

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 31.10.2017
PRONOUNCED ON : 03.11.2017

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.171 of 2001

1. Radhakrishnan
2. Lakshmi
3. Minor Kanniammal,
D/o. Peraman,
rep. By her mother &
guardian 2nd appellant

... Appellants/1,3, & 4 Plaintiffs

Vs.

1. Tamilarasi
2. Anandhakumar
3. Muthusamy
4. Ponnusamy

... Respondents/Defendants

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 17.07.2000, made in A.S.No.1 of 1999, on the file of the Court of Additional District Judge, Villupuram District, Villupuram confirming judgment and decree dated 20.11.1998, made in O.S.No.792 of 1995, on the file of the Court of the 2nd Additional District Munsif, Ulundurpet.

For Appellants : Mr.T.Dhanasekar
for Ms.N. Maninarayanan
For Respondents : Mr.K.Goviganesan

JUDGMENT

This second appeal has been directed against the judgment and decree dated 17.07.2000 made in A.S.No.1 of 1999 on the file of the Additional District Court, Villupuram, confirming the judgment and decree dated 20.11.1998 passed in O.S.No.792 of 1995, on the file of the Court of the 2nd Additional District Judge, Ulundurpet.

2. The parties are referred to as per their rankings in the trial Court.

3. Suit for declaration and permanent injunction.

4. The case of the plaintiff in brief is that the suit property is the ancestral property of one Annamalai, who died 50 years ago and after his death, his sons Sakkarai and Sappaiyan, inherited the suit property and after their life time, their legal representatives directly or through some of them are in possession and enjoyment of the suit property and the old patta number is 246 and the new patta number is 647 for the suit property and under the UDR scheme patta was granted in favour of the plaintiffs and in enjoyment of the plaintiffs. While so, the defendants who have no right or interest attempted to trespass into the suit property illegally, hence according to the plaintiffs they had been necessitated to lay the suit for appropriate reliefs.

5. The case of the defendants in brief is that the suit property belonged to Narasammal, wife of Kesavan, who is the brother of Annamalai and from her the suit property was purchased by one Vaithi under a registered sale deed dated 07.09.1943 and after his death his son and daughter inherited the suit property and been in possession and enjoyment of the suit property and they have also prescribed title to the suit property by way of adverse possession and the plaintiffs have no title in the suit property and hence, the suit is liable to be dismissed.

6. In support of the plaintiffs' case PWS 1 to 3 were examined and Exs.A1 to A9 were marked and on the side of the defendants DW1 to 3 were examined and Exs.D1 to D22 were marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties the Courts below were pleased to dismiss the suit laid by the plaintiffs. Impugning the same, the present second appeal has been preferred.

8. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration:

1. Are the Courts below correct and justified in dismissing the suit inspite of DW1's evidence, whereby title of plaintiffs ancestors is accepted?
2. Are the Courts below correct and justified in rejecting Exs.A8 and A9 on the ground that they are third parties documents when DW1 speaks to the contents of the documents, which tally?

9. According to the plaintiffs, the suit property is the ancestral property of one Annamalai and after his death, succeeded by his legal heirs, as detailed in the plaint and

accordingly, recognising their title and possession of the suit property, it is the case of the plaintiffs that patta had been granted in their favour under the UDR scheme and accordingly, obtaining patta and paying kist, the plaintiffs are enjoying the suit property as full owners thereof and inasmuch as the defendants, without any title attempted to interfere with their possession and enjoyment, according to the plaintiffs, they had been necessitated to institute the suit for appropriate reliefs.

10. Per contra the defence taken by the defendants is that the suit property originally belonged to Narasammal, Wife of Kesavan and from her, one Vaithi purchased the suit property under the sale deed dated 7.9.1943. After his death, the defendants who are the legal representatives, through his son and daughter are in possession and enjoyment of the suit property and hence, the plaintiffs have no right or title to the suit property and the suit is liable to be dismissed. The defendants have also pleaded that they have prescribed title to the suit property by way of adverse possession.

11. As rightly found by the Courts below, it is found that the plaintiffs are claiming title to the suit property only on the basis of the patta, said to have been issued in their favour under the UDR scheme. On a perusal of the documents placed by the plaintiffs, it is seen that the patta issued in their favour relate to the new patta no.647 and accordingly, kist receipts filed are also pertaining to the new patta no.647. Further it is seen by the Courts below, the documents placed on behalf of the plaintiffs are found to be from the year 1984 onwards only and there is no valid document placed on behalf of the plaintiffs to show that Annamalai owned the suit property ancestrally, by obtaining patta under the old patta no.246 and paying kist for the enjoyment of the same. With reference to the same, it is found that no acceptable document has been placed evidencing that the suit property is the ancestral property of Annamalai and been in his enjoyment, as put forth by the plaintiffs. On the other hand, it is seen that on the obtainment of the UDR patta, it is found that the plaintiffs at one stroke paid the kist for several years and that too, only corresponding to the new patta no.647 and not for the old patta no.246. Per contra, it is found that the suit property had been in possession and enjoyment of Narasammal, who is stated to be the original owner of the suit property by the defendants and accordingly, it is pleaded by the defendants that Vaithi had purchased the suit property from Narasammal under the sale deed marked as Ex.B1. Ex.B1 found to be dated 07.09.1943 and on a perusal of the recitals contained therein, would go to show that exercising full ownership over the suit property, Narasammal had usufructuously mortgaged the same, and this would go to show that she had been enjoying the suit property, as the full owner thereof. In the face of Ex.B1, it is found that as rightly

determined by the Courts below the plaintiffs have taken a new stand, as if, the suit property originally belong to the brothers Annamalai and Kesavan, husband of Narasammal and on the partition effected between them, the suit property fell to the share of Annamalai. However, when the same is not the case of the plaintiff in the plaint and when, as per the case of the plaintiff projected, Annamalai owns the property as ancestral property on his own, without any reference to his brother, the new stand taken by the plaintiffs, during the course of evidence that the suit property fell to the share of Annamalai in the partition effected with his brother, as such, cannot be accepted and rightly discarded by the Courts below. It is thus found that the defendants have projected better title to the suit property than the plaintiffs.

12. However, it is pleaded by the plaintiffs that in the title deed marked as Ex.A8, A9 and X1, the boundary recitals described thereunder would go to show that the plaintiffs owned the suit property and based on the boundary recitals contained in the said documents, the Courts should have accepted the plaintiffs' case. However, as rightly found by the Courts below Exs.A8, A9 and X1 are not documents effected inter parties and as no one has been examined connected with the said documents to prove the recitals contained therein, it is found that the relying upon the authorities cited, the Courts below have rightly not placed reliance upon the boundary recitals contained in the said documents. The above approach of the Courts below in not accepting the boundary recitals found in Exs.A8, A9 and X1 as none connected with the said documents to establish the same had been examined, particularly, when the said documents are not effected inter parties, merit acceptance. Similarly it is found that the boundary recitals found in Ex.X1 cannot also be straightaway accepted, as the same is also not the document effected inter parties. As seen from the materials, Ex.X1 had come into existence only during the year 1993, after the dispute had arisen between the parties and further, Ex.X1 has come to be marked through PW3, who is closely related to the plaintiffs and only a small fractional extent has been conveyed under Ex.X1 and particularly, when the executant of the said document has not been examined, it is not safe to rely upon the recitals, as rightly found by the Courts below. However, it is argued by the plaintiffs' counsel that as per the admission of the first defendant, examined as DW1, coupled with the boundary recitals found in Exs.A8, A9 and X1, the Courts below should have accepted the plaintiffs' case. However, it is found that admittedly there is house property belonging to the plaintiffs situated on the east of the suit property. Accordingly, it is seen that the Courts below have held that DW1 has referred only to the said property and by way of the above admission, it cannot be construed that DW1 had admitted the title of the plaintiffs in respect of the suit property. Therefore, the

contention that there is a clear admission on the part of DW1 admitting the title of the plaintiffs to the suit property as such cannot be countenanced readily.

13. The plaintiffs having come forward with the case, claiming title to the suit property should establish their case by acceptable and reliable evidence and cannot be allowed to pick holes in the defendants' case to sustain their case. In so far as this case is concerned, other than the patta granted under UDR scheme, there is no valid document placed on behalf of the plaintiffs to uphold their case. Per contra, as rightly determined by the Courts below, it is found that the suit property had been in possession and enjoyment of the defendants right from 1943 onwards and even prior to that and accordingly, it is found that the patta had been granted in their favour and accordingly, they had been enjoying suit property by paying necessary kist for several faslis and the documents marked on their side as Exs.B1 to B22 would amply demonstrate the same. The above documents were also taken into consideration by the Courts below, for accepting the defendants' version and accordingly, found that the defendants have better title to the suit property than the plaintiffs and in such view of the matter, the Courts below have rightly held that the plaintiffs cannot seek the relief of declaration and permanent injunction as claimed in respect of the suit property.

14. In the light of the above discussions, the Courts below have rightly dismissed the plaintiffs' suit and also rightly rejected the contention that DW1 has accepted the title of the plaintiffs to the suit property during the course of his evidence and accordingly, it is also found that the Courts below have rightly rejected Ex.A8, A9 and X1 and did not place reliance upon the boundary recitals contained therein and rightly held that the evidence of DW1, do not, in any manner, corroborate or support the boundary recitals found in the said documents. In such view of the matter, the substantial questions of law formulated in this second appeal are answered against the plaintiffs and in favour of the defendants.

15. In the result the second appeal fails and is accordingly dismissed with costs. Consequently, connected miscellaneous petition, if any is closed.

s/d-

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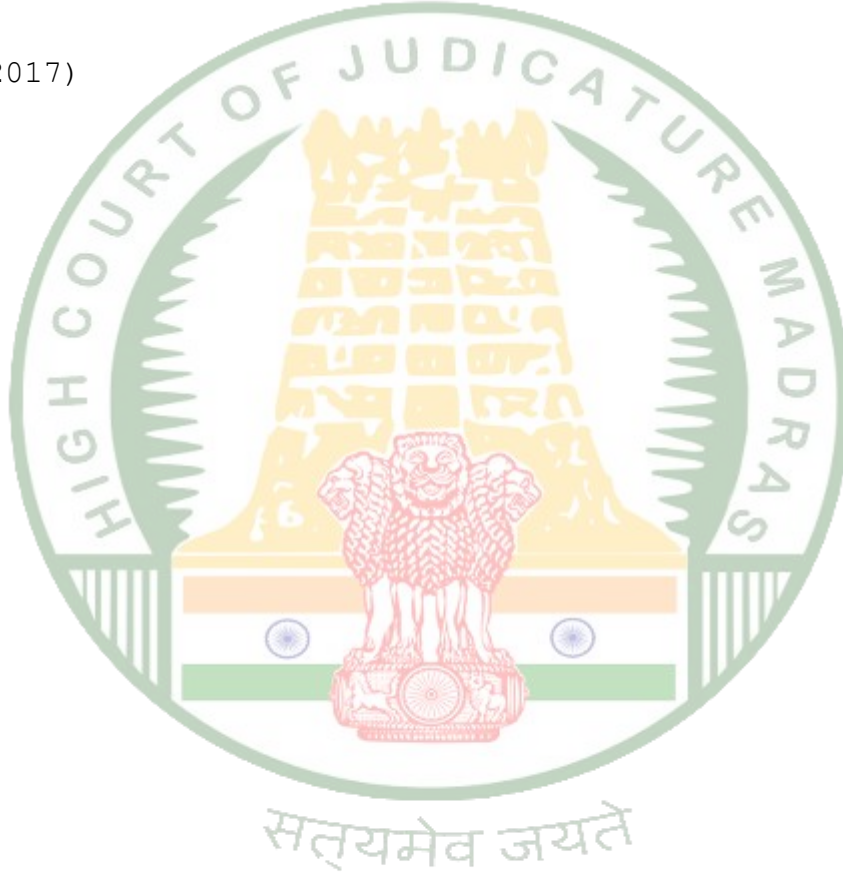
To

1. The Additional District Judge, Villupuram.
2. The 2nd Additional District Munsif, Ulundurpet.
3. The Record Keeper
VR Section, High Court, Madras(2 copies)

+1 CC to Mr.N. Maninarayanan, Advocate sr 78381.

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SP(28/12/2017)



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