

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.11.2016

PRONOUNCED ON : 17.11.2016

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Second Appeal No.73 of 2008

Tmt.Sri Rengathammal (Deceased)

1.Ramalingam

2.Mani

...Appellants

Vs

Anbazhagan

... Respondent

Prayer:- Second Appeal has been filed under Section 100 of C.P.C., against the judgment and decree dated 27.03.2006 passed in A.S.No.25 of 1998 on the file of the Subordinate Court, Ariyalur reversing the judgment and decree made in O.S.No.160 of 1995 dated 22.12.1997 on the file of the District Munsif, Ariyalur.

For Appellants : Mr.M.V.Krishnan

For Respondent : Ms.R.Meenal

JUDGMENT

A suit for declaration and permanent injunction was filed by the plaintiff. The trial Court allowed the suit and declared that the plaintiff is entitled for the title holder of the suit property bearing Old S.No.270/1 with New S.Nos.270/12 and 270/9F of Ponparappu Village, Ariyalur Taluk, to an extent of 66 cents.

2.On appeal, the First Appellate Court reversed the finding of the trial Court and held that the defendant is holding patta for New S.No.270/9F to an extent of 7 cents whereas, the plaintiff has failed to prove her possession and title over New S.No.270/12 and S.No.270/9F. By allowing the appeal, the First Appellate Court dismissed the suit. Aggrieved by the reversal judgment, the plaintiff herein has preferred the present Second Appeal.

3.While admitting this Second Appeal, this Court has formulated the following substantial questions of law:-

“1.Whether the lower Court/appellate Court ought to have confirmed the title of the plaintiff as the Court auction purchaser from

the land of original owner Ponnusami whose properties were brought to sale in E.P.No.159 of 1966 in O.S.No.1056 of 1965, on the file of the District Munsif Court, Ariyalur.

2.Whether the learned Subordinate Judge has erred in attaching importance to the patta standing in the name of the defendant, without seeing that the patta is not the document of title ?”

4.Brief facts, leading to this Second Appeal, are as follows:-

The suit property was originally purchased by one Mr.Ponnusamy Padayachi by a valid registered sale deed dated 28.06.1930. On his death, the property was enjoyed by his wife Mrs.Alamelammal. For her debt towards Mr.Ratinasamy Padayachi, the property was brought to Court auction by the decree holder - Mr.Ratinasamy Padayachi, in E.P.No.159/66. Mr.Sri Rengathammal, who is the plaintiff in the suit, was a Court auction purchaser. Being the successful bidder, she has taken possession of the suit property and she was in possession and enjoyment of the same.

5.The defendant while enjoying the rest of the plaintiff's land, during UDR Survey, has encroached upon the Western portion of the suit land and in connivance with the Survey Officers, he has taken away portion of the plaintiff's land by sub-dividing the original/old S.No.270/1 into New S.Nos.270/12 and 270/9F. While the trial Court has conceded the plea of the plaintiff positively and granted the relief of declaration to the entire extent of 66 cents comprising of subdivided New S.Nos.270/12 and 270/9F, the First Appellate Court, on a wrong premise, has rejected the plea of the plaintiff, for the reason that she has not obtained patta for the property, which she had purchased through Court auction.

6.Having lost the case, for want of patta, the appellants pending appeal has approached the revenue authorities and after a long battle with them, the Assistant Settlement Officer, has passed an order under the Tamil Nadu Minor Inam Abolition Act, 30 of 1963 granting patta in favour of the appellants in respect of New S.No.270/12 to an extent of 24.5 ares.

7.The learned counsel for the appellants furnishing this proceeding of the Settlement Officer, vide his proceeding in Na.Ka.Vu1/3364/09 (Tamil Nadu Minor Inam Act, 30/63) dated 11.01.2012, submitted that having obtained patta, the reason for allowing the first appeal has become nullify. Therefore, the judgment of the First Appellate Court has to be interfered with.

8.The learned counsel for the respondent submitted that in the disputed land, he is in possession of 7 cents under New S.No.270/9F as long as his title and possession is not disturbed, he has no claim over the remaining portion of the undivided Old S.No.270/1.

9.The appellants having purchased the suit property through Court auction and being in possession and enjoyment of the property ought not to have been deprived of their right, for want of patta. The First Appellate Court has erred in doing so.

10.Now, after proper enquiry, the Revenue Authorities have ordered to grant patta to the appellants in respect of 24.5 ares of land in New S.No.270/12.

11.The learned counsel for the appellants submitted that the appellants have no claim over the 7 cents of land in New S.No.270/9F, in which, the defendant having patta and claiming right. The appellants confine their claim and declaration in respect of New S.No.270/12 to an extent of 24.5 ares which is much less than the extent prescribed in the title deed.

12.In the light of the above fact, the Second Appeal is partly allowed and the judgment of the First Appellate Court is set aside and the decree passed by the trial Court is modified to the effect that the plaintiff/appellants shall entitle for declaration and injunction in respect of 24.5 ares of land in New S.No.270/12, Ponparappu Village, Ariyalur Taluk. There shall be no order as to costs.

17.11.2016

jbm

Index: Yes/No

To

1.The Subordinate Court,
Ariyalur.

2.The District Munsif,
Ariyalur.

Dr.G.JAYACHANDRAN.J.,

jbm

**Pre Delivery Judgment made in
Second Appeal No.73 of 2008**

17.11.2016