



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.08.2016

Coram:

THE HONOURABLE MS.JUSTICE R.MALA

S.A(MD)No.541 of 2016

and

C.M.P.(MD)No.6958 of 2016

1.Mallika

2.Sumathi

.. Appellants/Appellants/Defendants 5 & 6

vs.

1.Mariammal

.. Respondent/Respondent/Plaintiff

2.The District Collector,
Kokkirakulam,
Palayamkottai,
Tirunelveli District.

3.The Special Tahsildar,
Adi-Dravidar Welfare,
Cheranmahadevi,
Ambasamudram Taluk,
Tirunelveli District.

4.The Assistant Commissioner,
Land Reforms, Palayamkottai,
Tirunelveli.

5.Chandran

6.Parvathi

7.Indira

8.Sumathi

9.Devaki

10.Pandaram

... Respondents/Respondents/Defendants

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the Decree and Judgment passed in A.S.No.27 of 2008, dated 22.09.2010, on the file of the Subordinate Judge, ~~Cheranmahadevi~~ set aside the decree and judgment passed in O.S.No.82 of 2004, dated 05.12.2007 on the file of the District Munsif Court, Cheranmahadevi.



For Appellants : Mr.T.Selvakumaran
For 1st Respondent : Mr.S.S.Thesigan
For Respondents 2 to 4: Mr.R.Velmurugan,
Government Advocate

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JUDGMENT

The defendants 5 and 6, who lost the legal battle in both the Courts, have come forward with the Second Appeal, challenging the Decree and Judgment passed in A.S.No.27 of 2008, dated 22.09.2010, on the file of the Subordinate Judge, Ambasamudram, set aside the decree and judgment passed in O.S.No.82 of 2004, dated 05.12.2007 on the file of the District Munsif Court, Cheranmahadevi.

2. Heard the learned counsel for the appellants and perused the materials available on record.

3. The first respondent Mariammal as plaintiff filed the suit in O.S.No.82 of 2004 for declaration of title to the suit property in pursuance of the assignment given to the plaintiff's father and also restraining the defendants 4 to 10 to interfere her possession and enjoyment of the same stating that on 18.01.1993, the plaintiff's father Arumugam has received the assignment in respect of the suit property and also other properties. While obtaining assignment, this plaintiff/first respondent was assigned as nominee. There was a mutation of revenue records. The plaintiff's father died on 01.05.1998 leaving behind his wife Santhanam and his two daughters viz., Mailammal and the plaintiff Mariammal. From the date of assignment till his death, Arumugam was enjoying the property as owner. Now the Special Tahsildar, Adi-Dravida Welfare has attempted to acquire the property. Immediately, the plaintiff gave an objection. The defendants 4 to 10 have no right over the property. Now they are attempting to obtain a loan from Ambasamudram Co-operative Bank and made a construction. The 11th defendant is her cousin sister. The plaintiff has permitted her to take possession of 2 cents and made a construction. Since the defendants 4 to 10 have attempted to interfere her possession, denying her title, she is constrained to file the suit for declaration and injunction.

4. Resisting the same, the defendants 2, 4, 5 have filed a detailed written statement by stating that at the instigation of one Mahendran, S/o Subbiah, the present suit has been filed. The property has been acquired by the Harijan Welfare Department and patta has been issued in favour of the defendants 4 to 10. They are in possession and enjoyment of the same. Because of the <https://hccivilsuits.com/hccivilsuits> are unable to finish their construction. The Court fee has not been properly paid. The civil Court has no jurisdiction. Hence, they prayed for dismissal of the suit.



5. The trial Court, after considering the averments in the plaint and written statement, framed issues and decreed the suit. Against which, the defendants 4, 5 and 6 preferred an appeal in A.S.No.27 of 2008 and the appeal also dismissed. Against which, the present Second Appeal has been preferred by the defendants 5 and 6.

6. The learned Counsel for the appellants would submit that both the Courts below have not considered the fact that the property has been acquired by the Government for Adi-Dravida Welfare scheme and patta has been assigned in favour of the defendants 4 to 10 and that factum was not considered by both the Courts below. Hence he has substantial questions of law to be decided in this Second Appeal.

7. Considering the arguments made by the learned Counsel for the appellants and on perusal of typed set of papers, it would show that the the defendants have not filed any scrap of paper to show that the property has been acquired by the Adi-Dravida Welfare scheme. But they filed only a patta. Even though the District Collector and the Special Tahsildar have been impleaded as D.1 and D.2 they have not filed any separate written statement and the defendants have not filed any scrap of paper to show that the property has been acquired for the Adi-Dravida Welfare scheme for giving house site to Adi-Dravida people by the second defendant. Neither the appellants send for the documents nor summon the second defendant to depose the evidence before the Court to show that the suit property was acquired for providing house site for Adi-Dravida Welfare Scheme.

8. Per contra, the property has been given to the plaintiff's father on 18.01.1993 as per the assignment and on that basis they are in possession. The trial Court has rightly held that there is no evidence to show that Ex.A.1 has been cancelled, because the assignment has been given on 18.01.1993. The patta alleged to be given to the defendants under Exs.B.1, B.4 and B.7 have been issued on 01.12.1995. On that basis the trial Court has rightly held that the plaintiff has proved that the property has been allotted to her father and he was in possession till his death. That factum was also rightly considered by the first appellate Court, after framing necessary points for consideration.

9. The defendants have filed only the assignment order and they have not filed any relevant document to prove that the suit property has been acquired for Adi-Dravida Welfare Scheme. In such circumstances, I am of the view that there is no question of law arisen for consideration in this second appeal and the second appeal is liable to be dismissed at the stage of admission.



10. Accordingly, this second appeal is dismissed in the admission stage itself. No costs. Consequently, the connected Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar (CSI)

/True Copy/

Sub-Assistant Registrar

To

1. The Subordinate Judge, Ambasamudram.

2. The District Munsif, Cheranmahadevi.

+One cc to The Special Government Pleader, SR.No.45346

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RL/4C/4P/SKS/RR/3.1.2017

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