

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.01.2015

CORAM:

THE HONOURABLE MS.JUSTICE K.B.K.VASUKI

S.A.No.570 OF 2006

- 1.Venkatachalam (Deceased)
- 2.Sundarammal
- 3.Rajan @ Raja
- 4.Kuppusamy
- 5.Subramanian
- 6.Amirthavalli
- 7.Lakshmi

(Appellants 2 to 7 are brought on record
as Legal heirs of the deceased sole appellant
vide order of the Court dated 30.07.2014
made in M.P.Nos.1 to 3 of 2014) .. Appellants/Plaintiffs

Vs.

- 1.Alamelu Ammal
 - 2.Subramani
- ... Respondents/Defendants

This second appeal filed under Section 100 C.P.C. against the decree and judgment dated 01.11.2004 made in A.S.No.11 of 2004, on the file of the Subordinate Court at Mettur confirming the judgment and decree dated 31.10.2003 made in O.S.No.964 of 1996 on the file of the District Munsif cum Judicial Magistrate Court at Omalur.

For Appellants : Mr.P.Valliappan
For Respondents : Mrs.Hemalatha

J U D G M E N T

The unsuccessful plaintiff is the appellant herein. The suit in O.S.No.964 of 1996 on the file of District Munsif cum Judicial Magistrate at Omalur was filed by the plaintiff since deceased for Permanent Injunction restraining the defendants their men, from in any way unlawfully, interfering with the enjoyment of the suit property by putting up any construction in the same. The suit relief sought for is in respect of an extent of land measuring 2713 sq.ft with two Ankanam tiled house measuring north-south 75 ft on the eastern side, north-south 82 ½ feet on the western side, east-west 35 feet on the northern side, east-west 26 feet on the southern side in S.No.178/1 Omalur Village, Omalur town panchayat within four boundaries, as mentioned in the suit schedule.

2.The suit relief was resisted by the defendants 1 and 2 by denying the possession and enjoyment of the plaintiff of the entire suit property. It is the case of the defendants that the plaintiff is in possession and enjoyment of a portion of the suit property and the remaining portion, which is the disputed portion belongs to the first defendant on the basis of patta and on the basis of his possession and enjoyment of the same.

3. The parties in support of their respective contentions, adduced oral and documentary evidence. Both the trial Court and the first Appellate Court found that the defendants, on the strength of Ex.B5-patta have been in possession and enjoyment of north-south 8.6 meters and east-west 2.4 meters on the north-east portion of the suit property and the plaintiff has been in possession and enjoyment of the remaining extent which is adjacent to his house property. However, the Courts below did not grant any relief in favour of the plaintiff in respect of the portion in his occupation.

4. The trial Court dismissed the suit on the ground that unless and until Ex.B5 patta granted in favour of the first defendant is cancelled, the plaintiff cannot claim any right over the same. The lower Appellate Court also accepted the trial Court findings and confirmed the judgment and decree of the trial Court. Hence, this Second Appeal filed by the plaintiff before this Court.

5.The second appeal is admitted on the following Substantial Questions of law:

1. Whether the lower appellate court is correct in law in non-suited the appellant, after finding that the possession of the appellant stands proved by virtue of Ex.A2 to A4?

2. Whether the lower appellate court is correct in law in holding that the appellant cannot seek for permanent injunction until Ex.B5 Patta is cancelled, overlooking the fact that the appellant had challenged the grant of patta and the revenue officials are not taking any action in view of pendency of the civil suit?

6.Heard both sides and perused the records.

7.As far as the first Substantial Question of law is concerned, the plaintiff is able to make out a valid ground before this Court. Both the Courts below having found on the basis of the admission made by the defendant that the plaintiff has been in possession and enjoyment of the portion of the suit property, ought to have granted the decree for protecting his possession in respect of that portion by way of permanent injunction and dismissal of the suit in respect of the entire suit property by the Courts below is hence legally unsustainable.

8.As far as the second Substantial Question of law is concerned, the fact that the suit property is natham poromboke is clearly made out on the basis of the documents produced before the courts below.

9.The learned counsel for the plaintiff has produced the following judgment of the Division Bench of this Court in support of his stand that the land classified as Grama Natham never vested with the State to enable the Government to issue patta and Ex.B5-Patta issued in the name of the first defendant is not likely to extinguish his right over the entire extent of the suit property. However, the Division Bench of this Court in the judgment reported in 2012 (1) CTC 280 (DHARMAPURA ADHINAM MUTT, REP. BY ITS ADHINAKARTHA, SRI-LA-SRI SHANMUGHA DESIKA GNANASAMPANDA PARAMACHARIYA SWAMIGAL, DHARMAPURAM, MAYILADUTHURAI TALUK, NAGAPATTINAM DISTRICT V. RAGHAVAN and another) has clearly observed that Gramanatham is the village 'habitation', where the land holders may build houses and reside and they are also known as 'House sites' (Manai) and they were classified as Gramanatham to differentiate from Inam lands, Ryotwari lands, Pannai lands and Waste lands, while later vested with the Government, the Gramanatham never vested with the State. In the same case, the Division Bench has found that under the UDR scheme, a Thoraya Patta was issued to those persons, who claimed to be the land holders, to enforce a tax on the Natham lands and the patta issued under UDR Scheme is not the patta under the Land Encroachment Act.

10.It is contended before this court that as the claim of the plaintiff in respect of the suit property is based on title on the strength of Ex.A1 partition deed, the first defendant cannot be permitted to raise any claim in respect of the portion which is in the occupation of the plaintiff, on the basis of Ex.B5 patta, which was issued not recognising her title, but was issued under UDR scheme for limited tax purpose. In my considered view, the plea so raised herein deserves merits and consideration. However, as the suit arising out of which is the present second appeal, is not filed for declaration of title, the question as to who has better title, whether it is the plaintiff under Ex.A1 or the defendant under Ex.B5 need not be gone into herein. The question of title can be gone into, in the event of the suit filed by either of the parties for declaration of title and for recovery of possession. As the present suit is filed for permanent injunction, restraining the defendants from in any way unlawfully interfering the plaintiff's peaceful possession and enjoyment of the suit property by putting up any construction in the same, the plaintiff is only required to prove his possession and enjoyment of the entire suit property or any portion of the suit property to enable the court to grant appropriate relief in respect of such extent. As the specific extent is admittedly to be in the occupation of the plaintiff, the courts below ought to have restricted the relief in respect of that extent and the Courts below have thus erred in dismissing the suit in entirety on the ground that the suit for permanent injunction cannot be maintained until Ex.B5

patta is cancelled. As rightly argued by the learned counsel for the plaintiff, such ground on which the plaintiff's suit was dismissed, by overlooking the fact that the plaintiff already challenged the grant of patta in favour of the first defendant before the appropriate authority, is legally untenable and the plaintiff is hence entitled to the suit relief in respect of such extent, which is in his occupation and the substantial questions of law raised herein are accordingly answered.

11. In the result, the second appeal is allowed by setting aside the judgment and decree of the courts below and the suit is decreed by granting the relief of permanent injunction in respect of the suit property excluding north-south 8.6 meters and east-west 2.4 meters on the northeast side of the suit property, which is in the occupation of the defendants. No costs.

-s/d-

Assistant Registrar (CSIV)
dt:12/10/2015

True Copy

Sub-Assistant Registrar

kal/rk

To

1. The Subordinate Court, Mettur.

2. The District Munsif cum Judicial
Magistrate Court at Omalur.

सत्यमेव जयते

S.A.No.570 OF 2006

ug(co)
aa13/10/2015

WEB COPY