

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.07.2017

CORAM :

THE HONOURABLE MR.JUSTICE D. KRISHNAKUMAR

Second Appeal Nos. 408 to 411 of 2017

1. Revathi .. Appellant in SA 408/2017
1. Revathi
2. Saravanan .. Appellant in SA 409/2017
1. Balakrishnan
2. Mohan
3. Siva Alias Sivakumar .. Appellant in SA 410/2017
& SA 411/2017
- vs.
1. Ebinezar .. 1st Respondent in
all the SAs
2. The Tahsildar
Poonamallee Taluk
Ponamallee
Thiruvallur District. .. 2nd Respondent in
SA 408/2017
3. Paulraj
4. Sunder
5. Sagayam .. Respondents 2 to 4
in SA 410/2017
6. Marimuthu .. 5th Respondent
in SA 410/2017 &
2nd Respondent
in SA 411/2017 &

COMMON PRAYER in all SAs: Appeals filed under Section 100 C.P.C., against the Common Judgment and decree dated 06.04.2015 made in A.S.Nos.82 to 85 of 2013 on the file of the Sub Court, Poonamallee confirming the common Judgment and Decree dated 27.08.2013 made in O.S.Nos.499, 175, 296 and 116 of 2007 on the file of the Principal District Munsif, Poonamallee.

For Appellant : Mr.V. Selvaraj
in all SAs

J U D G M E N T

These Second Appeals arise out of the decree and judgement of the Sub Court, Poonamallee in A.S.Nos.82 to 85 of 2013 dated 06.04.2015, which has been passed confirming the common Judgment and Decree dated 27.08.2013 made in O.S.Nos.116, 175, 296 and 499 of 2007 on the file of the Principal District Munsif, Poonamallee.

2. Brief facts of the case are as follows :-

Originally one Muniammal was in possession and enjoyment of her undivided 1/6th undivided share measuring 115 x 75' in S.No.136/2, under settlement deed dated 01.03.1962 executed by her parents. After the demise of said Muniammal, her legal heirs inherited the suit property and appointed one Saravanan as their general Power of Attorney. The said Saravanan had sold and delivered the suit property to Revathi (appellant in S.A.Nos.408 & 409 of 2017), under sale deed dated 20.04.2007. According to the said Revathi, one Ebinezar (the 1st respondent in all the Appeals) colluding with the Tahsildar, Poonamallee/ 2nd defendant in S.A.No.408/2017, had fraudulently obtained patta in his name and claims right over the property. Hence, she filed a suit for declaration and recovery of vacant possession of the suit property, in O.S. No.499 of 2007. The claim of Ebinezar/ the 1st respondent herein, is that he is the owner of the suit property situated in Natham land in Old Survey No.136/2, New Survey No.304/19 to an extent of 1118 sq.ft., that he was in peaceful possession and enjoyment of the suit property from his father's period and patta was issued in his name in Patta No.95, on 30.12.1994 itself. Since the said Revathi, her husband Mohan and her brothers Balakrishnan, Marimuthu and Siva @ Sivakumar attempted to trespass his property colluding with Saravanan, based on the Power of Attorney executed by them, he filed suits in O.S. Nos. 175 & 116 of 2007 against the defendants, seeking for permanent injunction. According to the appellants in S.A. Nos. 410 & 411 of 2017 is concerned, O.S. No. 296 of 2007 was filed by them, in respect of the suit property which was originally purchased by Munusamy, from one Annammal, W/o.Munian and was later given to his brother Nagamani as his share. After the demise of Nagamani, his legal heirs Balakrishnan, Marimuthu, Mohan and Sivakumar were in joint possession of the suit property. Due to the interference of Ebinezar/ 1st respondent herein, they jointly filed O.S. No. 296 of 2007 against him.

3. Since the suit property under dispute is one and the same in the suits, all the four cases were tried together before the learned District Munsif Court, Poonamallee. During the course of trial, Thiru Mohan, the 2nd plaintiff in O.S.No.296/2007 examined himself as P.W.1 and marked Exs.A.1 to A.5. On the side of the first defendant, the first defendant Ebinezar examined himself as DW.1 and marked the patta issued in his favour in respect of the suit property as Ex.B1, the house tax receipt as Ex.B2, the Chitta and Adangal in Ex.B3 & Ex.B4, to show that he is in possession of the suit property and also two more documents as Ex.B5 & Ex.B6. The report and plans issued by the Sub Registrar, Poonamallee were marked as Exs.C1, C2 & C3 and the report and plan of the Advocate Commissioner were marked as Exs.C4 and C5. However, the said Revathy/ appellant in S.A.Nos.408 & 409 of 2017 and others, have not produced any parental title documents to establish that the property belongs to them. The court below has also held that the said property is a Natham land and the revenue authorities have granted patta in favour of the said Ebinezar/ 1st respondent herein. Therefore, considering the pleadings, oral and documentary evidences, upheld the claim of Ebinezar/ plaintiff in O.S. Nos.116 of 2007 & 175 of 2007 and allowed in his favour. The suits in O.S. No. 296 of 2007 filed by Balakrishnan & Others and O.S. No.499 of 2007 filed by Revathi, were dismissed by the trial court. Challenging the said judgement and decree, appeals were filed by Revathi in A.S. No.82 of 2013 and A.S. No. 83 of 2013 and A.S. Nos. 84 of 2013 and 85 of 2015 were filed by Balakrishnan & others before the Lower Appellate Court.

4. The lower Appellate Court after formulating necessary points for determination found that no proof has been filed by the appellants herein that Muniammal was in possession and how they acquired the property. In the absence of any such documents, rejected the contention of the appellants therein and dismissed the appellate suits and consequently, confirmed the common Judgment and Decree dated 27.08.2013 of the Trial Court. Challenging the common judgment and decree dated 06.04.2015 passed by the learned Principal District Munsif, Poonamallee, the present second appeals in S.A. Nos.408 & 409 of 2017 by Revathi and 410 & 411 of 2017 by Balakrishnan & Others, have been filed before this Court.

5. Mr. V. Selvaraj, the learned counsel appearing for the appellants herein submitted that as per the oral agreement between Munusamy and his brothers, the said property was allotted to one of the brother Nagamani. Hence, the legal heirs were in possession of the said property. On the basis of the Power of Attorney executed in favour of Saravanan, the appellant Revathi has purchased the said property. While the appellants were proceeding with construction, the 1st respondent herein

tried to disturb their possession and hence the original suits were filed. But the Court below has wrongly come to the conclusion that the aforesaid documents relied by the appellants herein have been executed during the pendency of the suit and hit by doctrine of lis pendense. Therefore, the findings recorded by the lower Appellate Court on the face of it, are unsustainable and hence, the learned counsel appearing for the appellants prayed for setting aside the said Judgment and Decree passed by the lower Appellate Court.

6. This Court has carefully considered the rival submissions and also perused the materials available on record in the form of typed set of documents.

7. It is seen that the judgment and decree has been passed by both the courts below, after considering the settled law of this Court. Since the suit property is classified as 'Natham' land, the revenue authorities are competent to grant the patta in favour of a person in continuous possession of the suit property. The appellants herein have filed the present second appeal on the title derived on Muniammal, who is vendor's mother. Both the courts below have held that the appellants herein have not placed any evidence, oral or documentary to show that the appellants are entitled to obtain the suit property by deriving the title of the property of the aforesaid Muniammal. Both the Courts have held that the said property being a 'Natham' land and that the patta has been produced by the 1st defendant herein. Hence, the plea of the appellants herein have not been substantiated by any documentary evidences.

8. In the said circumstances, the courts below have rightly dismissed the appeals of the appellants herein. Therefore, there is no warrant to interfere with the Common Judgment and decree dated 06.04.2015 made in A.S.Nos.82 to 85 of 2013 on the file of the Sub Court, Poonamallee, confirming the order passed by the trial court in the suits. Hence, there is no question of law involved in the Second Appeals to entertain these appeals.

9. Therefore, the Second Appeal Nos. 408 to 411 of 2017 are dismissed. No order as to costs.

Sd/-
Asst.Registrar (CCC)

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Sub Asst. Registrar

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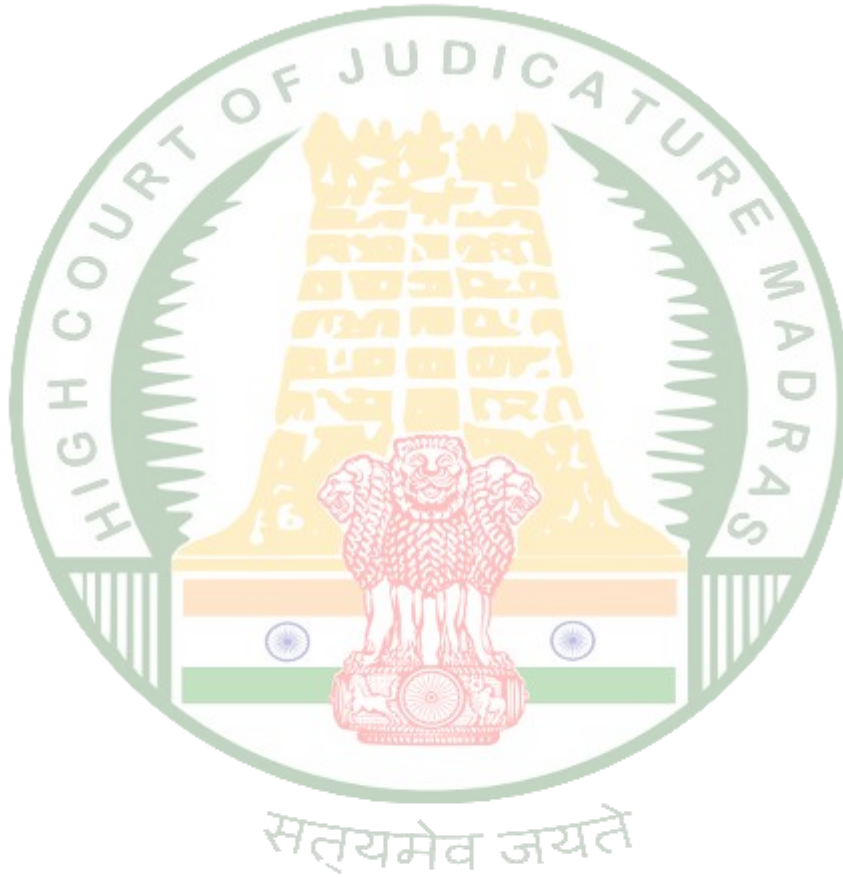
1.The Sub Court, Poonamallee.

2.The Principal District Munsif, Poonamallee.

+1cc to Mr.V. Selvaraj, Advocate in sr.no.51268

S.A.Nos. 408 to 411 of 2017

NR 15/11/2017



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