

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.8.2017

CORAM

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

S.A.No.765 of 2015

The Executive Officer,
Arulmigu Puthamari Amman Temple,
Kurinjipadi, Cuddalore. Appellant/4th Defendant

Vs.

1. R.Saraswathy
- 2 R.Muthu
- 3 R.Ramalingam
- 4 R.Gnanasundaram
- 5 R.Baskaran Respondents/Plaintiffs
1to5
- 6 The Tahsildar,
Cuddalore Taluk,
Cuddalore - 1.
- 7 The Inspector of Survey,
Land Survey Dept.,
Cuddalore -1.
- 8 The State Govt. of Tamilnadu
Rep. by its District Collector,
Cuddalore-1... Respondents/Defendants 1to3

Second appeal filed under Section 100 of the Civil Procedure Code to set aside the judgment and decree of the II Additional Subordinate Judge, Cuddalore, dated 10.03.2014 made in A.S.No.47 of 2013 confirming the Judgment and Decree of the Additional District Munsif, Cuddalore, dated 14.3.2013 made in O.S.No.258 of 2008.

For Appellants : Mr.R.Sunilkumar
For Respondents 1to5 : Mr.S.Vijayakumar
For Respondents 6to8 : Mr.T.Jayaramaraj
Govt. Advocate (C.S.)

JUDGMENT

The brief facts of the case as follows:

The appellant is the 4th defendant. Plaintiffs have filed a suit in O.S.No.258 of 2008 for declaration of title and mandatory injunction directing the respondents 1 to 3 to issue separate patta to the plaintiffs in respect of the suit property. According to the plaintiffs, first plaintiff is the mother and the plaintiffs 2 to 5 are her sons. The suit property originally belonged to one Singaravel Mudaliar by virtue of two sale deeds, dated 29.6.1946 and 16.6.1923. The said Singaravel Mudaliar was the maternal grandfather of the first plaintiff. He executed a registered settlement deed, dated 15.9.1948 in favour of his only daughter namely Thillaiammal and she executed a Will in respect of the suit property in favour of the plaintiffs namely daughter and grand children. The predecessors of the plaintiffs in title were in possession of the suit property and now the plaintiffs are in possession of the same for more than 85 years and they have prescribed title by adverse possession. The defendants 1 to 3 remained exparte. The fourth defendant has filed written statement contending that the revenue authorities have granted patta in the name of temple and according to them, the temple land comes under the purview of HR & C.E. Department. According to the 4th defendant, the plaintiffs are the encroachers of the temple property. After considering the oral and documentary evidence, the trial court decreed the suit in favour of the plaintiffs. Challenging the judgment and decree passed by the trial Court, the 4th defendant has filed an appeal in A.S.No.47 of 2013 before the II Additional Subordinate Court, Cuddalore. The Appellate court confirmed the judgment and decree passed by the trial court and dismissed the appeal. Challenging the Judgment and decree, the 4th defendant has preferred the present Second Appeal before this court.

2 The learned counsel for the appellant/4th defendant would submit that the respondents/plaintiffs have filed the suit for declaration and mandatory injunction. Pending suit, the revenue authorities have granted patta under Section 10(1) of the Patta Pass Book Act. The specific contention of the appellant/4th defendant is that the aforesaid property belongs to temple and the respondents/plaintiffs are the encroachers of the temple land. Therefore, the appellant/4th defendant has power to remove the encroachment under the provisions of H.R.& C.E. Act. The Courts below have wrongly come to the conclusion that the suit property is classified as Natham land. Therefore, burden of proof lies on the plaintiffs/respondents to establish their claim in the suit for the relief as prayed for. Further, under the provisions of Patta

Pass book act, the suit itself is not maintainable, there is bar to entertain the suit under the Act. But the trial Court has not framed issue to the effect, the suit is barred under the Act. The learned counsel for the appellant/4th defendant also contended that the Courts below have held that the suit land is classified as Natham. However, it is admitted by the respondents/plaintiffs that under Ex.B3, patta granted by the revenue authorities under Section 10(1) of the Patta Pass Book act without considering the nature of classification, both the courts erroneously held that the suit property is a 'Natham land'. Therefore, the judgment and decree passed by the Courts below are liable to be set aside.

3 In view of the above, the counsel for the respondents/plaintiffs would fairly conceded that the aforesaid appeal has to be remanded to the Appellate Court and to decide the appeal by framing additional issue if necessary and in accordance with law, and also seeks liberty to raise additional grounds if any, and to produce additional documents before the Appellate Court to prove the maintainability of the suit.

4 Both side counsel seeks liberty to raise additional grounds and additional documents if any, before the Appellate court if permission under the law.

5 In view of the submission made by the counsel for the parties, this Court is inclined to pass the following order:

(i) The Judgement and decree passed by the II Additional Subordinate Judge, Cuddalore in A.S.No.47 of 2013 is hereby set aside and the Appeal suit in A.S.No.47 of 2013 is remanded to the Appellate court to decide the same, after providing an opportunity to both parties by way of filing additional grounds and also filing additional documents if any, to determine the issues involved in the appeal suit.

(ii) The Second Appeal stands allowed with a direction to dispose of A.S. No.47 of 2013 as expeditiously as possible. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1 The II Additional Subordinate Judge, Cuddalore.

2 The Additional District Munsif, Cuddalore.

copy to

The Section Officer

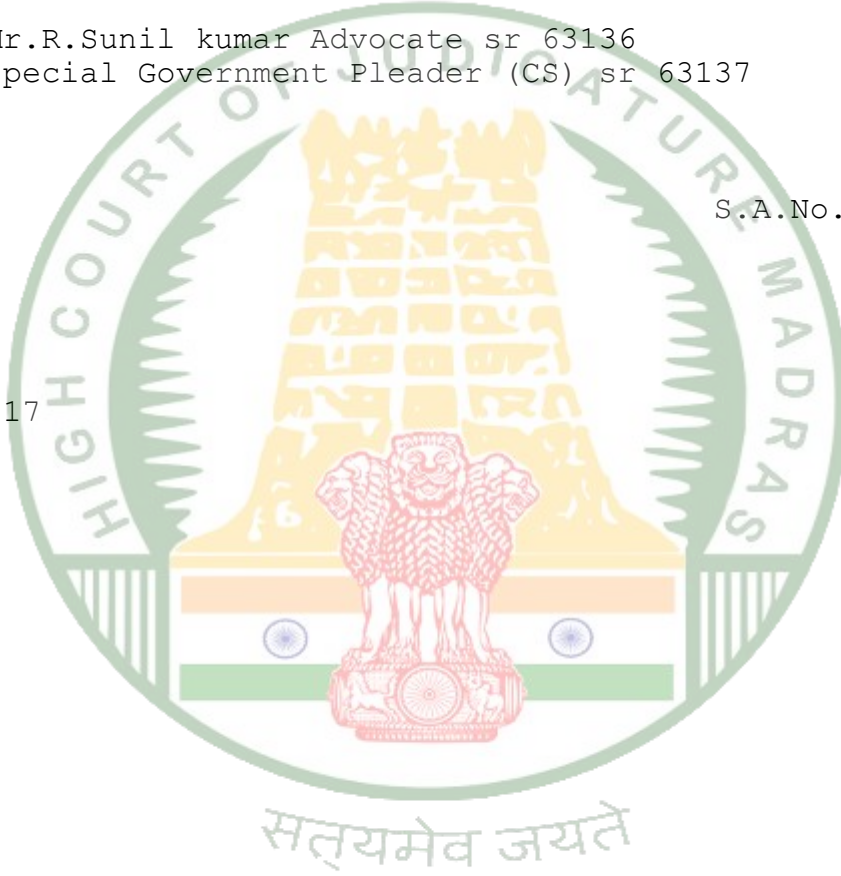
VR Section High Court Madras

+1 cc to Mr.R.Sunil kumar Advocate sr 63136

+1 cc to Special Government Pleader (CS) sr 63137

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