

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.07.2015

CORAM

THE HONOURABLE MS. JUSTICE R.MALA

S.A.No.430 of 2007

Judgment reserved on 09.07.2015	Judgment pronounced on 15.07.2015
------------------------------------	--------------------------------------

Rathinam

.. Appellant/Appellant/Plaintiff

Vs

1.Soriappan

2.Arathal

.. Respondents/Respondents/Defendants.

Prayer: Second appeal filed under Section 100 of CPC against the Judgment and Decree dated 17.02.2006 in A.S.No.18 of 2005 on the file of the Subordinate Court, Pollachi confirming the Judgment and Decree dated 07.02.2005 in O.S.No.174 of 1997 on the file of the District Munsif Court, Pollachi.

For Appellants : Mr.A.Bobblie

For Respondents

R1 : No appearance

R2 : Mr.T.P.Manoharan

JUDGMENT

This second appeal arises out of the Judgment and Decree dated 17.02.2006 in A.S.No.18 of 2005 on the file of the Subordinate Court, Pollachi confirming the Judgment and Decree dated 07.02.2005 in O.S.No.174 of 1997 on the file of the District Munsif Court, Pollachi.

2.The appellant as a plaintiff filed a suit for declaration of title to the suit property and also mandatory injunction directing the defendants to remove the illegal tiled shed put up by them and also for recovery of possession within the time stipulated by this Court, failing which, remove the encroachment through Court and injunction restraining the defendants not to interfere the suit property by putting up new superstructure or by trespassing into the same stating that the suit property is a Natham poromboke and she put up a small thatched shed in the suit property. The plaintiff's mother was staying there and when she went to her son's house, who is residing at Mysore, the plaintiff was in possession of the suit

property and confirming her possession, patta has been issued in her name and she was in enjoyment of the suit property. In the first week of December 1996, the defendants have demolished the old thatched shed and put up a new tiled house illegally. The plaintiff issued a notice to the defendants. Since the defendants refused to hand over the possession, she was constrained to file a suit.

3. Resisting the suit, the defendants would submit that the plaintiff is not the owner of the property. It is further submitted that the total extent of land measures 4 cents and the defendant is in possession of 1-1/2 cents. It is also submitted that they were in possession for more than 10 years and have put up superstructure and paying the tax regularly. Hence, they prayed for dismissal of the suit.

4. The Learned Trial Judge after considering the averments both in the plaint and written statement and arguments on either side counsel has framed necessary issues and on perusing the oral and documentary evidence viz., P.W.1, P.W.2, D.W.1, Exs.A1 to A6, Exs.B1 to B6 and Exs.C1 and C2, dismissed the suit. Aggrieved against the judgment and decree of the trial court, the plaintiff preferred an appeal in A.S.No.18 of 2005 on the file of the Subordinate Court, Pollachi.

5. The learned First Appellate Court has considered the argument advanced on either side and framed necessary point for consideration and confirmed the Judgment and Decree passed by the Trial Court and dismissed the appeal. Against the Decree and Judgment of the first Appellate Court, the present second appeal has been preferred by the plaintiff.

6. At the time of admission of the above second appeal, the following substantial questions of law were framed for consideration.

"1. Whether Courts below misdirected themselves in dismissing the suit when the Appellant herein has better title than the respondents herein?

2. Whether the Courts below erred in law and misconstrued documentary and oral evidence of the appellant herein?

3. Whether Courts below erred in recording of a finding that the respondents are in possession of suit property for over 10 years without any evidence on record?

4. Whether Courts below erred in non-considering the exhibits C1 and C2, which is relevant and admissible evidence to show that respondents herein has put a new tiled shed recently?

7.Challenging the judgment and decree of both the Courts below, the learned counsel appearing for the appellant/plaintiff would submit that both the Courts below have not considered the fact that recognizing the possession of the appellant and her mother, Patta has been issued, which was marked as Ex.A1, wherein it was stated that in S.No.434/34, 193 sq.m. has been allotted to the appellant. Since the defendants encroached upon the suit property, notice has been issued and then, she filed a suit. But both the Courts below have held that patta is not the title document and the encroached portion has not been mentioned in the plaint. Hence, both the Courts below have dismissed the claim. He further submitted that all the documents filed by the respondents/defendants are after the suit. That factum was not considered by both the Courts below. He would further submit that Commissioner was appointed and he filed a report, which shows that without any document, the respondents/defendants were in encroachment of the property and in possession of the tiled house. That factum was also not considered by both the Courts below. Hence, he prayed for setting aside the judgment and decree of both the Courts below.

8.Resisting the same, the learned counsel appearing for the respondents would submit that UDR Patta has been issued only for collecting tax and merely because Ex.A1 has been filed, it will not confer title upon the property. To substantiate his arguments, the learned counsel appearing for the respondent relied upon the following decisions:

1. 2012 (1) CTC 280 (Dhamapura Adhinam Mutt. Rep. by its Adhinakartha, Sri-la-sri Shanmugha Desika Cnanasampanda Paramachariya Swamigal, Dharmapuram, mayiladuthurai Taluk, Nagapattinam District vs. Raghavan and another)
2. 1999 (III) CTC 650 ((Guruvammal and another vs. Subbiah Naicker and others)
3. 2014 (4) CTC 471 (Union of India vs. Vasavi Co-op Housing Society Ltd. and others)

Hence, he prayed for dismissal of the appeal.

9.Considered the rival submissions made on both sides and also perused the material records and both oral and documentary evidence.

10.The suit property is a Natham Poromboke. The appellant/plaintiff is claiming title to 4 cents and to prove the same, Patta has been issued under Ex.A1 on 16.08.1995, wherein 193 sq.m. has been allotted. When the defendants attempted to encroach the suit property, the plaintiff issued a notice under Ex.A2, return cover was marked as Exs.A3, returned postal cover addressed to the Special Tahsildar, Kinthukadavu was marked as Ex.A4, field measurement map was marked as Ex.A5, copy of memo issued by the District Collector, Coimbatore was marked as Ex.A6, notice issued to the Village Administrative Officer was marked as Ex.A8, acknowledgment card was marked as Exs.A9 to A11 and the

acknowledgment card for the notice given to the Collector was marked as Exs.A13 to A15. But admittedly house tax receipts under Exs.B1 to B5 were came into existence after filing of the suit.

11.At this juncture, it is appropriate to consider the decision relied upon by the learned counsel appearing for the respondent reported in 2012 (1) CTC 280 (Dhamapura Adhinam Mutt. Rep. by its Adhinakarthas, Sri-la-sri Shanmugha Desika Cnanasampanda Paramachariya Swamigal, Dharmapuram, mayiladuthurai Taluk, Nagapattinam District vs. Raghavan and another), wherein it was held that Grama Natham lands are not vested with the Government. UDR scheme was introduced to enforce tax on Grama Natham lands and for that purpose Patta was issued to those persons who claims to be land owners. Patta issued under UDR is not Patta under Land Encroachment Act. It is appropriate to incorporate paragraph Nos.32 and 36, which reads as follows:

"32.Therefore, Gramanatham is not vested with the Government. Under UDR Scheme (Up Dating Revenue Record scheme) the gramanatham lands were surveyed and survey numbers have been assigned. There was an attempt by the Government to levy tax (Natham Nilavari Thittam). Therefore, under that scheme, the Natham lands were surveyed and resurvey numbers were assigned and pattas were issued. Since gramanatham is the habitation where the land owners may build houses and reside they were known as house sites. They were classified as Gramanatham to differentiate the land from Inam lands Ryotwari lands, pannai lands and waste lands. While the lands under the other classifications vested with the Government, the gramanatham never vested with the State. However, under the UDR scheme, to enforce a tax on the Natham lands, a Thoraya Patta, for tax purpose was issued to those persons who claimed to be the land holders. The land holding is based on the title through the predecessor-in-title. Therefore, the patta issued under UDR scheme is not the patta under the Land Encroachment Act and there is no bar of the jurisdiction of the civil court under Sec.14 of the Land Encroachment Act.

36.There is no question of setting aside the patta as the land was not vested with the Government and also the patta issued is only under UDR scheme to impose tax on Natham lands and the patta will not confer any title to the 2nd respondent, unless he proves that he is the land owner."

But the above citation is not applicable to the facts of the present case because there the property was leased out to one Chidambaram Chettiar where the appellant/plaintiff has entered into a Paguthi Deed dated 10.03.1927 and agreeing to run a Padasalai with a

condition that whenever he was unable to run the said Padasalai or violated the terms of the Paguthi Deed, he should vacate and hand over the vacant possession of the land to the Mutt. But whereas the respondents have attempted to interfere and in possession UDR Patta has been issued. In such circumstances, it was held that UDR Patta issued only to impose tax on Natham lands and the Patta will not confer any title unless he proves that he is the land owner. But, here the case of the appellant is that the suit property is a Natham Poromboke, her mother was in possession and after that, she was in possession and recognizing her possession, Patta has been issued. In such circumstances, I am of the view that the above citation is not applicable to the facts of the present case.

12.He has also relied upon the decision reported in 1999 (III) CTC 650 (Guruvammal and another vs. Subbiah Naicker and others), wherein it was held that mutation of entries are only to enable the State to collect revenues from the person in possession and enjoyment of the property and that the right, title and interest as to the property should be established dehors the entries. There is no quarrel over the proposition. But the above citation is not applicable to the facts of the present case since it is related to the Patta land and there was oral partition between the family.

13.He has also relied upon the decision reported in 2014 (4) CTC 471 (Union of India vs. Vasavi Co-op Housing Society Ltd. and others), wherein it was held that for suit for declaration of title and possession, the plaintiff could succeed only on the strength of its own title and that could be done only by adducing sufficient evidence to discharge the onus on it, irrespective of the question whether the defendants have proved their case or not. It is appropriate to incorporate paragraph No.15, which reads as follows:

"15.The legal position, therefore, is clear that the plaintiff in a suit for declaration of title and possession could succeed only on the strength of its own title and that could be done only by adducing sufficient evidence to discharge the onus on it, irrespective of the question whether the defendants have proved their case or not. We are of the view that even if the title set up by the defendants is found against, in the absence of establishment of plaintiffs own title, plaintiff must be non-suited."

There is no quarrel over the proposition. But here, as per the plaint, the property is a Natham Poromboke and recognizing the plaintiff's possession, Patta has been issued under Ex.A1.

14.The appellant/plaintiff was in possession. Commissioner was also appointed and he inspected the property and filed a report Exs.C1 and C2, which reveals that the plaintiff's house facing Eastern side and the defendant constructed a tiled house on the

Western side. Considering the plan given by the Commissioner along with Ex.A1, there is no difference in the measurement. Admittedly, if any person purchased the property under the document, in the Patta sketch has not been given. But whereas in Ex.A1 itself it was stated that since this Patta has been issued for recognizing the plaintiff's possession, the plan has been given for which portion of the property, patta has been given. In Ex.A1, it was specifically mentioned as follows:

Village	Solvampalayam
Taluk	Pollachi
District	Coimbatore
Patta No.	588
Given in the name of	Rathinam w/o. Raju
New Survey No.	434/34
Old Survey No.	132
Classification	Natham, Part I vacant site
Extent	193 sq.m., Thatched Shed
Kist	Rs.2/-

Admittedly, the measurement in Ex.A1 tallies with the measurement given in the Commissioner report. But the respondent encroached upon the property and made construction. It is true that as per the dictum of the Hon'ble Apex Court, the plaintiff must prove his case. The appellant/plaintiff has filed Ex.A1, namely, Patta issued by the Government. But the respondents have stated that they were in possession of 1-1/2 cents and they have not derived title to the property. In such circumstances, I am of the view that the plaintiff is entitled for declaration of title in respect of the property against the third party and not against the Government. So, the appellant is entitled to declaration of title in respect of the entire suit property.

15.Further, the learned counsel appearing for the respondents would submit that there is no cause of action for the suit because he would submit that in the plaint it was stated that in the first week of December 1996 the defendants destroyed the thatched shed and put up tiled house. But as per the Commissioner's report, the hut is within the property and hence there is no cause of action. But the argument advanced by the learned counsel appearing for the respondents does not hold good because the plaintiff after filing of the suit put up house and that has been assessed to tax, which was evidenced by house tax receipt under Ex.A18. In such circumstances, I am of the view that the argument advanced by the learned counsel appearing for the respondents that there is no cause of action for the suit does not merit acceptance.

16.It is true that the appellant here has filed a suit for mandatory injunction for removal of tiled house put up by the respondent and for recovery of possession. The appellant in her evidence has stated that the respondents/defendants have encroached

upon 1-1/2 cents and the respondents/defendants have also admitted that they were in possession of 1-1/2 cents. Hence the appellant is entitled to recovery of possession which was in occupation of the defendants. Thus, Substantial Question of law Nos.1 to 4 were answered in favour of the appellant. So, I am of the view that the decree and judgment of injunction granted by both the Courts below is perverse without considering the documentary evidence and oral evidence and the settled proposition of law. Hence, the decree and judgment passed by both the Courts below is perverse and hence, the same are hereby set aside. Consequently, the suit in O.S.No.174 of 1997 on the file of the District Munsif Court, Pollachi is decreed as prayed for in the plaint without costs. Further, two months time is granted for delivery of possession of 1-1/2 cents after removal of the tiled house. The second appeal is liable to be allowed and it is hereby allowed.

17. In fine,

- Second appeal is allowed.
- Judgment and decree passed by both the Courts below are hereby set aside.
- Consequently, the suit in O.S.No.174 of 1997 on the file of the District Munsif Court, Pollachi is decreed as prayed for in the plaint without costs.
- Two months is granted for delivery of possession of 1-1/2 cents after removal of the tiled house.
- There is no order as to costs. cse

s/d-

Assistant Registrar (CS-III)

True Copy

Sub-Assistant Registrar

To

1. The Subordinate Judge, Pollachi.

2. The District Munsif, Pollachi.

3. The Record Keeper,
V.R. Section, High Court, Chennai.

+ 1 cc to Mr. T. P. Manoharan, Advocate, SR 36015

+ 1 cc to Mr. L. Mouli, Advocate SR 35883

rv(co)
prk12/8

S.A.No.430 of 2007