

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.01.2017

Coram

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

Second Appeal No.73 of 2016

Arulmigu New Dharmaraja Temple

rep. By its Trustee Krishna Reddy .. Appellant/Appellant/
3rd Defendant

Vs

1.Sri Rama Bajanai Mandiram
rep. By its President
Canchi Parthasarathy

2.Chetty Baliya Sangam
rep. By its President
Canchi Parthasarathy

3.The State of Tamil Nadu
rep. By its Collector
having office at
Collector Office Complex,
Thiruvallur Town and Taluk,
Thiruvallur.

4.The Tahsildar,
having office at
Taluk Office Complex,
Tiruttani Town and Taluk,
Tiruttani.

.. Respondents/Respondents/
Plaintiffs

Second Appeal filed under Section 100 C.P.C. against the judgment and decree dated 10.07.2015 made in A.S.No.26 of 2014 on the file of the Subordinate Judge, Tiruttani, confirming the judgment and decree passed in O.S.No.35 of 2004 dated 27.06.2014 by the District Munsif, Tiruttani.

For Appellant .. Mr.G.Ravikumar
For Respondents .. Mr.T.Murugamanickam for R1 & R2
Ms.Saraswathi Sivarama Iyer
Govt. Advocate for R3 & R4

JUDGMENT

The third defendant is the appellant herein. Challenging the judgment decree dated 10.07.2015 made in A.S.No.26 of 2014 on the file of the Subordinate Judge, Tiruttani, the present second appeal has been filed.

2.The suit has been laid by respondents 1 and 2 being the plaintiffs for declaration of title to the suit property and for consequential relief of possession. The first plaintiff is a Private Trust. The suit property includes two tanks. The plaintiffs sought for ryotwari patta and the same was also granted by proceedings in R.P.No.9/1960 dated 31.03.1960. The patta originally granted in favour of the plaintiffs was cancelled pursuant to the amendment made to the Tamil Nadu Estates Abolition (Conversion into Ryotwari) Act, 1948 (for short 'the Act'), vide proceedings of the Assistant Settlement Officer in RC No.6297/80 (02) dated 14.09.1980. Thereafter, the plaintiffs procedurally approached the Settlement Officer, who in turn, confirmed the cancellation order passed by the Assistant Settlement Officer, by order dated 25.03.1981. The said confirmation order was challenged by way of further appeal and revision. Ultimately, the order passed by the Assistant Settlement Officer was confirmed by the Government of Tamil Nadu on 04.05.1988. Thereafter, the plaintiffs were dispossessed from the suit property as per Section 14-A of the Act. After dispossession, the suit property has been given by the revenue authorities in favour of defendants 3 and 4 to grow trees on the banks of the tanks by way of permissive possession. All these things happened decades ago. Thereafter, the present suit has been laid for the aforesaid relief.

3.Before the Court below, several pleas have been taken including the question of limitation and maintainability. It has also been contended that the cancellation of patta granted in favour of the plaintiffs having become final, it is not open to them to file the present suit. The trial Court, after holding that the decree for declaration cannot be granted to the suit property, nonetheless without any possession, granted a decree for possession on a wrong premise that at the time of granting permission to defendants 2 and 3 by defendants 1 and 2, the plaintiffs should have been put on notice. Unfortunately, the lower appellate Court has concurred with the reasoning of the

trial Court and hence the present appeal by the third defendant.

4. At the time of admission, the following substantial questions of law were framed:

a) Whether the Courts below are right in granting the relief of recovery of possession of the Government property which is vested with Government under the provisions of the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act (26 of 1948) to the respondents 1 and 2?

b) Whether the Courts below are right in decreeing the suit for recovery of possession while dismissing the prayer for declaration of title?

c) Whether the Courts below are right in holding that the respondents 1 and 2 filed the suit well within the period of limitation since the respondents 1 and 2 were dispossessed from the suit property in the year 1980 by the State Government under Section 14-A of the Tamil Nadu Estates Abolition Act and Conversion Act, 1948. Whether institution of the suit in the year 1995 is well within the limitation period or not?

5. Learned counsel appearing for the appellant submits that having declined the prayer for declaration, there is no basis for granting a decree for possession.

6. Learned counsel for the plaintiffs submits that defendants 1 and 2 ought not to have given permissive possession to defendants 3 and 4 and therefore, no interference is required.

7. This Court is at a loss to understand as to how both the Courts have granted a decree for possession after holding that the plaintiffs are not entitled for declaration. There is no dispute on facts. Admittedly, the ryotwari patta granted in favour of the plaintiffs was cancelled, put into challenge and thereafter, concluded against them. There is no challenge to the abovesaid proceedings. The proceedings have been concluded long time back. Consequently, they have been divested with the possession. As a consequence thereon and having acquired the title, defendants 1 and 2 have permitted defendants 3 and 4 to grow trees in the suit property by way of permissive possession. There is no law which mandates the owner of the property to put on notice the erstwhile ryotwari pattaholder before taking further action. Strangely, the Courts below, after refusing to grant a decree for declaration, granted a decree for possession. Even assuming that such a reasoning can be accepted, this Court is unable to understand how possession can be granted

to a person without title. In other words, in one stroke, the Courts below have given possession to a party, which does not have title. Incidentally, it has also set aside all the proceedings initiated by the authorities under the statute, which have become final. There is no challenge to the proceedings at all in the present suit. Similarly, there is no challenge to the permission granted to defendants 3 and 4 directly. Even if it is taken for the argument sake, though bordering on absurdity that the erstwhile ryotwari pattaholder is entitled for notice, the same will not get converted into possession. To put it differently, a subsequent decision to give permissive possession will not enable the erstwhile pattaholder to get possession in the event of such permission being contrary to law. The approach of the lower appellate Court requires to be frowned upon as it totally abrogated its function mandated under Section 96 C.P.C. Being the final Court of fact and law, it has not considered the issues but by a total non application of mind, merely confirmed the judgment and decree of the trial Court without any basis.

8.The judgments rendered by the Courts below are nothing but perverse, being contrary to the basic tenements of law. The substantial question of law (b) is answered in favour of the appellant, while setting aside the judgment and decree of the Courts below. Accordingly, the second appeal is allowed. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The Collector
having office at
Collector Office Complex,
Thiruvallur Town and Taluk,
Thiruvallur.

2.The Tahsildar,
having office at
Taluk Office Complex,
Tiruttani Town and Taluk,
Tiruttani.

3. The Subordinate Judge,
Tiruttani.

4.The District Munsif,
Tiruttani.

copy to
The Section Officer
VR Section High Court
Madras-104

+2 cc to M/s.G.Ravikumar Advocate sr 4988
+1 cc to M/s.T.Murugamanickam Advocate sr 5059
+1 cc to Government Pleader High Court Madras
sr 4885

S.A.No.73 of 2016

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