

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.12.2015

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.697 of 2007 and
C.M.P.No.2269 of 2007

1.The State of Tamil Nadu
Represented by its District
Collector, Nagapattinam
having his office at Nagapattinam
Town and Taluk.

2.The Tahsildar,
Nagapattinam Taluk,
Nagapattinam and District Munsif.

3.The Assistant Settlement Officer,
Having his office at Thanjavur
Town and Munsif.

... Appellants/Defendants

Vs.

Tmt.A.Thilagarani

... Respondent/Plaintiff

Prayer:- This second appeal has been filed under Section 100 C.P.C., against the judgment and decree dated 22.11.1999 made in A.S.No.105/1999 on the file of the learned Additional Subordinate Judge, Nagapattinam in so far as setting aside the judgment and decree dated 21.12.1998 made in O.S.No.272/1996 on the file of the learned District Munsif, Nagapattinam.

For Appellants : Mr.T.Jayaramanraj,
Government Advocate (CS)

For Respondent : Mr.S.I.Muthiah,
for Mr.J.Ramakrishnan

JUDGEMENT

The defendants in O.S.No.272 of 1996 on the file of the learned District Munsif, Nagapattinam are the appellants herein and the plaintiff in the said suit is the sole respondent herein. The said suit was filed by the respondent herein for a declaration of title of the plaintiff for the suit property and for a consequential relief of mandatory injunction to the appellants herein to change the classification of the land in the revenue records from "assessed dry waste" to "patta land" and issue patta to the plaintiff and for other reliefs.

2.By decree and judgment dated 21.12.1998, the trial Court dismissed the suit. As against the same, the respondent herein filed an appeal in A.S.No.105 of 1999. By decree and judgment dated 29.11.1999, the learned Additional Subordinate Judge, Nagapattinam, allowed the appeal, set aside the decree and judgment of the trial Court and decreed the suit as prayed for. As against the same, the appellants/defendants are before this Court with this second appeal.

3.The case of the plaintiff is as follows:-

The suit property was originally owned by one Mr.Murugaiya Pillai son of Mr.Kanagasabai Pillai. He had mortgaged the suit property by means of a registered mortgage deed dated 05.04.1919 to one Mr.Subbaiah Vanniar. Originally, the survey number of the suit property was S.No.159/8Z. During re-survey, it was re-numbered as T.S.No.550. Since, the above mortgage money was not repaid, a suit was filed by the mortgagee in O.S.No.211 of 1945. It was decreed. In E.P.No.340/1949, the property was sold in Court auction in favour of one Mrs.Muthulakshmi by sale certificate dated 10.10.1949. On 20.09.1966, Mrs.Muthulakshmi sold away the suit property to one Mr.Durai Raj by means of registered sale deed. Mr.Durai Raj, in turn, sold away the suit property and other properties belonging to him on 10.10.1972 under Document No.438/1972 in favour of one Mr.Jalaludin and Mohamed-Buhari. Mr.Jalaludin and Mohamed-Buhari, in turn, sold away of the suit property by means of registered sale deed dated 18.05.1985 in favour of Mr.Thiagu Gounder. From the said Mr.Thiagu Gounder, the pf purchased the suit property by means of registered sale deed dated 13.09.1995. Thus, from the date of purchase, the plaintiff has been in possession and enjoyment of the suit property as the absolute owner. When the plaintiff applied for transfer of patta, he came to know that the property has been wrongly classified as 'assessed dry waste land' in the revenue records. Thus, patta was not transferred to the name of the plaintiff. In those circumstances, the plaintiff filed the present suit for appropriate relief.

4.The second defendant filed a written statement disputing the title of the plaintiff. It was contended that, in all the revenue records, the suit property has been classified as 'assessed dry waste land' and thus, it is a Government land. According to the defendants, the suit property has been rightly classified as 'assessed dry waste land' and therefore, the plaintiff has got no right whatsoever over the suit property and he has got no title for the same.

5.Based on the above pleadings, the trial Court framed appropriate issues. On the side of the plaintiff, four witnesses were examined including the then Village Administrative Officer concerned and 19 documents were exhibited. On the side of the defendants, one Mr.M.Ganesan, the Junior Assistant of the Taluk Office was examined and two documents were exhibited.

6. Having considered all the above, the trial Court dismissed the suit which was reversed by the First Appellate Court. That is how the appellants/defendants are before this Court with this second appeal.

7. When this second appeal was admitted, this Court framed the following substantial question of law:-

"a. Whether the appellate Court failed to note that the Bar of Civil Court when the petition is pending before the Revisional authority."

8. I have heard Mr. T. Jayaramanraj, learned Government Advocate (CS) appearing for the appellants and Mr. S. I. Muthiah, learned counsel appearing for the respondent and I have also perused the records carefully.

9. The learned Government Advocate (CS) appearing for the appellants would submit that the suit property is not a private property of the plaintiff and the classification that it is an 'assessed dry waste land' belonged to the Government has been there in the revenue records from the year 1943 onwards and thus, according to the learned Government Advocate, neither the plaintiff nor his predecessors have any title over the suit property. Therefore, according to him, the First Appellate Court ought not to have reversed the well considered decree and judgment of the trial Court.

10. But, the learned counsel for the respondent would vehemently oppose this appeal. According to him, right from the year 1919, the suit property had changed the hands of several persons and it had come to the hands of the plaintiff at last in the year 1995. He would further submit that though, it is stated that the suit property is a Government land as a 'assessed dry waste land', it is only a private property of the plaintiff and before him, his predecessors in title and the said land was never owned by the Government. He would further submit that the First Appellate Court considered that it was in the year 1943, the classification was changed in respect of the suit property as 'assessed dry waste land' and until then, it was only in the name of Mr. Murugaiya Pillai, who originally owned the property namely, the predecessor of the plaintiff in title. He would further submit that simply because, a wrong classification has been made in the revenue records, the title of the plaintiff over the suit property cannot be deprived of. Thus, according to the learned counsel, this second appeal is liable to be dismissed.

11. I have considered the above submissions.

12. Admittedly, prior to 10.11.1943, the suit property was classified only as private land of one Mr. Murugaiya Pillai son of Mr. Kanagasabai Pillai namely, plaintiff's predecessor in title. The sequence of several documents exhibited on the side of the plaintiff would go to show that the land was all along treated only as a private land even after 10.11.1943. 10.11.1943 is the crucial date, on which, by proceedings of the Taluk

Office in R.C.No.6304/43-B-2 dated 10.11.1943, the classification of the suit property was changed as 'assessed dry waste land'. It is not explained to the Court as to why and how the suit property which was all along a private land was classified as a Government land in the year 1943. Even after 10.11.1943, the suit property was transferred to many persons and at last, it has come to the hands of the plaintiff. It is not even the case of the defendants that the suit property was ever in possession of the Government even after 10.11.1943.

13.Admittedly, the suit property was all along in possession and enjoyment of the plaintiff and his predecessors in title. All these facts have been dealt with by the First Appellate Court even before this Court, it is not explained to the Court as to why the classification of land was changed in the year 1943 as assessed dry waste land. Therefore, I find every justification in the finding of the First Appellate Court that the classification of the suit property as assessed dry waste land is not valid such an erroneous change made in the classification would not deprive the title of the plaintiff.

14.Therefore, the First Appellate Court was right in declaring the title of the plaintiff and also granting the consequential relief. The learned Government Advocate (CS) appearing for the appellants would submit that there is a bar for the Civil Court to entertain the present suit, since, there is a petition pending before the revisional authority wherein, the plaintiff has prayed for transfer of patta. In my considered view, it is for the Civil Court to decide the title of the party and the revision petition filed by the plaintiff for transfer of patta will not be a bar at all.

15.It is well known that patta in the instant case cannot be transferred unless, classification itself is changed. This suit pertains only to change of classification and not pertains to transfer of patta. Therefore, I am of the view that there is no bar for the Civil Court to entertain the present suit.

16.In view of the foregoing discussions, I hold that the First Appellate Court was right in decreeing the suit as prayed for by reversing the decree and judgment of the trial Court. Thus, I do not find any merit at all in this second appeal.

17.In the result, the second appeal fails and accordingly, the same is dismissed and the decree and judgment of the First Appellate Court is hereby confirmed. There shall be no order as to cost. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

<https://hcservices.ecourts.gov.in/hcservices/>

Sub Assistant Registrar

jbm

To

1.The Additional Subordinate Judge,
Nagapattinam.

2.The District Munsif,
Nagapattinam.

+lcc to the Government Pleader, S.R.No.65817

EU(CO)
PA(01/02/2016)

Second Appeal No.697 of 2007



WEB COPY