

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 28.03.2017

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

SA.No.232/2017

1.Murugan.
2.Annamalai.
3.Govindhan.
4.Arunachalam ..Appellants /Plaintiffs

Versus

1.Bhuvaneswari
2.The District Collector,
Villupuram.
3.The Revenue Divisional Officer,
Kallakurichi.
4.The Tahsildar,
Kallakurichi. ..Respondents /Defendants

Prayer: Second Appeal filed under section 100 of the Code of Civil Procedure against the judgment and decree dated 15.03.2016 made in A.S.No.14 of 2015 on the file of Subordinate Judge, Kallakurichi, confirming the judgment and decree dated 02.02.2015 passed in O.S.No.15 of 2011 on the file of II Additional District Munsif's Court at Kallakurichi.

For appellant : Mr.V.Manohar

JUDGMENT

The plaintiffs who lost before the courts below are the appellants herein. The appellants / plaintiffs filed the suit in OS.No.15/2011 on the file of the Court of II Additional District Court at Kallakurichi, against the respondents/defendants, praying for permanent injunction

restraining the defendants 2 to 4 in transferring patta in favour of the 1st respondent / 1st defendant, in respect of suit properties numbering 11 and also for the cost of the suit.

2 It is a case of the plaintiff that the suit properties have been purchased out of a joint earning of one Thirunathapillai and Plaintiffs and while effecting purchase, it was made in the name of then minor son of the Thirunatha pillai, namely Sakthivel, who was born to him through his second wife. It is further averred by the plaintiffs in the oral partition effected during the year 2005, the suit properties were allotted to Thirunatha pillai and Sakthivel and Sakthivel was allotted with Sakthi Motor business at the Thiyagadurgam Road and also given paddy harvesting machinery which was purchased by mortgaging the suit properties in a Nationalised Bank. The loan amount is discharged by the plaintiffs. Sakthivel died in the year 2008 and after his demise, the father of the plaintiff viz., Thirunatha pillai had settled the suit properties in favour of the plaintiffs by a registered settlement deed dated 12.03.2009 (Ex-A1). Pursuant to the execution of said document, they are in possession and enjoyment of suit properties. The 1st defendant who is the wife of the deceased Sakthivel, though allotted with Sakthi Motor business as well as handed over the paddy harvesting machinery, not satisfied with the same, started meddling in the affairs of the plaintiffs and with an intention to grab the properties illegally, is taking urgent steps to transfer the patta in her name and therefore came forward to file the suit.

3 The 1st defendant filed a written statement, denying the averments made in the plaintiff and would contend that the suit properties are the absolute properties of her husband late Sakthivel and Sale deed dated 04.05.1994(Ex-B1) also confirm the said fact and right from the date of purchase, he alone was in possession and enjoyment of the same and after his demise on 23.06.2008, the 1st defendant and her mother-in-law viz., Pazhaniammal, alone are entitled to suit properties and apart from that, in respect of other properties left by late Thirunatha pillai, the 1st defendant and her mother-in-law are entitled to 1/6th share each and would further

stated that the registered alleged settlement deed dated 12.03.2009 (Ex-A1) has been brought forth in a collusive and unlawful manner and prayed for dismissal of the suit.

4 The 4th defendant has filed the written statement which was adopted by 2nd and 3rd defendant and would state that till date no patta transfer has been effected and the enquiry is pending on the application submitted by the 1st defendant and further that the suit against defendants 2 to 4 is not maintainable for want of prior notice under section 80 of the Code of Civil Procedure, 1908 and prays for dismissal of the suit.

5 The Trial Court, on consideration of the pleadings, has framed the following issues:

- i. Whether the plaintiffs are entitled to get permanent injunction as prayed for?
- ii. To what other reliefs the plaintiffs are entitled to?

6 During the course of trial, the 1st plaintiff was examined as PW.1 and Exs.A1 and A2 were marked and on the side of the defendants, the 1st defendant was examined as DW1 and Exs.B1 to B4 were marked.

7 The Trial Court on consideration of pleadings and on appreciation of oral and documentary evidences, had dismissed the suit vide judgment and decree dated 02.02.2015 and aggrieved by the same, the plaintiffs filed an appeal in A.S.No.14 of 2015 on the file of the Court of Sub-ordinate Judge, Kallakurichi.

8 The Lower Appellate Court, taking into consideration the Memorandum of grounds and other materials, had formulated the following point for determination:

- i. Whether the appeal is to be allowed?

9 The Lower Appellate Court on consideration of materials placed before it, found that the suit is not maintainable in view of the prohibition contained in section 14 of the Tamilnadu Patta Pass Book Act and also noted that as on the date of filing of the suit, the Patta stands in the name of deceased Sakthivel and the 1st

defendant being his wife, as approached the revenue authorities for transfer of patta in her name and also in the name of her mother-in-law and if at all the plaintiffs want to sustain their claim, they should have filed a suit for declaration to declare their right and on the basis of such declaration, they should have sought for other consequential benefits. Admittedly they have not done so. The Lower Appellate Court further found that by way of decree for permanent injunction, the officials cannot be restrained from exercising their statutory function and citing the said reasons, has dismissed the appeal suit vide impugned judgment and decree dated 15.03.2016. Challenging the legality of the same, the plaintiffs had filed the present Second Appeal.

10 In the Memorandum of grounds of Second Appeal, the following substantial questions of laws are raised by the appellants / plaintiffs:

a. Whether section 14 of Patta passbook Act is a complete bar to file any suit against the revenue authorities even when the aggrieved person is in possession of the property and also when his right to title of the property is in danger of being denied?

b. Whether the present suit squarely falls under the ambit of law of Injunctions rather than under the Patta Passbook act, as it is merely a bare injunction suit?

c. Whether the learned judges committed error or not in deviating from the scope of the suit prayer?

11 The learned counsel appearing for appellants/plaintiffs would contended that the Trial as well as the Lower Appellate Courts, by mis-construing the proviso viz., section 14 of Tamilnadu Patta Passbook Act, has held the suit is not maintainable and would further contend that in the facts and circumstances, the suit for permanent injunction restraining the defendants from transferring patta in the name of 1st defendant is perfectly maintainable and in support of his submission has placed reliance upon the order dated 07.01.2011 made in C.R.P. (PD) No.1638 of 2010- (Rayathal (died) and 5 others Vs. Periya Kannu and 8 others).

12 This Court paid its best attention to the submissions made by the learned counsel appearing for the appellants/plaintiffs and also perused the impugned judgments and decrees rendered by the Courts below.

13 Admittedly, the patta stands in the name of deceased Sakthivel - husband of the 1st defendant and by submitting an application, the 1st defendant as well as her mother-in-law seek for transfer of Patta in their names. The order in C.R.P. (PD) No.1638 of 2010 (cited supra) relied on by the learned counsel for appellants/plaintiffs, laid down the proposition that in the light of Chapter VI of the Specific Relief Act, the plaintiff is entitled to ask for declaration that the order passed by the District Revenue Officer and confirmed by the Commissioner of Land Reforms, Chennai are null and void and that the first relief is maintainable and even in the absence of the 2nd relief, as per the proviso to Section 14 of Patta Passbook act, the court can grant the relief of declaration of title to the suit property in favour of the plaintiff even without setting aside the orders passed by the DRO and the Commissioner of Land Reforms, Chennai. In the considered opinion of the court, the above said decision, actually comes to the aid of the 1st defendant/1st respondent for the reason that as per the proviso to section 14 of the Tamilnadu Patta Passbook Act, if any person is aggrieved as to any right of which he is in possession, by an entry made in the patta pass-book under this Act, he may institute a suit against any person denying or interested to deny his title to such right, for a declaration of his rights under Chapter VI of the Specific Relief Act, 1963 (Central Act 47 of 1963), and the entry in the patta pass-book shall be amended in accordance with any such declaration.

14 Admittedly, the appellants/plaintiffs did not seek for declaration, but merely prayed for a decree for permanent injunction restraining the respondents 2 to 4/defendants 2 to 4 from transferring patta in the name of 1st defendant. It has to be pointed out at this juncture that the concerned official / defendant is exercising a statutory power in lieu of provisions contained in the Tamilnadu patta Passbook act and therefore there cannot be a decree for permanent injunction in restraining official from discharging their statutory functions. Even otherwise, the appellants/plaintiffs did not seek for declaration and

other consequential reliefs. Therefore the Courts below had rightly held that the suit as framed, is not maintainable and findings rendered by the Courts below are concurrent in nature. In the considered opinion of the Court, the legal issue has been rightly answered by it. Therefore, there are no substantial questions of law arise for consideration in the Second Appeal.

15 In the result, the Second Appeal is dismissed at the admission stage itself, confirming the judgment and decree passed by the learned Sub-ordinate Judge, Kallakurichi in AS.No.14/2015 dated 15.03.2016. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1.The Sub Court
Kallakurichi.

2.The II Additional District Munsif
Kallakurichi.

+ 1 cc to Mr.V. Manohar, Advocate Sr.19593

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