

In the High Court of Judicature at Madras

Dated: 24.06.2016

Coram

The Honourable Mr.JUSTICE K.RAVICHANDRABAABU

Second Appeal No.511 of 2016

and C.M.P.No.9046 of 2016

1. Muniammal
2. Vasantha
3. Nagaraj
4. Somu
5. Minor.Vijayalakshmi
Daughter of Late Chandrasekaran
rep. by mother and guardian
Is appellant, Ms.Muniammal Appellants/Plaintiffs
2-6

Vs.

1. Elumalai Naicker
2. Selvraj
3. Balakrishnan
4. Govindaraja Naicker Respondents/Defendants

Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree in A.S.No.114 of 2006 dated 26.10.2015 on the file of the learned Principal Subordinate Judge, Chengalpattu reversing the judgment and decree dated 9.8.2006 in O.S.No.270 of 1997 on the file of the learned District Munsif, Chengalpattu.

For Appellant : R.Selvakumar

J U D G M E N T

The plaintiffs in the suit for declaration and permanent injunction are the appellants. They succeeded before the trial Court, however, lost in the appeal filed by the respondents/defendants before the lower Appellate Court.

2. Heard learned counsel appearing for the appellant and perused the materials placed before this Court.

3. It is the admitted case of the plaintiffs that the suit property measuring an extent of 4 acres and 39 cents is the

Government promoboke land and however, they have been granted patta to the said property by the revenue officials. Thus, they filed the above suit against the defendants by claiming that the defendants sought to interfere with their possession and enjoyment of the suit property without having any right or claim over the same. The defendants contested the suit by specifically stating that the suit property is the communal promboke land and the same has been used by the villagers of Kayar village for cremation and burial of the dead bodies and also used as the grazing ground for the cattle from time immemorial. It is thus, contended by the defendants that the suit filed for declaration of title and injunction is bad for non-joinder of necessary parties, as the revenue officials were not made as parties/defendants in the said suit.

4. During the pendency of the suit, the trial Court appointed an Advocate Commissioner, who in turn inspected the suit property and filed a report. It is the specific finding of the Advocate Commissioner in his report, as could be seen from the judgment of the trial Court itself that in some of the places of the suit property signs relating to the burial of the dead bodies were found. It is seen that the plaintiffs have filed only certified copies of the patta said to have been granted by the revenue officials in respect of the suit property to claim over the same. It is their specific case that the suit property originally belonged to the government as promboke land was reclassified and thereafter, patta was granted in favour of the plaintiffs. However, except marking the certified copies of those pattas said to have been given in favour of the plaintiffs, no documents were filed showing reclassification of the land. However, the trial Court decreed the suit by entirely shifting the burden on the defendants to disprove the case of the plaintiffs by holding that once the plaintiffs have marked certain documents, which according to the trial Court are valid, it is for the defendants to disprove the same by summoning the revenue officials.

5. Challenging the said judgment and decree, the defendants filed an appeal. The lower appellate Court allowed the appeal by pointing out that the plaintiffs failed to produce any valid order/patta proceedings passed by the Revenue Officials and that only certified xerox copies of the documents were filed and that the alleged proceedings referable to the re-classification was not produced before the Court for its perusal and that none of the revenue officials have been summoned and examined. The lower Appellate Court has also taken note of the fact that the suit property is the burial ground for the use of the people of the particular village.

6. Challenging the said decision of the lower appellate Court, the plaintiffs are before this Court by way of filing this

Second Appeal.

7. Learned counsel appearing for the appellants submitted that since it is a reversing finding, this Court can entertain the Second Appeal and consider the same on merits, after issuing notice to the other side. He further contended that when the plaintiffs have marked the certified copies of patta granted by the revenue officials, the lower appellate Court is not justified in dismissing the suit merely because the plaintiffs have not marked the proceedings referable to the re-classification/conversion of the land. He further contended that even assuming without admitting that the plaintiffs have not established the title to the property in a manner known to law, the lower appellate Court ought to have at least confirmed the judgment and decree of the trial court insofar as the injunction relief is concerned as they are in possession and enjoyment of the suit properties for a long number of years.

8. I have given my careful consideration to the submissions made by the learned counsel for the appellant and perused the judgments rendered by both the Courts below.

9. No doubt, it is true that this appeal is filed challenging the reversing judgment and decree of the lower appellate Court. However, it is to be noted that such reversing findings itself cannot be a ground to entertain the Second Appeal unless certain substantial question of law does exist in the case for entertaining the Second Appeal based on such findings of the appellate Court. The scope under Section 100 C.P.C. has been spoken to on many occasions by this Court and the Honourable Supreme Court and therefore, the well settled principles need not be reiterated once again except to state that existence of a substantial question of law is sine qua non for entertaining the Second Appeal even though the same arises out of a reversing judgment. At this juncture, I would like to point out that the existence of substantial question of law as required under Section 100 C.P.C. should mean that such question of law so framed is the resultant of the prima facie satisfaction of this Court that the same, if answered later in affirmative, would ultimately favour the appellant. In other words, only when this Court is prima facie satisfied that a substantial question of law which exists in a given case is in favour of the appellant, if the same is answered in affirmative at a later stage after notice to the other side, the same can be framed for entertaining the Appeal. Therefore, not all questions of law which arise out of the facts and circumstances of the case would automatically entitle the entertainment of the Second Appeal and on the other hand, as already stated supra, only those questions of law which also should be substantial one and are prima facie in favour of the appellant, if answered in affirmative later, could be framed for entertaining the appeal.

10. Keeping this principle in mind and also considering the fact that the matter is listed before me for admission, let me consider as to whether any substantial question of law exists in this case, based on the facts and circumstances of the case and the decisions rendered by both the Courts below.

11. First of all, it is to be noted that the suit is the one for declaration of title of the plaintiffs to the suit property and for permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the same. Thus, when it is not a simple suit for bare injunction against the defendants and on the other hand, the title to the property is also claimed by the plaintiffs as a matter of right based on the documents filed by them, it is to be seen as to whether the plaintiffs have made the proper parties to the proceedings as defendants, when it is their admitted case that the suit property was originally a promboke land and subsequently, converted or re-classified and thereafter, they were granted patta for those lands by the revenue officials. Therefore, it goes without saying that those revenue officials are not only proper parties and also necessary parties to the proceedings in order to establish the title of the plaintiffs to the suit properties. Admittedly, those revenue officials were not made as parties/defendants in the suit and on the other hand, private parties viz., respondents herein alone were made as party defendants. The contention of the defendants is that the suit property is used by the villagers as burial ground and also as grazing lands for the cattle from time immemorial. Their contention is supported by the report of the Advocate Commissioner, who inspected the suit property, as found by the trial Court itself. When the Advocate Commissioner has specifically pointed out that there are signs showing burial of dead bodies in the suit property, I fail to understand as to how the trial Court decreed the suit even without going into the question as to whether the suit is bad for non-joinder of necessary parties, especially, when the defendants have raised such an objection.

12. The next question that would arise is as to whether the grant of patta in respect of burial ground is proper and as to whether the plaintiffs can claim title over the suit property based on such patta. It is well settled that patta is not a document of title. The revenue officials grant patta to certain properties under different circumstances and categories and therefore, each case has to be considered and decided based on the actual factual matrix of that case certainly in the presence of those revenue officials. Unless the revenue officials are made as parties and relevant documents are filed before the Court, granting a decree for declaration as has been done by the trial court in this case is not proper. It is also pointed by

the lower appellate Court that the plaintiffs have marked only the certified copies of the document namely, the so called patta granted by the revenue officials without examining any of the officials as witness. It is also found that the proceedings for conversion of the land said to have been issued by the revenue officials was also not marked before the Court. When that being the case, I fail to understand as to how the trial Court has shifted the burden on the defendants to disprove the case of the plaintiffs, when the plaintiffs themselves have miserably failed to add the proper and necessary parties to the suit viz., revenue officials as defendants and not marked the relevant documents which are necessary for considering the relief of declaration. Therefore, I find that the lower Appellate Court has rightly dismissed the suit by allowing the appeal filed by the defendants, with which, I find no infirmity or irregularity. Consequently, based on the above stated facts and circumstances, I do not find any substantial questions of law that arises for consideration in this appeal. Accordingly, the Second Appeal fails and the same is dismissed even at the admission stage. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

vsi
To

1. The Principal Subordinate Judge,
Chengalpattu

2. The District Munsif,
Chengalpattu.

+1 cc to Mr.R.Selvakumar Advocate sr.35720

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