Decree dated 25.02.2014, made in A.S.No.23 of 2013 on the file of the learned Principal Subordinate Court, Tiruvannamalai Town and District confirming the Judgment and Decree dated 27.02.2013, made in O.S.No.289 of 2009 on the file of the learned Additional District Munsif Court at Tiruvannamalai Town and District.

For Appellant : Mr.S.Vediappan

For Respondent 1 : Mr.P.G.Thiyagu

For Respondents 2 & 3 :Mr.P.H.Arvinth Pandian, A.A.G.
Asst. by Mr.T.Jayaramaraj, G.A

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J U D G M E N T

The defendants 1 and 2 in O.S.No.289 of 2009 on the file of the learned Additional District Munsif, Tiruvannamalai are the appellants herein. The first respondent herein is the plaintiff in the suit. The respondents 2 and 3 herein are the defendants 3 and 4 in the suit. The said suit was filed by the plaintiff for declaration of title and for permanent injunction to restrain the defendants 1 and 2 from in any manner interfere with her peaceful possession and enjoyment and also for permanent injunction to restrain the defendants 3 and 4 from changing the assignment order dated 22.06.2007 from the name of the plaintiff to anybody else. The trial Court by decree and judgment dated 27.02.2013, decreed

the suit in part thereby granted a decree declaring that the plaintiff is the absolute owner of the suit property and also granted permanent injunction restraining the defendants 1 and 2 from interfering with her possession. So far as the second relief viz., decree of permanent injunction to restrain the defendants 3 and 4 from changing the assignment order dated 22.06.2007, the Trial Court dismissed the suit. It needs to be mentioned that before the Trial Court the defendants 3 and 4 remained ex parte. As against the decree and judgment of the Trial Court declining to grant permanent injunction as against the defendants 3 and 4, the plaintiff did not file any appeal and that part of the decree and judgment has become final. As against the decree for declaration of title and for permanent injunction granted against the defendants 1 and 2, the defendants 1 and 2 filed an appeal in A.S.No.23 of 2013 before the learned Principal Subordinate Judge, Tiruvannamalai. By decree and judgment dated 25.02.2014, the lower Appellate Court dismissed the appeal thereby confirmed the decree and judgment of the Trial Court. As against the same, the appellants are before this Court with this second appeal.

2. This second appeal originally came up for admission on 27.01.2015. At that time, it was noticed that the defendants 3 and 4 had remained ex parte before the Trial Court. This Court felt that being responsible officers of the Government, the respondents 3 and 4 should have responded to the summons issued to them and have gone to the Trial Court with a statement in respect of the issues involved in the suit. Admittedly, the Revenue Divisional Officer, Tiruvannamalai and the District Collector, Tiruvannamalai remained ex parte. Therefore, this Court directed the District Collector, Tiruvannamalai and the Revenue Divisional Officer, Tiruvannamalai to be present before this Court. Accordingly they were present before this Court as they happens to be the respondents 2 and 3 in this appeal also.

3. The third respondent filed an affidavit explaining the circumstances in which he remained ex parte before the Trial Court as well as before the lower appellate Court. This Court is not satisfied with the said explanation. The learned Additional Advocate General submitted that this amounts to lapse which occurred because the Court cases are monitored by the District Collector and the Revenue Divisional Officer only by maintaining the records manually.

4. The District Collector has filed a report, wherein, he has stated that as of now 1249 cases are pending before various Civil Courts and in 72 cases the District Collector remained ex parte. This is really an unfortunate situation that the District Collector, a very responsible officer, as the head of the District has not chosen to respond to the summons and he has remained ex parte paving way for the parties to get ex parte decree without contesting on behalf of the Government by properly presenting the facts before the Court.

5. On the direction issued by this Court, the learned Additional Advocate General, today, submitted that a software is being developed and if the same is put in use, these lapses would not happen. In this regard, I have to mention that I have passed a detailed order dated 30.03.2015 in M.P.No.2 of 2014 in S.A.SR.No.21589 of 2014 expressing my displeasure and also directed the Government to expedite the process of developing the software so as to ensure that there is no lapse on the part of the Government officials in attending to the Court cases. I do not want to repeat the same in this second appeal also. As the said direction would hold good for the whole of the State.

6. Turning back to this second appeal, as I have already pointed out, so far as the respondents 3 and 4 are concerned, already the relief sought for against them was negatived and the same has become final and they have got nothing to do with the relief granted to the plaintiff as against the defendants 1 and 2 who are the appellants herein.

7. The case of the plaintiff is that the suit property was originally a Government Poramboke land and on assignment of the same, she became the absolute owner and she was in possession and enjoyment of the same.

8. The case of the appellants is that they purchased the land from its original owner and the suit property lies on the side of their land. Thus, the appellants have been enjoying the suit property for a long time. But by concealing the same, the plaintiff has obtained assignment patta from the Government.

9. Based on the above pleadings, the Trial Court framed appropriate issues. On the side of the plaintiff two witnesses were examined and nine documents were exhibited as Exs.A1 to A9 and on the side of the defendants, three witnesses were examined and three documents were exhibited as Exs.B1 to B3. Advocate Commissioner Report was marked as Ex.C1 and his rough sketch has been marked as Ex.C2. Having considered all the above, the Trial Court decreed the suit as prayed for so far as the relief of declaration of title and for injunction against the appellants herein is concerned. The appeal filed by the appellants before the lower Appellate Court has also been dismissed and that is how the appellants are before this Court with this second appeal.

10. In this second appeal, it is contended that there is enormous evidence to show that the appellants have been in possession and enjoyment of the suit property but it has been overlooked by the Courts below. The learned counsel for the appellant would submit that the Commissioner's report was not properly appreciated by the Courts below. Thus, according to the learned counsel, wrong appreciation of the facts involved in this case has led to the decree against them and as such the same is liable to be interfered with.

11. The learned counsel for the first respondent/plaintiff would submit that the two Courts below on appreciating the evidence gave a clear finding that the plaintiff has got absolute title and she is also in possession and enjoyment of the suit property. He would further submit that the Government has issued patta assigning the land to the plaintiff and therefore without any doubt she is the owner.

12. I have considered the above submissions.

13. As of now, the assignment patta issued by the Government stands in the name of the plaintiff. Thus, the plaintiff has got title for the property as of now. The land is vacant. Therefore, the Courts as to go by the assumption that "possession follows title".

14. In such view of the matter, in my considered opinion, the two Courts below were right in granting the decree as against the defendants 1 and 2 but, at the same time, I would like to clarify that since the decree was granted based on the assignment patta, it will not prevent the defendants from challenging the assignment patta in the manner known to law. I only say that so long as the assignment patta granted stands in the name of the plaintiff, the Courts below were right in granting the decree. Thus, I find no substantial question of law in this second appeal and the appellants are entitled only for the above clarification that they are at liberty to challenge the assignment patta issued to the plaintiff in the manner known to law.

15. In the result, the second appeal fails and the same is accordingly dismissed. Consequently the connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

1. The Principal Subordinate Court,
Tiruvannamalai.

2. The Additional District Munsif Court,
Tiruvannamalai.

+1 cc to Mr.P.g.Thiyagu, Advocate,SR.17897.

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krd 29/5

S.A.No..1302 of 2014
and M.P.No.1 of 2014