

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.11.2015

CORAM

THE HON'BLE MR.JUSTICE S.NAGAMUTHU

Second Appeal No.1363 of 1999

1.Chandrappa
2.Akkachamma

... Appellants/Defendants 3 & 4

-Versus-

1.Pilla Reddy

2.The Assistant Commissioner,
Hindu Religious & Charitable Endowments Department,
Dharmapuri.

3.The Inspector,
Hindu Religious & Charitable Endowments Department,
Denkanikottai,
Dharmapuri District.

... Respondents/Plaintiff/Defendants
1 & 2

This second appeal is filed against the decree and judgment dated 27.04.1998 made in A.S.No.175 of 1996 by the learned Subordinate Judge, Hosur, confirming the decree and judgement dated 15.09.1995 made in O.S.No.99 of 1993 by the learned District Munsif, Denkanikotta.

For Appellants : Mr.C.R.Muralidharan

For Respondent(s): Mr.I.Abrar Mohamed Abdullah for
Mr.V.Krishnan for R1

Mr.T.Jayaramaraj, GA (CS) for R2 & R3

WEB COPY

JUDGMENT

The defendants 3 & 4 in O.S.No.99 of 1993 on the file of the learned District Munsif, Denkanikottai are the appellants herein. The 1st respondent herein is the plaintiff in the suit and the respondents 2 and 3 are the defendants 1 and 2 in the suit. The said suit was filed by the 1st respondent herein for declaration of title and for permanent injunction restraining the defendants from in any manner interfering with their peaceful possession and enjoyment. The trial court, by decree and judgement dated 15.09.1995, decreed the suit as prayed for. As against the same, the appellants herein (defendants 3 and 4) filed an appeal suit in A.S.No.175 of 1996 before the Subordinate Judge, Hosur. By decree and judgement dated 27.04.1998, the first appellate court dismissed the appeal thereby confirming the decree and judgement of the trial court. Challenging the same, the appellants are now before this court with this second appeal.

2. The case of the plaintiff in brief is as follows:- The suit property is an agricultural land measuring a total extent of 2.26 Acres comprised in S.No.302 of Belagondapalli, Denkanikotta Taluk. The suit land was originally taken over by the Government under the Provisions of the Madras Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963 [hereinafter referred to as "the Inams Abolition Act"]. One Mr. Sundaraiah was cultivating the said land. According to the plaintiffs, the said land was granted to the ancestors of Sundaraiah for the purpose of pooja in Sri Kasi Visveswaraswamy Temple at Hosur. Subsequently, as per the provisions of the Inams Abolition Act, the Settlement Tahsildar by his proceedings in SR No.883/Act 30/63 dated 16.09.1968 granted ryotwari patta to Sundaraiah under Section 11 of the Inams Abolition Act. From the said date onwards, according to the plaintiff, Sundaraiah was enjoying the property as the absolute owner. Thereafter, Sundaraiah, sold away the same under Ex.A.2 dated 20.04.1982 to the plaintiff. Thus, according to the plaintiff, he has got absolute title for the suit property. From the date of purchase, according to him, he has been in possession and enjoyment of the same. Since, the defendants 1 and 2, according to the plaintiff, with the support of the defendants 3 and 4 attempted to disturb the possession of the plaintiff, he filed the present suit for the relief of declaration of title and for permanent injunction.

3. The defendants 1 & 2 [respondents 2 and 3 herein] remained ex parte before the trial court. They did not even file any written statement. But, the defendants 3 and 4 [appellants herein] filed written statement wherein, they admitted that Sundaraiah had title for the property. But, according to them, as per Section 21 of the Inams Abolition Act, the property cannot be sold away without complying with the provisions of

Section 21(4) of the said Act as it is only a service inam. Thus, in the instant case, according to the appellants herein [Defendants 3 & 4], the so called sale made in favour of the 1st respondent [plaintiff] is not valid and thus, the plaintiff has got no title. It is the further contention of the appellants that they have been continuously in possession and enjoyment of the suit property as cultivating tenants and, therefore, they are entitled for the protection under the Tamil Nadu City Tenants' Protection Act, 1921.

4. Based on the above pleadings, the trial court framed appropriate issues. On the side of the plaintiff, 5 witnesses were examined and 43 documents were marked and on the side of the defendants 3 witnesses were examined and 28 documents were marked. Having considered the above, the trial court, decreed the suit and the same was confirmed by the first appellate court. Aggrieved by the same, the appellants are now before this court with this second appeal.

5. When the second appeal was admitted on 27.11.2003, this court framed the following substantial questions of law:-

(1) Whether the sale of the suit property in favour of the plaintiff under Ex.A.2 is valid in law, particularly when the original grant is to be construed as a service inam and the Ryotwari patta issued to the plaintiff's vendor under Tamil Nadu Act XXX of 1963 is a conditional one burdened with service, which the plaintiff's vendor cannot alienate?

(2) Whether the courts below had failed to consider that the 1st appellant being in possession of the suit property as a cultivating tenant and entitled to protection under the Tamil Nadu Cultivation Tenants Protection Act, the civil court has no jurisdiction to try the suit and more so the suit for injunction and declaration of title is not maintainable?

(3) Whether the courts below are correct in decreeing the suit without reference to the entries in the Adangal Registers Exs. B1, B2, B24 to B28 as also the categorical evidence of the Village Administrative Officer DW-2 to show that the 1st appellant is in possession of the suit property as a Cultivating Tenant?

6. I have heard the submissions of the learned counsel for the appellants; the learned Government Advocate (CS) for the respondents 2 and 3; and the learned counsel for the 1st respondent on the above said substantial questions of law and also perused the records carefully.

7. The learned counsel for the appellants would submit that the appellants admitted that Sundaraiah was the owner of the property. He would further submit that there is enormous evidence to show that the appellants have been cultivating the suit property as tenants and their landlords are Sundaraiah and Sri Kasi Visveswaraswamy Temple. The learned counsel would further submit that the so-called sale made by Sundaraiah in favour of the 1st respondent/plaintiff is not valid in view of the provisions of the Inams Abolition Act. Thus, according to the learned counsel, the courts below were not right in declaring the title of the plaintiff. He would further submit that so far as the possession is concerned, the courts below have erred in holding that the plaintiff is in possession of the property though the appellants have produced a number of documents issued by the revenue department, such as, Chitta extract, Adangal extract, etc., to prove that they have been in possession and enjoyment of the suit property. Thus, the decree and judgement passed by the trial court and confirmed by the first appellate court deserve to be set aside.

8. The learned Government Advocate appearing for the respondents 2 and 3 would support the said arguments. But, he is unable to explain as to why the respondents 2 and 3 remained ex parte before the trial court as well as before the first appellate court.

9. The learned counsel for the 1st respondent [plaintiff] would submit that it is not open for the appellants to raise a question regarding the validity of the sale made by Sundaraiah in favour of the plaintiff. The learned counsel would further submit that the correctness or the validity of the order passed by the Settlement Tahsildar granting patta under Section 11 of the Inams Abolition Act to Sundaraiah cannot be called in question in the suit at all.

10. The learned counsel for the 1st respondent would further submit that as per the said patta which is unconditional Sundaraiah had absolute title to convey and that is what he conveyed under the sale deed in favour of the 1st respondent/plaintiff. Thus, according to him, the 1st respondent/plaintiff is the absolute owner and the courts below have also rightly held that the 1st respondent is in possession of the property. Thus, according to the learned counsel, the decree and judgement of the trial court and confirmed by the first appellate court do not require any interference at the hands of this court.

11. I have considered the above submissions and also perused the records carefully.

12. Admittedly, the patta under the provisions of the Inams Abolition Act was issued by the Settlement Tahsildar in favour of Sundaraiah. That order has become final and the same was not challenged either by the temple authorities or by anybody else. As a matter of fact, it is in evidence that when the proceedings was pending before the Settlement Tahsildar, the temple authorities, namely, Sri Kasi Visveswaraswamy Temple did not even make appearance to make any claim regarding the property. Therefore, as rightly held by the courts below, it is too late in the day to contend that the 1st respondent has got no title for the property. As rightly pointed out by the learned counsel for the 1st respondent/plaintiff, the validity or correctness of the order granting patta under Section 11 of the Inams Abolition Act to Sundaraiah cannot be examined in this suit as it was never put under any issue. A reading of the said patta would go to show that it is unconditional and, therefore, Sundaraiah had absolute title to convey the property to the plaintiff. The learned counsel would submit that since it was a service inam the pattadar cannot sell the property to somebody without complying with the provision under Section 21(4) of the Inams Abolition Act. In my view, the appellants cannot succeed on this question also because the patta issued under Section 11 of the Inams Abolition Act was a full-fledged patta issued unconditionally. Therefore, the question of complying with Section 21(4) of the Inam Abolition Act does not at all arise. Therefore, I hold that the courts below were right in holding that Sundaraiah had absolute title for the suit property.

13. In this regard, the learned counsel for the appellants would rely on a judgement of a Division Bench of this Court in Srinivasan v. Sri Madhyarjuneswaraswami, Pattavaithalai, reported in 1998 (II) MLJ 722.

14. I have gone through the above said judgement. That was a case where ryotwari patta granted by the tribunal under the Inams Abolition Act was challenged before the High Court and the same went upto the Hon'ble Supreme Court. It was in those circumstances, the Hon'ble Supreme Court held as to how and at what condition a patta should be issued to the tenant under Section 11 of the Inams Abolition Act.

15. The learned counsel for the appellants would rely on a judgement of the Hon'ble Supreme Court in Joint Commissioner, H.R. & C.E., Administration Department v. Jayaraman and others reported in 2006 (1) LW 306 (SC). '

16. Referring to the above said judgement, the learned counsel would submit that the civil court has got jurisdiction to go into the question of the validity of the patta issued under the Madras Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963. Regarding this legal proposition, I do not

have any second opinion. But, at the same time, it needs to be noted that was a case where precisely the patta issued was put under challenge and in those circumstances, the Hon'ble Supreme Court held that the civil court can very well exercise its jurisdiction to examine the validity of the patta issued. But, here, in the instant case, the patta issued in favour of Sundaraiah was never put under any challenge either before the civil court or before any other authority. Therefore, these two judgements do not come to the rescue of the appellants.

17. Per contra, the learned counsel for the 1st respondent would rely on a judgement of this court in Syed Mohindeen v. V.Periannan @ Ramaswamy and others, 2011 (4) LW 448. In that case, the precise question before the learned Judge was as to whether in the absence of any suit filed by the parties to establish their right over the suit properties, the civil court can go into the question of the validity of the patta issued under the Act. The learned Judge after having elaborate discussion and after having referred to many judgments has ultimately held that without there being a separate suit filed questioning the validity of the patta, it is not open for the defendant to raise an incidental issue in the suit filed by the plaintiff for a different relief.

18. Applying the above said principles to the facts of the case, I hold that the validity of the patta issued in the name of Sundaraiah cannot be gone into by this court and the courts below were right in doing so.

19. Now, turning to the sale made, as I have already pointed out, since the patta issued was unconditional and Sundaraiah had every right to convey title to the plaintiff under the sale deed, the sale is valid and by virtue of the same, the plaintiff has become absolute owner of the suit property. The courts below have rightly considered the issue and have come to the right conclusion that the 1st respondent/plaintiff has established his right over the suit property. Accordingly, the first substantial question of law is answered against the appellants.

20. Now turning to the plea of protection under the Tamil Nadu City Tenants' Protection Act, it is seen from the written statement that there was no such plea taken at all in the written statement. Therefore, it is not open for the appellants for the first time to raise such an issue before this court. Even otherwise, when the question of title is under dispute, the civil court alone is the competent court to decide about the title and also about the nature of the possession. Accordingly, the second substantial question of law is also answered against the appellants.

21. So far as the third substantial question of law is concerned, it relates to the so-called possession which the appellants claim. Both the courts below on appreciating the evidence have held that the 1st respondent/plaintiff is in possession and enjoyment of the property in question and not the appellants. This is, essentially, a question of fact, which cannot be gone into by this court in the second appeal. The conclusion arrived at by the courts below that the 1st respondent/plaintiff alone is in possession of the property cannot be stated to be perverse as the perusal of the judgments of the courts below would go to show that they have appreciated both, the oral as well as the documentary evidence, in their proper perspective. Thus, the third substantial question of law is also answered against the appellants.

22. In view of the foregoing discussions, I do not find any infirmity at all in the judgments of the courts below and thus, the second appeal must fail.

23. In the result, the second appeal is dismissed and the decree and judgment of the courts below are confirmed. However, there shall be no costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

kmk

To

- 1.The Subordinate Judge, Hosur, Krishnagiri District.
- 2.The District Munsif, Denkanikotta, Krishnagiri District.

+1 cc to M/S.R.Subramanian Advocate sr.61093
+1 cc to Special Government Pleader (cs) sr.61150
+1 cc to Mr.D.Shivakumar Advocate sr.61551
Copy to: The Section Officer,
V.R.Section, High Court, Madras

Second Appeal No.1363 of 1999

aa27/11/2015