

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on		15.12.2017
Delivered on		23.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

S.A. No.1485 of 2000

Lakshmi :Defendant/Respondent/ Appellant

Vs.

1.Nachammal

2.Mayavathi

3.Bakkialakshmi

4.Dhanalakshmi

5.Ramasamy

:Plaintiffs/Appellants/ Respondents

Prayer: Second Appeal is filed under section 100 of the Code of Civil Procedure, 1908, against the judgment and decree dated 20.07.1999 made in A.S.No.32 of 1999 (on the file of the Subordinate Court, Bhavani) reversing the judgment and decree dated 24.11.1998 made in O.S.No.536 of 1996 (on the file of the Principal District Munsif Court, Bhavani).

For Appellant : Mr.T.Muruga Manickam

For Respondents: No appearance

J U D G M E N T

This Second Appeal has been filed by the defendant against the judgment and decree passed by the learned Subordinate Judge, Bhavani in A.S.No.32 of 1999, dated 20.07.1999, reversing the judgment and decree passed in O.S.No.536 of 1996, on the file of the Principal District Munsif Court, Bhavani, dated 24.11.1998.

2.The respondents herein have filed a suit in O.S.No.536 of 1996, on the file of the Principal District Munsif Court, Bhavani for declaration of title and for permanent injunction. The learned District Munsif has dismissed the said suit by the judgment dated 24.11.1998. As against the said judgment and decree, the respondents herein have filed an appeal in A.S.No.32 of 1999 before the Subordinate Judge, Bhavani. The learned Subordinate Judge, by his judgment dated 20.07.1999 has allowed the said appeal and decreed the suit as prayed for. Challenging the said judgment and decree, the defendant has filed the present Second Appeal. For the sake of

convenience, the parties are referred to as described before the trial Court.

3.The averments made in the plaint are in brief as follows:-

The first plaintiff is the mother of the other plaintiffs. Originally the suit property belonged to one Saradambal. From her, the husband of the first plaintiff and the father of the other plaintiffs namely Karuppiah Konar had purchased the suit property on 26.07.1967 under a registered sale deed. Ever since the date of purchase he was in possession and enjoyment of the suit property as an absolute owner till his death in the year 1970. After his death, the plaintiffs succeeded to the suit property and they are in possession and enjoyment of the same. The said Karuppiah Konar, while he was alive, executed a registered mortgage deed on 27.09.1967, in respect of the suit property in favour of one Irusayammal. On 02.05.1975, from the said Irusayammal the defendant had got the aforesaid mortgage assigned in her favour. Except right to collect the mortgage amount, the defendant had no other rights or interests over the suit property. Even the said debt has become time barred now. The suit property is now in a dilapidated condition. The plaintiffs have been paying the house taxes. That being so, the defendant had moved the Natham Tahsildar of perundurai seeking patta, but the said Tahsildar has rejected her claim on 24.05.1993. As against the said order, the defendant had preferred an appeal before the settlement officer, Dharapuram and the said appeal has been allowed by the order dated 28.01.1994 and the same has been confirmed by the District Revenue Officer by the order dated 12.01.1996. The aforesaid authorities have passed orders without referring to the title and hence the said orders will not bind upon the plaintiffs. Taking advantage of the said orders the defendant attempted to trespass into the suit property. Hence the suit.

4.The averments made in the written statement are in brief as follows:-

It is false to state that the plaintiffs are the absolute owners and they are in possession of the suit property. It is the defendant, who is in possession and enjoyment of the suit property for the past 25 years continuously, uninterruptedly and with the knowledge of the plaintiffs. The suit property is classified as Oor Natham and patta has been granted to the defendant herein. The plaintiffs did not file any appeal or revision, against the order of the District Revenue Officer. The defendant has been paying the house tax to the suit property. In these circumstances, in alternative, the defendant has perfected her title over the suit property by adverse possession also in case the plaintiffs proved their title over the suit property. There is no cause of action for filing the suit and hence the defendant prayed to dismiss the suit.

5. Based on the aforesaid pleadings, the learned District Munsif has framed necessary issues and tried the suit. During the trial on the side of the plaintiffs, fifth plaintiff was examined as PW1 and one Krishnaveni was examined as PW2. Exs A1 to A12 were marked as exhibits on the plaintiffs' side. On the side of the defendant, the defendant examined herself as DW1 and also examined one R. Lakshmanan as DW2 and marked Exs B1 to B10 as exhibits. The report and the plan filed by the Advocate Commissioner have been marked as Exs C1 and C2 respectively.

6. The learned District Munsif, after considering the materials placed before him, found that the defendant is in possession of the suit property; that she has perfected title by adverse possession and that recognising her possession the Government also had issued patta. Accordingly he dismissed the suit. Aggrieved by the same, the plaintiffs have preferred an appeal in A.S.No.32 of 1999 on the file of the Subordinate Judge, Bhavani. The learned Subordinate Judge has allowed the appeal and decreed the suit as prayed for. As against the said judgment and decree, the defendant has filed the present Second Appeal.

7. At the time of admitting the Second Appeal the following questions of law were formulated:-

"1. Whether a suit for declaration of title is maintainable in respect of Natham land without the Government being made a party?

2. When the Revenue Authorities have conclusively held that the defendant is in possession and granted Natham patta in her favour whether the present suit is maintainable without a prayer seeking to set aside the order made in the Revenue proceedings?"

8. Though the respondents/plaintiffs have received notice, they did not appear either in persons or through counsel and hence they were set ex-parte. Hearing the arguments of the learned counsel for the appellant and perusing the records judgment is being passed.

9. The suit property is a thatched house bearing Door No.3/48-A measuring 0.01.10 square meters situated in Natham R.S.No.185/9 of Ilipili Village, Bhavani Taluk, Erode District. According to the plaintiffs, the suit property originally belonged to one Saradammal and from her, the husband of the first plaintiff and father of the other plaintiffs namely Karupppiah Konar had purchased the suit property on 26.07.1967 under a registered sale deed and after his death, they succeeded to the suit property as legal heirs and they have been in possession and enjoyment of the same. In order to substantiate their claim, they have produced Exs.A1 to A12. It is seen from Ex.A1 (A registered sale deed dated 29.07.1964) that one Ponnayal @ Saradammal had purchased the suit property from one Kandappa Konar. Ex.A2 (A

registered sale deed dated 26.07.1967) shows that one Karupppiah Konar had purchased the suit property from the said Ponnayal @ Saradammal . The said Karupppiah Konar is the husband of the first plaintiff and father of the other plaintiffs. Ex.A3 (A registration copy of the mortgage deed dated 27.09.1967) shows that the said Karupppiah Konar had mortgaged the suit property to one Irusayammal. So, it is clear that the said Karupppiah Konar was the owner of the suit property and after his death his legal heirs viz., the plaintiffs had succeeded to the suit property. Exs.A5 to A7 are house tax receipts. They would show that the plaintiffs are in possession of the suit property.

10.The defendant is the own sister of the first plaintiff. According to the plaintiffs, the defendant got assignment of the mortgage, in respect of the suit property, from the said Irusayammal and as such except the right to recover the mortgage amounts, she had no other rights over the suit property. Ex.A4 (A registration copy of the made over deed of the mortgage) shows that on 02.05.1975, the defendant has paid Rs.1,000/- to the said Irusayammal and got assignment of the mortgage in her favour. Though the defendant, while examining herself as DW1 has denied the said made over, Ex.A10 (A copy of the order passed by the settlement officer, Dharapuram dated 28.01.1994) shows that the defendant herself has produced the said made over deed of the mortgage and marked as Ex.R1 in the patta proceedings. So, she is estopped from denying the said made over of the mortgage. Since, the defendant got made over of the mortgage admitting that the said Karupppiah Konar was the mortgagor of the suit property, it is not open to her to deny the title of the said Karupppiah Konar or his legal heirs (Plaintiffs).

11.The learned counsel for the appellant/defendant has contended that taking into consideration, the defendant is in possession of the suit property, the Revenue Authorities have granted patta in favour of the defendant and the same has not been questioned by filing appeal or revision and as such the said order has become final. A perusal of the first appellate Court's judgment shows that the same kind of arguments have been advanced in the first appeal also and the learned First Appellate Judge by relying upon the decision in Kuppuswami Nainar Vs. The District Revenue Officer, Thiruvannamalai and others, (1995) 1 MLJ 426 has rightly held that the views expressed by the Revenue authorities in patta proceedings on the question of title will not in any way affect the jurisdiction of the civil Court and it is for the civil Court to decide the question of title. Therefore, the findings of the Revenue authorities relating to the title will not bind upon the civil Court. In this case, as already pointed out that the defendant herself got made over of the mortgage admitting that the plaintiffs' predecessor in title viz., Karupppiah Konar alone got title over the suit property. Therefore, the first appellate Court has rightly come to the

conclusion that the plaintiffs are the owners of the suit property.

12. On coming to the question of possession, the learned first appellate Judge, relying upon the Advocate Commissioner's report and plan (Exs.C1 & C2), held that the house situated in the suit property is in a dilapidated condition and only remnants of old wall is there and that should be treated as a vacant site only and hence no reliance can be placed upon the house tax receipts filed by the defendant as they might have been created for the purpose of the case. It is also to be pointed out that in the said made over of the mortgage it is not stated that the possession of the suit property has been handed over to the defendant. The learned first Appellate Judge relying upon the Principle that the "Title follows Possession" has held that it has to be presumed that the possession of the suit property is with the plaintiffs only. It cannot be said that the said finding is perverse.

13. The learned counsel for the appellant /defendant also contended that since the suit property is the Natham land, without impleading the Government as a party, the suit for declaration of title is not maintainable. It is well settled that the Natham land is not a Government Poramboke land and as such in the dispute between the Private individuals, the Government is neither a necessary party nor a proper party. Therefore, there is no substance in the aforesaid argument.

14. Since the Appellant/defendant got assignment (Made over) of the mortgage, at the most she can ask for re-payment of the mortgage amount if the Law of Limitation permits. Beyond that she cannot claim any other right, over the suit property. For the aforesaid reasons, I am of the view that the judgment of the first Appellate Court is a well reasoned one and I do not find any infirmity in the said judgment. Accordingly, the substantial questions of Law are answered.

15. In the result, the Second Appeal is dismissed. No costs.

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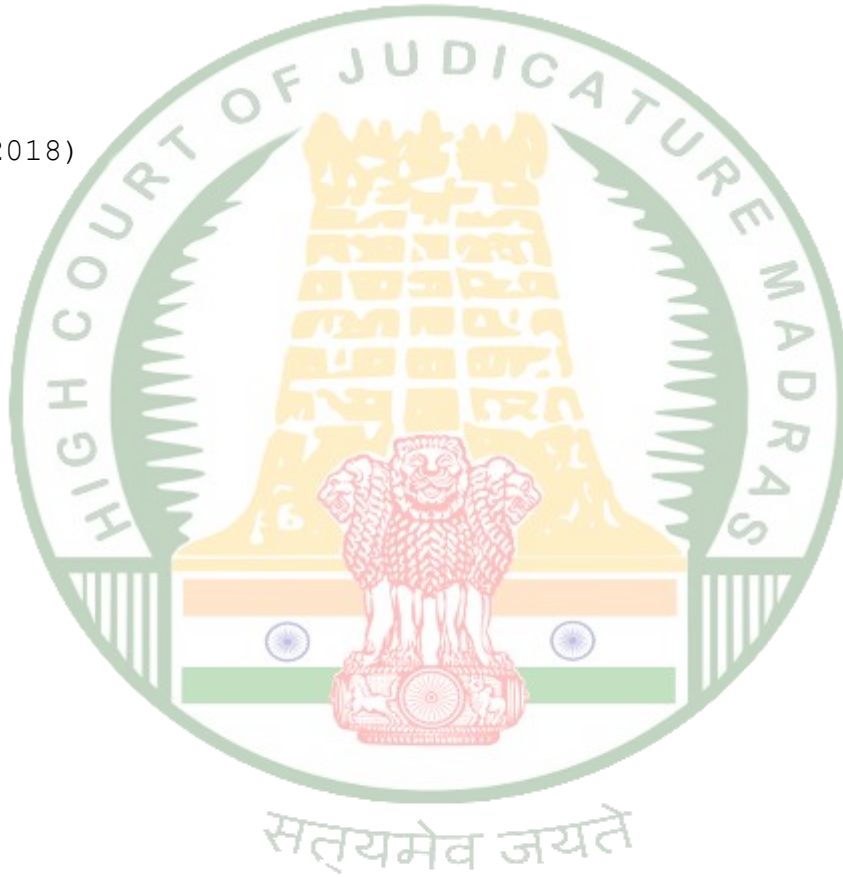
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To

1. The Subordinate Judge, Bhavani.
 2. The Principal District Munsif, Bhavani.
 3. The Record Keeper, Vr Section, High Court, Madras.
- + 1 cc to MR. T. Murugamanickam, Advocate Sr.5004

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