

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.11.2016
PRONOUNCED ON : 22.11.2016

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A.No.318 of 2011
and
M.P.No.1 of 2011

Thaiyanayaki Ammal ... Appellant/Plaintiff

Vs.

Ramachandran ... Respondent/Defendant

Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 22.07.2010 made in A.S.No.92 of 2005 on the file of the learned II Additional Sub-Ordinate Judge, Villupuram, confirming the judgment and decree dated 05.04.2005 made in O.S.No.436 of 2003 on the file of Learned District Munsif, Villupuram.

For Appellant : Mr.P.Dinesh Kumar

For Respondent : M/s.R.Meenal

JUDGMENT

Challenge in this second appeal is made by the plaintiff against the judgment and decree dated 22.07.2010 made in A.S.No.92 of 2005 on the file of the II Additional Subordinate Court, Villupuram, confirming the judgment and decree dated 05.04.2005 made in O.S.No.436 of 2003 on the file of the District Munsif Court, Villupuram.

2. The suit has been laid for Declaration and Permanent Injunction.

3. The case of the plaintiff, in brief, is as follows:

The suit property is the ancestral property of the plaintiff's husband and the plaintiff and her husband are residing in the suit property. Natham Patta has also been granted by the Thasildar in the name of the plaintiff's husband. The plaintiff's father-in-law sold a portion and retained the suit property and considering the possession and enjoyment of the suit property by the plaintiff's husband, patta has been

granted and for more than 30 years, the plaintiff's husband and the plaintiff are enjoying the suit property by paying Kist etc.,. Thereby, on account of their uninterrupted long possession and enjoyment of the suit property, asserting title over the statutory period to the knowledge of every one including the defendant the plaintiff has prescribed title to the suit property by adverse possession also. The plaintiff's husband executed a settlement deed dated 24.12.2001 in respect of the suit property in favour of the plaintiff and pursuant to the same also, the plaintiff has been in possession and enjoyment of the suit property. The plaintiff and her husband had constructed house, thatched shed with garden in the suit property. Gokilambal, the mother of the defendant, purchased the property to the east of the suit property from the plaintiff's husband and father-in-law on 03.12.1950 and boundary recital in the sale deed also clearly depict the same. The suit property was retained by the plaintiff's father-in-law and the remaining property was sold to the defendant's mother. While so, in order to grab the suit property, the defendant attempted to interfere with the plaintiff's possession and enjoyment and hence, the suit.

4. The case of the defendant, in brief, is as follows:

The suit is not maintainable either in law or on facts. It is false to state that the suit property is the ancestral property of the plaintiff's husband Krishnamoorthy and that, the Special Thasildar had granted Natham patta in respect of the suit property in favour of the plaintiff's husband. The Special Thasildar has no right to issue any patta in respect of the suit property and the same is not valid in law. It is false to state that the plaintiff's husband and the plaintiff had been in possession and enjoyment of the suit property for more than 30 years by putting up house, thatched shed and garden and enjoying the same for more than statutory period and thereby, prescribed title to the suit property by adverse possession also. It is false to state that the defendant attempted to interfere with the possession and enjoyment of the suit property. The defendant's mother Gokilambal and one Subbaraya Gounder, a Pangali of the defendant purchased on eastern side an extent of 115' east-west and north-south 165', which is situated on the west of survey No.318 under the sale deed dated 28.06.1939 executed by Pappalammal and been in possession and enjoyment of the same. Gokilambal, further purchased an extent of 10 ' east-west, further on the west of the above said property and thus, Gokilambal is entitled to an extent of 125' east-west on the west of survey No.318 and the said property was succeeded exclusively by the defendant, after the death of Gokilambal since Subbaraya Gounder left without any heirs. The plaintiff's husband Krishnamoorthy is the son of the defendant's sister and therefore, Krishnamoorthy was permitted to reside in the

thatched house belonging to the defendant and it appears that Krishnamoorthy had fraudulently obtained the patta and is falsely claiming right to the suit property. Neither the plaintiff nor her husband had right over the suit property and never been in possession and enjoyment of the suit property as full owner thereof at any point of time. The suit is not maintainable and liable to be dismissed.

5. In support of the plaintiff's case, PWs1 to 3 were examined and Exs.A1 to 14 were marked. On the side of the defendant, DW1 was examined and Ex.B1 was 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. The first appeal preferred by the plaintiff also failed. Now, the plaintiff has preferred this second appeal, challenging the judgments of the Courts below.

7. The second appeal was admitted and the following substantial questions of law are formulated for consideration in this second appeal.

(i) When it is settled in law that in absence of any title documents for the ancestral properties, the entry in the revenue records shall be presumed as piece of evidence of title, still are the Courts below right in dismissing the suit on the ground that the revenue records do not confer title over the suit properties?

(ii) When it has been settled by this Hon'ble Court in its catena of judgments that the plea of title and adverse possession can go together, still are the Courts below right in dismissing the plea of adverse possession as the plaintiff pleaded title?

8. The plaintiff lays claim to the suit property on the basis of the settlement deed said to have been executed in her favour by her husband in respect of the suit property and the said settlement has been marked as Ex.A1. According to the plaintiff, the suit property is the ancestral property of her husband Krishnamoorthy. Further, according to the plaintiff, UDR patta has been granted in her favour in respect of the suit property and accordingly, the plaintiff's husband and the plaintiff had put up house construction, thatched shed and also laid garden in the suit property and enjoying the same for more than the statutory period continuously to the knowledge of everyone including the defendant and others and thus, according to the plaintiff, she has also perfected her title to the suit

property by adverse possession. According to the plaintiff, inasmuch as the defendant without any valid claim or right interfered in her possession and enjoyment of the suit property unlawfully, she has been constrained to institute the suit for necessary reliefs.

9. Per contra, the case of the defendant is that the plaintiff has no title, right, possession and enjoyment over the suit property in any manner. It is further contended that the plaintiff's husband has also, no title to the suit property and never been in possession and enjoyment of the same, at any point of time, as full owner thereof and therefore, the settlement deed Ex.A1 would not confer any title to the suit property on the plaintiff. Further, according to the defendant, UDR patta alleged to have been obtained by the plaintiff is invalid in law and the Thasildar is not entitled to issue patta in favour of the plaintiff in respect of the suit property. Further, according to the defendant, it is only, he, who has been in possession and enjoyment of the suit property for a long time and according to him, his mother and one Subbaraya Gounder, his pangali, had purchased certain portion in the suit survey number and to the west of survey No.318 under the sale deed dated 28.06.1939 executed by Pappalammal and further, his mother had purchased another extent from the plaintiff's father-in-law and thus, according to the defendant, his mother and thereafter, the defendant had been in possession and enjoyment of an extent of 125' east-west to the west of survey No.318 and the plaintiff's husband, who is the son of the defendant's sister, was permitted to reside in the thatched house belonging to the defendant and it appears that the plaintiff's husband fraudulently obtained the patta in respect of the suit property and therefore, according to the defendant, neither the plaintiff's husband nor the plaintiff could lay any claim over the suit property and hence, the suit is liable to be dismissed.

10. Inasmuch as the defendant has vehemently denied the plaintiff's title, right or claim over the suit property and also, pleaded that neither the plaintiff's husband nor the plaintiff had been in possession and enjoyment of the suit property at any point of time as full owner thereof, it is clear that the onus of proving that the plaintiff's husband had a valid title over the suit property squarely rests upon the plaintiff. As adverted to earlier, the plaintiff claim title to the suit property based upon the settlement deed Ex.A1 executed in her favour by her husband. When according to the defendant, the plaintiff's husband has no authority under law to execute the settlement deed in respect of the suit property in favour of the plaintiff, the plaintiff has to discharge the onus that her husband had the legal authority to execute the settlement deed Ex.A1.

11. According to the plaintiff, the suit property is the ancestral property of her husband. However, with reference to the above claim of the plaintiff nil material is forthcoming. To establish that the plaintiff's husband owned the suit property ancestrally, the boundary recitals found in Ex.A14 seems to have been very much relied upon by the plaintiff (i.e) the sale deed executed by the plaintiff's father-in-law to the defendant's mother. In the said sale deed, it is mentioned as to the east of the vendor's property and therefore based upon the above said boundary recital, it is argued that the plaintiff's father-in-law had retained the suit property and only alienated the other portion to the defendant's mother Gokilambal under Ex.A4. However, on that boundary recital alone, it cannot be construed that the plaintiff's father-in-law or the plaintiff's husband had retained the suit property as described in the plaint schedule.

12. With reference to the above case of the plaintiff, the oral and documentary evidence adduced on her behalf are not satisfactory as found by the Courts below. In this connection, the plaintiff examined as PW1, during cross examination, has admitted that she does not know as to what is the extent of the property owned by her father-in-law in the suit survey number and to the west of the suit property one Mani's property is located and he is in enjoyment of an extent of 24' and there is a lane in between Mani's property and the suit property and the defendant has purchased certain portion of land on eastern side and her father-in-law had given 60' to the west of the property of Pappalammal and the defendant had purchased the property from Pappalammal and her father-in-law had sold only the property to the west of the above said property of Pappalammal. Further, the plaintiff's husband, examined as PW2, during cross examination has also testified that he does not know about the sale deed executed by his father in favour of Gokilambal and his father had alienated only 10' to the west of the property (115') purchased by Gokilambal under the sale deed and he does not know whether in Ex.A14 sale deed, only 1/6th of the common portion had been mentioned and there is no record to show as to how much his father was entitled in the suit survey number. Similarly, PW3 examined on the side of the plaintiff has also pleaded ignorance about the extent of land owned and enjoyed by the plaintiff's predecessor in title or the defendant. A cumulative reading of the above evidence tendered by PWs1 to 3 would, as rightly found by the Courts below, go to show that none is able to speak about the extent of the property actually owned and enjoyed by the plaintiff's father-in-law in the suit survey number. When such being the position, to contend that the plaintiff's father-in-law had retained the suit property and sold only the remaining portion by placing sole reliance upon the boundary recital Ex.A14 cannot be accepted in any manner.

Therefore, it could be seen that the reliance placed upon by the plaintiff in the boundary recital found in Ex.A14 by itself would not be sufficient to uphold the title of the plaintiff over the suit property. As regards the above aspect of the case, both the courts below have correctly appreciated the evidence in the right perspective and accordingly, negated the plaintiff's contention to lay claim over the suit property.

13. It is argued by the plaintiff's counsel that the Courts below have erred in not placing reliance upon the revenue records placed by the plaintiff, to establish her title and according to him, the suit property being the ancestral property of the plaintiff's husband and as no document could be expected to prove the ancestral character of the property and accordingly, the suit property being a Grama Natham, the Revenue records placed by the plaintiff would be sufficient to sustain the plaintiff's claim and therefore, according to him, the Courts below have erred in rejecting the revenue records and declining the relief sought for by the plaintiff. In this connection, the plaintiff's counsel placed reliance upon the decisions reported in 2011 (1) MWN (Civil) 712 (Nachammal and another V. S.Murugesan) and 2013 (1) MWN (Civil) 81 (Vadivelu and three others V. Natesan and seven others), In the above said decisions, it has been held that for an occupied Grama Natham, the occupier and his successor in title become owners of the land and on that basis, the case was proceed that in such cases, the reliance could be placed on the revenue records. However, in so far as the present case is concerned, though the plaintiff claims that she has been granted the UDR Patta under Grama Natham survey, the same has been vehemently disputed by the defendant. According to the defendant, the suit property is not the ancestral property of the plaintiff's husband and the Special Thasildar for Natham land tax scheme has no right to issue any patta and the patta alleged to have been issued in favour of the plaintiff's husband in respect of the suit property is invalid in law. Further, the defendant has also taken a plea that misusing the permissive possession given by the defendant, the plaintiff's husband had fraudulently obtained patta and therefore, on the basis of the patta, neither the plaintiff's husband nor the plaintiff can be conferred any title in respect of the suit property. Even in the light of the above stark defence set forth by the defendant, it could be seen that the plaintiff has not endeavoured to establish that the suit property is the ancestral property and that the suit property comes under the classification "occupied Grama Natham" and that the patta has been granted in her favour or in favour of her husband lawfully after issuing notice to all concerned. Further, other than marking Ex.A2 patta, no other material has been placed by the plaintiff to show that the patta Ex.A2 has been lawfully issued in her favour. When Ex.A2 patta has been

seriously disputed and when there is nothing on record to show that it has been lawfully issued and when according to the defendant, the Special Thasildar in Natham Survey is not competent to issue such patta, it could be seen that in the absence of proof with reference to the validity of the Ex.A2 patta as rightly found by the Courts below, no safe credence could be attached to the same and also the kist receipt paid by the plaintiff to uphold the plaintiff's claim of title in respect of the suit property. Therefore, no exception could be taken to the findings of the courts below that the plaintiff cannot be granted the relief of title in respect of the suit property based on the revenue records projected by her.

14. The plaintiff has alleged that the suit property belongs to her husband ancestrally and that she is claiming title to the suit property under the settlement deed Ex.A1 executed by her husband in her favour. Further, she has also taken a plea that on account of her continuous and long enjoyment of the suit property, without any interruption, asserting title, to the knowledge of everyone including the defendant she has also perfected her title to the suit property by way of adverse possession. No doubt, the courts below have commented that the plaintiff is not entitled to take inconsistent pleas. However, to substantiate that the plaintiff is entitled to take inconsistent pleas i.e. claim both under the regular title as well as under the plea of adverse possession reliance was placed upon the decision reported in 2005 (3) CTC 292 (Pappayammal V. Palanisamy and others). No doubt, in the above said decision, it has been held that there is no bar for making alternative pleas and in case, where a person set up title in himself and fails to substantiate the same, alternatively, such a person can claim adverse possession.

15. Even though, the courts below have commented that the plaintiff is not competent to take inconsistent pleas, however, dealt on the question of her plea of adverse possession in detail on the basis of the evidence adduced by her and found that she has not established her plea of adverse possession. The defendant has taken a plea that the plaintiff's husband was given permission to occupy the house in the suit property and taking advantage of the same, misusing his possession, he had fraudulently obtained patta in his name. As adverted to earlier, the patta document relied upon by the plaintiff cannot be the basis for upholding the plaintiff title on its own. Now the plaintiff, in the alternative, has also laid claim over the suit property by way of adverse possession. Therefore, it could be seen that indirectly, the plaintiff has admitted the title of the defendant in respect of the suit property. Therefore, the question now remains is whether the plaintiff has established her plea of adverse possession. Other than marking some kist

receipt and electricity bills, house tax receipt as Exs.A4 to 12, the plaintiff has not placed any other material to show that she has been in continuous and long possession and enjoyment of the suit property without any interruption and also exhibiting hostile attitude towards one and all including the real owner viz., the defendant beyond the statutory period. The above documents of its own, in my considered opinion, would not be sufficient, as also found by the Courts below, to uphold the plea of adverse possession set up by the plaintiff. Therefore, nothing could be faulted in the approach of the courts below in negating the plea of adverse possession set up by the plaintiff. It could be seen that courts below have rightly appreciated the evidence on record in the correct manner and on an analysis of the same, has negated the plea of adverse possession set up by the plaintiff. No warrant is made out to interfere with the above findings of the courts below.

16. Further, as regards the findings of the courts below negating the plea of adverse possession projected by the plaintiff, when no ground is made out to interfere with the above said concurrent findings of the Courts below and when the plaintiff has also not made out that the approach of the Courts below to reach the above finding on the plea of adverse possession is erroneous in law, it could be seen that the same would not constitute a question of law to be adjudicated in the second appeal and the same would only constitute a question of fact and this could be seen from the decision reported in 2016 (5) CTC 862 (Syeda Rahimunnisa V. Malan Bi by L.Rs.and ors). On the above ground alone, it could be seen that the second appeal is not to be entertained on the plea of adverse possession, now sought to be projected by the plaintiff. With regard to the plea of adverse possession, the plaintiff's counsel has also placed reliance upon the decision reported in 2005-2-L.W.470 (N.S.Spance V. D.s.Kanagarajan and another).

In the light of the above discussions, it could be seen that the plaintiff has failed to establish that substantial questions of law are involved in this second appeal. Further, the substantial questions of law formulated in the second appeal are answered against the appellant/plaintiff and in favour of the defendant/respondent. Resultantly, the second appeal is found to be devoid of merits and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

sms

To

1. The II Additional Sub-Ordinate Judge,
Villupuram.
2. The District Munsif,
Villupuram.

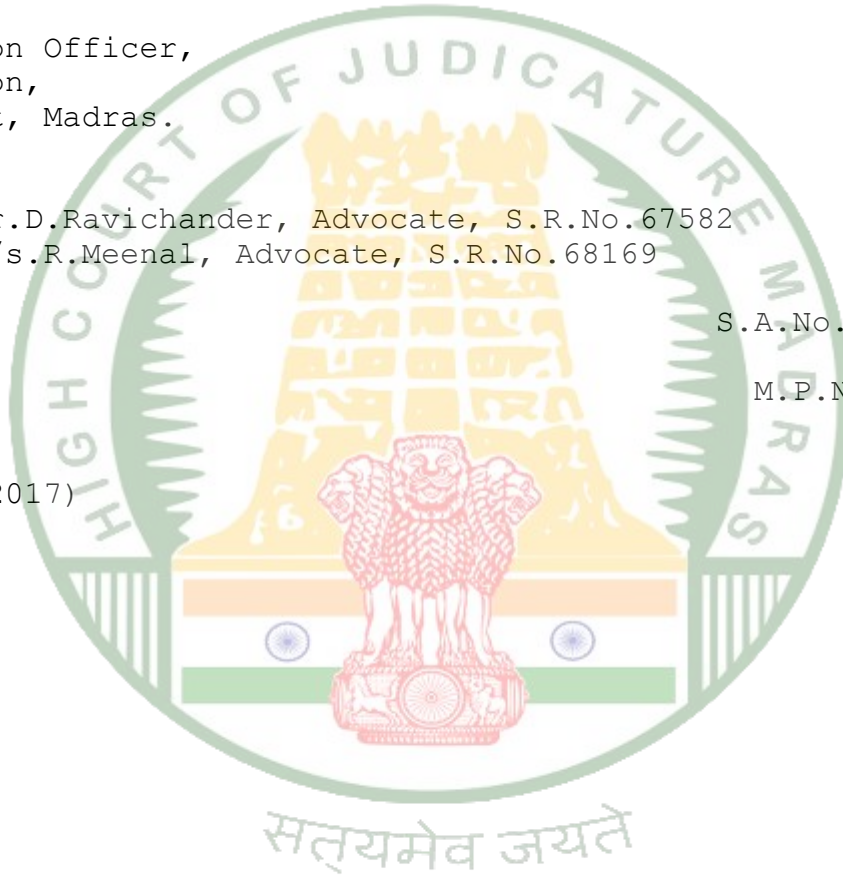
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+lcc to Mr.D.Ravichander, Advocate, S.R.No.67582
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