



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.08.2017

CORAM

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THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

SECOND APPEAL (MD) No.651 of 2014

and

M.P.(MD).No.2 of 2014

Valli

... Appellant / Appellant / Plaintiff

Vs.

Ayyadurai

... Respondent /Respondent / Defendant

PRAYER: Appeal filed under Section 100 of C.P.C., against the judgment and decree, dated 31.01.2013, made in A.S.No.19 of 2012 by the learned Principal Subordinate Judge, Ramanathapuram, confirming the judgment and decree, dated 20.06.2011, made in O.S.No.37 of 2001 by the learned District Munsif cum Judicial Magistrate, Thiruvadanai.

For appellant ... Mr.G.Ramanathan

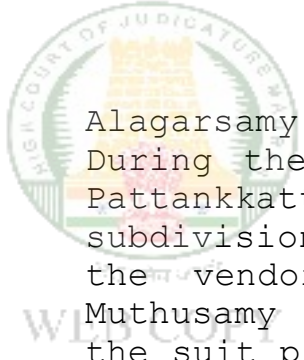
For respondent Mr.C.Vakeeswaran

JUDGMENT

The unsuccessful plaintiff in a suit for declaration and permanent injunction is the appellant.

2. The case of the plaintiff is that the suit property originally belonged to one Desingu Pattankkatti, who had got the same under UDR scheme from the Tahsildar, Thiruvadanai. It is stated that the original Survey No.126/1 was subdivided as S.Nos.126/1B1 and 126/1B2. The said survey No.126/1B1 was assigned to one Lakshmi, who is the wife of Desingu Pattankkatti. The plaintiff has purchased the property from the said Lakshmi on 22.09.1994. As the defendant has got no right over the suit property and he was disturbing the possession of the plaintiff, the suit was filed for declaration of title and for permanent injunction.

3. The suit was resisted by the defendant contending that the suit property never belonged to Desingu Pattankkatti or his wife. It was originally owned by one Muthusamy Iyyangar and his brother



Alagarsamy Iyyangar and patta was also issued in their names. During the UDR scheme, patta was issued in the name of Desingu Pattankkatti wrongly without any enquiry. But, even before the subdivision of the suit property, it was settled in the name of the vendor of the defendant viz., Muniyandi Devar and one Muthusamy Iyyangar Vagayara jointly. The defendant had purchased the suit property from the heirs of Muthusamy Iyyangar Vagayara on 13.09.1994. It is strenuously denied by the defendant that the suit property never belonged to Desingu Pattankkatti and he had never enjoyed the suit property at any point of time. It is further stated that Lakshmi is not the wife of Desingu Pattankkatti and one Meenambal is his wife. The defendant had also filed an application before the Tahsildar, Thiruvadanai and in his proceedings in Mu.Mu.P.No.B.4/5499/99, dated 25.02.2000, the Tahsildar held that Lakshmi is not the wife of Desingu Pattankkatti and also held that Desingu Pattankkatti did not have any right over the suit property and cancelled the patta standing in her name. Hence, the purchase made by the plaintiff is not valid and binding on the defendant.

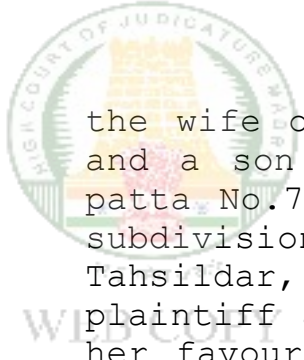
4. Before the trial Court, on the side of the plaintiff, the plaintiff herself was examined as PW1 and Exs.A1 to A15 were marked. On the side of the defendant, the defendant himself was examined as DW1 and Exs.B1 to B9 were marked. The Courts below have concurrently held that the plaintiff had not established her title or possession and thus, dismissed the suit.

5. At the time of admission, only notice was ordered.

6. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondent.

7. It is the case of the plaintiff that the suit property originally belonged to Desingu Pattankkatti and a valid patta was issued in his name in Patta No.781 and it was subsequently subdivided into Survey Nos.126/1B1 and 126/1B2. Thereafter, the patta was changed in the name of his wife Lakshmi in Patta No.1085 in Survey No.126/1B1. The plaintiff claimed to have purchased the property from the said Lakshmi and has filed the suit for declaration. Per contra, the defendant has claimed that the suit property originally belonged to Muthusamy Iyyangar Vagayara and patta was issued during UDR scheme by mistake in the name of Desingu Pattankkatti.

8. The plaintiff, who examined herself as PW1, in her cross-examination had deposed that she did not know that Muthusamy Iyyangar Vagayara had got patta in their names. Before purchasing the property, the patta was in the name of Lakshmi. She has denied the fact that Lakshmi was not the wife of Desingu Pattankkatti or how the said Desingu Pattankkatti got the property. She has also denied the fact that Lakshmi was not the wife of Desingu Pattankkatti.



the wife of Desingu Pattankkatti and only Meenambal was his wife and a son by name Karunanithi was born to them. Ex.A1 is the patta No.781 standing in the name of Desingu Pattankkatti. After subdivision, the patta was changed in the name of Lakshmi by the Tahsildar, Thiruvadana, which proceeding is marked as Ex.A3. The plaintiff also has filed Ex.A5 - sale deed executed by Lakshmi in her favour. From the perusal of the above documents, one cannot infer that Lakshmi is the wife of Desingu Pattankkatti and it is also not clear as to how either Desingu Pattankkatti or his alleged wife Lakshmi became the owner of the property.

9. On the contrary, the defendant himself has deposed as DW1 and marked Ex.B1 - settlement extract with regard to Survey No.126/1 which was settled in favour of one Muniyandi and Muthusamy Iyyangar Vagayara. Ex.B2 is a patta passbook in the name of Alagarsamy Iyyanagar with regard to Survey No.126/1B and corresponding patta No.781. Ex.A1 is also a patta standing in the name of Desingu Pattankkatti bearing the same patta No.781. The title deed of the defendant is marked as Ex.B3, dated 13.09.1994, whereunder the defendant has purchased the suit property from the sons of Muthusamy Iyyangar Vagayara. Ex.B5 is the proceedings of the Tahsildar, Thiruvadana, dated 25.02.2000. A perusal of Ex.B5 would go to show that originally there was a joint patta in the names of Muniyandi Thevar, Alagarsamy Iyyangar and Muthusamy Iyyangar. The said Alagarsamy Iyyangar's son Srinivasan Iyyangar had sold the property in favour of the defendant on behalf of his minor sons on 13.09.1994. While so, on 22.09.1994 the plaintiff has purchased the same property from Lakshmi W/o.Desingu Pattankkatti. The Tahsildar has specifically found that for the same extent of the property, the said Lakshmi had executed a sale deed in favour of the plaintiff, a week after the sale in favour of the defendant. The said Lakshmi also had not established as to how she was entitled to the said property and to alienate in favour of the plaintiff.

10. In the absence of any evidence that the said Lakshmi is the wife of Desingu Pattankkatti nor she had any right or title to the property, the patta granted in her favour was cancelled and it was subsequently observed that the issuance of patta in the name of Desingu Pattankkatti itself was a mistake. Excepting the complaint of the plaintiff/appellant that the Thasildar could not have cancelled the patta, the plaintiff is unable to substantiate her claim for declaration of title. It is specifically pointed out that the defendant has approached the Thasildar only pursuant to the direction of the Revenue Divisional Officer, Ramanathapuram. In the absence of any material to show that the vendor of the plaintiff had got right or title to the suit property, the plaintiff is not entitled to get the relief sought. The Courts below have rightly dismissed the suit. In the light of the above discussions, there is no question of law arising for consideration.



11. In the result, this second appeal fails and the same is, accordingly, dismissed, confirming the judgment and decree passed by the Courts below. No costs. Consequently, connected miscellaneous petition is also dismissed.

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Sd/-

Assistant Registrar(CS-I)

/True copy/

Sub Assistant Registrar

To

1. The Principal Subordinate Judge,
Ramanathapuram.
2. The District Munsif cum Judicial Magistrate,
Thiruvadanai.

Copy to:

The Record Keeper,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1 cc to Mr.G.Ramanathan , Advocate in SR.No. 73802
+1 cc to Mr.C.Vakeeswaran , Advocate in SR.No. 73387

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AE/KP/SAR1/07.09.2017/4P/6C

S.A. (MD) No.651 of 2014
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