

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 29.9.2015.

CORAM

THE HON'BLE MR.JUSTICE P.R.SHIVAKUMAR

S.A.No.1813 of 2003

1. Kuppusamy
2. Elumalai
3. Yesodhai Ammal

Appellants/Appellants/
Plaintiffs 1,3,4

vs.

1. Karuppa Padayachi
2. Kuil Ammal
3. Palani Ammal
4. Pavadai Padayachi
5. Thirumalai

Respondents 1to4/Respondents
1 to 4/ Defendants 1to4

Second Appeal against the judgment dated 5.12.2000 in A.S.No.167 of 1998 on the file of the II Additional Subordinate Judge, Villupuram against the judgment and decree dated 19.11.1998 in O.S.No.701 of 1995 on the file of the District Munsif, Ulundurpettai.

For appellants : Mr.S.Krishnasamy

For Respondents: No appearance.

JUDGMENT

Plaintiffs 1, 2 and 4 in the original suit are the appellants in the second appeal. The third plaintiff is the fifth respondent. For the sake of convenience, the parties are referred to in accordance with their ranks in the original suit and at appropriate places, their ranks in the second appeal will also be indicated.

2. The suit was filed for a declaration of title and injunction not to dispossess the plaintiffs (appellants and the fifth respondent) in respect of plaint A schedule property and for a bare injunction in respect of plaint B schedule property.

3. The plaintiffs claimed that Natesa Padayachi, the father of plaintiffs 1 to 3/husband of the fourth plaintiff was the owner of plaint A schedule property, who got it ancestrally and

that after his death, the plaintiffs became entitled to the said property. So far as plaint B schedule property is concerned, it is the case of the plaintiffs that the same is a poramboke land in the occupation of the plaintiffs and they have been issued B memo based on which the penalty has been levied on them for several years. Based on the abovesaid contentions and a further contention that the defendants, who had no manner of right or title in respect of either of the suit properties, made attempts to cause disturbance to the enjoyment of the plaintiffs in respect of the suit properties, they filed the suit for the abovesaid reliefs.

4. The suit was resisted by respondents 1 to 4/defendants denying the plaint averments regarding plaint A schedule property and contending that the same originally belonged to one Munusamy, which devolved upon his only son Ayyamperumal; that the said Ayyamperumal died without leaving direct legal heirs; that the first defendant being the younger brother's son of Munusamy got the property and was in enjoyment of the same and that by a gift settlement deed dated 16.3.1993, the same was settled on his wife, the second respondent. Besides contending that the second defendant thus derived title to plaint A schedule property, they also pleaded that in any event, they had perfected title by adverse possession. Based on the said defence plea, they prayed for dismissal of the suit.

5. After framing necessary issues, a trial was conducted by the Trial Court. The second appellant/second plaintiff figured as the sole witness (PW1) and 16 documents were produced as Exs.A1 to A16 on the side of the plaintiffs. Two witnesses including the second respondent were examined as DWs 1 and 2 and ten documents were marked as Exs.B1 to B10 on the side of the defendants.

6. The learned Trial Judge, after considering the evidence adduced on both sides, non-suited the plaintiffs to all the reliefs sought for in respect of both the plaint A schedule and B schedule properties and accordingly dismissed the suit by a judgment and decree dated 19.11.1998. As against the said decree dismissing the suit in entirety, plaintiffs 1, 2 and 4 preferred an appeal in A.S.No.167 of 1998 before the lower appellate court (Court of II Additional Subordinate Judge, Villupuram). The learned lower appellate Judge concurred with the findings of the Trial Court regarding the plaint A schedule property and confirmed the dismissal of the suit in respect of plaint A schedule property. However holding that the plaintiffs were able to prove their possession and enjoyment of plaint B schedule property, which is, admittedly, a poramboke land, the lower appellate court granted the relief of injunction in respect of plaint B schedule property alone, by a judgment and decree dated 5.12.2000. As against the disallowed portion, to

be precise, as against the dismissal of the suit in respect of plaint A schedule property, which came to be confirmed by the lower appellate court, the present second appeal has been filed.

7. The second appeal was admitted on 26.3.2004, noticing the following question to be the substantial question of law involved in the second appeal:-

"Whether the courts below are correct in dismissing the case of the plaintiffs in respect of plaint A schedule property on erroneous consideration of the documents filed by the plaintiffs?"

8. Though there are five respondents, the fifth respondent (third plaintiff) has been given up with the result that the fifth respondent Thirumalai is no longer a party to the second appeal. Notice in the second appeal was served on respondents 1 to 4. But, they have not chosen to enter appearance either in person or through counsel. Hence, this court has to hear the arguments advanced on the side of the appellants and pronounce the judgment. Accordingly, the arguments advanced by Mr.S.Krishnasamy, learned counsel for the appellants are heard. The materials available on record are perused and taken into consideration.

9. So far as plaint B schedule property is concerned, the plaintiffs were granted the relief of permanent injunction by the lower appellate court, even though such relief was declined by the Trial Court. As against the grant of the said relief of permanent injunction in respect of plaint B schedule property, none of the defendants has chosen to file any appeal or cross objection. Hence, consideration of the question of correctness or otherwise of the decree granted in respect of plaint B schedule property is a non-issue in the second appeal and the scope of the second appeal is confined to the reliefs sought for by the plaintiffs in respect of plaint A schedule property.

10. An extent of 20 cents comprised in S.No.463/2 in Pidagam Village is shown as plaint A schedule property. The plaintiffs claim that they are the owners of plaint A schedule property and they trace their title to Natesa Padayachi, the father of plaintiffs 1 to 3/husband of the fourth plaintiff. According to them, plaint A schedule property was the ancestral property of Natesa Padayachi and in the UDR, he was granted patta in respect of the plaint A schedule property among other properties. In support of their contention, the only parol evidence available is the interested testimony of PW1, who is none other than the second plaintiff. The patta issued in the name of Natesa Padayachi has been produced on the side of the plaintiffs and marked as Ex.A1. The patta came to be issued in

November 1985. No kist receipt showing payment of kist for the plaint A schedule property by Natesa Padayachi came to be produced by the plaintiffs. Only four kist receipts relating to plaint A schedule property came to be produced by the plaintiffs. They are Ex.A3 dated 26.2.1987, Ex.A4 dated 19.3.1993, Ex.A10 dated 26.1.1995 and Ex.A12 dated 30.1.1992. Out of the abovesaid kist receipts, Ex.A3 was issued in the name of Natesa Padayachi. Admittedly, he was not alive at the time of issuance of the said kist receipt. Exs.A4 and A12 are in the name of Yasodha Ammal, the third appellant/fourth plaintiff. Ex.A10 is in the name of Kuppusamy, the first appellant/first plaintiff. All the above said documents came into existence subsequent to the date of Ex.A1. The plaintiffs, who claim that plaint A schedule property is their ancestral property and they are the absolute owners, are not able to produce any document pertaining to plaint A schedule property prior to issuance of UDR patta under Ex.A1 which happened in the month of November 1985. Even thereafter, besides producing the abovesaid four receipts, they have not chosen to produce copies of chitta and adangal to show that the patta continuously stood in their names and they were paying kist regularly.

11. On the other hand, respondents 1 to 4/defendants have produced Exs.B8 to B10 viz, adangal extracts and chitta extracts to show that patta stood in the name of Ayyamperumal, son of Munusamy as early as in 1970s. When patta stood in the name of Ayyamperumal, how the same came to be changed in the name of Natesa Padayachi in the UDR has not been explained by the plaintiffs. It is not the case of the plaintiffs that Natesa Padayachi was a close relative of Ayyamperumal and on the death of Ayyamperumal, in the absence of any other legal heirs with closer proximity, Natesa Padayachi became a legal heir and thus, he got the property based on which, he was issued patta. On the other hand, respondents 1 to 4/defendants have taken a clear plea that Ayyamperumal died as a bachelor without issues and the first defendant/first respondent, being his father's brother's son, got plaint A schedule property and he was in possession and enjoyment of the same. It is the further case of respondents 1 to 4/defendants that as early as in 1993, the first defendant/first respondent executed a settlement under Ex.B1 in favour of his wife Kuyil Ammal, the second defendant/second respondent herein and that thereafter, Kuyil Ammal was assessed for the land revenue and she was paying the kist. Besides producing the adangal extract and chitta extract and also the kist receipts, in the name of Ayyamperumal and Kuyil Ammal, the defendants have also examined DW2 Ramasamy, the sister's husband of Kuyil Ammal, who also spoke about the abovesaid relationship between Ayyamperumal and the first respondent/first defendant.

12. In the light of the abovesaid documentary and oral evidence adduced on the side of the defendants and in the light of the fact that the plaintiffs were not in a position to show how patta, which stood in the name of Ayyamperumal, came to be issued in the name of Natesa Padayachi in the UDR survey, the learned Trial Judge and the lower appellate Judge chose to hold that the plaintiffs miserably failed to prove their title to plaint A schedule property. After weighing the evidence adduced on both sides, the courts below also came to the conclusion that the plaintiffs also failed to prove their possession of plaint A schedule property. In view of the said findings, the plaintiffs were denied the reliefs of declaration and injunction in respect of plaint A schedule property.

13. Mr.S.Krishnasamy, learned counsel appearing for the appellants made a feeble attempt to contend that though respondents 1 to 4/defendants were able to produce chitta and adangal extracts dating back to 1380 faslis, they did not produce any document to show that the property belonged to Munusamy from whom Ayyamperumal got it. It is the further contention of the learned counsel for the appellants that in the absence of any document to show that the first defendant became the legal heir of Ayyamperumal and thus, got plaint A schedule property, the courts below ought to have disbelieved the case of the defendants herein and held the case of the plaintiffs to be more probable leading to the result that the plaintiffs should have been held to be entitled to the relief sought for in respect of plaint A schedule property. This court is not in a position to accept that there is any merit in the abovesaid submission. The plaintiffs, having approached the court with the suit for declaration of their alleged title in respect of plaint A schedule property and a consequential injunction, cannot try to get a decree pointing out the weakness of the defendants' case. On the other hand, they have to either stand or fall according to the strength of their own case. Even in the absence of any evidence on the side of the defendants, unless the plaintiffs substantiate their claim of title to plaint A schedule property and possession, they cannot succeed in getting either the relief of declaration or the consequential relief of injunction.

14. Both the courts below, on appreciation of evidence and on proper application of the principles of law, rendered a correct and concurrent finding that the plaintiffs herein failed to substantiate their claim in respect of plaint A schedule property. The said finding of the Trial court, which was confirmed by the lower appellate court, cannot be termed as perverse warranting interference by this court in the second appeal. Hence, the question, formulated as substantial question of law in the second appeal, has to be necessarily answered in the negative and against the appellants.

15. In view of the answer provided to the substantial question of law, resultant position shall be the dismissal of the second appeal confirming the decree of the lower appellate court confirming the dismissal of the suit in respect of the plaint A schedule property.

In the result, the second appeal fails and the same is dismissed. Since the respondents have not entered appearance, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS-II)

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Sub Assistant Registrar

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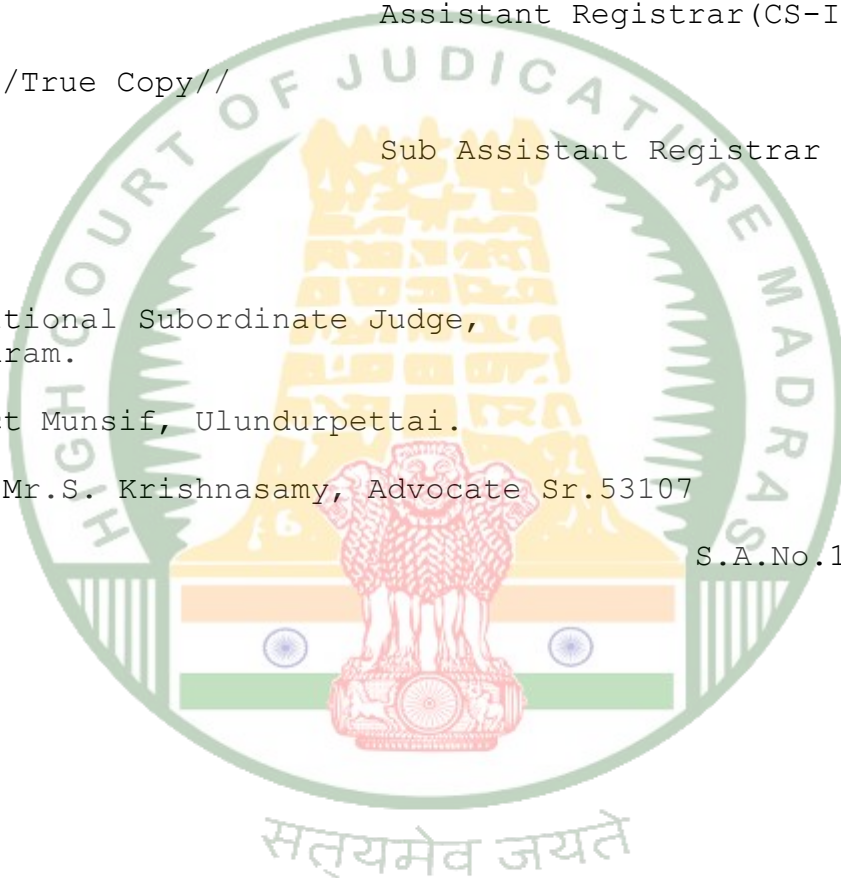
1. II Additional Subordinate Judge,
Villupuram.

2. District Munsif, Ulundurpettai.

+ 1 cc to Mr.S. Krishnasamy, Advocate Sr.53107

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