IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.01.2015

Coram :

THE HONOURABLE Ms. JUSTICE K.B.K.VASUKI

S.A.No.75 of 2009
and MP.No.1 of 2009

1.The Tahsildar,
Polur.

2.The Tamil Nadu Government rep.
by its District Collector,
Tiruvannamalai. .. Appellants/Defendants 3 & 4

vs.

1.Kamsalammal
2.Chinnakannu
3.Venkatesan .. Respondents/Plantiff/1 & 2 Defandants

Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 25.09.2007 made in A.S.No.50/2006 on the file of the Sub Court, Arani, Thiruvannamalai District confirming the judgment and decree dated 20.10.2005 made in O.S.No.23 of 1998 on the file of the District Munsif court, Polur.

For Appellants : Mr.K.Venugopal, SGP (CS)

For Respondents : Mr.T.R.Rajaraman (R1)
No representation -R2 & R3

JUDGMENT

The unsuccessful defendants 3 and 4 in O.S.No.23 of 1998 are the appellants before this Court.

2.The suit was filed by the first respondent herein by name Kamsalammal for declaring her title to the suit property and for consequential relief of permanent injunction against the defendants 1 and 2 restraining them from in any manner interfering with the plaintiff's possession and enjoyment of the suit property and for permanent injunction against the defendants 3 and 4 revenue officials restraining them from in any manner transferring or altering the patta granted to the suit property from the name of the plaintiff to any other third party. The suit reliefs are sought for in respect of the property measuring 0.01.5 hectares comprised in grama natham dry S.no.142/6, at Karaipoondi Village, Polur Taluk, Thiruvannamalai District. The suit reliefs are based on claim for absolute ownership on the strength of patta passbook and house site patta issued to the plaintiff in patta no.405. According to the plaintiff, much prior to the grant of patta, the plaintiff and her husband have been in possession and enjoyment of the suit property, which was classified as gramanatham land, by putting up superstructure and by obtaining alteration of revenue records and by paying house tax to the panchayat and by paying B memo charges and penal charges to the Government and they have been in such possession and enjoyment of the property for more than 30 years and the patta was issued only by recognising such long possession of the plaintiff and her husband. It is the further case of the plaintiff that the defendants 3 and 4 officials, at the instance of the defendants 1 and 2/individuals, have been making attempt to cancel the patta and to forcibly dispossess the plaintiff from the suit property and the same compelled the plaintiff to come forward with the suit for the reliefs stated supra.

3.The defendants 1 and 2 did not choose to appear and to either file any written statement resisting the suit claim or to contest the same. The suit reliefs were resisted only by the defendants 3 and 4 officials. What is stated in the written statement filed by the third defendant as adopted by the fourth respondent is that patta no.403, relates to S.No.432/3 and not S.No.142/6 and that S.no.142 consists of five sub divisions from S.Nos.142/1 to 142/5 and there was no sub division in S.no.142/6 and the plaintiff and her husband started living in filed house in S.no.432/12 measuring 0.02.0 hectare covered by patta no.290, which is located very near to the suit property and the same was encroached by the plaintiff and the encroachment made by the plaintiff has been causing hindrance to the temple and to the public in general and while the defendants have been making enquiries of the same through VAO, the suit came to be filed.

4.The parties in support of their respective contentions, examined the plaintiff and her witnesses as PW1 to PW4 and two revenue officials as DW1 and DW2 and produced Exs.A1 to A6 and Exs.B1 to B4 documents. The documents produced by the witnesses were received as Exs.X1 and X2 documents. The trial court after going through the entire evidence, arrived at the conclusion that Exs.A1 patta pass book and Ex.A2 Manaivari Thoraya Patta in respect of S.No.142/6 are issued in the name of the plaintiff and Ex.A3 house tax receipt and Ex.A4 receipt for payment of electricity consumption charges are in respect of D.No.1/52 in S.no.142/6 and Exs.X1 and X2 Chittas are standing in the name of the plaintiff and the oral evidence of PW4-Village Administrative Officer would support the plaintiff's case that the suit property has been in possession and enjoyment of the plaintiff and her husband and there was no satisfactory evidence on the side of the defendants to disprove the genuineness of Exs.A1 and A2 patta pass book and patta and to prove their plea that there was no sub division in S.No.142/6 and patta no.403 relates to different S.no.432/3 and not S.No.142/6 and accordingly decreed the suit as prayed for.

5.Aggrieved against the same, the defendants 3 and 4 preferred AS.50/2006. The lower appellate court, after appreciating the evidence, found no error in the findings of the trial court and agreed with and confirmed the same and accordingly dismissed the appeal. Hence, this second appeal by the defendants 3 and 4 revenue officials before this court.

6.The Second Appeal is admitted on the following substantial questions of law:

(i)Whether the Courts below are correct in granting the reliefs of declaration and permanent injunction on the basis of the patta, which stands in different persons name as per the revenue records and is related to different property situated in S.No.432/3?

(ii)Whether the Courts below are correct in accepting the patta filed by the plaintiff as related to the suit land in the absence of any clear and credible evidence when the documents relied upon by the plaintiff are suspicious in nature?

(iii)Whether the Courts below are correct in granting the reliefs of declaration and permanent injunction to the plaintiff on the basis of patta, when patta itself will not be conclusive proof of title to the property and possession and also it will not confer title?

(iv)Whether the Courts below are correct in granting the relief when in a suit for declaration of title and injunction the burden of proving the legal right and also possession is on the plaintiff?

(v)Whether the Courts below are correct in decreeing the suit on the basis of mere patta without the proof of assignment order passed by the Government in favour of the plaintiff?

(vi)Whether the lower appellate court is correct in confirming the decree and judgment of Trial Court after finding that the suit S.No.142/6 stands in the name of one Muthu udayar and not in the plaintiff name?

(vii)Whether the Courts below are correct in decreeing the suit ignoring the settled law that a person in possession of a property is not entitled to injunction against the true owner?

(viii)Whether the Courts below are correct in decreeing the suit without any documentary proof of possession for 30 years?

7.Heard the rival submissions made on both sides and perused the records.

8.In this second appeal, what was questioned is the correctness of the findings rendered by the Courts below that S.No.142 has more than 5 sub divisions and the revenue records issued by the competent authority relating to the suit property measuring 0.01.5 hectares in S.No.142/6 stands in the name of the plaintiff and the plaintiff's possession and enjoyment of the property is for longer period on the strength of Exs.P1 patta and P2 house site patta issued in her name. Both the Courts below arrived at such conclusion by placing more reliance on the oral evidence of PW4-VAO and Exs.X1 and X2 Chitta produced on his side relating to the property in question standing in the name of the plaintiff. Though the learned counsel for the appellant would by relying on Ex.B1-extract, Ex.B2-village field map relating to S.No.142, Ex.B3-"A" Register Extract for S.No.142 with sub division numbers and Ex.B4-village map relating to S.No.142, contend that S.No.142 has only five sub divisions, the same is belied by the evidence of PW4-VAO and his Exs.X1 and X2 documents.

9.It is relevant to point out at this juncture that the genuineness of the documents produced on the side of the plaintiff as well as the evidence of PW4-VAO are not disputed by the revenue officials. The revenue officials have also not produced any other satisfactory evidence to prove that they do relate to different survey number and different property and the possession and enjoyment of the suit property in S.No.142/6 by the plaintiff is without any right and is only by way of encroachment. The defendants, except saying that there is no survey number S.No.142/6, failed to produce any satisfactory evidence to prove that the title vests with them in respect of the property in the occupation of the plaintiff.

10.Even assuming for the sake of argument that the plaintiff is unable to establish her title and patta cannot be recognised as conclusive proof of title, on the failure of the Revenue officials to show better title over the suit property, the relief granted upholding such possessory right and injunction granted to protect the plaintiff's settled possession on the basis of such possessory right cannot be found fault with.

11.Thus, for the discussions held above, this court feels that the findings of the courts below, which are otherwise well reasoned, call for no interference by this Court and the substantial questions of law are hence answered against the appellants/officials.

12.In the result, the Second Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

-sd/-

ASSISTANT REGISTRAR

/ TRUE COPY /

SUB-ASSISTANT REGISTRAR

rk/tsh

To

1. The Sub Judge, Arani, Thiruvannamalai.
2. The District Munsif, Polur.

+1 CC to MR. T.R.RAJARAMAN ADVOCATE. SR.NO. 1125

SA.No.75 of 2009

CO-PVR
JD 08/10/2015