

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.10.2016

PRONOUNCED ON : 02.11.2016

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No. 176 of 2011

Gurusamy

...

Appellant

Vs.

1.State of Tamil Nadu

Rep.by the District Collector,
Erode District - 11.

2. The District Revenue Officer,
Erode District - 11.

3. The Tahsildar,
Bhavani Taluk,
Erode District.

...

Respondents

Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 27.08.2010 made in A.S.No.13 of 2010 on the file of the Sub Court, Bhavani confirming the judgement and decree dated 22.01.2010 made in O.S.No.336 of 2007 on the file of the Principal District Munsif Court, Bhavani.

For Appellant : Mr.T.Murugamanickam
For Respondents : No appearance

JUDGMENT

The plaintiff by way of this second appeal has challenged the judgment and decree dated 27.08.2010 made in A.S.No.13 of 2010 on the file of the Sub Court, Bhavani, confirming the judgement and decree dated 22.01.2010 made in O.S.No.336 of 2007 on the file of the Principal District Munsif, Bhavani.

2. The suit for mandatory injunction.

3. The avernments contained in the plaint in brief are as follows:

In respect of the suit properties, considering the plaintiff's title and enjoyment, the third defendant by his proceedings dated 14.10.1999 had granted patta in the name of the plaintiff and accordingly, the plaintiff has been declared as patta holder for the suit properties. While so, at the instigation of one V.M.Loganathan and others, with a view to grab the suit properties and also, to cancel the patta granted in favour of the plaintiff, they had petitioned before the defendants 1 & 2 and accordingly, inasmuch as the defendants 1 & 2 had attempted to interfere with the possession and enjoyment of the suit properties by the plaintiff, the plaintiff has been necessitated to file the suit for permanent injunction against the above said persons in O.S.No.88 of 2000 on 15.03.2000 on the file of the First Additional District Munsif Court, Bhavani and the plaintiff was granted judgement and decree as prayed for on 03.01.2002 in the above said suit and after the institution of the above said suit, the second defendant, illegally and without any authority, had cancelled the patta granted to the plaintiff in respect of the suit properties by his proceedings dated 20.03.2000 and therefore, the plaintiff issued the statutory notice to the defendants calling upon them to record his name as patta holder in respect of the suit properties in the revenue

records and as the defendants failed to comply with his demand, the suit has been laid.

4. The averments contained in the written statement filed by the defendants in brief are as follows:

The suit is not maintainable either in law or on facts. As per G.O.No.1971, Revenue (SS.11) Department dated 14.10.1988, only in recognition of enjoyment of a person for more than 30 years and above, in respect of the house sites and non-agricultural lands, patta has to be issued and accordingly, on survey of the lands on noting that the suit properties were remaining vacant, the same has been classified as Government Porambokku and necessary mutation made in the revenue records and as per the Government Order, the person is not entitled to seek patta for more than 30 cents of land based upon his enjoyment in Natham Porambokku and the plaintiff has purchased the suit properties cleverly through the sale deeds and obtained patta in his name without any basis and illegally. After objection put forth to the same and after due enquiry, by his proceedings dated 20.03.2000, the second defendant had cancelled the patta granted to the plaintiff in respect of the suit properties. The suit properties have been classified as Government Porambokku lands and the plaintiff is economically well placed and also working in a Nationalised bank and as he had encroached upon the properties which were classified as government porambokku, for his illegal

benefit and as patta granted to the plaintiff was cancelled in respect of the suit properties, in the said suit filed by the plaintiff in O.S.No.88 of 2000, the Court has also not directed the defendants to grant patta to the plaintiff in respect of the suit properties and therefore, the suit, without any cause of action, is liable to be dismissed.

5. In support of the plaintiff's case, PW1 has been examined and Exs.A1 to 7 were marked. On the side of the defendants, DW1 has been examined and Ex.B1 has been marked.

6. On a consideration of the oral and documentary evidence adduced by the respective parties, the trial Court was pleased to dismiss the suit filed by the plaintiff and the same has also been confirmed by the first appellate court in the appeal preferred by the plaintiff. Aggrieved over the same, the plaintiff has preferred this second appeal.

7. It is argued by the plaintiff's counsel that considering his title and enjoyment of the suit properties, patta has been granted to the plaintiff by the third defendant in his proceedings dated 14.10.1999 and accordingly, the plaintiff has been enjoying the suit properties as patta holder. While so, at the instigation of one

V.M.Loganathan and others, the defendants, without any authority and illegally, attempted to cancel the patta granted in favour of the plaintiff and accordingly, as the plaintiff had right in the suit properties, he filed the suit against them in O.S.No.88 of 2000 for permanent injunction and pending the said suit, the patta granted in favour of the plaintiff, in respect of the suit properties, had been cancelled by the second defendant and therefore, the plaintiff has come forward with the present suit seeking for a mandatory injunction with a direction to the defendants to record the plaintiff's name as pattatharar in respect of the suit properties.

8. The main defence put forth by the defendants is that the plaintiff had illegally obtained patta in respect of the suit properties on the footing that he had purchased the suit properties and that, he had been enjoying the suit properties for a long time. However, on verification and survey of the suit properties finding that the suit properties had not been put into use as per law and as the plaintiff is not entitled to get patta in respect of the suit properties, the patta granted in favour of the plaintiff had been cancelled by the second defendant by his proceedings dated 20.03.2000 and accordingly, even in the plaint in O.S.No.88 of 2000, there was no relief granted against the defendants to record the plaintiff's name as pattatharar in respect of the suit properties and therefore, the suit filed by the plaintiff is

liable to be dismissed.

9. According to the plaintiff's counsel, the suit properties have been classified as Grama Natham lands and therefore, the Government could not claim any title or interest over the same automatically and in such circumstances, the action of the defendants, in cancelling the patta granted in favour of the plaintiff, in respect of the suit properties, is illegal and therefore, the plaintiff has been forced to file the suit for mandatory injunction. The plaintiff's counsel mainly relied upon the judgment and decree granted in his favour in O.S.No.88 of 2000. That suit has been laid by the plaintiff for permanent injunction on the footing that the defendants therein are trying to interfere with his possession and enjoyment of the suit properties. Pending that suit, the patta granted in favour of the plaintiff has been cancelled by the second defendant by his proceedings dated 20.03.2000. Therefore, it could be seen that the plaintiff was put on notice about the cancellation of the patta in the above said suit. Even thereafter, it has not been explained, as to why, the plaintiff has not sought for amendment of suitable reliefs in the said suit, particularly, with reference to seek declaratory relief or mandatory injunction in the said suit, as against the cancellation of

patta. To the above query put forth by this Court, the plaintiff's counsel contended that inasmuch as the second defendant has cancelled the patta granted in favour of the plaintiff without any notice, the plaintiff is not aware of the proceedings of the second defendant and therefore, he could not seek necessary and suitable relief in O.S.No.88 of 2000. However, the above argument of the plaintiff's counsel does not merit acceptance.

10. The suit in O.S.No.88 of 2000 was disposed of by the judgement and decree dated 03.01.2002. The said suit has been laid by the plaintiff on 15.03.2000. The patta, in respect of the suit properties granted in favour of the plaintiff, has been cancelled by the second defendant on 20.03.2000. Therefore, it could be seen that within five days of filing of the suit in O.S.No.88 of 2000, the second defendant has cancelled the patta granted to the plaintiff. In such circumstances, it could be clearly seen that during the pendency of the suit in O.S.No.88 of 2000, the plaintiff was put on notice about the cancellation of the patta by the defendants with reference to the suit properties. The defendants have also taken the said plea in their written statement filed in O.S.No.88 of 2000. Despite the same, the plaintiff has not evinced any interest to seek necessary relief as against the defendants in the said suit, by amending the suit. He has been pleased to confine with the original relief viz., permanent

injunction alone and accordingly, it could be seen that he had also been granted the said relief by the Court in the said suit. However, it does not stand to reason as to how the Court could have granted the relief of permanent injunction in the said suit in favour of the plaintiff as against the defendants injuncting them from cancelling the patta granted in favour of the plaintiff. The defendants having already marked their proceedings dated 20.03.2000 as Ex.B1 in the said suit, it would have clearly disclosed that the defendants have already cancelled the patta granted to the plaintiff in respect of the suit properties. Despite the same, it has not been explained, as to how the Court could have granted relief of Permanent injunction as against the defendants injuncting them from deleting the name of the plaintiff as pattadhar in the revenue records.

11. Be that as it may, it is argued by the plaintiff's counsel that inasmuch as the defendants had cancelled the patta without notice to him, he was not aware of the proceedings of the second defendant dated 20.03.2000. However, the above contention of the plaintiff's counsel has to be rejected considering the evidence adduced by the plaintiff in the present suit. The trial Court has in its judgment noted that the plaintiff examined himself as PW1, during his cross examination, has admitted that only after due enquiry and after giving affordable opportunity, the defendants have cancelled the patta

and that, the defendants have re-classified the suit lands as Porambokku lands. Therefore, it could be seen that the plaintiff has, in the present suit clearly, admitted that the second defendant had cancelled the patta only after due enquiry. Even, the first appellate court has also in its judgment noted that the plaintiff, during his cross examination, has admitted that only after due enquiry, the patta had been cancelled by the second defendant and the suit properties had been classified as Government Porambokku. Such being the admission of the plaintiff, during his cross examination, the argument put fourth by the plaintiff's counsel that the plaintiff is not aware of the proceedings of the second defendant cancelling the patta and therefore, he was not in a position to amend the plaint for necessary reliefs as against the defendants in O.S.No.88 of 2000 cannot at all accepted in any manner.

12. That apart, it could also be seen that the first appellate Court has also noted that PW1 has admitted that he had preferred the appeal against the cancellation of patta before the appellate authority, during his cross examination and however, no material has been placed by the plaintiff in the present suit as to the out come of the appeal. Therefore, it could be seen that the plaintiff had also preferred the appeal against the order of cancellation of patta and in such circumstances, when the plaintiff had already taken necessary

redressal available to him, challenging the order of cancellation of patta, it does not stand to reason as to how the present suit could have been laid by the plaintiff seeking the relief of mandatory injunction without exhausting the legal remedies available to him under the Act as against the order of cancellation of patta by the defendants.

13. The plaintiff's counsel vehemently contended that the Courts below erred in holding that the suit laid by the plaintiff is not maintainable under Section 14 of the Tamil Nadu Patta Pass Book Act and the plaintiff has not claimed any relief under the Tamil Nadu Patta Pass Book Act and on the other hand, he has only sought relief in the suit for directing the defendants to record his name as pattadharar in the revenue records as per the revenue standing orders and therefore, the judgement and decree of the Courts below cannot be upheld.

14. No doubt, the Courts below, inter alia, have also held that the suit laid by the plaintiff is not maintainable as per Section 14 of the Tamil Nadu Patta Pass Book Act. However, the Courts below have also discussed the merits and demerits of the plaintiff's case in its entirety and after holding that the defendants have cancelled the patta of the plaintiff, after due enquiry and as the plaintiff had also

preferred the appeal before the appropriate authority impugning the said cancellation of patta and as the plaintiff is not entitled to get suitable relief from the Court, it did not grant any relief to the plaintiff and accordingly, rejected his case. In such circumstances, the contention that the Courts below had solely rejected the plaintiff's case under Section 14 of the Tamil Nadu Patta Pass Book Act cannot be countenanced.

15. The plaintiff's counsel further contended that in the suit in O.S.No.88 of 2000, the Court has held that the cancellation of patta by the defendants has become *non est* in the eyes of law and therefore, the proceedings of the second defendant cancelling the patta in his favour cannot be upheld and hence, the plaintiff has come forward with the present suit. If that be so, it has not been explained by the plaintiff as to why he had not sought for necessary relief in O.S.No.88 of 2000 and what is the need for him to institute the present suit. Further, if according to the plaintiffs, the defendants have not complied with the judgement and decree of the Court, which had been passed in O.S.No.88 of 2000, then why he has not initiated necessary action against the defendants available to him under law for due compliance. On the other hand, as pointed out above, the plaintiff having admitted that the defendants have cancelled the patta after due enquiry and when it has also been admitted by the plaintiff

that he has preferred appeal before the appropriate authority against the cancellation of patta and when it has not been explained by the plaintiff, as to how, he could lay the suit for the relief of mandatory injunction against the defendants without exhausting the remedies available to him under law vis-a-vis cancellation of the patta, it could be seen that as rightly found by the Courts below, the plaintiff has no cause of action to institute the present suit and in such circumstances, it could be seen that the plaintiff has failed to establish that he is legally entitled to seek the relief sought for in the present suit. The authority cited by the plaintiff counsel reported in **2004 (3) CTC 270 (The Executive Officer, Kadathur Town Panchayat, Harur Taluk, Dharmapuri District Vs. V.Swaminathan and others)** is taken into consideration and the principles of law adumbrated in the above said decision as applicable to the facts and circumstances of the present case, are followed.

In conclusion, I do not find any substantial questions of law is involved in this second appeal and accordingly, the second appeal is dismissed as devoid of merits. No costs.

02.11.2016

Index : Yes/No

Internet: Yes/No

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T.RAVINDRAN,J.

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Pre-delivery order in
S. A.No. 176 of 2011

02.11.2016

Pre -delivery judgment
in S. A.No. 176 of 2011

To

The Hon'ble Mr.Justice T.Ravindran

Respectfully submitted
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(P.A.to the Hon'ble Judges)

