

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2017

C O R A M

THE HONOURABLE Mrs.JUSTICE PUSHPA SATHYANARAYANA

S.A.No.672 of 2017
and C.M.P.No.17432 of 2017

1. Lakshmi
2. Arjunan
3. Mani
4. Rani

.. Appellants/Plaintiffs

-Vs-

1. State of Tamil Nadu
Rep by District Collector,
Villupuram
2. The Tahsildar, Vanur
3. Sellam @ Sellammal

... Respondents/Defendants

PRAYER: Second Appeal filed under Section 100 C.P.C to set aside the Judgment and Decree dated 06.06.2012 made in A.S.No.5 of 2010 on the file of the Principal Sub Court, Tindivanam confirming the decree and judgment passed in O.S.No.73 of 2005 dated 08.01.2010 on the file of the District Munsif Cum Magistrate, Vanur.

For Appellant : Mr.Rajesh Kannan
for Mr.S.Dawoodkhan

सत्यमेव जयते
O R D E R

The unsuccessful plaintiffs have come up with the above Second Appeal having lost before the Courts below in a suit filed for declaration, permanent injunction and also for mandatory injunction directing the defendants 1 and 2 to cancel the patta granted to the third defendant and to re-issue the patta in their favour.

2. The case of the plaintiff is that the plaintiffs have been in possession and enjoyment of the suit property though admittedly the property belonging to the Government. It is also admitted by the plaintiffs that the patta has been transferred in the name of the third defendant. The second defendant, who is

the Tahsildar, has granted patta originally in the name of the plaintiff. Subsequently, the same was cancelled and the patta was granted in the name of the third defendant. It is the case of the plaintiffs that armed with the patta granted in her favour, the third defendant is trying to disturb the possession of the plaintiffs. Hence, the suit was filed by the plaintiffs.

3. The suit was resisted by the third defendant contending that she was given the assignment of the suit property on 20.06.1969 and she has been in possession of the suit property ever since. It is the plaintiffs, who had clandestinely included their names in the patta, which had to be subsequently deleted at the instance of the third defendant. The plaintiffs have no right or title to the suit property and the third defendant is the absolute owner of the schedule mentioned property claiming under the assignment given by the Government in her favour.

4. The first and second defendants, who are the authorities, also filed the written statement stating that the suit property is classified as Government Poromboke land in the revenue records. The third defendant had encroached the property long back and in recognition of her possession, the properties were assigned to her by the second defendant-Tahsildar and a patta was issued under the category of landless poor and from then onwards, the third defendant has been in possession of the property.

5. Before the Trial Court, the plaintiff examined himself as PW-1 and three more witnesses were examined as PW-2, PW-3 and PW-4 and Exhibits A1 to A25 were marked. On the side of the defendants, the defendant examined himself as DW-1 and two more witnesses were examined as DW-2 and D.W.3 and Exs.B1 to B21 were marked.

6. Based on the pleadings as well as oral and documentary evidence, the Courts below held that the plaintiff had not established their possession of the suit property. Aggrieved by the same, the above second appeal has been filed by the plaintiffs.

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

8. It is admitted that the plaintiffs' names were deleted in the patta and the same was issued in favour of the third defendant. If the plaintiffs were aggrieved that a patta was issued in favour of the third defendant without issuing notice to them, they could have challenged the same before the appropriate authority. It appears from Ex.B-13 that the patta

has been issued in favour of the third defendant, viz., Sellam @ Sellammal on 09.06.2001. Without having any right or title, the plaintiffs have filed the suit for permanent injunction. The Courts below have rightly held that the defendants are entitled to the property even though the interim order of injunction was granted at the time of filing of the suit. Having failed to establish their right of possession, the plaintiffs cannot claim the equitable relief of permanent injunction when the plaintiff could not establish any right over the suit property, the Courts below are right in refusing to grant the relief of declaration and mandatory injunction. The Courts below have rightly dismissed the suit and there is no infirmity in the judgment of the Courts below warranting any interference. In the above facts, there is no question of law, much less, substantial question of law, for consideration in this Second appeal.

9. Accordingly, the Second appeal is dismissed confirming the Judgment and decree of the Courts below. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Sub Judge, Tindivanam
2. The District Munsif Cum Magistrate, Vanur.
3. The Section Officer, V.R.Section, High Court, Madras.

+2 ccs to M/s.S.Dawood Khan Advocate sr 85341

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