



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 27.07.2017
CORAM
THE HON'BLE MRS.JUSTICE PUSHPA SATHYANARAYANA

S.A. (MD) No.33 of 2014
and
M.P. (MD) No.1 of 2014

WEB COPY

1. Ramuthayee @ Mookammal
2. Ramaraj
3. Murugan
4. Balakrishnan .. Appellants/ Appellants/Defendants
vs.

S.Lakshmananperumal@Lakshmanan .. Respondent/Respondent/Plaintiff

Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 28.06.2013 passed in the appeal in A.S.No.35 of 2013 on the file of the Principal Subordinate Judge, Dindigul, partially confirming and partially modifying the judgment and decree dated 05.10.2012 passed in the suit in O.S.No.49 of 2007 on the file of the Principal District Munsif, Nilakkottai.

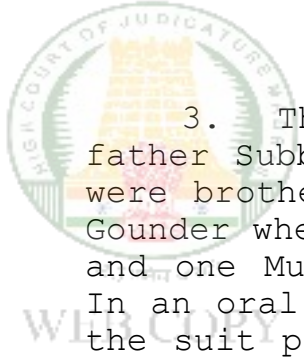
For Appellants : Mr.J.Barathan

For Respondent : Mr.R.Suresh Kumar

JUDGMENT

The unsuccessful defendants before the courts below have preferred the above appeal challenging the decree granted in favour of the plaintiff in a suit for declaration and recovery of possession and for mandatory injunction.

2. According to the plaintiff, the suit property is a Poramboke House Site belonging to the Government. As the plaintiff has been in possession uninterruptedly for more than 50 years, the Government had issued a temporary patta in Patta No.275. Further, the suit property was even surveyed and assigned to Survey No. 279/13. Earlier, there was a suit filed by the plaintiff in O.S.No. 107/2003 against the defendants and obtained a decree and an appeal also has been filed against the same. It is said to be pending. Enraged over the said decree against them, the defendants are trying to disturb the possession of the plaintiff by attempting to put up a superstructure. Hence, the above suit has been filed.



3. The case of the 1st defendant is that the plaintiff's father Subbaiya Gounder and the defendants' father Ramasamy Gounder were brothers. The 1st defendant is the only daughter of Ramasamy Gounder whereas subbaiya Gounder had two sons, namely, the plaintiff and one Muthusamy. The said Muthusamy died leaving his two sons. In an oral partition between Ramasamy Gounder and Subbaiya Gounder, the suit property was allotted to Ramasamy Gounder and the western property was allotted to Subbaiya Gounder. Admittedly, the plaintiff has been employed in Visalakshi Mill in Madurai. As the 1st defendant, being the only daughter, she has been in enjoyment of the property on her own. The share which went to the Subbaiya Gounder was in the possession of Muthusamy and his son Thirumulu. From the date of the partition, the 1st defendant and her husband had been in an uninterrupted possession of the suit property and have put up a pucca construction in the suit property. Therefore, the plaintiff, who has got no manner of right, cannot be given any indulgence by the court.

4. Based on the above pleadings, the trial court has framed appropriate issues. In order to prove the case, on the side of the plaintiff, 2 witnesses were examined as P.W.1 and P.W.2 and as many as 7 documents have been exhibited as Ex.A1 to Ex.A.7. On the side of the defendants, 2 witnesses were examined as D.W.1 and D.W.2 and as many as 5 documents have been exhibited as Ex.D.1 to Ex.D5. Apart from that, an Advocate Commissioner has been appointed by the trial court and his Report and Rough Sketch have been marked as Ex.C.1 and Ex.C.2 respectively. Having considered all the above, both the Courts below have concurrently held that the plaintiff is entitled to a decree. Aggrieved by the same, the above appeal is filed.

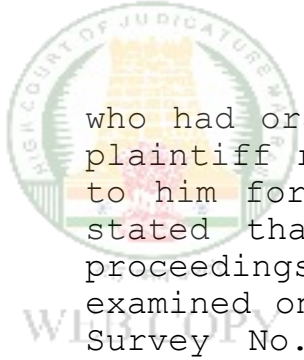
5. At the time of filing of the appeal, the following Substantial questions of law were framed:

"1. Whether the established principle of law that patta is not a document of title applies to the Natham Patta issued under the Natham Settlement Scheme framed as per the Government Order in G.O.Ms.No.1971, Revenue (SSII) Department, Government of Tamil Nadu dated 14.10.1988?

2. Whether the Natham Patta (Exhibit A3) confers title to the respondent/plaintiff when his admissions in his deposition runs contrary to the Natham Settlement Scheme?

3. Whether the observation of the first Appellate Court that title follows possession is right?"

6. The plaintiff has placed his case only based on long possession. It is stated that the suit property belonged to the Government and he was issued a Thoraya Patta based on his possession whereas the defendants have traced their title to their predecessor

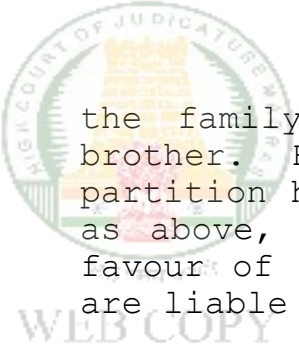


who had orally partitioned the suit property. Ex.A.1 filed by the plaintiff relates to Survey No.279/13 and there was a notice issued to him for enquiry for the purpose of issuing patta. It is also stated that the Tahsildar had conducted an enquiry as per the proceedings in Ex.A.2. The Village Administrative Officer, who has examined on the side of the plaintiff, has also stated that for the Survey No.279/13, the patta has been issued in favour of the plaintiff. While so, the 1st defendant's claim tracing her title through her ancestors and she has also been claiming that she has been in uninterrupted possession, the 1st defendant also has produced the House Tax Receipts, Water Charges and also the application to issue patta in his favour. Though the defendants have not established their title as required by law, the plaintiff has produced documents only to show that the suit property is a poramboke land as per the revenue records. The plaintiff is claiming his right only through Ex.A.3 Manaivari Thoraya Patta.

7. Whether the interested persons were issued notice before granting the patta is not known. According to the 1st defendant, she was not served with any notice before issuing the Thoraya Patta in favour of the plaintiff. As stated earlier, she has also filed an application for change of patta in her name. Excepting the temporary patta, the plaintiff, who claims title to the suit property has not produced any other document to substantiate his claim. It is a settled principle of law that patta will not confer any title. Patta issued by the Government will confer title only when the lands were assigned in favour of a person. But, in this case, there is no such assignment, either pleaded or proved by the plaintiff. Merely because, a temporary patta is issued, the title cannot be declared in favour of the plaintiff. When admittedly, the suit property is a poramboke land, the plaintiff ought to have at least impleaded the Government as a party. Without doing so, the suit also will be barred for non-joinder of necessary parties. The plaintiff has not been living in the suit premises as he was employed in Madurai. The report of the Commissioner indicates that the 1st defendant has been in occupation of the suit property.

8. The courts below also have held that the 1st defendant has put up some construction on the rear side of the suit property. The plaintiff, who has got no manner of right or title, is seeking a declaration of title to the suit property only based on the Thoraya Patta and the courts below also have erred in granting the decree only based on the patta. The plaintiff has also not added the Revenue Authorities, who would be the best person to speak about the classification of the land, assignment and grant of patta. The report of the Commissioner also shows that the 1st defendant has been in possession for a long period.

9. In the cross-examination of P.W.1, it is admitted that he is not aware of the length and breadth of the property. He could say only after seeing the patta. Further, he has admitted that he has got no knowledge about how the suit property ancestrally belonged to



the family and when there was a partition between him and his brother. He also did not know the date, grant or the year when the partition had taken place. While the admission of the plaintiff is as above, the courts below ought not to have decreed the suit in favour of the plaintiff. Hence, the findings of the courts below are liable to be set aside.

10. In the result, this second appeal is allowed and the judgment and decree passed by the Courts below are set aside and the matter is remitted back to the file of the trial court for fresh consideration giving liberty to the parties to adduce further oral and documentary evidence. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To

1. The Principal Subordinate Judge, Dindigul.

2. The Principal District Munsif, Nilakkottai.

+1cc to Mr.R.Suresh Kumar, Advocate Sr.No.68677

+1cc to Mr.T.R.Jayapalam, Advocate Sr.No.68539

TSI

VB/KP/SAR1/10/08/2017/4P/5C

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