

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.02.2017

Coram

The Hon'ble Mr.Justice M.M.Sundresh

S.A.No.833 of 2015

and

M.P.No.1 of 2015

1. Esayyan
2. Sivanandhan
3. Samy
4. Flory
5. Saju
6. Siju

..Appellants/Respondents

Defendants

versus

Selvaboy

Respondent/Appellant/

Plaintiff 6

Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgement and decree, dated 05.02.2015, made in A.S.No.128 of 2008, on the file of the First Additional District Court, Coimbatore, in reversing the judgment and decree, dated 29.04.2008, made in O.S.No.60 of 2007, on the file of the Sub Court, Pollachi.

For Appellants : Mr.B.Ramamoorthy

For Respondent : M/s.Lesi Saravanan

JUDGEMENT

The plaintiff, who filed the suit, is the respondent herein. He filed the suit for the relief of declaration and recovery of possession, based upon the title derived through the assignment made in favour of his vendor's vendor.

2. The suit was dismissed by the trial Court, inter alia, holding that the patta granted in favour of the vendor of the plaintiff was cancelled, and the defendants/appellants are in possession of the suit property.

3. The Lower Appellate Court initially remanded the matter to the trial Court for fresh consideration. On further appeal, in C.MA.No.2619 of 2010, this Court directed the Lower Appellate Court itself, to decide the evidentiary value of Ex.A.3 and Ex.B.6 and the evidence given by the revenue officials. Thereafter, the Lower Appellate Court reversed the judgement and decree of the trial Court holding that Ex.A.3 stands in the name of plaintiff's vendor's vendor, as of now, and therefore, the subsequent cancellation of patta itself, cannot be a ground to decline the relief. It was further held that the subsequent cancellation was on the footing that, no entry on issuance of

patta was made in the revenue records.

4. Challenging the judgment and decree of the Lower Appellate Court, the present Second Appeal has been filed, and it has been admitted by this Court by framing the following substantial questions of law:-

i) Whether a person, as plaintiff can file a suit for declaration of title and possession, who has derived title from his vendors?

ii) Whether vendors in a sale deed, whose patta was cancelled as illegal patta can execute a sale deed in favour of the purchaser transferring valid and legal title? and

iii) Whether the Court can decide that a patta given long back will pass on title to person, who was given such patta when the Tahsildar as witness has deposed no patta was given in the said Survey Number and patta already given was cancelled as illegal patta?

5. The learned counsel for the appellants/defendants would submit that, inasmuch as the patta, Ex.A.3 having been cancelled, as per Ex.B.6, the first Appeal ought not to have been allowed. The appellants have proved the factum of possession, as recorded by the trial Court beyond the statutory prescription. Therefore, this judgement and decree ought not to have been reversed by the Lower Appellate Court.

6. Learned counsel for the respondent/plaintiff would submit that, even as per the evidence of Revenue Authorities, Ex.A3 stands as of now, in the name vendor of the plaintiff's vendor. A mere cancellation of patta, which has been given, based upon possession on technical grounds, would not disentitle the plaintiff from getting the relief, as rightly recorded by the Lower Appellate Court. The plaintiff has purchased the property for a statutory period, and so is the case of earlier purchaser by his vendor. The appellants have not proved that they are in possession and enjoyment beyond the statutory period for claiming adverse possession. Therefore, no interference is required.

7. The evidence of Tahsildar makes one position clear, as doubted by the trial Court, that Ex.A3, which was given as assignment in favour of the plaintiff's vendor's vendor stands as of today. Ex.B.6 is nothing but a reply given in favour of the appellants under the Right to Information Act. In that, it

has been stated that the subsequent patta based upon possession, was cancelled on the ground that, no entry was made in the revenue record. Thus, the subsequent patta is not a document of title.

8. Thus, as rightly held by the Lower Appellate Court, existence or cancellation has got no bearing on Ex.A3. As long as Ex.A3 continues to be in force, the defendants cannot contend to the contrary. Ex.A3 certainly constitute a document, evidencing the title. The plaintiff has purchased the property from his vendor. Ex.A3 has been issued in favour of the vendor of the plaintiff's vendor. Coming to the second issue, the Lower Appellate Court has rightly found that the suit is one for recovery of vacant possession of the suit property, and, a mere long such possession, per se, will not be a material fact to claim right over the property. It is for the parties, who claims adverse possession, to establish their before the Court, as they seek to discredit the entitlement of a true owner. For doing so, there has to be necessary animus as against the true owner, for which, the date on which, such an assertion made is very important.

9. Thus, the Lower Appellate Court as correctly held that the mere possession of the property, in a suit for recovery of possession is not material fact, to claim adverse possession. In such view of the matter, this Court's interference is not required, and there is no substantial question of law involved. However, liberty is granted to the appellants to workout their remedy, in the manner known to law, by seeking the cancellation of assignment made under Ex.A3 before the appropriate authority, in which case, concerned Authority will have to issue notice to all necessary parties, including the parties before this Court.

10. In the result, this Second Appeal is dismissed, confirming the judgment and decree passed by the Lower Appellate Court. No costs. Consequently, connected M.P. is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. First Additional District Court, Coimbatore,
2. The Sub Court, Polachi.

+1cc to Mr.B. Ramamoorthy, Advocate, S.R.No.8257

+1cc to Mr.Lesi Saravanan, Advocate, S.R.No.8714

GJI (CO)

md(23/03/2017)

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