

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 11.06.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

S.A.No. 321 of 2018
and
C.M.P. No.8852 of 2018

Arumugam Nainar

.. Appellant/Petitioner

Vs.

1.Rajamani
2.Velu
3.Mathiyazhan

.. Respondents/Defendant

Second Appeal is filed under Section 100 of C.P.C to set aside the judgment and decree passed by the learned Subordinate Judge at Ulundurpettai dated 12.12.2017 in A.S. No. 59 of 2017 and the Hon'ble District Munsif of Ulundurpettai confirming the judgement and decree dated 11.11.2014 in O.S. No. 261 of 2009.

For Appellant : Mr.K. Gangadaran

JUDGMENT

This Second Appeal is filed against the judgment and decree passed by the learned Subordinate Judge at Ulundurpettai dated 12.12.2017 in A.S. No. 59 of 2017 confirming the judgement and decree dated 11.11.2014 in O.S. No. 261 of 2009.

2.The appellant is plaintiff and the respondents are defendants in O.S.No.261 of 2009 on the file of the Sub Court, Ulundurpettai. The appellant filed the said suit for declaration, possession and for mesne profit. According to the appellant, the suit property originally belonged to Government and on 29.11.1996 the Special Tahsildar, Ulundurpettai issued patta No.315 to the appellant and from that date, he was in possession and enjoyment of the suit property and perfected his title by adverse possession. On 20.09.2009, the respondents tried to trespass into the suit property and the same was prevented by the appellant. However, subsequently, the first respondent trespassed into the suit property and he is now in possession of the property. Under such circumstances, the appellant has come out with the present suit for the relief stated above.

3. The 1st respondent filed written statement and the same was adopted by the 2nd and 3rd respondents. The respondents denied all the averments made in the plaint and contended that originally on 10.10.1982 patta was granted to the appellant for the lands in Survey No.63/12A for 3 cents, for which the present Survey Number is 150/4. The appellant got the said patta transferred to his wife's name and is trying to get patta in respect of Survey No.150/6 which was assigned to the 1st respondent's grandfather. It is the habit of the appellant to get house site patta by making false representations and hence prayed for dismissal of the suit.

4. Based on the pleadings, the learned Trial Judge framed four issues. Before the learned Judge, the appellant examined himself as PW-1 and one Swamidurai as PW-2 and marked one document as Ex.A1. The 1st respondent Rajamani examined himself as DW-1 and other four witnesses, as DW-2 to DW-5 on behalf of the respondents and marked documents Ex.1 to Ex.14. The third party documents were marked as Ex.X-1 to X9.

5. The learned trial Judge considering the pleadings and oral and documentary evidence, dismissed the suit, holding that Ex.A-1 patta granted to the appellant by the Government is not valid.

6. Against the said judgment and decree dated 11.11.2014 made in O.S.No.261 of 2009, the appellant filed an appeal in A.S.No.59 of 2017 on the file of the Subordinate Court, Ulundurpet.

7. The learned first Appellate Judge framed necessary points for consideration and independently considering all the materials on record and judgment and decree of the trial Court, dismissed the appeal confirming the judgment and decree of the trial Court.

8. Against the judgment and decree dated 12.12.2017 made in A.S.No.59 of 2017, confirming the judgment and decree dated 11.11.2014 made in O.S.No.261 of 2009, the appellant has come out with the present Second Appeal.

9. The learned counsel appearing for the appellant contended that the 1st respondent is a Government servant and is not entitled to Nathampatta. The courts below failed to consider the fact that the 1st respondent has admitted that he was in service in Villupuram Marketing Committee for 30 years and that assignment of Nathampatta was granted, while he was in service. PW-2 in cross examination admitted that the 1st respondent has put illegal shed in the suit property, three

years before filing of the suit by the appellant. The courts below failed to consider Ex.B-10 the letter from the Tahsildar, which says that the 1st respondent is not residing in Parikkal Village, where the suit property is situated, but is residing only in Kantamanadi Village. Ex.B-10 clearly shows that patta in respect of the suit property is in the name of the appellant and there is no tamarind tree in the suit property. The documents filed by the respondents are created. The 1st respondent has not produced the original patta.

10. Heard the learned counsel for the appellant and perused the materials available on record.

11. According to the appellant, patta was issued to him under the Natham Land Tax Scheme on 29.11.1996 and from that date onwards he was in possession of the suit property and he has perfected his title by adverse possession. The courts below rejected the said contention as the appellant has not proved that he was in possession of the suit property prior to the issuance of the 'Thoraya Patta' on 29.11.1996. The appellant also failed to prove that the respondents have trespassed into the suit property on 20.09.2009. On the other hand, in the cross examination, DW-2 has stated that the 1st respondent had put up a shed in the suit property, about three years before filing of the suit. Patta has been issued in the year 1982 to the appellant and the 1st respondent. The patta issued to the appellant relates to the property in Old Survey No.63/12A, New Survey No.150/4 and the patta issued to the 1st respondent is to the property situated in Survey No.150/5. The appellant got the patta in respect of the property in Survey No.150/4 and transferred the same to his wife's name and is trying to get patta in respect of the property in Survey No.150/6. To prove this contention, the 1st respondent has marked the documents in Ex.B1 to Ex.B14. Further, the respondents, through third party have marked extract of revenue records, as Ex. X1 to X9. The courts below have considered that the patta produced by the appellant dated 29.11.1996 which is only a 'Thoraya Patta' and held that regular patta can be granted only after considering the objections received by the Tahsildar and dismissed the suit and the appeal.

12. The courts below have considered all the above facts and by giving valid reasons have rejected the claim of the appellant. There is no error in the said findings. No question of law much less than the substantial question of law has been raised in this Second Appeal.

13.In the result, the Second Appeal is dismissed.
Consequently, the connected Miscellaneous Petition is closed.
No costs.

Sd/-
Assistant Registrar (CS-vi)

//True Copy//

Sub Assistant Registrar

avr

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1. The District Munsif Court, Ulundurpet.
2. The Subordinate Court, Ulundurpet.

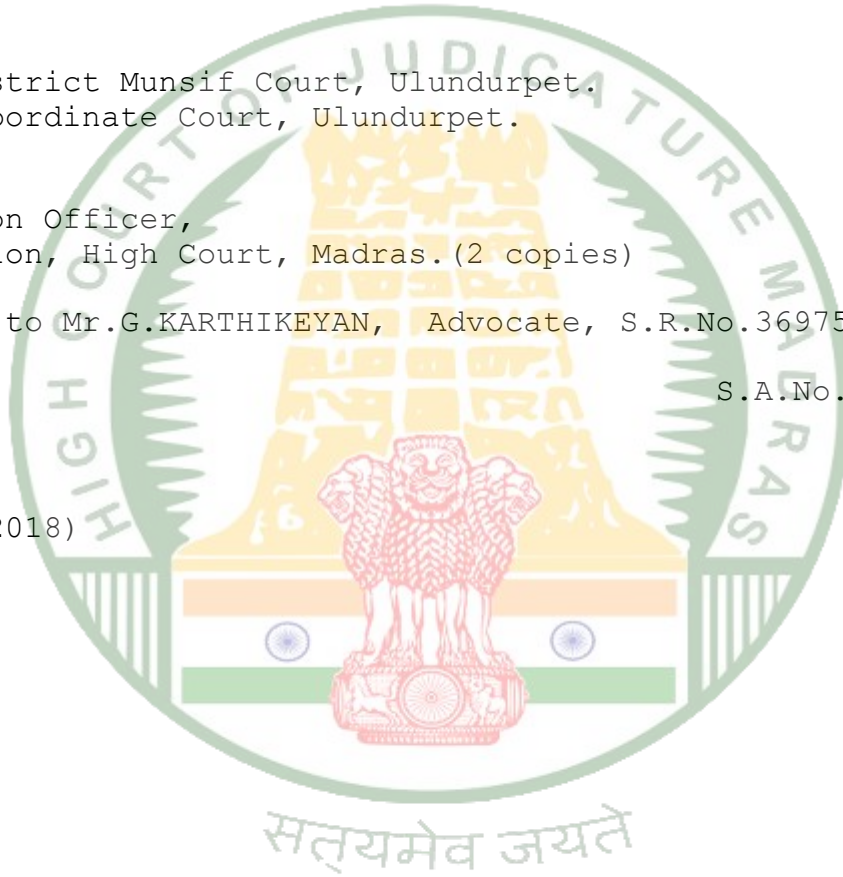
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+1cc to Mr.G.KARTHIKEYAN, Advocate, S.R.No.36975

S.A.No.321 of 2018

RJ(CO)
TR(23/07/2018)



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