

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.03.2015

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.166 of 2015 and
M.P.No.1 of 2015

Veramani, by his power Agent
Alexander Muthurangan

... Appellant

Vs.

- 1.The District Collector,
Nagapattinam.
- 2.Revenue Divisional Officer,
Revenue Divisional Office,
Mayladuthurai.
- 3.Tahsildhar
Tahsildhar Office, Myladuthurai.
- 4.Myladuthurai Town,
Revenue Inspector,
Tahsildar Office, Myladuthurai

... Respondents

Prayer:- This second appeal has been filed under Section 100 C.P.C., against the judgement and decree dated 21.10.2013 made in A.S.No.110 of 2012 on the file of the learned Principal Subordinate Judge, Myladuthurai, Nagapattinam District confirming the judgement and decree dated 17.09.2012 made in O.S.No.56 of 2011 on the file of the learned Additional District Munsif, Myladuthurai.

For Appellant : Mr.A.Rajachandramohan

JUDGEMENT

The plaintiff in O.S.No.56 of 2011 on the file of the learned Additional District Munsif, Mayiladuthurai, is the appellant herein. The respondents are the defendants in the suit. The said suit was filed for mandatory injunction to direct the defendants 1 to 3 to grant patta to the plaintiff for the suit property and for a decree for permanent injunction to restrain the defendants from in any manner interfering with his peaceful possession and enjoyment of the suit property. By decree and judgement dated 17.09.2012, the learned Additional District Munsif, Mayiladuthurai, partly allowed the suit thereby granting decree for permanent injunction to restrain the

defendants from dispossessing the plaintiff without following the procedure established by law. However, the trial Court dismissed the suit in respect of mandatory injunction prayed for. As against the said classified decree for permanent injunction, the respondents/defendants have not filed any appeal. The appellant/plaintiff has filed an appeal in A.S.No.110 of 2012 on the file of the learned Principal Subordinate Judge, Mayladuthurai challenging the denial of decree for mandatory injunction and also aggrieved over the classified decree of permanent injunction granted. The First Appellate Court by decree and judgement dated 21.10.2013, dismissed the appeal thereby confirming the decree and judgement of the trial Court. Aggrieved over the same, the appellant/plaintiff is before this Court with this second appeal.

2.This second appeal has come up today for admission. I have heard the learned counsel for the appellant and I have also perused the records carefully.

3.The case of the plaintiff in brief is that, originally, the suit property was a Government poramboke land. The plaintiff's father was an Ex-service man. 50 years prior to the date of filing of the suit, the plaintiff's father entered into the possession of the suit property and constructed a house on the same and he was living along with the plaintiff in the said house for several decades. The said house has been provided with electricity service connection. There are fences on four sides of the property put up by the plaintiff's father. His father died on 08.01.2013 and thereafter, the plaintiff has been in exclusive possession and enjoyment of the suit property. The plaintiff also is an Ex-service man. During his life time, the plaintiff's father made an application to the Government for grant of patta for the suit property in favour of him. The Revenue Authorities initiated proceedings on the said application and measured the suit property and also obtained no objection from the other authorities for issuance of patta in favour of the plaintiff's father. However, no decision was taken on the said application filed by the plaintiff's father and therefore, the plaintiff has filed a writ petition before this Court in W.P.No.38195 of 2005 seeking a direction to the first defendant in the suit to consider the said request made by the plaintiff and to grant patta to him. By order dated 25.11.2005, this Court issued a direction to the District Collector concerned to consider the request of the plaintiff. Thereafter, further proceedings were initiated and the suit property was re-classified as "Natham land". Even thereafter, patta has not been issued to the plaintiff. Now, an attempt is made by the defendants to disturb his possession. Therefore, the plaintiff filed the above suit for the reliefs mentioned herein above.

4.Despite service of summons, the defendants did not appear before the trial Court. They were set exparte. The trial Court framed a single issue, as to "whether the plaintiff is entitled for the decree as prayed for ?". On the side of the plaintiff, he was

examined as P.W.1 and as many as 17 documents were exhibited. After having considered all the above, the trial Court found that so far as the relief of mandatory injunction sought for by the plaintiff is concerned, the Civil Court has got no jurisdiction to issue such a mandatory injunction in view of the provision contained in Section 39 of the Specific Relief Act. So far as the decree of permanent injunction is concerned, the trial Court found that the plaintiff was in possession of the suit property. However, the trial Court found that the plaintiff had not produced any document to show that the suit property has been re-classified as Natham land. Therefore, the trial Court held that the suit property is only a Government poromboke land and so, the trial Court granted only a qualified decree for permanent injunction in favour of the plaintiff restraining the defendants from dispossessing the plaintiff without following the procedure established by law.

5.As I have already stated, as against the decree and judgement of the trial Court, the appellant/plaintiff has filed an appeal. The First Appellate Court dismissed the appeal thereby confirming the said findings of the trial Court. That is how the appellant/plaintiff is before this Court with this second appeal.

6.In this second appeal, by referring to the grounds of appeal, the learned counsel for the appellant would submit that the trial Court ought to have decreed the suit in full as prayed for by the plaintiff because, the defendants did not chose to appear and to file any written statement before the trial Court. When the facts stated by the plaintiff were not at all under dispute, according to the learned counsel, the trial Court ought to have granted the decree as prayed for. The learned counsel would further point out that from the evidence of P.W.1 and the documentary evidences let in by the plaintiff before the trial Court, the plaintiff has proved that he is not only in possession and enjoyment of the suit property but, also he is entitled for patta.

7.Before the First Appellate Court, the respondents/defendants appeared and they have contested the case. Their arguments were heard.

8.The learned counsel for the appellant/plaintiff would submit that without filing any written statement disputing the claim of the appellant/plaintiff, it would not have been proper for the defendants to raise any objection at the time of hearing of the first appeal.

9.I have considered the above submissions.

10.At the outset, I should say that there is no substantial question of law at all involved in this second appeal. I do not find any perversity in the facts also. It is too well settled that simply because the defendants remained exparte before the trial Court, the plaintiff is not entitled for a decree as prayed for by him. The

plaintiff is required to prove his case so as to get a decree as prayed for. In this case, the plaintiff has proved that he is in possession and enjoyment of the suit property. Therefore, the trial Court granted decree for permanent injunction in favour of the plaintiff restraining the defendants from disturbing his possession without following the procedure established by law the First Appellate Court has also confirmed the same. So long as the ownership of the land is concerned, the plaintiff has failed to prove that the suit property is a natham land.

11. Even according to the admitted case of the plaintiff, the suit property was only a Government poramboke land. Under the Land Encroachment Act, the Government has got every power to remove the encroachment, but, it cannot be done by force and such dispossession should be made by following the procedure established under the Act. Having regard to this legal position only, the trial Court as well as First Appellate Court has classified the decree for permanent injunction, in which, I do not find any infirmity.

12. Now, turning to the denial of decree for mandatory injunction is concerned, there can be no second opinion that in view of the specific provision contained in Section 39 of the Specific Relief Act, the Civil Court cannot grant decree for mandatory injunction compelling the Government to grant patta. But, the learned counsel for the appellant would submit that all the authorities who are concerned in the issue had given an objection to the District Collector for grant of patta to the plaintiff. It may or may not be true. It is immaterial for this Court. If the plaintiff has got right to claim patta, he can very well work out his remedies either by filing writ petition or in any other manner known to law, for which, the present judgement will not be an impediment. Thus, in the decree and judgement of the trial Court and confirmed by the First Appellate Court, I do not find any infirmity. Further, I do not find any substantial question of law involved in this second appeal so as to admit the same. Thus, the appeal has to necessarily fail.

13. In the result, the second appeal fails and accordingly, the same is dismissed. However, it is clarified that the dismissal of this second appeal confirming the decree and judgement of the First Appellate Court shall not be an impediment for the plaintiff either to file a writ petition or to work out his remedies in the manner known to law seeking grant of patta for the suit property based on his long possession. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

jbm

To

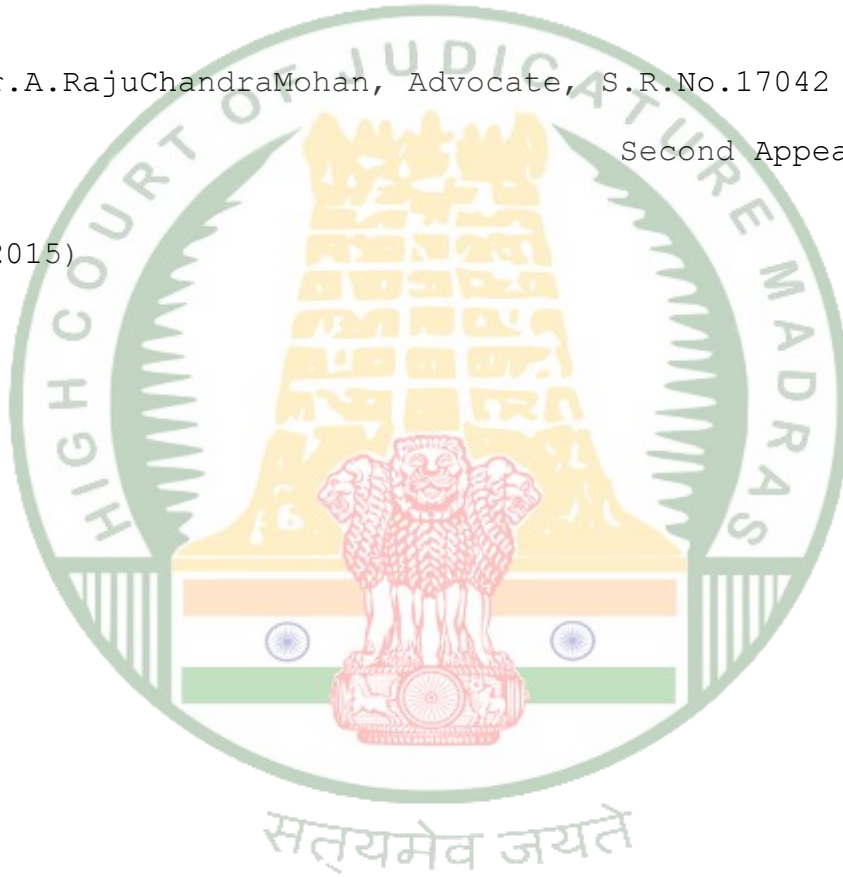
1.The Principal Subordinate Judge,
Myladuthurai,
Nagapattinam District.

2.The Additional District Munsif,
Myladuthurai.

+2cc to Mr.A.RajuChandraMohan, Advocate, S.R.No.17042

Second Appeal No.166 of 2015

CNR (CO)
CA(02/06/2015)



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