

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2016

CORAM :

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

S.A.No.932 of 2013

and

M.P.No.1 of 2013

1.The District Collector,
Ariyalur.
2.The Revenue Divisional Officer,
Ariyalur
3.The Tahsildar,
Ariyalur. ... Appellants/Defendants

Vs

Velusamidurai ... Respondent/Plaintiff

Prayer:- This Memorandum of Second Appeal is filed under Section 100 of Civil Procedure Code to set aside the Judgment and decree dated 24.11.2012 and made in the appeal in A.S.No.17 of 2012 on the file of the learned Subordinate Judge, Ariyalur, confirming the judgment and decree dated 30.04.2008 and made in the suit in O.S.No.35 of 2008 on the file of the learned Principal District Munsif at Ariyalur.

For Appellants : Mr.Jayaramaraj,
Government Advocate (CS)

For Respondent : Mr.M.V.Venkateshan

J U D G M E N T

This Memorandum of Second Appeal has been directed against the Judgment and decree dated 24.11.2012 and made in the appeal in A.S.No.17 of 2012 on the file of the learned Subordinate Judge, Ariyalur, confirming the judgment and decree dated 30.04.2008 and made in the suit in O.S.No.35 of 2008 on the file of the learned Principal District Munsif at Ariyalur.

2. The defendants 1 to 3 in the suit in O.S.No.35 of 2008 are the appellants herein, whereas the respondent is the plaintiff.

3. For the sake of convenience and for easy reference, the respondent herein may herein after be referred to as the plaintiff and the appellants 1 to 3 herein be referred to as the defendants 1 to 3, where ever the context so require.

4. The plaintiff has filed the above suit as against the defendants, seeking for the relief of declaration declaring his right over the suit property and also for the relief of mandatory injunction to direct the defendants to grant Patta for the suit property in his favour by altering revenue records. Despite the contest made by the defendants, the trial Court on 30.04.2008 had proceeded to decree the suit as prayed for. Challenging the correctness of the judgment and decree, the defendants had filed an appeal in A.S.No.17 of 2012 on the file of the learned Subordinate Judge, Ariyalur. After hearing both sides, the learned Subordinate Judge had dismissed the appeal confirming the judgment and decree of the trial Court. Having lost their case in both the Courts below, the defendants viz., appellants stand before this Court with this second appeal.

5. Heard Mr.T.Jayaramaraj, learned Government Advocate (CS) appearing for the defendants/appellants and Mr.M.V.Venkataseshan, learned counsel appearing for the respondent/plaintiff.

6. It is significant to note here that the appeal is not yet admitted. However, Mr.T.Jayaramaraj, learned Government Advocate(CS) has raised the following two substantial questions of law for the disposal of the second appeal.

(i)Whether the suit is barred by jurisdiction under Section 15 of the Patta Pass-Book Act?

(ii)Whether the plaintiff is entitled to get Patta through the Courts?

7. It is the case of the plaintiffs that originally, the suit property and some other properties were belonged to one Udayarpalayam Jameen Kachi Chinna Nallappa Kalakka Thozha Udayar and after his demise his properties were divided among his sons namely, K.M.Chinnarajadurai, K.C.Periyakuzhandhai Raja, K.C.Chinnakuzhandhai Raja by means of a registered Partition Deed dated 16.07.1955 (Ex.A2). In that Partition Deed, the property described in 'F' schedule was allotted to one Kannan @ A.V.Kumaradurai by appointing his mother Aboorvavalliammal as guardian as he was then minor. After attainment of majority, the said Kannan @ A.V.Kumaradurai was in possession and enjoyment of the suit property and other properties allotted to him in the above said partition. The said Kannan @ A.V.Kumaradurai is none other than the father of the plaintiff herein.

8. The plaintiff's father had died on 30.09.2000 leaving behind him and his mother Jayakumari as his legal heirs. After the demise of his father, his mother was in possession and enjoyment of the suit property as an absolute owner. After the demise of his mother in the year 2004, he came to be in possession and presently he has been in possession and enjoyment of the suit property as an absolute owner there of. In the year 2006, he had approached the third defendant viz., the Tahsildar, Ariyalur for getting patta, chitta. Whiles, he was informed that the suit property was mentioned as Anathenam in the revenue records.

9. In the month of November 2006, he had given an application to the third defendant for changing the entry in the revenue records and for granting patta in his name. But his efforts were ended in futile and therefore, this suit was filed for the relief of declaration of right over the suit property and also for mandatory injunction as against the defendants directing them to issue patta in his favour by altering the revenue records.

10. The third defendant viz., the Tahsildar, Ariyalur had filed his written statement saying that the suit property had been entered in the revenue records as Anathenam at the time of survey. No one had approached the Revenue Authorities for claiming their ownership and therefore, it was classified as Anathenam. It is also his case that the plaintiff had presented an application requesting to issue patta in his name as he is the absolute owner of the property. Based on his application, the third defendant had inspected the suit property and on enquiry he was put to understand that the plaintiff had been in possession and enjoyment of the suit property. He has also stated that he had no objection to issue patta in his name provided that the plaintiff proves with acceptable legal documentary evidence that he is the absolute owner of the property.

11. As afore stated, the trial court had granted the decree. The first Appellate Court had also confirmed the judgment and decree of the trial Court.

12. Now, Mr.T.Jayaramaraj, learned Government Advocate (CS) appearing for the appellants has contended that the suit itself is barred under Section 15 of the Patta Pass Book Act 1983(Tamil Nadu Act 4 of 1986).

Section 15 is extracted as under:

Certified copies of records to be annexed to plaint or application:- (1) The plaintiff or applicant in every suit or application, as hereinafter defined relating

to land situated in any area to which this Act applies shall annex to the plaint or application a certified copy of an entry in the Register of Patta Pass-Book or the Patta Pass-Book relevant to such land.

(2) If the plaintiff or applicant fails to do so, for any cause which the Court deems sufficient, he shall produce such certified copy within a reasonable time to be fixed by the Court and if such certified copy is not so annexed or produced, the plaint or application shall be rejected, but the rejection thereof shall not of its own force preclude the presentation of a fresh plaint in respect of the same cause of action or of a fresh application in respect of the same subject matter with a certified copy annexed.

13. On careful perusal of the sub Sections 1 and 2 of Section 15, this court is of view that Section 15 does not operate as a bar for the plaintiff to file the suit. It is apparent from the specific admission of the third defendant that on enquiry he was put to understand that the suit property was in possession and enjoyment of the plaintiff and that he was an absolute owner of the suit property. He has also contended that he had no objection to grant patta in respect of the suit property provided the plaintiff is able to prove that he is the absolute owner of the property.

14. In so far as this case is concerned, the plaintiff in specific term has pleaded in his plaint that in Ex.A2, a registered Partition Deed dated 16.07.1955 his father Kannan @ A.V.Kumaradurai was allotted with the 'F' schedule property and since he was minor, his mother was appointed as a guardian and after his attainment of majority, he came to be in possession and enjoyment of the suit property, in view of the terms of the Partition Deed dated 16.07.1955 (Ex.A2). Now after the demise of his father as well as his mother, he came to be in possession and enjoyment of the suit property in his capacity as an absolute owner. But in this connection, the third defendant does not have any objection and he himself has stated that on enquiry he was put to understand that the plaintiff is the absolute owner of the property and he himself has been in possession and enjoyment of the property. Keeping in view of this fact, this Court finds that the proviso to Section 15 of the Patta Pass Book Act 1983 does not operate as a bar. In fact, the third defendant has specifically admitted in his written statement that in the month of November 2006, the plaintiff had presented an application requesting to issue patta in his name. However, as stated by the plaintiff no action was taken at the end of the defendants and therefore, he was constrained to file the suit.

15. Having regard to all the related facts and circumstances, this Court does not find any discrepancy or infirmity in the judgment and decree passed by the Courts below and therefore, this Court's interference does not require. Hence both the substantial questions of law are answered in the negative form as against the appellants.

16. In the result, the second appeal is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Subordinate Judge,
Ariyalur
2. The Principal District Munsif,
Ariyalur.

+2cc's to Mr.M.V.Venkataseshan, Advocate, S.R.No.19062
+1cc to the Special Government Pleader(CS), S.R.No.19360

S.A.No.932 of 2013
and
M.P.No.1 of 2013

PUR(CO)
CA(25/05/2016)

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