

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2016

CORAM :

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

S.A.No.933 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

- 1.Durai Raj
- 2.Kalavathi
- 3.Kunjumani
- 4.Sulochana
- 5.Saraswathi Respondents/Plaintiffs

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.18 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.33 of 2008 on the file of the learned Principal District Munsif at Ariyalur.

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

For RR1 to 4 : Mr.M.V.Venkataseshan

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.18 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.33 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.33 of 2008 are the appellants herein, whereas the respondents are the plaintiffs.

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

4. The plaintiffs have filed the above suit as against the defendants, seeking for the relief of declaration declaring their 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 their 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.18 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 respondents 1 to 4.

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.C.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 'G' schedule was allotted to one Muthu Vijaya Oppillatha Maravaraya Nainar @ Muthaiya Samidurai. He had been in possession and enjoyment of the suit property and other properties allotted to him in the partition deed dated 16.07.1955 (Ex.A2).

8. The said Muthu Vijaya Oppillatha Maravaraya Nainar @ Muthaiya Samidurai had two wives namely Amsavalliaayal and Kaveriammal. Through the first wife Amsavalliaayal, he had no issues and hence he had married Kaveriammal and she had given birth to one male child namely Murugesan. The said Murugesan had got four sons and one daughter namely Durairaj, Kalavathi, Kunjumani, Jeganathan and one Jayaraman @ Nakkiran. The said Jeganathan died on 29.07.2007 leaving behind him the 4th plaintiff Sulochana as his only legal heir. Another son Jayaraman @ Nakkiran died on 20.08.2002 leaving behind him the 5th plaintiff Saraswathi as his only legal heir.

9. The said Muthu Vijaya Oppillatha Maravaraya Nainar @ Muthaiya Samidurai during his life time had executed a registered Will dated 24.09.79 and through the said Will he had bequeathed 'C' schedule property therein to Kaveriammal. As per the recital of the Will, the said Kaveriammal had to enjoy the properties without creating any encumbrance till her life time and after her demise, her son Murugesan can enjoy those properties as an absolute owner.

10. The said Muthu Vijaya Oppillatha Maravaraya Nainar @ Muthaiya Samidurai had died on 09.01.1993. Immediately after his death, the Will came into effect and the said Kaveriammal had enjoyed the suit properties till her life time. After her death on 24.06.2002, her son Murugesan had enjoyed the suit property and other properties as an absolute owner as per the recital of the Will. After his demise, the plaintiffs are enjoying the suit property and other properties jointly without any division as absolute owners.

11. When the plaintiffs have approached the third defendant in the year 2006 to issue patta in their name, they were put to understand that the suit property was entered as Anathenam in the revenue records. Thereafter, immediately in the month of November 2006, the 4th plaintiff's father had given an application to the 2nd and 3rd defendants for changing the entry in the revenue records and for granting of patta in their name. Based on his application, the second defendant had directed the third defendant to pass an order on that application. In spite of that no fruitful result was forthcoming and therefore, the plaintiffs were constrained to file the present suit.

12. In the written statement, the third defendant has admitted that in the revenue records the suit property has been entered as Anathenam. Since the predecessors of the plaintiffs had not approached the defendants for granting of patta, it was entered as Anathenam in the revenue records as the original owners were not known. The third defendant has also admitted that the plaintiffs had presented an application to the second and third defendants requesting them to issue

patta and only on their application, the second defendant had directed the third defendant through his proceedings in O.Mu-A4.556/2006 dated 19.11.2006 to pass orders on the application given by the plaintiffs. Accordingly, the second defendant had inspected the property. On enquiry he came to know that the plaintiffs have been in possession and enjoyment of the suit property as absolute owners. Therefore, he has stated that he had no objection to issue patta in the name of the plaintiffs provided they prove through acceptable legal documentary evidence that they are the absolute owners of the property.

13. As afore stated, the trial court has granted decree as prayed for and the first Appellate Court has also confirmed the judgment and decree of the trial Court. Having lost their case in both the Courts below, the defendants stand before this Court with the present second appeal.

14. 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.

15. 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 plaintiffs 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 plaintiffs and that they are the absolute owners of the suit property. He has

also contended that he had no objection to grant patta in respect of the suit property provided the plaintiffs are able to prove that they are the absolute owners of the property.

16. In so far as this case is concerned, the plaintiffs in specific term have pleaded in their plaint that in Ex.A2, a registered Partition Deed dated 16.07.1955, the property described in 'G' schedule was allotted to one Muthu Vijaya Oppillatha Maravaraya Nainar @ Muthaiya Samidurai. He had been in possession and enjoyment of the suit property and other properties allotted to him in the partition deed dated 16.07.1955 (Ex.A2). The said Muthu Vijaya Oppillatha Maravaraya Nainar @ Muthaiya Samidurai had died on 09.01.1993. Immediately after his death, the Will dated 24.09.79, came into effect and the above said Kaveriammal had enjoyed the suit properties till her life time. After her death on 24.06.2002, her son Murugesan had enjoyed the suit property and other properties as an absolute owner as per the recital of the Will. After his demise, the plaintiffs are enjoying the suit property and other properties jointly without any division as the absolute owners.

17. 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 plaintiffs are the absolute owners of the property and they themselves are in possession and enjoyment of the property and therefore, section 15 of the Patta Pass Book Act 1983 does not operate as a bar.

18. In fact, the third defendant has specifically admitted in his written statement that in the month of November 2006, the plaintiffs have presented an application requesting to issue patta in their names. However, as stated by the plaintiffs, no action was taken at the end of the defendants and therefore, they have filed the present second appeal.

19. In view of the above fact, 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.

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

Sd/-
Assistant Registrar(CO)

//True Copy//

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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.19061
+1cc to the Special Government Pleader(CS), S.R.No.19361

S.A.No.933 of 2013
and
M.P.No.1 of 2013

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



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